

# **OFFICIAL RECORD OF PROCEEDINGS**

**Wednesday, 23 February 2000**

**The Council met at half-past Two o'clock**

## **MEMBERS PRESENT:**

THE PRESIDENT

THE HONOURABLE MRS RITA FAN, G.B.S., J.P.

THE HONOURABLE KENNETH TING WOO-SHOU, J.P.

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

THE HONOURABLE DAVID CHU YU-LIN

THE HONOURABLE HO SAI-CHU, S.B.S., J.P.

THE HONOURABLE CYD HO SAU-LAN

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

THE HONOURABLE ALBERT HO CHUN-YAN

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

THE HONOURABLE LEE WING-TAT

THE HONOURABLE LEE CHEUK-YAN

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

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

THE HONOURABLE LEE KAI-MING, S.B.S., J.P.

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

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

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

THE HONOURABLE NG LEUNG-SING

PROF THE HONOURABLE NG CHING-FAI

THE HONOURABLE MARGARET NG

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

THE HONOURABLE RONALD ARCULLI, J.P.

THE HONOURABLE MA FUNG-KWOK

THE HONOURABLE JAMES TO KUN-SUN

THE HONOURABLE CHEUNG MAN-KWONG

THE HONOURABLE HUI CHEUNG-CHING

THE HONOURABLE CHRISTINE LOH

THE HONOURABLE CHAN KWOK-KEUNG

THE HONOURABLE CHAN YUEN-HAN

THE HONOURABLE BERNARD CHAN

THE HONOURABLE CHAN WING-CHAN

THE HONOURABLE CHAN KAM-LAM

DR THE HONOURABLE LEONG CHE-HUNG, J.P.

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

THE HONOURABLE LEUNG YIU-CHUNG

THE HONOURABLE GARY CHENG KAI-NAM, J.P.

THE HONOURABLE SIN CHUNG-KAI

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

DR THE HONOURABLE PHILIP WONG YU-HONG

THE HONOURABLE WONG YUNG-KAN

THE HONOURABLE JASPER TSANG YOK-SING, J.P.

THE HONOURABLE HOWARD YOUNG, J.P.

DR THE HONOURABLE YEUNG SUM

THE HONOURABLE YEUNG YIU-CHUNG

THE HONOURABLE LAU CHIN-SHEK, J.P.

THE HONOURABLE LAU KONG-WAH

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

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

THE HONOURABLE AMBROSE LAU HON-CHUEN, J.P.

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

THE HONOURABLE CHOY SO-YUK

THE HONOURABLE ANDREW CHENG KAR-FOO

THE HONOURABLE SZETO WAH

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

THE HONOURABLE LAW CHI-KWONG, J.P.

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

THE HONOURABLE FUNG CHI-KIN

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

**MEMBER ABSENT:**

THE HONOURABLE MICHAEL HO MUN-KA

**PUBLIC OFFICERS ATTENDING:**

THE HONOURABLE MRS ANSON CHAN, G.B.M., J.P.  
THE CHIEF SECRETARY FOR ADMINISTRATION

THE HONOURABLE DONALD TSANG YAM-KUEN, J.P.  
THE FINANCIAL SECRETARY

THE HONOURABLE ELSIE LEUNG OI-SIE, J.P.  
THE SECRETARY FOR JUSTICE

MR CHAU TAK-HAY, J.P.  
SECRETARY FOR TRADE AND INDUSTRY

MR GORDON SIU KWING-CHUE, J.P.  
SECRETARY FOR PLANNING AND LANDS

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

MR RAFAEL HUI SI-YAN, G.B.S., J.P.  
SECRETARY FOR FINANCIAL SERVICES

MR JOSEPH WONG WING-PING, G.B.S., J.P.  
SECRETARY FOR EDUCATION AND MANPOWER

MR KWONG KI-CHI, G.B.S., J.P.  
SECRETARY FOR INFORMATION TECHNOLOGY AND BROADCASTING

MISS DENISE YUE CHUNG-YEE, J.P.  
SECRETARY FOR THE TREASURY

MR STEPHEN IP SHU-KWAN, J.P.  
SECRETARY FOR ECONOMIC SERVICES

MR DAVID LAN HONG-TSUNG, J.P.  
SECRETARY FOR HOME AFFAIRS

MRS LILY YAM KWAN PUI-YING, J.P.  
SECRETARY FOR THE ENVIRONMENT AND FOOD

MRS REGINA IP LAU SUK-YEE, J.P.  
SECRETARY FOR SECURITY

MR LEE SHING-SEE, J.P.  
SECRETARY FOR WORKS

## **CLERKS IN ATTENDANCE:**

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

MR LAW KAM-SANG, J.P., DEPUTY SECRETARY GENERAL

MS PAULINE NG MAN-WAH, ASSISTANT SECRETARY GENERAL

MR RAY CHAN YUM-MOU, ASSISTANT SECRETARY GENERAL

**TABLING OF PAPERS**

The following papers were laid on the table pursuant to Rule 21(2) of the Rules of Procedure:

Subsidiary Legislation/Instruments	<i>L.N. No.</i>
Road Traffic (Parking) (Amendment) Regulation 2000 ..	45/2000
Road Traffic (Parking) (Approved Cards) Notice .....	46/2000
Securities (Exchange — Traded Stock Options) (Amendment) Rules 2000 .....	47/2000
Banking (Amendment) Ordinance 1999 (42 of 1999) (Commencement) Notice 2000 .....	48/2000
Mutual Legal Assistance in Criminal Matters (South Korea) Order (L.N. 23 of 2000) (Commencement) Notice 2000 .....	49/2000

**Other Papers**

No. 76 — AIDS Trust Fund 1998-99 Annual Accounts together with the Director of Audit's Report

No. 77 — Hong Kong Tourist Association Annual Report 98/99

Report of the Bills Committee on Mass Transit Railway Bill

Report of the Bills Committee on Exchanges and Clearing Houses (Merger) Bill

Report of the Bills Committee on Firearms and Ammunition (Amendment) Bill 1999

## ORAL ANSWERS TO QUESTIONS

**PRESIDENT** (in Cantonese): Questions. First question.

### Public Expenditure on Building and Civil Engineering Works

1. **MR EDWARD HO** (in Cantonese): *Madam President, will the Government inform this Council of:*

- (a) the estimated public expenditure on building works and civil engineering works in each of the next three financial years; and*
- (b) a comparison of the aforesaid expenditure to that of the Government and the former Provisional Municipal Councils on such works in the current and the past three financial years?*

**SECRETARY FOR THE TREASURY** (in Cantonese): Madam President, the question raised by Mr Edward HO focuses on the public expenditure on "building works" and "civil engineering works". At present, the expenditure on capital works is divided into nine categories, including highways, drainage, water works, new town and urban area development, and so on. In order to provide an answer to Mr HO's question, we could only broadly classify the expenditure on the nine categories into two major groups, that is, "building works" and "civil engineering works".

Another point to be clarified is that as the question raised by Mr HO refers to "public expenditure", we include in our analysis the public works of both the Government and the Housing Authority (HA). Generally speaking, the public works of the HA comprise mainly the construction of buildings, and therefore we classify them broadly as "building works".

According to our analysis, the forecast public works expenditure of the Government and the HA in the coming three financial years will total about \$165 billion, that is, \$55 billion per year on average. Within this total, government "building works" account for about \$14 billion and "civil engineering works" for about \$19 billion, while HA's "building works" account for about \$22 billion.

Part (b) of the main question refers to the comparison of the above-estimated expenditure with that of the Government and the former Provisional Municipal Councils in the current and the past three financial years. Since the first part of the question covers "public expenditure" which includes the expenditure of the HA, my reply to this part of the question also covers its expenditure.

In the past three financial years as well as the current one (four financial years), the total expenditure of the Government, the former Provisional Municipal Councils and the HA on public works is about \$188 billion, that is, \$47 billion per year on average. Within this total, the expenditure of the Government and the former Provisional Municipal Councils accounts for about \$13 billion on "building works" and \$16 billion on "civil engineering works" while the HA spent about \$18 billion on "building works".

**MR EDWARD HO** (in Cantonese): *Madam President, first of all, I applaud that the expenditure on public works in the next three financial years is to be increased rather than decreased. However, if we are to achieve the target on public works expenditure in the next three financial years, such works must be launched and completed on time. In this regard, I would like to ask the Secretary whether she has confidence that this target can be achieved? If not, what would be the problems?*

**SECRETARY FOR THE TREASURY** (in Cantonese): Madam President, I do not have absolute confidence because the commencement of infrastructural works may not be totally within the control of the Government. Members may also be aware that a number of steps will be involved in a lot of infrastructural works: land may have to be resumed; various legislation and clauses may have to be passed, members of the public have to be consulted and a statutory period of time have to be set for members of the public to raise objections; or reclamation works and assessments on the environmental impact may have to be carried out;



and the most important of all is, of course, to justify to the satisfaction of the Legislative Council that the fund application of the Government is justifiable and cost-effective. Since all these procedures and work are not totally within the control of the Government, I cannot say that I have absolute confidence. However, I can assure the Legislative Council that the relevant authorities of the Government of the Special Administrative Region, including the Secretary for Works and all public works departments, will make their best efforts to ensure, as far as possible, that our scheduled infrastructural works will be commenced and completed on time.

**DR RAYMOND HO** (in Cantonese): *Madam President, the Secretary for Treasury mentioned that the expenditure on civil engineering works will incur about \$19 billion in the next three financial years. However, two years ago, the Chief Executive said in his policy address that a total of \$240 billion would be spent on public works within five years. If half of that amount, that is \$120 billion, is spent on railway projects, then the same amount, that is \$120 billion, will also be spent on other civil engineering works. With an expenditure of \$19 billion per year, it will take six years before this target can be reached at this rate. But now, two years in the five-year timetable have passed, and only three years are left. As such, there will be a discrepancy of three years, does it mean that the Government has made some miscalculations?*

**SECRETARY FOR THE TREASURY** (in Cantonese): Madam President, I would like to thank Dr HO for asking this question because he has given me another opportunity to clarify this matter. The Chief Executive said in his policy address that the expenditure on major infrastructural projects will amount to \$240 billion within five years. If Members take a look at the Chief Executive's 1999 policy address, they will realize that this \$240 billion also covers the expenditure on railway projects to be undertaken by the Mass Transit Railway Corporation and the Kowloon-Canton Railway Corporation; whereas the figures given in my main reply did not include the projects of the two railway corporations.

**PRESIDENT** (in Cantonese): Dr HO, which part of your supplementary question has not been answered?

**DR RAYMOND HO** (in Cantonese): *Madam President, I just said that apart from the expenditure on railway projects, that is \$120 billion, there is a discrepancy of three years in the Administration's timetable, and that is, with an expenditure rate of \$19 billion per year, it will take six years before the target can be reached. I would like to ask the Administration why is there a discrepancy of three years, and has there been any miscalculation?*

**SECRETARY FOR THE TREASURY** (in Cantonese): Madam President, I do not think that there is any question of miscalculation, for Dr HO may have compared two issues with different benchmarks. The \$240 billion, which the Chief Executive talked about, included both the infrastructural expenditure of the Government and two railway corporations; whereas the figures given in my main reply included the infrastructural expenditure of the Government and HA, but excluded the two railway corporations.

**MR HO SAI-CHU** (in Cantonese): *Madam President, the Secretary for the Treasury quoted some figures in her main reply, I would like to ask whether such figures are calculated on the basis of a fixed price, or on the money of the day? If it is calculated on the basis of the money of the day, then for the expenditure on government building works alone, the future value of \$14 billion will be \$15 billion. Does this mean that the actual number of works undertaken in the future, as compared to the past, will be decreased?*

**SECRETARY FOR THE TREASURY** (in Cantonese): Madam President, the figures I quoted in the main reply are calculated on the basis of the money of the day. In other words, the expenditure on the infrastructural works of the past three years was based on the actual expenditure, whereas that of the current financial year is based on the estimated price of the current financial year; and the figures for the next three years are based on the money of the day because we have already taken into account foreseeable price adjustments in the construction sector. As regards Mr HO's question that whether there will be any increase in the expenditure on infrastructural works if our calculations are based on actual prices in general, the answer is in the affirmative.

**MR HOWARD YOUNG** (in Cantonese): *Madam President, the Honourable Edward HO just said that he is very pleased to learn that the expenditure on "building works" and "civil engineering works" will be increased in the next few years. However, I believe that, in the future, the works programme of the former Municipal Councils will be incorporated into the government works as a result of the dissolution of the two Municipal Councils. I recall it was seemingly said earlier that the approved works would be carried out as scheduled and that some of those works were still under review. Since the review has not yet been completed, it is possible that some of these works will not be launched. Taking into account the total number of works that the Government has taken over from the Municipal Councils, I would like to ask the Secretary whether it is possible that there may not be a year to year increase in the expenditure on public works? Will there be a negative increase in the total number of government works, if one or two works programmes of the Municipal Councils are to be cancelled?*

**SECRETARY FOR THE TREASURY** (in Cantonese): Madam President, the question of Mr Howard YOUNG is, how is the Government going to deal with the works programmes of the two former Provisional Municipal Councils after the municipal services have been reorganized. Perhaps I should take this opportunity to reiterate that, in fact, we have incorporated 149 works programmes of the two former Provisional Municipal Councils into the Category A Public Works Programme. Within these 149 programmes, outstanding programmes account for \$5 billion. Furthermore, on 16 February, we have received approval from the Public Works Subcommittee of the Legislative Council to upgrade eight outstanding programmes of the former Provisional Municipal Councils to Category A. In addition, next month, we will try to obtain approval from the Public Works Subcommittee to upgrade another four of those programmes to Category A. It is estimated that the total expenditure on these 12 new programmes will amount to \$2.4 billion. As regards the series of programmes which are still at their preliminary or medium stage of planning, the new Secretary will make a report on those programmes to the relevant Legislative Council Panel. Therefore, there is no question that after the reorganization of municipal services, the Government will cut back on the municipal services which will be provided to the public.

**MR EDWARD HO** (in Cantonese): *Madam President, in her reply to my question, the Secretary for the Treasury just said that the future expenditure on government works would be affected by a number of factors. Apart from the possibility that Members of this Council may not accept the fund application of the Government, will the Secretary make allowances in respect of time to accommodate other factors in her forecast?*

**SECRETARY FOR THE TREASURY** (in Cantonese): *Madam President, all the general factors will normally be taken into account, but there are times, in particular for major programmes, when the delay will be longer than we usually expected. As regards the major programmes, it is really impossible for us to make accurate predictions on how long it will take to secure the approval of the District Councils or that of the relevant policy bureaux, or how long it will take us to deal with the objections raised during the statutory period. Generally speaking, we will allow for a certain period of time to deal with such matters in accordance with our past experiences, but it may not be possible for each and every one of our forecast to be accurate.*

**PRESIDENT** (in Cantonese): *We have spent more than 15 minutes on this question, and will now move on to the second question.*

### **Decline in Trade Volume between Hong Kong and the Mainland**

2. **MR HUI CHEUNG-CHING** (in Cantonese): *Madam President, in reply to my question at the Legislative Council meeting on 16 December 1998, the Government said that it had adopted a series of measures to enhance the competitiveness of Hong Kong's container terminals and container freight industry. In 1999, the respective volumes of trade between the Mainland and Japan, the United States and the European Union (EU) registered two-digit growth rates, while the volume of trade between Hong Kong and the Mainland declined by 3.5%. Moreover, the ranking of Hong Kong among the Mainland's trade partners had also dropped from the third to the fourth. On the other hand, as China is about to join the World Trade Organization (WTO), direct trade between the Mainland and other member states of the WTO will continue to increase. In this connection, will the Government inform this Council:*

- (a) *of the progress of implementing the series of measures;*
- (b) *whether it has studied the reasons for the decline in the value of trade between Hong Kong and the Mainland despite the implementation of these measures; if it has, of the details; and*
- (c) *of the strategies it has to help Hong Kong's trades and industries to reverse the downward trend of the value of trade between Hong Kong and the Mainland?*

**SECRETARY FOR TRADE AND INDUSTRY** (in Cantonese): Madam President,

- (a) In 1999, Hong Kong's container port handled 16.1 million twenty-foot equivalent units (TEUs), representing an increase of 10% in container throughput over 1998. Hong Kong is likely to resume the status of the world's busiest container port. In the meantime, the Government is making good progress in implementing a series of measures to enhance the competitiveness of the container terminals and container freight industry. For example, the tendering procedures for the construction of the Container Terminal 9 (CT 9) have been completed. The actual construction of CT 9 is expected to start in May 2000. This will include the dredging of the Rambler Channel to 15.5 m deep so that the terminal will be able to handle new generation container ships of even larger sizes. Upon completion in 2004, CT 9 will have six berths and its port capacity will be increased by 2.6 million TEUs. Construction of supporting road infrastructures is now well underway.

At the same time, we have taken measures to ease the congestion of cross-boundary container truck traffic in order to facilitate the flow of goods to and from the container port. Such measures include the setting up of additional immigration/customs kiosks and the implementation of the "empty goods vehicle lanes" arrangement. To further enhance the efficiency of the existing facilities, we will complete the Port Back-up Facilities and Land Requirement Study in the first quarter of the year. Another study on the development of Hong Kong into a Replenishment Port for ship bunkering will be

completed by the middle of the year to enhance our support for the trade. We are also planning to review the port cargo growth trends and our current port development strategy.

- (b) According to the Census and Statistics Department of the Government of the Hong Kong Special Administrative Region (SAR), the total value of trade between the SAR and the Mainland increased by 1.3% in 1999, representing a significant improvement in comparison with the negative growth of 6.5% in 1998. The figures quoted by Mr HUI Cheung-ching may reflect mainland statistics. We note that the Mainland uses two types of methodologies in measuring trade between the Mainland and the SAR. If the SAR is regarded as the place of destination/origin, the trade between the two place in 1999 will have a decline of about 3.6%. However, if the SAR is regarded as the place of consignment (that is, including re-export), the trade between the two places will record a growth of about 4.7%. Also, according to the statistics of the mainland authorities, the SAR is the fourth largest trading partner of the Mainland in 1998 and 1999, following Japan, the United States and EU. As compared to 1997 when Hong Kong ranked as the second largest trading partner of the Mainland, Hong Kong's rankings in 1998 and 1999 have indeed dropped.

It is true that the value of trade between the SAR and the Mainland has not rebounded to the level as in 1997. This is attributable to the Asian financial crisis which has impacted on the performance of trade. Apart from this, the on-going structural shift of Hong Kong's external trade to offshore trade has also contributed to the continuous slowdown in our domestic exports over the recent years. For the past five years, the value of trade between the Mainland and Hong Kong registered an average growth of 4.3% per annum. However, we estimate that the annual growth of offshore trade in real terms should far exceed this figure. Although the increase in offshore trade has led to a fall in the value of exports, offshore trade will boost the market demand for trade supporting services such as trade finance and insurance, thus bringing about a rise in the revenue from export of services and the inflow of investment income. Therefore the growth in offshore trade will still be beneficial to Hong Kong economy as a whole.

According to the figures recently released by China's General Administration of Customs, the Mainland's external trade recorded a 50% growth in January. Meanwhile, mainland export to the SAR has also increased over 60%. Since quite a number of goods from the Mainland are re-exported to overseas markets through Hong Kong, we are optimistic that this year will see good growth in trade between the Mainland and the SAR.

- (c) The SAR Government has, within the framework of free market economy, been endeavouring to create a business friendly environment and provide the necessary infrastructure, including supporting facilities and services, to meet the diversified needs of our industries, so that business activities can flourish. At the Legislative Council meeting on 26 January 2000, Mr HUI Cheung-ching moved a motion on "Assisting import and export trade in seizing the opportunities created by China's accession to the WTO". In response to the motion, the Government enumerated a set of strategies and measures to enhance the competitive edges of Hong Kong and improve further the competitiveness of various sectors. These measures include strengthening our links with the Mainland, enhancing infrastructural development in trade and industry, intensifying trade promotion activities as well as providing more training to upgrade human resources, management and information technology skills in our industries. I shall spare the details here.

**MR HUI CHEUNG-CHING** (in Cantonese): *Madam President, in part (b) of the main reply the Secretary said in the year 1998-99 Hong Kong dropped to be the fourth largest trading partner of the Mainland, an obvious drop compared to its rank as the second largest trading partner of the same in 1997. The Secretary pointed out that that was attributable to the Asian financial crisis. However, if that was the only cause, why did the ranking of other countries improve? With the imminent accession of China into the WTO, keen competition from all parts of the world can be expected. If the Administration continues to attribute the fall in ranking to the Asian financial crisis, surely it is determined to face up to the impact brought about by the opening up of the market in China. Will the Secretary let me know now what considerations there have been or what research plans or measures have been undertaken to enhance the competitiveness of Hong Kong in the Mainland?*

**SECRETARY FOR TRADE AND INDUSTRY** (in Cantonese): Madam President, I wish to thank Mr HUI for the supplementary question. In fact, I pointed out clearly in part (b) of the main reply that according to the Census and Statistics Department of the SAR Government the total value of trade between the SAR and the Mainland increased, not decreased. Although there was only a slight increase of 1.3%, I must point out that if the Mainland used the same statistical base as Hong Kong does, the value of trade would record an increase of 4.7% in 1999 rather than a decrease of 3.5% or 3.6%. Hence, in 1999, both the total value of mainland goods passing through Hong Kong or the throughput of our container terminals (the latter increased by 10% in 1999) recorded an increase, though the increase was not as much as that in the total value of bilateral trade between the Mainland and Japan or the EU or the United States. I do not think therefore the situation is so worrying.

In addition to the financial crisis, there are of course other factors. One of these factors as I said is the increase of our offshore trade. Goods may be ordered in Hong Kong, manufactured in the Mainland and then exported to overseas countries without going through Hong Kong or using Hong Kong as a centre for re-export. Trade figures in this area are not added to the export figures or direct trade in Hong Kong. Thus our increase in total trade value does not seem as high. But as I said in the main reply, although we do not have exact figures for the offshore trade, a rough estimate shows that in recent years the annual rate of increase in offshore trade far exceeds that in our total trade value.

**MR AMBROSE LAU** (in Cantonese): *Madam President, although in paragraph (a) of the main reply the Government said Hong Kong is likely to resume the status of the world's busiest container port, an undeniable fact is that mainland ports pose an increasing threat to Hong Kong. Will the Government on the demand of the industry induce container port operators to reduce their handling charges which are too high, so that Hong Kong will not be handicapped in absorbing the ever-increasing trade opportunities in the Mainland?*



**SECRETARY FOR ECONOMIC SERVICES** (in Cantonese): I wish to thank Mr LAU for the supplementary question. I think what is most important is that we consider the position as a whole. Indeed the main reply mentioned several ways through which we can cope with. For instance, construction of CT 9 will soon commence. Our competitiveness will be enhanced as on completion there will be six more berths and 2.6 million TEUs more. The River Trade Terminal at Tuen Mun has been completed. Over 300 000 containers were handled last year. What we need to do now is to find out ways to enhance shipping of containers to Hong Kong by sea as this can save costs. From the statistics, we can see that if containers are first shipped to Hong Kong by sea from Zhongshan, Zhuhai and then to the United States, the costs will be less than those for containers to be first transported to Hong Kong by container trucks to Yentien and then to the United States. In this way, transport charges for containers from Zhuhai will cost US\$325 less, while those from Zhongshan, US\$314 less.

As Mr LAU said, what we need to do now is to find ways to enhance our competitiveness and lower our operating costs. Other than encouraging shipment of containers to Hong Kong by sea before sending them to other overseas countries, we have a series of measures to facilitate transportation by road. We have installed 10 more kiosks for handling goods transportation and special lanes for empty container trucks so that time is saved on queuing. Furthermore, the Government will consider the possibility of completing customs procedures beforehand to facilitate container trucks as they pass through the border. The Government will also discuss with the Guangdong provincial government to see if an area could be allocated for the parking of empty container trucks so that such trucks need not commute between Hong Kong and the Mainland unnecessarily. Such measures are meant to lower the operating costs of container trucks. As everyone probably knows that in the past two years the charges for container truck services have been dropping. At present the charge may be \$3,000 which is indeed lower than the \$4,000 before. As regards port handling charges, practically there has not been any increase in the past two years. The relevant groups have been communicating with the Shippers Association of Hong Kong and are trying to continue to freeze the port handling charges.

**MR LEE KAI-MING** (in Cantonese): *Madam President, in paragraph (a) of his reply, the Secretary pointed out the Government is making good progress in implementing a series of measures to enhance the competitiveness of the*

*container terminals and container freight industry. But we have a chronic shortage of parking areas for container trucks while parking lots for container trucks are insufficient, leading to an increase in the cost for parking. Will the Secretary inform this Council that for all his so-called "measures" and "good progresses", what improvements have been made in parking container trucks?*

**SECRETARY FOR ECONOMIC SERVICES** (in Cantonese): I would like to thank Mr LEE for the supplementary question. If Mr LEE has noted paragraph (a) of the main reply, we have pointed out we will complete the Port Back-up Facilities and Land Requirement Study in the first quarter (referring in fact to the next month) of the year. The relevant Port Back-up Facilities include parking areas and land for goods storage referred to by Mr LEE. When the Study is completed next month we will be launching a study on port development strategy to tie in with it. In other words, the former is an analysis on the demands while the latter, a search for proper land to meet the demands. When the Study is completed next month we will start working on the latter.

**PRESIDENT** (in Cantonese): Although there are many Members queuing, we must proceed with the third question as we have spent more than 16 minutes on this question.

### **Regulation of Village Representative Elections**

3. **MR ALBERT HO** (in Cantonese): *Madam President, on 26 January this year, the Court of Appeal of the High Court dismissed the appeal lodged by the Government and the rural committees concerned and upheld the decision of the Court of First Instance that non-indigenous residents should have the right to vote and to stand for elections of village representatives in the New Territories. Also, it is reported that an election of village representatives will be held in the middle or latter part of this month in Po Toi O Village in Sai Kung, which was involved in the case, and that the non-indigenous residents will have the right to vote and to stand for the election. In this connection, will the Government inform this Council whether:*

- (a) *the Sai Kung District Office has followed or will follow the normal practice of assisting the Po Toi O villagers in their preparation for the said election; and*
- (b) *it will expeditiously introduce legislation to regulate matters relating to village representative elections and give non-indigenous residents the right to vote and to stand for such elections; if it will, of the specific timetable; if not, the reasons for that?*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, I thank Mr Albert HO very much for his question. My reply is as follows:

- (a) According to the information provided by the Sai Kung District Office, Po Toi O Village in Sai Kung has no plans to hold a Village Representative election this month. Since the Government has now decided to file with the Court of Appeal a Notice of Intended Application for Leave to appeal against the Court of Appeal judgment on Village Representative elections, we will advise the Po Toi O villagers to await the court decision on the appeal before conducting the Village Representative election accordingly.
- (b) A Working Group was set up in April 1999 to review the arrangements and procedures for rural elections, including Village Representative elections, to ensure that the elections will be held in a fair and open manner. The Working Group has initially proposed that legislation to regulate Village Representative elections be introduced. The proposed legislation will provide for the arrangements for Village Representative elections, including the qualifications of the voters and candidates. In finalizing its proposals, the Working Group will consult the parties concerned, including the Heung Yee Kuk and the relevant Legislative Council panel, and take into account the court decision. Since we have yet to consult the parties concerned to facilitate the formulation of detailed proposals on Village Representative elections, it is not possible at this stage to devise a specific timetable for the introduction of the relevant legislation. However, the Working Group will proceed with the review expeditiously and put forward comprehensive proposals as soon as possible.

**MR ALBERT HO** (in Cantonese): *Madam President, since the middle of last year when the Court of First Instance ruled that the election of village representatives of Po Toi O Village was void, the post of village representative has been left vacant due to legal proceedings in progress. Without a village representative, villagers would be devoid of any channel of communication with the Government; as such, they are complaining that their interests and rights have not been taken care of. Could the Secretary inform this Council of the specific measures taken by the Government to introduce a channel of communication to protect the interests of villagers in the interim when the post of villager representative remains vacant, which is the period between last year and the time when the Court of Final Appeal delivers its judgment or the next election?*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): *Madam President, I wish to thank Mr Albert HO for his supplementary question. Here, I should like to make two points. First, there is no statutory scope of duties for the post of village representative. Second, very often in the New Territories there are villages that have not elected any, or have no, village representatives, but that does not mean they cannot function or communicate with the Government. They may communicate with the Government through other channels such as their clan elders, or they may directly contact the District Offices concerned. Moreover, District Officers and their colleagues will also send Liaison Officers to contact villagers from time to time. So, there are channels for communication.*

**MR MARTIN LEE** (in Cantonese): *Madam President, in answering an oral question raised by Mr SZETO Wah on 21 April last year, the Secretary informed this Council that a Working Group had been set up to review village representative elections, and that the Working Group was expected to come up with its finalized recommendations within six months. I believe the Secretary would also agree that although it has been more than six months since then, a timetable has yet to be formulated. Actually, the Government should at least conduct a consultation to solicit views from the public, including those from the Members of this Council. Up till now, not even a timetable is available. The Government only says that the Working Group will proceed with the review in full speed. Previously it was said that work could be completed within six months, but now six months have lapsed and no action can be detected. Could the Secretary inform this Council when would the review be completed "in full speed"?*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, I thank Mr Martin LEE for his supplementary question. Last year we did expect the Working Group to complete its work within six months. However, as it proceeded with the review, it found that the problem was very complicated. Naturally, the court decision has also affected the work progress of the Working Group to a certain extent, but this does not mean work has halted completely. As I have mentioned just now, we have, after discussing closely with the Heung Yee Kuk and other relevant parties, agreed in principle that Village Representative elections should be regulated by law. In addition, given the view that Village Representative elections should be properly regulated, we have agreed to include Village Representative elections within the ambit of the Elections (Corrupt and Illegal Conduct) Ordinance. So, some progress has indeed been made, albeit it has taken more time than expected as pointed out by Mr LEE. However, there is a reason for this. The judgment of the court, for example, would certainly affect the work progress.

**MR MARTIN LEE** (in Cantonese): *I was asking the Secretary for a timetable. Could the Secretary inform this Council when a timetable would be available?*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, I have already said in the main reply that it was not possible to devise a specific timetable at this stage but we hoped to deal with it as soon as possible. I believe we can only make our best effort to expedite the work concerned.

**MR MARTIN LEE** (in Cantonese): *Madam President, last time the Secretary said work could be completed within six months, but now he does not even dare to make an undertaking of another six months. Why is the Secretary so afraid of committing himself to completing the work within six months?*

**PRESIDENT** (in Cantonese): Mr Martin LEE, please resume your seat. Government officials are free to answer in whatever ways they deem fit. However, I will ask the Secretary again whether he has any additional comments regarding this supplementary question.

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, perhaps I should explain a bit here. I do not want to say six months now and another six then, lest Mr LEE should say that I am not being sincere enough in giving such a reply. We have decided to file with the Court of Appeal a Notice of Intended Application for Leave to Appeal against the Court of Appeal Judgment, but we do not know how long this would take or whether our application would be approved. Nevertheless, we will try our best. I can only tell Mr LEE frankly that we will proceed with the review as soon as we can.

**MR ANDREW WONG** (in Cantonese): *Madam President, according to Mr Albert HO's main question, "it is reported that an election of village representatives will be held in the middle or later part of this month in Po Toi O Village in Sai Kung, which was involved in the case." Apparently the newspaper report was possibly inaccurate because as far as I know the non-indigenous residents and some of the indigenous residents there have decided to elect a temporary village representative before or after the court delivers its judgment so that there is at least a leader in the village. Having regard to this fact, may I assimilate the part of Mr HO's main question to ask whether the Sai Kung District Office has followed or will follow the normal practice of assisting Po Toi O villagers in their preparation for the election, which is the election of a temporary village representative?*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, in paragraph (a) of my main reply, I said we will advise the Po Toi O villagers to await the court decision on the appeal before conducting the Village Representative election. This is our suggestion and advice for the villagers.

**MR ANDREW WONG** (in Cantonese): *Madam President, my supplementary question was about assistance given to the election of a temporary village representative and not a village representative. The Secretary appears to have answered another question. Could the Secretary answer in terms of an election for a temporary village representative?*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, no matter whether the election is for a village representative or a village chief, we will advise the villagers to await the court decision on the appeal before conducting the election. There could be confusion if a temporary villager representative is to be elected at this stage.

**DR YEUNG SUM** (in Cantonese): *Madam President, I am very much concerned about the appeal taken by the Government to the Court of Final Appeal regarding rural elections. Will it, as a next step, seek an interpretation of the relevant provisions by the National People's Congress (NPC)? I am very much concerned about this point.*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, to file an application for leave to appeal is one of the rights to be enjoyed in a society that upholds the rule of law. All members of the public are entitled to this right, including the Government. I believe I only have to answer that the Government is exercising a right provided by the law and is acting in a lawful manner. As regards other matters, I do not think I need to make any comments.

**DR YEUNG SUM** (in Cantonese): *I am not questioning the Government's right to appeal, as the right is for everyone including the Government. I was asking whether the Government would seek an interpretation by the NPC.*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, it is a very grave matter to request the NPC to interpret the Basic Law. In my position as Secretary for Home Affairs, I would say what we are doing is only to seek a judgment from the court. I see no connection of this with seeking an interpretation of the Basic Law by the NPC.

**PRESIDENT** (in Cantonese): We have spent nearly 16 minutes on this question, We shall move on to the fourth question.

**Labour Disputes Relating to the MPF Scheme**

4. **MR LEE WING-TAT** (in Cantonese): *Madam President, it has been reported that as the Government is going to fully implement the Mandatory Provident Fund (MPF) Scheme, many employers intend to take this opportunity to cut back on the salaries and benefits of their employees. In this connection, will the Government inform this Council:*

- (a) of the measures in place to prevent such cutbacks in staff salaries and benefits;*
- (b) whether it will formulate measures to encourage those employers who have already set up occupational retirement schemes with payments that exceed the statutory minimum requirements, to retain such schemes; and*
- (c) whether it will consider setting up hot lines and a complaints handling mechanism specifically for dealing with labour disputes relating to the MPF Scheme and the relevant complaints from employees?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese):  
Madam President,

- (a) According to the Employment Ordinance, without the consent of employees, employers are not allowed to make unreasonable variation to their employment contracts unilaterally including cutbacks in staff salaries and benefits. Employees who have grievances may lodge their complaints with the Labour Relations Service (LRS) of the Labour Department, which will provide conciliation service to help settle disputes between the two parties. If the disputes cannot be settled by conciliation, employees may take their cases to the Labour Tribunal. Remedies available to employees if their employment contracts have been varied unreasonably include reinstatement on the terms of their original contracts or re-engagement on comparable terms, or the employer giving terminal payments to them.



Under the provisions of the Occupational Retirement Schemes Ordinance (ORSO), an employer must obtain not less than 90% of the scheme members' consent before he can institute changes to a scheme's rules if such changes would result in detriment to scheme members' accrued benefits or vested benefits.

- (b) The Labour Department and the Mandatory Provident Fund Schemes Authority (MPFA) will be writing to employers who have already set up occupational retirement schemes and major business chambers, reminding them that employees are entitled to claim remedies under the Employment Ordinance against unilateral unreasonable variation of their terms of employment by their employers. Before the formulation of any legislation on the MPF, some employers have already set up occupational retirement schemes on a voluntary basis with the objective of benefiting their employees. In our letters, we will also call on these employers to uphold this objective and be far-sighted when assessing different options for implementing the MPF Scheme, with the aim of keeping up their employees' morale and winning their faithful support. We will also emphasize that both employers and employees should approach the issue with an open mind and discuss the interface or transition between the MPF Scheme and their occupational retirement schemes.
- (c) The implementation of the Scheme is advantageous to both employers and employees. We will monitor the situation closely and endeavour to help settle labour disputes such that a harmonious relationship between employers and employees can be maintained.

The Labour Department has a Telephone Enquiry Service in place to provide inquiry service on labour issues through a 24-hour computerized telephone system consisting of more than 120 lines.

The Department also handles labour disputes through its LRS, under which there are 10 branch offices in different parts of the territory.

If an employer, in implementing the Scheme, unilaterally introduces any change to his staff's salaries or benefits, the employees may contact the Telephone Enquiry Service (at 2717 1771) for any inquiries arising therefrom or lodge their complaints with the LRS. Where necessary, the LRS will provide conciliation service to help settle the disputes between the two parties.

The MPFA has set up a 24-hour automated hotline for public inquiries on matters relating to the MPF. Members of the public may choose to listen to the general information on the hotline, or approach its staff during office hours for direct inquiries.

As we expect there will be a surge in the number of inquiries and complaints from the public in the next few months, steps are being taken by the MPFA to enhance the hotline service. An advanced telephone information system with 30 lines will be put into operation in early April.

Moreover, the MPFA will take initiatives in contacting employers and employees extensively to explain the Mandatory Provident Fund Ordinance (MPFO) to them. Later this year, its staff will visit shops, both large and small, throughout the territory to distribute MPF leaflets so as to enhance the awareness of the employers about the Scheme. Besides, we will set up inquiry counters in District Offices and Labour Department's Local Employment Service Offices to answer any inquiries the public may have about the Scheme.

**MR LEE WING-TAT** (in Cantonese): *Madam President, the Government claims that the introduction of the MPF Scheme is advantageous to both employers and employees. However, before they receive any protection, "wage earners" at large have to face cutbacks in salaries and benefits by their employers due to the Government's implementation of the MPF Scheme. My supplementary question is, since the Government has taken the lead by reducing the gratuities of contract civil servants in order to pay MPF contributions, with what excuse and moral courage does the Government have to persuade other companies not to do so?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, with regard to the variations to the contracts of civil servants due to the implementation of the MPF Scheme, I know that the Civil Service Bureau has made a reply recently. As far as I know, the Government has discussed this arrangement with staff representatives of the four consultative councils and obtained their consent. This arrangement has been implemented since mid-October, 1998. In this respect, we do not think the new arrangement contravenes the provisions of the MPFO. According to the explanation given by the Civil Service Bureau, the contract gratuities include some retirement arrangements. Therefore, even after the implementation of the MPF Scheme, the arrangements for employees when they leave service are the same as before.

**MR TAM YIU-CHUNG** (in Cantonese): *Madam President, according to some MPF providers, many small and medium enterprises (SMEs) adopt a wait-and-see attitude towards the MPF Scheme in the hope that its implementation could be postponed. Will the Government inform this Council whether the implementation date of MPF contributions will be changed or under what circumstances will it be changed?*

**SECRETARY FOR FINANCIAL SERVICES** (in Cantonese): Madam President, when the relevant Mandatory Provident Fund Bill was passed, the Government has already drawn up a very clear timetable, according to which the final decision on whether to implement the Scheme as planned in December will be made in April this year. We have talked about this timetable for a long time and we will follow it. In order to implement the MPF Scheme, the Chief Executive in Council must specify the commencement date of the MPF Scheme by subsidiary legislation. The Administration is now making an assessment, covering the state and prospects of the Hong Kong economy, the readiness of the industry, the readiness of all systems as well as the readiness of staff of the MPFA. We will analyse and review these data and make a final decision in April. Based on the present circumstances, it is very unlikely that the date will be postponed.

**MRS SOPHIE LEUNG** (in Cantonese): *Madam President, at the end of part (b) of the main reply, it is said that employers and employees should discuss the interface or transition between the MPF Scheme and their occupational*

*retirement schemes. Just now, a colleague also asked about the arrangements for contract civil servants. As far as I know — and the Secretary also explained just now, if an occupational retirement scheme is already in place, there is no need to set up an MPF Scheme. My supplementary question is this: The entire main reply seems to imply that employers may not understand how the MPF Scheme works. However, perhaps there is also much that employees do not understand and the Government should explain to them and educate them so that there will be no misunderstanding between employers and employees, lest it would give rise to unjust accusations of "unscrupulous employers"?*

**PRESIDENT** (in Cantonese): Which Secretary will answer this?

**SECRETARY FOR FINANCIAL SERVICES** (in Cantonese): Madam President, Mrs Sophie LEUNG's suggestion is right. The most important thing is for employers and employees to have a clear idea about how the MPF Scheme will be implemented, including the problems involved, the questions to be considered and the legal requirements in the interface between the MPF Scheme and the occupational retirement schemes. As the Secretary for Education and Manpower said just now, the Labour Department provides various inquiry services and the MPFA will also enhance such services now and in the future. As far as I know, the MPFA now receives over 30 inquiries every day. However, I believe this number will rise rapidly over the next few months. Therefore, we have to make arrangements to tie in with this. Our focus is on education and promotion efforts targeted at both employers and employees.

**MR LEE CHEUK-YAN** (in Cantonese): *Madam President, to employees, the implementation of the MPF Scheme seems to produce more disadvantages rather than advantages to start with. In part (c) of the main reply, the Secretary said "We will monitor the situation closely". I wonder what situation the Administration is monitoring. Recently, we the Hong Kong Confederation of Trade Unions (CTU) received the following three categories of complaints. How many complaints did the Government receive that pertain to those three categories? The first category of complaint is that all staff have been asked to resign, since a new MPF Scheme has to be set up. The second category is about the abolition of the more beneficial occupational retirement scheme originally in place and the transfer to a less beneficial MPF Scheme, thus reducing the*

*original 7.5% or 10% contribution to 5%. The third category is about the commencement of cutbacks on salaries or benefits by an employer due to the need to contribute to the MPF Scheme. How many complaints did the Administration receive that pertain to those three categories? Will the Administration set up one unified hotline, instead of having the Labour Department set up one hotline and the MPFA set up another? We have received a complaint about a case where the inquirer was asked by the MPFA to contact the Labour Department, while the Labour Department referred him to the MPFA. How will the Government solve this problem?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, first, if Mr LEE receives those complaints, he can refer them to the Labour Department and we will deal with them properly. With regard to the number of complaints received by the LRS of the Labour Department on the implementation of the MPF Scheme, according to our information at hand, 19 inquiries were received between 1 January to 21 February this year, in which the employees inquired about the possible cutbacks on salaries or benefits as a result of the implementation of the MPF Scheme. However, there was only one specific complaint and the LRS is now providing conciliation service to both parties in respect of this complaint. With regard to the second supplementary question, Mr LEE asked whether there would be better co-ordination between the MPFA and the Labour Department or whether a unified hotline would be set up. I will note this down and ask colleagues in the Labour Department and the MPFA later on to consider whether there is an actual need and whether it will really be helpful.

**PRESIDENT** (in Cantonese): Mr LEE, which part of your supplementary question has not been answered?

**MR LEE CHEUK-YAN** (in Cantonese): *The part that I asked the Secretary to classify the complaints. I do not know whether he can classify the complaints, but I did ask the question with those three different categories. If the Secretary cannot answer now, I hope he could provide a written answer classifying those complaints.*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, actually, I have answered it. Speaking of genuine complaints, we have only received one which is not an inquiry. It is a complaint about an employer planning to replace the existing occupational retirement scheme with an MPF Scheme, which might be detrimental to employees. As for the manner of classification or whether the classification will correspond to Mr LEE's, we will decide after discussing with colleagues in the Labour Department later on.

**MISS CHAN YUEN-HAN** (in Cantonese): *Madam President, in part (b) of the main reply, the Government talked about calling on employers to be "far-sighted when assessing different options for implementing the MPF Scheme". What if the employers are not far-sighted? The Government said that it had received only one genuine complaint. In my view, the Government is very distant from the people's sentiment ..... Madam President, I will ask my supplementary question very soon.*

**PRESIDENT** (in Cantonese): Miss CHAN, what is your supplementary question?

**MISS CHAN YUEN-HAN** (in Cantonese): *I wish to explain to the Secretary the gist of my question. Now, we are worlds apart. When some employers wish to reduce the protection of occupational retirement schemes, they will threaten employees with dismissal if they raise objections. Therefore .....*

**PRESIDENT** (in Cantonese): Miss CHAN, you must ask your supplementary question now.

**MISS CHAN YUEN-HAN** (in Cantonese): *Yes, Madam President, I will ask my supplementary question now. The deadline is the 3rd of May. However, there are over 10 000 occupational retirement schemes. How will the Government exempt these schemes? What will the Government do in the face of this situation?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese):

Madam President, about Miss CHAN's supplementary question, an answer has actually been given in the main reply. In part (b) of the main reply, we said that the Labour Department and the MPFA would be writing to employers and major business chambers, reminding them not to make unilateral unreasonable variation of the terms of employment and calling on them to assess the different options for implementing the MPF Scheme, which of course includes retaining the occupational retirement schemes. We will enhance publicity to encourage employers to do so in future, in the hope that employers will try to keep up their employees' morale and maintain a harmonious relationship with employees.

**MR ANDREW CHENG** (in Cantonese): *Madam President, I wish to follow up part (b) of the main reply which refers to far-sightedness and "an open mind" and calls on employers who have set up ORSO schemes to adopt such an attitude. However, it seems to me that these are just wishful thinking, since we can clearly see that basically many large companies take no heed of the Government's call. Does the Government have any means to encourage companies to retain the original more favourable provident fund schemes, such as using financial incentives and offering tax concessions?*

**SECRETARY FOR FINANCIAL SERVICES** (in Cantonese): Madam President, there are certainly tax concessions. Tax concessions are provided for employer and employee contributions for both occupational retirement schemes and the MPF Scheme. As for whether the Government will consider increasing the concessions at this stage and if so, whether they should only apply to occupational retirement schemes, it is a question of balance and fairness. Therefore, my answer is that there are certainly concessions, but we will not consider increasing them at this stage.

Finally, I wish to add one point. The occupational retirement schemes that we are talking about have been voluntary over the years. There is no legal requirement for employers to set up these occupational retirement schemes. Even so, there are nearly 20 000 such schemes. Maybe I am more naïve or maybe because I have never been an employer. Although there is no legal requirement, those employers have already set up occupational retirement schemes. Should they not be considered some of the better employers? An employer may consider that there is a need to make adjustments after a period of economic restructuring or poor business. They may make adjustments to salaries and benefits which are not against the law and after consultation with

their staff. Under these circumstances, it is not necessarily empty talk to call on employers to be far-sighted or to retain some good employees for the sake of the long-term interests of the companies.

**PRESIDENT** (in Cantonese): Last supplementary question.

**MR CHAN WING-CHAN** (in Cantonese): *Madam President, in the main reply, the Secretary for Education and Manpower said that they could do nothing about cutbacks in staff benefits by employers. Madam President, I have received complaints from employees, saying that employers are beginning to cut staff benefits. In some trades, employers force employees who have been in service for a long time (such as 10 years) to accept a 25% long service payment, after which new contracts will be signed. Otherwise, they will be dismissed. Employers are cutting back on the salaries and benefits of their employees in anticipation of the MPF Scheme. Will the two Secretaries please tell us what effective measures they have to prevent such unscrupulous moves in order to protect employee interests and ensure the smooth implementation of the MPF Scheme?*

**PRESIDENT** (in Cantonese): Which Secretary will answer this?

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, actually, I wish to clarify. In my main reply, I did not say that we could do nothing about variations to the terms of employment by employers, as Mr CHAN claimed. In fact, in the main reply, I said that employers are not allowed to make unreasonable variation to employment contracts unilaterally. Otherwise, they will be breaking the law. If Mr CHAN Wing-chan knows of employers who intend to do this and employees feel threatened, I hope he will refer the complaints to the Labour Department. The LRS of the Labour Department will be most willing to follow up the relevant cases and offer appropriate conciliation service.

**PRESIDENT** (in Cantonese): We have spent more than 22 minutes on this question. We will proceed to the fifth question.



**Letting out Slopes alongside Highways for Advertisement**

5. **MRS SELINA CHOW** (in Cantonese): *Madam President, it was reported that, in order to generate additional revenue, the Administration intends to launch a trial scheme of letting out slopes alongside highways for displaying advertisements. In this connection, will the Government inform this Council:*

- (a) of the plans to promote such advertisement sites to the advertising industry;*
- (b) of the measures in place to ensure the contents of such advertisements will neither be indecent nor inappropriate; and*
- (c) whether it has assessed if advertisements displayed at such sites will distract the attention of drivers; if so, of the ways to avoid traffic accidents caused by such distraction?*

**SECRETARY FOR PLANNING AND LANDS** (in Cantonese): Madam President, I should like to first provide Honourable Members with some background information regarding the pilot scheme before giving replies to the three questions Mrs Selina CHOW raised just now.

The use of slopes along public roads for advertising purposes was one of the winning entries in the Government's 1999 Helping Business Awards Scheme. The idea behind the proposal is to open up new business opportunities for the advertising industry while at the same time improving the visual impact of man-made slopes with hard surface cover.

An inter-departmental Working Group, to be convened by the Lands Department and comprising representatives from the relevant departments, will be set up by the end of this month to consider a pilot scheme to test out the idea with the advertising industry. When formulating details of the scheme, the Working Group will consider carefully the effect of the proposal on slope stability, road safety, and its visual impact.

At the present stage, the slopes selected for the pilot scheme will mainly be those man-made slopes with hard surface cover. We have no intention to turn natural or "green" slopes into advertising space. While the exact number and

locations of suitable slopes have yet to be explored by the Working Group, we believe that the number of slopes suitable for advertising purposes would be a very small number of the roadside slopes. The pilot scheme will only start with a few suitable slopes to test out the feasibility of the idea.

As regards slope safety, the Government will ensure that this will not be compromised in any arrangements that will be drawn up for the pilot scheme. Owners of advertisement signboards which fall within the definition of "building works" under the Buildings Ordinance are required to submit plans to the Building Authority for prior approval before erection. The Building Authority will consult the Civil Engineering Department to ensure that the stability of the slope would not be adversely affected by the proposed advertisement signboards.

Turning to the respective questions raised by Mrs Selina CHOW, my replies are as follows:

- (a) the Lands Department has already written to over 20 major advertising companies consulting them on the proposal of using slopes along public roads for advertising purposes, likely market demand and suggestions on how to implement the scheme;
- (b) advertisements to be put up on the slopes under the proposed scheme will be required to comply with the relevant laws relating to the public display of materials such as the Control of Obscene and Indecent Articles Ordinance, Smoking (Public Health) Ordinance and the Film Censorship Ordinance.

The Working Group will look further into the detailed arrangements in the light of the consultation with the advertising industry and the relevant professional bodies.

- (c) On road safety, the Government would not accept any form of advertisement which would adversely affect the safety of road users. The Transport Department will assess the suitability of the proposed locations having regard to the overall traffic conditions including:
  - (i) the permitted road speed at the proposed location;

- (ii) whether drivers' sight line would be obstructed by the advertisement; and
- (iii) whether the advertisements are located at road bends or road junctions, steep gradient, and whether there are traffic signs or signals in the vicinity.

**MRS SELINA CHOW** (in Cantonese): *Madam President, given that it could generate more government revenue, this pilot scheme would certainly be welcomed by the Government, in particular the Financial Secretary. However, as I understand, the advertising sector may not support it unanimously, while some members of the public have expressed their concern that the scheme might bring about the so-called "visual pollution". Could the Secretary inform this Council whether the Government would consult the public to see if the community is widely in support of or against the scheme before implementing it?*

**SECRETARY FOR PLANNING AND LANDS** (in Cantonese): *Madam President, public consultation is a necessary step. During the initial stage, the Working Group would first discuss with the industry the relevant principles and certain implementation details, and then it would consider launching consultation exercises. Rather than trying out the scheme at a number of locations, our objective is to identify one or two suitable slopes to test the feasibility of the scheme. As regards visual impact and other issues that need to be considered, a final conclusion is expected to be reached upon completion of the consultation exercises.*

**DR RAYMOND HO** (in Cantonese): *Madam President, it is rare for the Government to come up with proposals as creative as this one. By letting out the unsightly man-made slopes with hard surface for advertising purposes, not only could additional revenue be generated, but the slopes concerned would also be beautified. As for other countries, some dilapidated buildings along roadsides have been given over to works painted by artists. May I ask the Secretary whether the proposed scheme would also allow for the display of government publicity materials which would generate nil revenue, such as those on anti-smoking, more care for the elderly and love for children?*

**SECRETARY FOR PLANNING AND LANDS** (in Cantonese): Madam President, actually, the Government is currently making use of a hillside in Ho Man Tin to display messages which promote anti-corruption awareness. So, this kind of promotional work has been in progress all along. However, the fact remains that the original purpose of the proposal is to bolster commercial participation in this respect, rather than enabling the Government to have the use of those slopes. Should the results of our study indicate that the commercial sector is not interested in this scheme, we would use those slopes for purposes similar to that of the hillside in Ho Man Tin, providing the display of advertisement there would not affect road users or be unsightly.

**MR HOWARD YOUNG:** *Madam President, in the face of all the praises for the scheme, I notice that when the Honourable Mrs Selina CHOW asked the question, she was focusing on the inappropriateness and indecency or otherwise of the advertisements. I would like to ask something relating to inappropriateness from another angle. In this age of promotion for eco-tourism, some people may think that advertising on the slopes would actually create visual pollution. And of course, these people's interests differ from those of the advertising sector. I wonder if the Government could tell us that when considering the inappropriateness aspect as Mrs CHOW said in the second part of her question, it would also consider the visual impact? In other words, would the Government not just consider whether it is descent or not, but would also consider from an aesthetic point of view?*

**SECRETARY FOR PLANNING AND LANDS:** Madam President, here we touch on rather personal judgment of what is nice, what is good looking or what is not so good looking. Thus, we begin to, in fact, go into a pretty subjective issue. Nonetheless, the question of visual impact of science would be a vital consideration in the pilot scheme. And clearly, we do not wish to allow, during the trial period, for the display of anything which would lead to the discredit of the scheme itself. Hence, we would be very careful about what could be permitted to be advertised in the trial stage.

**MRS SOPHIE LEUNG** (in Cantonese): *Madam President, according to the background information provided by the Secretary, the scheme was one of the winning entries in the Government's 1999 Helping Business Awards Scheme. It*

*has been referred to by the Secretary in his reply to part (a) of the main question raised by Mrs Selina CHOW that the Lands Department has already written to over 20 major advertising companies consulting them on the proposal of using slopes along public roads for advertising purposes, likely market demand and so on. However, it seems that the Government has laid particular stress on market demand. Could the Secretary inform this Council whether the Government would consider incorporating into the implementation of the scheme the factor that has enabled it to win? Given that this scheme was one of the winning entries and also a part of the Government's 1999 Helping Business Awards Scheme, the Government should not focus its attention on commercial considerations alone. In this connection, could the Secretary inform this Council whether the Government would consider selecting some outstanding or particularly creative advertisements for display, and whether it would consider from an aesthetic point of view and take into account factors like environmental awareness as referred to by Mr Howard YOUNG just now?*

**SECRETARY FOR PLANNING AND LANDS** (in Cantonese): Madam President, this scheme was one of the winning entries simply because the person advocating it has put forward a proposal whereby business activities in Hong Kong could be bolstered. He has won the award for this reason, not because he has suggested that turning certain locations into advertising space would generate revenue.

As regards whether in the future other assessment standards would be incorporated during the trial period or the implementation of the scheme, decisions should be made pending consultations with the advertising industry and other sectors concerned. At the present stage, the pilot scheme is only to test out the feasibility of the idea, it has nothing to do with any awards or assessments.

**MR EDWARD HO** (in Cantonese): Madam President, unlike the Honourable colleagues who spoke just now, I do not care whether the advertisements have any aesthetic appeal or whether they contain any elements of public interest. My concern is that since most of the slopes are located in the countryside, would rural roads be sandwiched between advertisements like those in the urban areas? Although the word "Environment" has been deleted from the new post title of the Secretary, and he has now become Secretary for Planning and Lands, I do

*wonder if the Secretary would wish to see the roads sandwiched between advertisements when he goes home from Kowloon, and whether such a state would result in environmental pollution?*

**SECRETARY FOR PLANNING AND LANDS** (in Cantonese): Madam President, I am afraid I need to repeat certain points raised in my main reply. Among the thousands of slopes we could identify or count up at the present stage, not more than five would be suitable for the pilot scheme. So, Honourable Members can rest assured that the number of slopes selected for advertising purposes will be very limited. Moreover, as far as highways are concerned, I just cannot think of any situation where advertisements can be displayed alongside roads without affecting the traffic conditions or obstructing the sight line of drivers as referred to in part (c) of the main question. For this reason, Madam President, I do not think the proposed scheme would give rise to any of the problems that Mr Edward HO has expressed concern about.

**PRESIDENT** (in Cantonese): Mr Edward HO, which part of your supplementary has not been answered?

**MR EDWARD HO** (in Cantonese): *Madam President, it seems to me that the Secretary has answered a question on traffic conditions. However, my supplementary was on environmental pollution issues. Madam President, the question I should like to ask is: Could the Secretary inform this Council whether he believes the implementation of the scheme would give rise to problems of environmental pollution or visual pollution?*

**PRESIDENT** (in Cantonese): Secretary, do you have any point to add?

**SECRETARY FOR PLANNING AND LANDS** (in Cantonese): Madam President, perhaps I will attempt to answer the Honourable Member in this way. If there are only one or two slope advertisements, the chance of these advertisements causing pollution problems should be very slim, provided that they are being very carefully designed and their contents meticulously examined.

**MRS SELINA CHOW** (in Cantonese): *Madam President, given that the Government considers this scheme an award-worthy proposal which is creative and conducive to generating additional government revenue, may I ask the Secretary whether this implies that the Government would come up with various measures against the interests of the public just to increase government revenue?*

**SECRETARY FOR PLANNING AND LANDS** (in Cantonese): Madam President, the original purpose behind this scheme is to open up new business opportunities for the advertising industry, while the question of whether we would collect government rent for letting out the slopes in the future is another issue. One thing, however, is for sure, the proposed scheme was put forward with the intention to open up new business opportunities in Hong Kong, in particular that of the advertising industry.

**PRESIDENT** (in Cantonese): Last supplementary.

**DR RAYMOND HO** (in Cantonese): *Madam President, seeing that the Government could make good use of the slopes which could hardly be turned green, I do not worry about having to watch a lot of advertisements on my way home. Actually, when riding the Mass Transit Railway, we will be also be watching advertisements as we travel from one station to another. As regards the question of indecency that Honourable Members have expressed concern about, this is in fact a pretty subjective issue. In this connection, could the Secretary inform this Council whether the inter-departmental Working Group would invite one or two persons from outside the Civil Service, such as Justices of the Peace or members of other sectors, to provide an additionally independent judgment in this respect?*

**SECRETARY FOR PLANNING AND LANDS** (in Cantonese): Madam President, I am grateful to the Honourable Member for his suggestion, which is something we will put into practice.

**PRESIDENT** (in Cantonese): Sixth question.

**Health Hazards of Repeated Use of Cooking Oil**

6. **MR FRED LI** (in Cantonese): *Madam President, will the Government inform this Council whether:*

- (a) it has conducted any studies on the possible health hazards caused by consumption of foods cooked with repeatedly-used cooking oils;*
- (b) it has conducted any surveys on the number of times or the duration of cooking oils being used before disposal by various types of food outlets and food factories at present, and whether there are any statutory provisions in this regard; and*
- (c) in order to reduce the repeated use of cooking oils by food outlets and food factories, it has considered implementing a waste cooking oils recycling scheme, by which waste cooking oils are collected regularly from food outlets and then converted into detergents or fuels, or other measures in this regard; if it has, of the details?*

**SECRETARY FOR THE ENVIRONMENT AND FOOD** (in Cantonese):  
Madam President,

- (a) There is at present no scientific evidence to prove that the consumption of food cooked with repeatedly-used cooking oil will cause any health hazards. However, when heated to high temperatures, cooking oil will undergo chemical changes and produce degradation products. While there is as yet no scientific evidence to show that such degradation products are hazardous to health, the quality of cooking oil will deteriorate if it is seriously degraded. The oil will thicken, become darker in colour and produce a rancid smell, adversely affecting the taste and the appearance of the food cooked with the oil. These characteristics can be easily detected by customers. Therefore, from the commercial point of view, there is no reason for food outlets and food factories to use repeatedly-used cooking oil excessively.



- (b) Since the data collected cannot be verified, the Food and Environmental Hygiene Department has not conducted any survey on the number of times and the duration cooking oil is repeatedly used by food outlets and food factories. There is also no requirement in the law in this regard. However, cooking oil used by food outlets and food factories is included in the Department's food surveillance programme to ensure that it is fit for human consumption.
- (c) A number of commercial concerns collect used cooking oil from food premises. It is processed and exported for industrial use. The Government provides assistance to the recycling industry through the leasing of appropriate sites on a short term basis for its exclusive use. These commercial concerns may apply for the use of such sites.

**MR FRED LI** (in Cantonese): *Madam President, in the past two weeks, we have tried to conduct relevant studies and investigation with respect to this question, but regrettably, except for one shop, owners of the several fast-food shops we have visited — I do not want to mention their names to avoid giving them publicity — have been reluctant to respond to our questions. Some of my friends from the catering industry told me that many small restaurants or food factories in Hong Kong were still using so-called "10 millenium oil". I wonder if the President has heard of this term before. It is used for referring to the oil stored in oil containers which has been incessantly recycled. When oil starts to diminish, new oil will be added and mixed with the old oil but still the old oil will remain. I hope the Government can respond to the following questions: Has it noticed this phenomenon in food shops and will such kind of "10 millenium oil" produce an adverse effect on the consumers' health?*

**SECRETARY FOR THE ENVIRONMENT AND FOOD** (in Cantonese): Madam President, "10 millenium oil" is a term commonly used for referring to cooking oil which has been used repeatedly. But as Mr LI is also aware, such kind of "10 millenium oil" does not really exist. There is simply no such oil that can be used for more than 10 000 years without undergoing any changes. *(Laughter)*

I have mentioned in the main reply earlier that there is at present no scientific evidence to prove that the consumption of such oil will have any impact on our health. However, some studies have shown that if cooking oil is repeatedly used up to a certain level, chemical effects and degradation products, including the so-called polymer, might be produced. It has also been shown in a study that if the content of polymer in cooking oil reaches 50% and such oil is used for feeding animals, it will give rise to intestinal discomfort. Nevertheless, human beings are a bit different from animals put under tests. As explained by me earlier, if such cooking oil is used repeatedly, its quality will deteriorate. It will thicken and become darker in colour. It is basically difficult for us to use such oil for cooking purpose. Most importantly, the oil will produce a rancid smell, which can be detected by consumers when they buy the food cooked with such oil and when they eat the food. Food outlets and food factories are greatly concerned with safeguarding their own interests. Therefore, judging from the commercial point of view, I think such a phenomenon should not arise.

If Mr LI finds out in informal surveys the food outlets that have failed to replace the oil stored in their oil containers for years, I hope he can pass the relevant information to me or the Food and Environmental Hygiene Department. We have conducted random check frequently. Over the past three years, the Department of Health has inspected approximately 500 samples and found that only one of them has slightly exceeded the target set by the Department of Health internally. However, I still want to stress that even if this target is exceeded, it does not mean that health of consumers will be jeopardized. We only want to point out that the quality of the food will slightly change.

**MR LEE WING-TAT** (in Cantonese): *Madam President, according to the information we obtained from the Internet, researches carried out in both Taiwan and the United States have proved that cooking oil repeatedly used after being heated under high temperatures will produce some hazardous substances such as acrylaldehyde. Frequent consumption of food cooked with such cooking oil will affect human livers and might cause cancerous diseases. Nevertheless, such researches have yet to be confirmed extensively. As it is very popular for cooking oil to be repeatedly used for the preparation of food in Hong Kong, will the Government consider introducing other international standards to determine hygiene levels in this aspect as well as increasing the frequency of inspection and examination?*

**SECRETARY FOR THE ENVIRONMENT AND FOOD** (in Cantonese):

Madam President, I have also pointed out earlier that I doubt whether the study used for testing animals will, if used for testing human beings, produce the same results. Just now, Mr LEE has also added that the findings of these tests are still awaiting confirmation. As far as I understand it, there is no international standard in terms of frequency or period of time with respect to when cooking oil should be discarded. The standard we adopted in conducting random check is based on the relevant information and documentation. As far as I understand it, this standard has also been adopted by some countries such as the Netherlands. Therefore, the response to the first part of Mr LEE's supplementary question is that there is no international standard available at present for our reference and application.

As for the second part concerning whether the Government will conduct more random checks on cooking oil samples, I believe, apart from food outlets, some families also have the practice of not discarding the cooking oil they have just used. However, as I said earlier, the quality of the food cooked with repeatedly-used oil will deteriorate. I think the upkeeping of the quality of food is the most fundamental safeguard to consumers and patrons. From the point of view of both food outlets and food factories, the repeated use of oil will definitely affect their products. Most importantly, of the 500 samples we have inspected, only one sample has been found to have slightly exceeded our target. For these reasons, I cannot give Mr LEE an immediate response here that we will conduct more random checks on cooking oil. This is because, since the establishment of the Food and Environmental Hygiene Department, we have undertaken to strengthen or improve work in several areas. We need to consider in what manner should the resources of the new department be utilized with a pragmatic attitude. Nevertheless, I can undertake that we will pay close attention to the relevant situation. If we discover problems do really exist on the basis of the information to be furnished to us by Mr LEE and the findings of our random inspections, we will take corresponding action immediately.

**MRS SELINA CHOW** (in Cantonese): *Madam President, it was my original intention to ask the Secretary why the researches she mentioned could be so powerful or successful that we could even know the animals were not feeling well after an intake of such cooking oil. I later decided that it would be better for me to raise questions about food outlets as the discomfort felt by animals really has nothing much to do with us. What puzzles food outlets at the moment is that*

*owing to some requirements laid down in ordinances related to sewage disposal, they find it hard to discharge the whole lot of cooking oil even if they want to replace the repeatedly-used cooking oil. Although the Secretary has proposed a method in part (c) of the main reply, it is apparently not proactive, positive and comprehensive. Will the Government think of some methods which are better and more encouraging to help food outlets to discharge repeatedly-used cooking oil without subjecting to the threat of being prosecuted?*

**SECRETARY FOR THE ENVIRONMENT AND FOOD** (in Cantonese): Madam President, although Mrs Selina CHOW has not formally asked me the question concerning the researches done on animals, I want to make some clarifications. First, the researches were conducted abroad, not in Hong Kong. Second, I believe there is no need for guinea pigs to "tell" us that they are suffering from stomach discomfort. I think we can verify whether they are suffering from stomach discomfort from observation or through other channels in the course of conducting researches.

As for how food outlets can handle repeatedly-used cooking oil, I have also mentioned earlier that a number of commercial concerns have been providing services for collecting such cooking oil at the moment. As far as I know, 220 tons of used cooking oil can be collected each month. These services are, however, mainly used by larger food outlets and hotels because they have adequate room for storing their used cooking oil. At the moment, these commercial concerns come to collect the oil only once or twice every week. According to the information I have obtained, cooking oil collected by these commercial concerns accounts for approximately 50% to 60% of cooking oil used by food outlets. As for smaller food outlets, we are also concerned with how they handle these problems. In fact, the problems encountered by small food outlets are only minor ones and the amount of cooking oil involved is limited. If they can find out ways to mix cooking oil with solid wastes, they can treat them as solid wastes and have them transported to landfills altogether. As far as I know, the Environmental Protection Department is at present of the view that such problems are not too serious.

**PRESIDENT** (in Cantonese): The last supplementary question.

**MR HOWARD YOUNG** (in Cantonese): *Madam President, I originally wanted to focus my question on the impact of cooking oil on health. However, the Secretary stated in the second sentence of part (a) of the main reply that, "..... when heated to high temperatures, cooking oil will undergo chemical changes" and then go on to say, "there is as yet no scientific evidence to show that ..... hazardous to health". It seems that she has failed to confine the scope of discussion to the area of eating. I have recently read some reports. They are not talking about the repeated use of cooking oil. Rather, they are talking about the possible impact on the health of the staff of food outlets who have inhaled substances produced as a result of the heating of cooking oil under high temperatures. I wonder if these reports are similar to the report mentioned by Mr LEE Wing-tat earlier. Has the Secretary paid attention to other reports on the impact of cooking oil heated under high temperatures on the health of human beings, apart from the researches done on animals?*

**SECRETARY FOR THE ENVIRONMENT AND FOOD** (in Cantonese): Madam President, I believe Mr YOUNG is concerned about the problem of cooking fumes. Some reports are also concerned about the ways Chinese women cook at home. Although not all Chinese women cook, most of them do. As the ways of cooking used by foreigners are different from those used by the Chinese, will this lead to a higher rate of contracting lung cancers among Chinese people? I did ask doctors in our department about this question. They are of the opinion that there is no specific medical ground to prove that Chinese women have a higher chance of contracting cancer because of inhaling a greater amount of fumes in the course of cooking as there are other internal as well as external factors which can affect the morbidity rate.

As regards cooking fumes, there has been an increase in the number of complaints we received in the past year from the public with respect to the discharge of cooking fumes by food outlets. At present, we do have control on the discharge of cooking fumes by food outlets. We will first issue air pollution abatement notices to these food outlets under the Air Pollution Control Ordinance and will only institute prosecution if the relevant food outlets persistently refuse to make improvements. In any case, we are still examining whether we need to strengthen supervision in this area.

**PRESIDENT** (in Cantonese): We have spent more than 18 minutes on this question. Question time shall end here.

## **WRITTEN ANSWERS TO QUESTIONS**

### **Processing of Applications for Small Houses**

7. **MR AMBROSE LAU** (in Chinese): *Madam President, regarding applications to build small houses in the New Territories as well as the vetting and approving procedure for such applications, will the Government inform this Council of:*

- (a) *the number of applications vetted and approved over the past three years, and the average and longest periods of time required from the submission of applications to the completion of the vetting and approving procedure in such cases;*
- (b) *the reasons for the lengthy time taken in vetting and approving some applications;*
- (c) *the mechanism for vetting and approving applications to build small houses, as well as the roles of the relevant government departments in this mechanism;*
- (d) *the current number of small house applications pending processing; and*
- (e) *the measures in place to streamline the vetting and approving procedure?*

**SECRETARY FOR PLANNING AND LANDS** (in Chinese): Madam President,

- (a) The Lands Department vetted a total of 14 336 applications and approved 4 616 applications between January 1997 and December 1999. It took an average of four and a half years and the longest 16 and a half years from the date of application to the grant of approval and the subsequent execution of the land documents;

- (b) The major reasons for the long processing time for some applications include: failure by an applicant to provide proof of good title to the land under application; geotechnical engineering problems affecting a site; local objections; requirement for Town Planning Board approval; and absence of adequate access for emergency vehicles. For example, land title problems had been the major cause of delay for the case which took the longest processing time of 16 and a half years to complete as mentioned in paragraph (a) above.
- (c) In vetting an application, the District Lands Officer needs to verify the eligibility of the applicant and the applicant's title to the land in question; to carry out site inspection to ascertain the suitability of the site; to consult the relevant rural committee if necessary; and to circulate the application to the relevant District Office, the Environmental Protection Department, the Fire Services Department, the Planning Department and other departments concerned for comments as appropriate. All applications will then be considered by the District Lands Office Conference chaired by the relevant District Lands Officer with membership including representatives from the respective District Office, the Planning Department, and the District Survey Office and so on. The Conference decides to approve or disapprove applications on the merits of each case.
- (d) As at 31 December 1999, there were 9 223 applications for small house grants pending processing;
- (e) The following measures have been put in place to streamline the vetting and approving procedure —
  - (i) since May 1997: initial screening of applications according to their complexity and land availability so that the processing of straightforward cases would not be delayed by the more complicated cases;
  - (ii) since September 1998: allowing applicants to build small houses on straddling lots without going through the time-consuming land exchange procedures; and

- (iii) since June 1999: processing applications by batches according to their complexity and locality and through dedicated workshops. Under this arrangement, a pool of officers in the respective District Lands Office conduct dedicated sessions in the form of a workshop to process the applications. Such "workshop approach" has helped achieve synergy, greater efficiency and reduce the processing time. For example, the adoption of the "workshop approach" has greatly reduced the number of small house applications pending processing in Tai Po and North Districts from 3 200 and 3 326 in June 1999 to 2 202 and 2 368 applications respectively in December 1999.

### **Handling of Complaints about the Immigration Department's Service**

8. **MISS CYD HO:** *Madam President, regarding the statistics on and the handling of complaints about the service of the Immigration Department, will the Government inform this Council:*

- (a)
  - (i) *of the number of cases withdrawn subsequently on the complainant's own initiative and the reasons for withdrawal;*
  - (ii) *of the number of cases in which the investigation could not be completed and the reasons for that; and*
  - (iii) *of a breakdown by the type of disciplinary actions taken against the civil servants concerned in respect of those cases found justified;*

*in each of the past three years;*

- (b) *of the number and contents of the recommendations on the improvement of existing policies and procedure made by the Complaints Review Working Party in the past three years, and the progress of the implementation of such recommendations;*
- (c) *whether the complainants are informed of the findings of the investigation; if not, of the reasons for that;*



- (d) *whether it will video-tape all interviews conducted with suspects at border control points, so as to facilitate the investigation of complaints lodged in this connection in future; if so, of the implementation schedule; if not, the reasons for that; and*
- (e) *whether it will consider establishing an independent mechanism specifically for handling and investigating such complaints?*

**SECRETARY FOR SECURITY:** Madam President,

- (a) Statistics on complaints received and handled by the Immigration Department in 1997 to 99 about its service are as follows:

	1997	1998	1999
Total number of complaints received:	226	217	189*
(i) Number of cases withdrawn by applicants:	2	4	3
Reasons:			
- complainants satisfied after clarification with the Immigration Department	(1)	(3)	(2)
- voluntary withdrawal	(1)	(1)	(1)
(ii) Number of cases in which investigation was not completed:	1	6	1
Reasons: complainants did not provide necessary information to enable investigation despite repeated requests/complainants could not be contacted for provision of such information			

1997 1998 1999

(iii) Disciplinary actions taken in the form of:

- Verbal warning to staff concerned	3	2	4
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Nature of complaints:

- making rude remarks to passengers at control points	(3)	(2)	(3)
- making rude remarks to the person accompanying an applicant for an ID card	(-)	(-)	(1)

- Others	0	0	0
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\* 30 of these cases are being processed as at the date of reply.

Note: The number of complaints which were found to be substantiated in 1997, 1998 and 1999 were 54, 46 and 28 respectively. The complaints were mostly of an administrative or procedural nature. They relate to poor staff manners; delay in processing applications; inefficiency of individual officers; low standard of service provided; and inadequate facilities provided. (Cases involving allegation of criminal offence, once reported, will be referred to the police or Independent Commission Against Corruption for investigation.) In substantiated cases other than those in (iii) above, specific actions were subsequently taken to rectify any inadequacies identified. Actions included counseling of staff concerned (24 in 1997; 30 in 1998; and 20 in 1999), and introduction of measures to improve the prevailing practices or services being provided.

(b) The Complaints Review Working Party made recommendations on 108 of the complaints cases received by the Immigration Department in the past three years. The recommendations and number of cases involved are categorized as follows:

(i) The cases should be used as sample materials for training purpose. (45 cases)

- (ii) Briefings should be given to the staff concerned to enhance the standard of service. (28 cases)
- (iii) The management concerned should closely monitor the processing of applications to avoid any delay. (14 cases)
- (iv) The management concerned should review the working procedures and relevant procedural manuals. (eight cases)
- (v) The performance of the staff concerned should be closely monitored. (seven cases)
- (vi) Cleansing agent should be provided for use by applicants after thumbprint-taking during identity card applications, and ball pens should be provided in all public offices, in order to provide better services to the public. (two cases)
- (vii) Self-defense training to immigration staff should be strengthened. (one case)
- (viii) The Immigration Service Standing Order should be updated in a timely manner. (one case)
- (ix) The management of Extension Section should speed up the creation of additional posts and expansion of the office accommodation in order to further improve the standard of services provided. (one case)
- (x) The telephone service of branch offices should be enhanced to provide better customer service. (one case)

Actions have been taken as recommended in respect of all of the cases concerned.

- (c) All complainants are in normal circumstances informed of the findings of the investigation into their complaints. In respect of the complaints received by the Immigration Department during the past three years into which investigations were conducted, the complainants in 39 cases were not informed of the findings of the investigations for the following reasons:
- (i) the complainant left no means of contact (26 cases);
  - (ii) the complainant specifically indicated that no reply was necessary (eight cases);
  - (iii) the complainant provided incomplete contact addresses or incorrect telephone number (three cases); and
  - (iv) under the Personal Data (Privacy) Ordinance, the findings could not be released to the complainant because he was not the data subject. In such cases, the complainants were informed that the investigations had been completed and that the persons concerned should contact the Immigration Department direct for the investigation outcome (two cases).
- (d) Video recording of interviews is conducted on suspects of more serious offences, such as suspects involved in forgery syndicates. The Immigration Department is not able to video-tape interviews conducted on all suspects because of manpower and capital resource constraints. Video-taping interviews need to be conducted under specific procedures in a Video Recording Interview (VRI) Room with special features and monitored by a controller.

Video-taped interviews of suspects are presently conducted in two VRI Rooms set up at the Immigration Headquarters in July 1998. We will install five additional sets of VRI facilities in the Immigration office at Chek Lap Kok Airport (one set), the Immigration Task Force office at Ma Tau Kok Government offices (two sets), and the Immigration Headquarters (two sets) by the end of 2000. More interviews with suspects of serious offences will be video-taped upon installation of the additional facilities.

- (e) A number of independent mechanisms are in place both within and outside the Immigration Department to handle and investigate complaints against the immigration services.

Complaints against immigration services may be lodged direct on the spot with the officer-in-charge. Alternatively, complainants may telephone the Customer Services Unit, or write to the Chief Immigration Officer (Management Audit Division) at any time. These avenues have been widely promulgated through posters displayed in all immigration offices and through information booklets available in all public offices.

All complaints made to the Immigration Department are investigated by officers of the subject division at the rank of not lower than Assistant Principle Immigration Officer. All complaints are closely monitored by the Management Audit Division, which is set up under the Administration and Planning Division and audits the work of all sections in the Department and oversees the handling of all complaints. A Complaints Review Working Party headed by the Assistant Director (Administration and Planning) with the Management Audit Division as members holds monthly meetings to review and analyse all investigated complaints, with a view to making recommendations on appropriate follow-up actions, such as review of staff training needs, staff counseling, review of policies and procedures and disciplinary actions. Follow-up actions are closely monitored by the Working Party. Where complaints are found to be substantiated, the Director of Immigration may take disciplinary actions against the officers concerned in accordance with the Immigration Service Ordinance, Immigration Service Standing Order or the Civil Service Regulations.

Where a member of the Immigration Service commits a criminal offence, the case will be reported to the police for investigation in the first instance.

Complaints against the immigration services can also be made to external bodies such as the Ombudsman and the Independent Commission Against Corruption, which conduct independent investigations into the complaints as appropriate.

The existing mechanisms for handling and investigating complaints are working smoothly and effectively. There is no plan to establish an additional mechanism for this purpose.

**Purchase of Medicine for Treatment of Alzheimer's Disease**

9. **MR LAW CHI-KWONG** (in Chinese): *Madam President, it is learnt that "Aricept", a medicine supplied free of charge by pharmaceutical companies, is prescribed by doctors of the Hospital Authority (HA) for patients suffering from Alzheimer's disease (commonly known as "senile dementia"). In this connection, will the Government inform this Council:*

- (a) *how the medicine compares with other medicines for the treatment of Alzheimer's disease in terms of curative effects, side effects and price; and*
- (b) *whether it knows if the HA has any plan to purchase the medicine after the medicine supplied has been exhausted; if so, the estimated annual expenditure thereon; if not, why not?*

**SECRETARY FOR HEALTH AND WELFARE** (in Chinese): Madam President,

- (a) At present, there are drugs, namely Tacrine and Aricept, which are used for treatment of patients with mild or moderate dementia of Alzheimer's disease type. These two drugs can bring short-term symptomatic improvement to the cognitive functions of some patients, and in this regard Aricept has been shown by clinical research to be more efficacious than Tacrine. However, there is no clinical evidence to show that either of the two drugs can bring long-term improvements to the patients' cognitive functions or alter the course of Alzheimer's disease.

The most common side effects of taking Tacrine and Aricept are nausea, diarrhoea, insomnia, vomiting, muscle cramps, fatigue and anorexia. Less common side effects, such as hallucinations, agitation and aggressive behaviour, have also been reported. When compared with Tacrine, Aricept is associated with fewer occurrences of side effects, and has fewer adverse effects relating to disturbances in liver function. Hence, unlike Tacrine, routine liver function monitoring is not required for those patients taking Aricept.

Price and cost comparisons between Aricept and Tacrine are provided below –

		<i>Price (HK\$)</i>	<i>Daily maintenance dose</i>	<i>Daily drug cost (HK\$)</i>
Aricept	5 mg	\$17.30	5 mg-10 mg daily	\$17.30-\$24.00
	10 mg	\$24.00		
Tacrine cap	10 mg	)	20 mg-40 mg	\$24.00
	20 mg	) all at \$6.00	four times daily	
	30 mg	) per tablet		
	40 mg	)		

- (b) Aricept is a new drug which has been approved for use by the HA since July 1999. HA clinicians are well-informed that Aricept is generally more efficacious than Tacrine, and hospitals have started to purchase Aricept gradually to replace the use of Tacrine. On some occasions, clinicians may, based on their clinical judgment, decide to continue to prescribe Tacrine, particularly for those patients who have shown beneficial effects by taking the drug. Nevertheless, as Aricept is proven to have fewer side effects and is of comparable cost per patient treatment as Tacrine, gradual replacement of Tacrine by Aricept for the majority of patients is expected.

As the costs of using Tacrine or Aricept are comparable, the estimated annual expenditure will remain similar, in the region of \$500,000 to \$1 million, when either drug is used.

### **Landmines Buried along the Border Area**

10. **MR BERNARD CHAN:** *Madam President, it was reported that landmines planted during the riots in 1967 might still be buried along the border area. In this connection, will the Government inform this Council whether:*

- (a) *it has assessed if there are still landmines buried along the border area; if the assessment result is in the positive, of the measures it will take to ensure the public's safety; and*
- (b) *it has kept records of cases in which landmines buried along the border area were accidentally uncovered and exploded since 1967; if it has, of the number of such cases and the resultant casualties?*

**SECRETARY FOR SECURITY:** Madam President, the Government's assessment is that it is highly unlikely that there are still landmines buried in the border area. Based on available records, there were only two incidents of explosion caused by landmines in the border area since 1967. One occurred in October 1967 and one in December 1967. Three persons were injured in these incidents. Extensive repair works to the border fence were undertaken in 1968 which required the removal of landmines in the border area. Subsequently numerous other minor works were also carried out in the area and there had not been any incidents of explosion or casualties.

### **Uploading of the Government Gazettes onto Government Websites**

11. **MR NG LEUNG-SING** (in Chinese): *Madam President, will the Government inform this Council whether it has plans to upload, by category, the contents of Government Gazettes onto the government websites and provide relevant search engines for them, so as to facilitate the public's access to the relevant information; if so, of the details and the implementation schedule; if not, the reasons for that?*

**SECRETARY FOR THE TREASURY** (in Chinese): Madam President, the Government Gazette contains seven parts — the Main Gazette and six Supplements. At present, certain sections are already uploaded on various homepages at the government website. These include:

- (a) Legal Supplements Nos. 1 and 2, which contain Ordinances and Regulations respectively. These are available at the website for the Department of Justice, at [<info.gov.hk/justice>](http://info.gov.hk/justice);



- (b) Legal Supplement No. 3, which contains Government Bills. This is available at the website for the Legislative Council, at <legco.gov.hk>; and
- (c) tender notifications in the Main Gazette. These are available in the respective departments' homepages.

To further facilitate public access to the information contained in the Government Gazette and improve user-friendliness, the Administration will upload onto the Government Homepage:

- (a) the Main Gazette, which contains non-statutory material such as appointments, notices, tenders, and so on and statutory notices and appointments which do not have the effect of adding to or amending the law;
- (b) Legal Supplements Nos. 1, 2 and 3, which are already available through other websites; and
- (c) Special Supplement No. 5, which contains draft Bills, Executive Orders, Order of the State Council, and so on.

We are examining the various technical and implementation details, including the design and editing of the various webpages, the provision of the relevant search engines, and the links for different parts of the Gazette to facilitate easy access. We plan to launch the new system in a few months' time.

In parallel, we will examine the propriety of upholding onto the government website the two remaining parts of the Government Gazette, that is, Special Supplement No. 4, which contains periodical lists of registered professional persons, and so on; and Supplement No. 6, which contains private Bills, public notices and advertisements. As these Supplements involve information provided by third parties, rather than the Government, we have to consider various implications more carefully.

**Conversion of Historical Buildings for Cultural Use**

12. **MR HOWARD YOUNG** (in Chinese): *Madam President, will the Government inform this Council of the mechanism whereby it promotes the restoration of vacant buildings of historical interest (such as the former Wan Chai Police Station and the Yaumatei Theatre) and authorizes a change of their use; as well as the role of the Leisure and Cultural Services Department (LCSD) in the mechanism?*

**SECRETARY FOR HOME AFFAIRS** (in Chinese): Madam President, my replies to Honourable Howard YOUNG's questions are:

The Antiquities and Monuments Office (AMO) under the LCSD studies and assesses the historical, cultural and architectural value of individual buildings. In addition, it offers expert advice on the restoration, alteration and protection of historical buildings. The Antiquities Advisory Board is regularly consulted during this process.

The AMO is normally consulted on the use of vacant government buildings considered to have historical value. The AMO has also in place an ongoing programme to identify buildings of historical interest for declaration as monuments under the Antiquities and Monuments Ordinance. These monuments will be restored if necessary. Examples of such restored monuments include the Western Market in Sheung Wan, the former Kowloon British School in Tsim Sha Tsui and the Old Stanley Police Station. If the new use of a restored building does not conform with that specified in the town plan, permission from the Town Planning Board would be sought.

It is the established procedures for the Buildings Department (BD) to check all proposals received for demolition, redevelopment, and alteration works affecting private buildings against the list of monuments declared or proposed under the Antiquities and Monuments Ordinance. Proposals affecting private buildings or sites which have been declared a monument or proposed monument will be disapproved by the BD under the provision of the Buildings Ordinance.

Subject to the Urban Renewal Authority Bill being passed into law by the Legislative Council, the Urban Renewal Authority will play an active role in preserving private buildings, sites and structures of historical, cultural or architectural interest within urban renewal priority project areas and target areas.

### **Legislation to Completely Ban Smoking at Indoor Workplaces**

13. **DR DAVID LI:** *Madam President, the Hong Kong Council on Smoking and Health estimates that 1.14 million non-smokers are suffering from passive smoking at work. In view of the health hazards of passive smoking, will the Government inform this Council if it will consider introducing legislation to completely ban smoking at indoor workplaces; if it will, of the specific timetable; if not, the reasons for that?*

**SECRETARY FOR HEALTH AND WELFARE:** Madam President, passive smoking generally refers to situation where non-smokers breathe in "sidestream" smoke from the burning tip of cigarettes, and "mainstream" smoke that has been inhaled and then exhaled by smokers. It is our policy to reduce the exposure of the public to passive smoking in indoor environment to the maximum extent possible. To this end, substantial efforts have been made through legislative, educational and administrative means. Under the Smoking (Public Health) Ordinance (Cap. 371), we have introduced, by phases, no smoking requirement to indoor places such as shopping malls, department stores, banks, amusement game centres, cinemas, theatres and concert halls. Such prohibitions not only protect members of the public using these places but also employees working in these premises from being affected by passive smoking.

In addition, the Council on Smoking and Health (COSH) has since 1992 been encouraging business firms to adopt a smoke-free workplace policy by subscribing to a "Smoke-free Workplace Charter". Over 150 corporations and organizations have signed the Charter and undertaken to establish a smoke-free environment in their workplaces.

We are currently evaluating the effectiveness of the measures undertaken to date, in the context of a review of our anti-smoking strategy. As part of this review, we will consider the possibility of extending the ban on smoking to other indoor workplaces, and where feasible, consider the timing of implementation.

In deciding the way forward, a number of factors need to be considered, such as the expectation of the community, the enforceability of the proposal and an agreed definition for the term "workplace" among different sectors. We shall address these issues in collaboration with other parties concerned, including the Department of Health, Labour Department, Environment Protection Department and COSH.

### **Electronic Tendering System Adopted by Government Supplies Department**

14. **MR SIN CHUNG-KAI** (in Chinese): *Madam President, with regard to the Electronic Tendering System (ETS) recently adopted by the Government Supplies Department (GSD), will the Government inform this Council:*

- (a) of a comparison of the operating cost of the ETS to that of the traditional tendering process;*
- (b) of the number of suppliers currently registered with the GSD for using the ETS to submit their tender offers and a breakdown by category; and*
- (c) whether the GSD has plans to recommend the ETS or similar systems to those departments which may make procurement on their own, especially for inviting tenders for goods or services of values not exceeding \$1.3 million?*

**SECRETARY FOR THE TREASURY** (in Chinese): Madam President, the ETS is still at the preparatory stage. The target is to bring it into operation later in the year.

- (a) The operating cost for processing one set of tender (that is, issuing tender invitation and tender document, receiving and opening tenders received) under the ETS is comparable to that for the traditional tendering process. Both are estimated to cost about \$120 on a per tender basis.

- (b) From last October, the GSD has been inviting expressions of interest from suppliers to register under the ETS. Some 3 000 suppliers (including 500 from outside Hong Kong) have been approached and about 1 500 (including 50 from outside Hong Kong) have expressed an interest. We expect to start formal registration later in the year to tie in with the launching of the ETS.
- (c) The ETS will initially cover tenders under the purview of the GSD Tender Board (that is, tenders valued between \$1.3 million and \$10 million). In the light of the GSD's experience with the ETS, we will consider whether it is appropriate to extend the system to other government bureaux and departments. Under existing arrangements, bureaux and departments are not required to tender for the procurement of goods and services at or below \$1.3 million.

### **Disposal of Vacant Quarters Returned by Subvented Organizations**

15. **MR CHEUNG MAN-KWONG** (in Chinese): *Madam President, will the Government inform this Council:*

- (a) *whether it knows the respective numbers of vacant staff quarters of subvented organizations, including the Hospital Authority (HA), the Vocational Training Council (VTC) and the University Grants Committee (UGC)-funded institutions at present; the respective numbers of these quarters for which disposal methods have been drawn up, together with a breakdown by such disposal methods; and the reasons for these quarters being left vacant;*
- (b) *of the number of vacant quarters returned by subvented organizations to the Government for disposal over the past three years; and among them, the number of quarters for which disposal methods have yet to be drawn up;*
- (c) *of the average and longest waiting time before the returned vacant quarters are disposed of by the authorities; and*
- (d) *of the measures in place to expedite the disposal of vacant quarters returned by subvented organizations?*

**SECRETARY FOR THE TREASURY** (in Chinese): Madam President,

*Part (a) of the question*

A number of staff quarters under the purview of the HA, the VTC and the UGC-funded institutions have become surplus to requirement as a result of introduction of new employment terms. This was the case when the HA introduced the cash allowance upon its establishment in 1991, when the VTC introduced common terms of service for expatriate officers in 1996, and when the UGC-funded institutions introduced the Home Financing Scheme (HFS) in 1998. The number of vacant quarters in these three organizations, and their disposal plans, are set out below.

The HA had 245 vacant quarters as at January 2000. Of these, the HA plans to:

- (i) demolish 79 quarters in the Yan Chai Hospital in the context of the hospital's future redevelopment plan which was drawn up in 1998;
- (ii) convert 132 quarters in the Pamela Youde Nethersole Eastern Hospital into an elderly home to be operated on a self-financing basis by the Nethersole Hospital Executive Committee. The organization is now seeking capital funds for effecting the conversion; and
- (iii) convert the remaining 34 quarters into other uses, for example, patient areas, call rooms, overnight rooms and offices to cater for the recent expansion of hospitals.

Since 1997, the VTC has invited its staff who are eligible for Private Tenancy Allowance to occupy its vacant quarters instead of renting from the market. As at mid-February 2000, it had only 15 vacant quarters. The VTC plans to let these quarters in the open market from mid-2000 onwards subject to necessary modification to the land grant conditions.

The UGC-funded institutions had 315 unoccupied staff quarters as at the end of January 2000. These include 177 rendered surplus as a result of the introduction of the HFS and which are yet to be re-allocated, rented out or put to alternative use. The rest are left vacant due to resignation, retirement and expiry of contract of the occupants.

The Administration has envisaged that the introduction of the HFS would give rise to surplus quarters, and has set up a Task Force, chaired by the Secretary-General, UGC, to ensure that such quarters are disposed of in ways which yield the greatest public benefits. In the short term, some institutions have obtained authorizations from the Director of Lands to turn such quarters into rentable premises for their staff (particularly those receiving Private Tenancy Allowance and Home Financing Allowance for rental) and, where appropriate, outsiders. The institutions have also formulated medium- to long-term proposals for the disposal of currently or potentially surplus quarters for consideration by the Task Force. These include:

- (i) surrendering 45 quarters at the Hong Kong Baptist University to the Government by April/May 2000 for use as government quarters;
- (ii) converting 94 quarters at the Chinese University of Hong Kong into student hostels, and 14 of them into academic support facilities from June 2000 onwards;
- (iii) surrendering 155 quarters at the Hong Kong Polytechnic University to the Government for site redevelopment by July 2001;
- (iv) surrendering 100 quarters at the University of Hong Kong to the Government for site redevelopment in the overall context of the University's campus redevelopment strategy; and
- (v) converting some of the 99 quarters at the Hong Kong Institute of Education into student hostels.

In formulating the above disposal plans, the UGC-funded institutions have also taken into account the possible need to dispose of vacant quarters not arising from the introduction of the HFS.

*Part (b) of the question.*

Over the past three years, a total of 179 vacant quarters have been handed over to the Government from the HA. These include 80 quarters at the Prince of Wales Hospital (PWH), 96 quarters at the ex-Castle Peak Hospital and three quarters at the West End Path Quarters. Their disposal arrangements are explained in the following section. No other subvented organization has returned any vacant quarters to the Government over the past three years.

*Part (c) of the question*

Disposal methods for the vacant quarters are drawn up by the relevant authorities prior to, or immediately upon, their return to the Government, and practically no waiting time is involved. The disposal methods are set out as follows:

- (i) prior to taking over the 80 units in the PWH in November 1997, the Government Property Agency (GPA) had already identified alternative government and welfare uses for the premises where possible. Immediately upon the takeover, eight quarters were allocated for government quarters uses, 10 were allocated for welfare uses, the remaining 62 units were offered for leasing in the market and currently 59 of them have been let out;
- (ii) of the 96 ex-Castle Peak Hospital quarters taken over by the GPA in July 1998, all were originally planned for redevelopment in less than two years' time. In June 1999, owing to deferral of the redevelopment proposal, the GPA circulated these units for alternative government uses but without success. In October 1999, the GPA advertised these premises for commercial interest in October 1999. Currently, the GPA is negotiating with potential users to turn 64 of these units into privately-run welfare operations; and



- (iii) for the three quarters at the West End Path Quarters, the Department of Health has used them as storage for medicine immediately upon taking over from the HA in January 1998.

*Part (d) of the question*

When vacant quarters are handed over to the Government by the subvented organizations, they will be allocated immediately for government use if suitable. Those not required for government purposes will be put to alternative uses such as leasing to private tenants or allocation to qualified welfare organizations pending redevelopment of the sites for long-term purposes. The existence of vacant quarters is only transient, arising from the need to resolve physical and other constraints before alternative uses are realized.

**Racial Discrimination in Hong Kong**

16. **MISS CHRISTINE LOH:** *Madam President, regarding racial discrimination in Hong Kong, will the Administration inform this Council:*

- (a) *whether it knows if members of the ethnic minorities consider that racial discrimination is prevalent in Hong Kong; if it is prevalent, of the details;*
- (b) *of the existing respective channels through which an aggrieved person can seek redress for being racially discriminated against by acts of:*
  - (i) *the Government or a public body; or*
  - (ii) *other parties;*

*if there are no such channels, whether it will consider ways to help such aggrieved persons; if it will not, of the reasons for that;*

- (c) *whether it has adopted a policy of making redress channels available to all aggrieved persons who have been subject to racial discrimination acts; if not, of the reasons for that; and*
- (d) *whether it will consider requesting the Central People's Government to make a declaration for Hong Kong in accordance with Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination, that the Hong Kong Government recognizes the competence of the Committee of the Elimination of Racial Discrimination of the United Nations to receive and consider communications from Hong Kong residents or organizations claiming to be victims of a violation by the Hong Kong Government of any rights set forth in the Convention?*

**SECRETARY FOR HOME AFFAIRS:** Madam President, taking the Honourable Member's questions *seriatim*:

- (a) We examined the issue in detail in the course of our 1996-97 study, reporting our findings in the consultation paper: "A study of discrimination on the Ground of Race". Both that study and the subsequent consultations indicated that racial discrimination was not a significant problem in Hong Kong. Those findings have subsequently been reconfirmed in follow-up consultations conducted in 1997-98 and in 1998-99. Members of the ethnic minorities were included in all these consultations.
- (b) (i) An aggrieved person may seek redress against alleged acts of racial discrimination by the Government or a public authority (or by any person acting on their behalf) by bringing an action to court for possible infringement of the right to equality and non-discrimination guaranteed under the Hong Kong Bill of Rights Ordinance (BORO). Section 6 of that Ordinance — Remedies for contravention of Bill of Rights" — provides that:

"A court or tribunal:

- (a) in proceedings within its jurisdiction in action for breach of this Ordinance; and
- (b) in other proceedings within its jurisdiction in which a violation or threatened violation of the Bill of Rights is relevant,

may grant such remedy or relief, or make such order, in respect of such a breach, violation or threatened violation as it has power to grant or make in those proceedings and as it considers appropriate and just in the circumstances."

The remedy or relief granted by the court or tribunal may include an award of financial compensation. And, in appropriate cases, complaints of racial discrimination may be challenged in court as being contrary to the protections guaranteed in the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Basic Law.

Where persons consider that the actions of a public servant acting on behalf of the Government or a public authority has breached, violated, or threatened their rights guaranteed under the BORO on racial grounds, then section 6 of that Ordinance might be invoked for claiming of relief. But, where members of the public consider that a public officer has mistreated them, we strongly encourage them to bring the matter to the attention of the relevant departmental complaint channel. And the Ombudsman will readily investigate all complaints against unreasonable conduct, or abuse of power, on the part of public officials. The Government views most seriously — and will thoroughly investigate — allegations of misconduct on the part of its personnel, including mistreatment arising from discrimination. Where, after such

investigation, misconduct is established, it will take such corrective measures as it considers appropriate in the circumstances. Those measures may include disciplinary action;

- (b) (ii) While there is no specific legislation against discrimination on the ground of race on the part of private individuals and organizations, there are provisions in the law that afford relevant protections and means of redress. To particularize:
- the general criminal law of Hong Kong proscribes acts of violence of various kinds, as well, of course, as the incitement of others to commit such acts. For example, killing and causing grievous bodily harm — that may be racially motivated — are offences under section 9A of the Offences Against the Person Ordinance (Cap. 212). Under section 5A of the Societies Ordinance (Cap. 151), the Societies Officer may refuse to register or to exempt from registration a society or a branch if he reasonably believes that the refusal is necessary in the interests of national security or public safety, public order (order public) or the protection of the rights and freedoms of others. An order may also be made under section 8 of the Ordinance to prohibit the operation or continued operation of a society or a branch for the same reasons;
  - there are measures in force to prevent television and radio broadcasts containing material that is likely to incite racial hatred or is racially denigrating. The Television Ordinance (Cap. 52) and the Telecommunication Ordinance (Cap. 106) prohibit television and sound broadcasting licensees respectively from broadcasting any programme, advertisement, announcement or other material that is likely to incite hatred against any group of persons, being a group defined by reference to colour, race, sex, religion,

nationality or ethnic or national origins. There are similar provisions in the Codes of Practice on Programme Standards with which licensees are required to comply. And the Film Censorship Ordinance (Cap. 392) provides that approval for exhibition of a film may be refused if the film denigrates or insults any particular class of the public by reference to the colour, race, religious beliefs or ethnic or national origins or the sex of the members of that class.

(c) and (d)

We consider the existing channels to be adequate and see no need to make a declaration under Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination. Like our own BORO, that Article is concerned with claims by individuals or groups of individuals regarding violation of prescribed rights on the part of Governments. The BORO fully reflects the provisions of the ICCPR which include proscriptions on acts of discrimination, including racial discrimination where they concern Government and public authorities. Those provisions are directly enforceable in the courts of Hong Kong Special Administrative Region (SAR). Thus persons who consider that their rights have been infringed, or are threatened with infringement, have an immediate and effective right of access to an independent judicial system to have their claims tested. And, if those claims are upheld, they may be awarded appropriate remedy and redress. In these circumstances, we do not see any need to apply Article 14 to the SAR. Indeed, only 27 of the 155 States Parties to the Convention have made the declaration under Article 14<sup>1</sup>.

<sup>1</sup>Source: United Nations homepage.

**Meetings of the Chief Executive with the Chief Justice of CFA**

17. **MISS EMILY LAU** (in Chinese): *Madam President, the Administration informed this Council on 5 January this year that the Chief Executive and the Chief Justice of the Court of Final Appeal (CFA) had met four times in the past 12 months to discuss matters relating to the resourcing of the Judiciary, legislative proposals which relate to the Judiciary and matters of mutual concern to the Judiciary and the community. In this connection, will the executive authorities inform this Council whether:*

- (a) the above matters for discussion fall within the purview of the Judiciary Administrator; if so, of the reasons for the Chief Executive's meeting the Chief Justice of CFA to discuss those matters; and*
- (b) the Chief Executive and the Chief Justice of CFA will curtail such meetings so as to avoid damaging the public's perception of judicial independence?*

**CHIEF SECRETARY FOR ADMINISTRATION** (in Chinese): Madam President, the Administration's reply to the question raised by the Honourable Member is as follows:

- (a) The Judiciary Administrator provides administrative support to the Chief Justice of CFA who, as provided for in section 6(2) of the Hong Kong Court of Final Appeal Ordinance, is the head of the Judiciary and is charged with the administration of the Judiciary. The meetings between the Chief Executive and the Chief Justice of CFA provide opportunities for the Chief Executive to better understand matters of interest to the Judiciary.
- (b) The meetings between the Chief Executive and the Chief Justice of CFA continue a practice before July 1997. These meetings do not in any way undermine the independence of the Judiciary. There is no cause for any public concern and we see no need to curtail such meetings.

Hong Kong has a judiciary of international standing and repute. The Administration is deeply committed to the independence of the Judiciary which is central to the maintenance of the rule of law, and is guaranteed under the Basic Law.

### Use of Octopus Cards in Public Transport

18. **MR LAU KONG-WAH** (in Chinese): *Madam President, regarding the progress of installing the Octopus system by public transport operators and their provision of distance-based section fares by means of the Octopus system, will the Government inform this Council whether it knows:*

- (a) *the number of franchised buses installed with Octopus processors at present and the percentage of the number of such buses in the total number of franchised buses in Hong Kong;*
- (b) *the franchised bus routes that are currently providing distance-based section fares by means of the Octopus system, as well as the following information regarding the franchised bus companies:*
  - (i) *how they determine the routes on which section fares can be implemented by means of the Octopus system;*
  - (ii) *the problems encountered in implementing section fares by means of that system; and*
  - (iii) *whether they have plans to provide section fares on the remaining bus routes by means of that system; if so, the details; if not, the reasons for that;*
- (c) *the number of green minibuses, with a breakdown by routes, installed with Octopus processors at present; whether minibus trade associations have plans to extend the Octopus system to cover the routes run by other minibuses and green minibuses; and*
- (d) *if all inner-harbour ferry routes and those plying the outlying islands accept payment of fares by Octopus cards at present?*

**SECRETARY FOR TRANSPORT** (in Chinese): Madam President, at present, 3 313 franchised buses representing about 55% of the franchised bus fleet are installed with Octopus processors.

Among the some 600 franchised bus routes currently in operation, 458 bus routes offer distance-based section fares. They mainly consist of:

- (a) long haul routes where there is downstream passenger demand and the routes have spare capacity towards the end of the bus journey to meet the demand; and
- (b) rural routes such as those operating in Lantau and North District.

At present, 274 of these routes accept payment of section fares by Octopus. The franchised bus operators have plans to install Octopus processors on another 168 of these routes by end 2000 to enable the payment of section fares by means of Octopus card.

The remaining 16 bus routes accept payment of section fares by cash only. These routes offer distance-based section fares to passengers irrespective of whether the passengers board the bus in the front or end parts of the bus journey. There are difficulties in applying the Octopus system for this type of section fare arrangement in these routes as the acceptance of section fares by dual payment method, that is, by cash and by Octopus at the same time could give rise to confusion and considerable risks of fare evasion. As a result, the payment of section fares in these routes would have to be limited to cash only or Octopus only. Passenger acceptance is an important factor in considering whether the payment method of section fares of these routes should be changed to Octopus only instead of by cash. Besides, some of these routes have more complicated fare structure, for example, more than two tiers of section fares for the bus journey. The currently available Octopus software is not yet able to support the technical requirements.



As regards green minibuses (GMBs), at present 42 GMBs of six Hong Kong Island routes are installed with the Octopus processor:

<i>Route No.</i>	<i>No. of GMBs Installed with Octopus System</i>	
39C & 39M	9	Yue On Court (Ap Lei Chau) to Aberdeen (Cir)/Tin Hau MTR
40	10	Stanley Village to Causeway Bay
45A	4	Western District (First Street) to Conduit Road (Cir)
56	13	Mid-levels (Robinson Road) to North Point (Marble Road)
63	6	South Horizons to Queen Mary Hospital

The Creative Star Limited has developed a low-cost limited function Octopus model for GMBs and has briefed GMB operators on the system at a GMB Conference conducted by the Transport Department in January 2000.

On ferry services, Octopus cards are accepted on the following four outlying island ferry routes:

Central – Cheung Chau  
Central – Mui Wo  
Central – Peng Chau  
Central – Yung Shue Wan

The Creative Star Limited is discussing with the ferry operators of the other ferry routes on the possibility of applying the Octopus system to the latter's services.

**Management of Cultural and Leisure Services and Facilities**

19. **MRS SELINA CHOW** (in Chinese): *Madam President, regarding the arrangements for cultural and leisure services and facilities following the dissolution of the Provisional Municipal Councils, will the Government inform this Council of:*

- (a) *the Leisure and Cultural Services Department (LCSD)'s policy on the allocation of funds for cultural services; whether the Department will consider establishing management or advisory committees comprising members of the public and the relevant professions to supervise the operation of museums, libraries and other cultural facilities within the purview of the Department;*
- (b) *its timetable for implementing the corporatization programmes for the Hong Kong Chinese Orchestra, Hong Kong Repertory Theatre and Hong Kong Dance Company; how it compares with the original timetable; if there are differences, of the reasons for that; and*
- (c) *the present management framework for the Hong Kong Stadium as well as the Government's policy in this regard?*

**SECRETARY FOR HOME AFFAIRS** (in Chinese): Madam President, my replies to Honourable Mrs Selina CHOW's questions are:

- (a) Cultural services funding by the LCSD is mainly allocated according to the needs of the prevailing services and their future development. Broadly speaking, the Department provides three major types of services for the public, which are heritage and museums, libraries and performing arts.

On the heritage and museums front, the principal tasks are heritage preservation and provision of quality museum services for the public so as to enhance their appreciation and knowledge of our heritage and arts and culture.

For library services, apart from managing and further developing libraries to meet public demands in the areas of education, information and research, library extension activities are also held for different age groups to encourage good reading habits.

In respect of the performing arts, the Department promotes culture and the arts by providing cultural facilities and services as well as organizing performances. The scope of work covers the management of civic centres, the organization and promotion of a series of well-balanced cultural entertainment programmes, the promotion of community arts and the planning of new cultural services.

To further improve its services, the Department will seek advice from individual experts by inviting them to be honorary advisers on each of the three areas of work. The Department is also actively considering the need for setting up advisory committees to advise on its programmes and services.

- (b) In February 1999, the standing committee of the former Provisional Urban Council (PUC) approved the governing principle for corporatizing the three performing companies and the whole process was then aimed to be completed in one year's time. The former Urban Services Department (USD) commenced the preparation work immediately afterwards. However, as the corporatization programme would cover an extensive area of work, including the legal framework, the mode of future governance, staffing and future funding requirements, members of the former PUC therefore agreed that there should not be a rigid timetable for implementing the corporatization plan. It was considered important that more thought should be given to issues such as the long-term funding arrangements for each of the new corporations, the corporate structure of these companies, the formulation of details relating to the transitional arrangements for staff and the future staff establishment, the office accommodation and the transfer of assets to ensure the smooth transition and operation of the three companies.

The LCSD is now actively following up on the detailed arrangements of the corporatization scheme. It is initially hoped that the corporatization of the three companies could be completed by the end of this year or early next year.

- (c) After the dissolution of the Provisional Municipal Councils, the LCSD has further streamlined the management framework of the Hong Kong Stadium. Among the 33 posts, two posts, one Principal Amenities Officer and one Accounting Officer I, have been deleted. The Manager of the Stadium has been replaced by a Chief Amenities Officer while the accounting work has been reassigned to the accounting section of the LCSD Headquarters.

As far as policy is concerned, the Department's aim is to promote the Stadium and minimize costs so as to attract more events to be held at the venue. The Stadium will continue to operate under the self-financing principle for holding international and major sports events. Charitable organizations will be able to rent the Stadium at concessionary rates to organize charitable activities.

To monitor the operation of the Hong Kong Stadium, the LCSD has set up a Management Committee under the Chairmanship of the Deputy Director (Leisure Services) to supervise the management of the Hong Kong Stadium.

### **Breaching of the Water Pollution Control Ordinance by the MTRC**

20. **MR HUI CHEUNG-CHING** (in Chinese): *Madam President, it was reported that the Mass Transit Railway Corporation (MTRC) had been convicted twice last year of breaching the Water Pollution Control Ordinance (Cap. 358) because sewage of pollutants level exceeding the stipulated permissible limits was found to have been discharged from the Quarry Bay Station and Central Station of the Mass Transit Railway (MTR); and to solve the problem, the MTRC had decided to spend \$90 million on installing additional sewage treatment facilities at the MTR stations and depots. In this connection, will the Government inform this Council whether it knows:*

- (a) *the commencement and expected completion dates of the works; the measures the MTRC will adopt, before the completion of the works, to ensure that the pollutants level of the sewage discharged will not exceed the statutory provisions; and*
- (b) *the impact of the expenditure for the works on the fares of the MTR?*

**SECRETARY FOR TRANSPORT** (in Chinese): Madam President,

- (a) as most parts of the urban lines of the Mass Transit Railway System were built in the '70s and early '80s and before the current standard for effluents discharge were introduced, wastewater treatment facilities have not been provided in the MTR stations and depots. The MTRC has since 1996, with the advice from the Environmental Protection Department, started working on solutions to meet the wastewater standards stipulated in the Ordinance. The MTRC has committed, with a full improvement programme between 1997 and 2001, to bring its system up to the required standards. A total budget of \$90 million has been allocated for the improvements which cover the installation of wastewater treatment plants and pipe diversion works. The construction work for the wastewater treatment plant at the three depots, namely Chai Wan Depot, Tsuen Wan Depot and Kowloon Bay Depot, was completed in December 1999. These plants will be in full operation in March 2000. The installation of wastewater treatment system and pipeline diversion inside stations is expected to be completed in late 2000. Pipe conversion and construction works outside MTR stations, which will involve substantial diversion works, are expected to be completed by year 2001.

Meanwhile, the MTRC will employ different techniques and technology to achieve the best results in its cleaning procedure and will improve the control of its contractors.

- (b) According to the MTRC, the expenditure for the sewage treatment improvement works will not generate any immediate impact on the MTRC's fares.

**BILLS****First Reading of Bills**

**PRESIDENT** (in Cantonese): Bills: First Reading.

**EMPLOYMENT (AMENDMENT) BILL 2000****ENTERTAINMENT SPECIAL EFFECTS BILL****DRUG DEPENDENT PERSONS TREATMENT AND REHABILITATION CENTRES (LICENSING) BILL**

**CLERK** (in Cantonese): Employment (Amendment) Bill 2000  
Entertainment Special Effects Bill  
Drug Dependent Persons Treatment and Rehabilitation  
Centres (licensing) Bill.

*Bills read the First time and ordered to be set down for Second Reading pursuant to Rule 53(3) of the Rules of Procedure.*

**Second Reading of Bills**

**PRESIDENT** (in Cantonese): Bills: Second Reading.

**EMPLOYMENT (AMENDMENT) BILL 2000**

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese):  
Madam President, I move the Second Reading of the Employment (Amendment) Bill 2000.

The existing section 9 of the Employment Ordinance lists out the lawful grounds for an employer to terminate the employee's contract of employment without notice and payment in lieu. However, the existing provisions of section 9 do not state expressly that the taking part by an employee in a strike would not constitute a lawful reason for summary dismissal under this section.

The Legislative Council Panel on Manpower had discussed the issue and requested the Administration to amend the relevant provisions of the Employment Ordinance for the purpose of clarification. The Administration accepted the Panel's suggestion and undertook to make the amendments at the Manpower Panel meeting in July last year.

The Bill being proposed by us aims to make it clear that the taking part by an employee in a strike does not entitle his employer to dismiss him summarily without notice or payment in lieu under section 9 of the Employment Ordinance. The purpose of the amendments is solely to clarify the wording of the relevant sections which will help avoid unnecessary misunderstanding between employers and employees.

The Labour Department has consulted the Labour Advisory Board on the proposed amendments in the Bill. Representatives of employers and employees of the Board have given their support.

Madam President, I urge Members to pass the Bill into law as soon as possible.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Employment (Amendment) Bill 2000 be read the Second time.

In accordance with the Rules of Procedure, the debate is now adjourned and the Bill referred to the House Committee.

## **ENTERTAINMENT SPECIAL EFFECTS BILL**

**SECRETARY FOR INFORMATION TECHNOLOGY AND BROADCASTING** (in Cantonese): Madam President, I move the Second Reading of the Entertainment Special Effects Bill.

At present, the use of dangerous goods for producing special effects in films, television programmes and theatrical performances is governed by the Dangerous Goods Ordinance and the Gas Safety Ordinance. Since these two Ordinances are not specifically designed to meet the operational needs of the film and entertainment industry and are enforced by five different departments, the industry encounters considerable difficulties in complying with the relevant requirements.

In view of this, the Information Technology and Broadcasting Bureau has conducted a comprehensive review on the use of dangerous good for producing special effects in films, television programmes and theatrical performances. The Entertainment Special Effects Bill has subsequently been drafted to provide a new regulatory system that meets the operational needs of the film and entertainment industry on the one hand and ensures public safety and security on the other. In drawing up the new regulatory system, we have engaged a United States consultant to provide professional advice to the Government. We have also taken into account the Californian regulatory regime to which the film industry in Hollywood is subject. In so doing, we seek to develop a new regulatory system that will cater for the specific needs locally whilst at the same time drawing on the merits of the regulatory measures overseas.

The Entertainment Special Effects Bill will streamline and improve the existing regulatory system. Key areas of the Bill are outlined as follows:

- (a) a one-stop licensing authority, to be called the Entertainment Special Effects Licensing Authority (the Authority), will be established to oversee the supply, conveyance, storage and use of special effects materials. The Authority shall be the Commissioner for Television and Entertainment Licensing;
- (b) a licensing system for special effects operators will be set up and special effects materials for the production of entertainment special effects will have to be discharged by qualified practitioners. The Television and Entertainment Licensing Authority (TELA) has been running training courses for local special effects operators since 1998. Trainees will receive provisional recognition if they pass the assessment on their completion of the courses. Provisionally recognized special effects operators may, within 90 days after the entry into force of the new legislation, apply for a formal licence in the same stream and class of licence as provisionally recognized and will be exempted from separate assessment. Such an arrangement will facilitate the migration of the local practitioners to the new licensing regime;
- (c) the Authority will be the central body to process and approve applications for discharge permits, regardless of the type and quantity of the special effects materials involved;



- (d) pyrotechnic special effects materials will be required to be registered with the Authority before they can be supplied, conveyed, stored or used in Hong Kong so as to ensure public safety;
- (e) suppliers of pyrotechnic special effects materials will be required to be licensed to ensure proper monitoring of the supply of such materials; and
- (f) other regulatory measures on the conveyance and storage of special effects materials will also be streamlined to the extent commensurate with public safety considerations.

When drawing up the new regulatory system, we have consulted the industry, the Film Services Advisory Committee and Members of this Council at various stages. The suggestions received during the consultation have been incorporated in the Bill as far as practicable. On the whole, the new regulatory system is user-friendly and can better meet the operational needs of the industry. This will help to encourage the industry to comply with the relevant requirements.

In addition, with the proposed one-stop licensing authority for regulating the use of special effects materials for the production of entertainment special effects, many of the more cumbersome regulatory measures under the existing system will be streamlined, thus enhancing efficiency in the production of films, television programmes and theatrical performances in Hong Kong. The proposed licensing system for special effects operators will help to build up a pool of locally qualified practitioners who will practise their trade safely. This is conducive to enhancing the professional expertise of the local special effects operators as well as safety in the production of entertainment special effects. Furthermore, we believe that the new regulatory system will enhance Hong Kong's attraction as a venue for location shooting involving the production of entertainment special effects.

Madam President, the Entertainment Special Effects Bill strikes a balance between the operational needs of the industry and the protection of public safety. It also contributes to the healthy development of the local film and entertainment industry in the long run. To enable the industry to produce more creative entertainment special effects in a safe manner under a new regulatory system that is user-friendly and in line with their needs as soon as possible, I appeal to

Members to consider the Bill at the earliest opportunity and to render support to it.

Thank you, Madam President.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Entertainment Special Effects Bill be read the Second time.

In accordance with the Rules of Procedure, the debate is now adjourned and the Bill referred to the House Committee.

## **DRUG DEPENDENT PERSONS TREATMENT AND REHABILITATION CENTRES (LICENSING) BILL**

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, I move the Second Reading of the Drug Dependent Persons Treatment and Rehabilitation Centres (Licensing) Bill.

The Government adopts a multi-modality approach to drug treatment and rehabilitation services in order to cater for the different needs of drug dependent persons. In order to raise the existing standards of such services, improve the facilities and the fire protection equipment of premises for voluntary residential treatment and rehabilitation services, and to provide better protection to the persons receiving these services, the Government proposes that the obsolete Drug Addicts Treatment and Rehabilitation Ordinance be replaced by the Drug Dependent Persons Treatment and Rehabilitation Centres (Licensing) Bill. The Government hopes to bring all centres providing voluntary residential treatment and rehabilitation services under control fitting to modern needs.

According to the Central Registry of Drug Abuse, there were still over 16 000 drug dependent persons in Hong Kong in 1999. We think that we can relieve the financial burden of the community arising from treatment for drug users in the long run to achieve a more effective use of our overall resources if we can improve the environment and services of treatment centres and hence their rate of success. Moreover, we will find that many advanced countries abroad such as the United Kingdom, the United States and Australia all have laws imposing control on the standards of service of these centres.

The proposed licensing scheme requires that operators of voluntary residential drug treatment and rehabilitation centres providing care for four persons or more must apply to the Director of Social Welfare for a licence. Applicants must comply with the requirements of a fit person and will only be granted a licence if the fire protection and building safety specifications and other service conditions meet the standards specified by the Director. The proposed scheme will not entail harsh requirements or standards on the operation of treatment centres. In fact, these centres will continue to enjoy full autonomy in their provision of different forms of treatment and rehabilitation services for drug dependent persons who are free to choose treatment institutions suitable to their needs.

To ensure there is minimal interruption to the operation of existing treatment and rehabilitation centres, there will be a grace period so that they can prepare themselves for licence application at the same time as they continue operation. New centres, however, must meet the new requirements on the day they commence operation. Since circumstances for different centres vary, the Administration suggests that centres subsidized by the Social Welfare Department should be given a grace period of four years while centres not so subsidized will be granted a grace period longer than four years.

Madam President, I hope Members can support the Drug Dependent Persons Treatment and Rehabilitation Centres (Licensing) Bill.

Thank you, Madam President.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Drug Dependent Persons Treatment and Rehabilitation Centres (Licensing) Bill be read the Second time.

In accordance with the Rules of Procedure, the debate is now adjourned and the Bill referred to the House Committee.

### **Resumption of Second Reading Debate on Bill**

**PRESIDENT** (in Cantonese): We will now resume the Second Reading debate on the Mass Transit Railway Bill.

**MASS TRANSIT RAILWAY BILL****Resumption of debate on Second Reading which was moved on 13 October 1999**

**PRESIDENT** (in Cantonese): In accordance with the Rules of Procedure, I have Mrs Miriam LAU, Chairman of the Bills Committee on Mass Transit Railway Bill, to address this Council on the Committee's Report.

**MRS MIRIAM LAU** (in Cantonese): Madam President, in my capacity as Chairman of the Bills Committee on Mass Transit Railway Bill, I now submit the report of the Committee. The Mass Transit Railway Bill (the Bill) is an important milestone of the proposed privatization of the Mass Transit Railway Corporation (MTRC). Under the Bill, all assets and liabilities of the existing MTRC will be vested in the MTR Corporation Limited (MTRCL) on a date to be appointed by the Secretary for Transport. The new company will be granted a 50-year franchise to operate the Mass Transit Railway (MTR) and to construct and to operate any extension to the railway. The Bill requires the MTRCL to maintain a proper and efficient service in accordance with an Operating Agreement (OA). The OA will be a legally binding document entered into between the Government and the MTRCL, similar to the franchise documents for buses and ferries.

**The Bills Committee**

The Bills Committee has held a total of 15 meetings with the Administration and the MTRC. It has received written submissions from eight organizations and academics, and met the representatives from six of them. In response to the Bills Committee's request, the Administration has arranged for its financial adviser to brief members on the Initial Public Offering process. The Administration has also arranged for five financial/railway experts to appear before the Bills Committee to give their opinions in relation to the proposed privatization of the MTRC and the associated regulatory framework including fare determination mechanism.

## Deliberations of the Bills Committee

In the course of deliberations, the Bills Committee is especially concerned about whether the proposed arrangement will adequately safeguard public interest and it has discussed various issues in detail.

### *Conflict of Interests*

One of the major concerns of the Bills Committee is whether the fact that the Administration will play different roles after the privatization of the MTRC will lead to conflict of interests. The Administration advises that it expects the MTRCL to continue to be driven by market competition and the need to achieve a commercial return. Besides, as the majority shareholder of the MTRCL, the Government will closely monitor the service standards of the Corporation to avoid serious problems. According to the OA, the Government has the right to ask the MTRCL to review its operational arrangements and suggest that the MTRCL should take improvement measures.

### *Granting of Property Development Rights to the MTRCL*

The Bills Committee is also concerned about whether it should continue to grant property development rights to the railway project to the MTRCL after its listing. The Administration believes the MTRCL shall be allowed to continue its role in integrating railway and property developments after privatization. Such an arrangement is advantageous to the Government, the Corporation and the railway users because the profits arising from the developments have allowed the cost-effective expansion of the railway system in Hong Kong as a whole. After all, the Government will charge the MTRCL the full market value of the land granted for such property developments. As such, there is no question of subsidy to a private corporation.

### *Corporate Governance*

The Bills Committee is extremely concerned about the composition of the future board of directors. Some members of the Bills Committee consider it necessary to appoint a staff representative to the board of directors as it will help enhance communication between the staff side and the management and, in turn, benefit the Corporation as a whole. Some other members, however, agree with the Administration that such an appointment is not appropriate or necessary.

The MTRCL is to be established as a listed company with public shareholders charged to operate on prudent commercial principles. The board of directors will have a legal and contractual duty to consider the interest of the company as a whole and it will not be appropriate to have individual directors to represent specific sectoral interests. The MTRCL will continue to consult its staff on important issues affecting them under the existing mechanism.

### *Fare Determination Mechanism*

The Bills Committee notes that the matter has raised wide public concern. Even among members of the Bills Committee, there are divergent views on the fare determination mechanism for the future privatized Corporation. Some members consider that the present framework based on prudent commercial principles has proved to have worked well and the operator's freedom from political influence in fare setting shall be upheld. Some other members, however, are of the view that as the MTR is one of the major modes of transport for the commuting public, its fare increases have significant impact on people's livelihood and shall therefore be subject to more stringent scrutiny. Several proposals have been put forward aiming at making fare increases of the MTR to be subject to some form of regulation. The Bills Committee has invited individual Members to present their proposed Committee stage amendments to the Committee at a meeting.

According to the Administration, it is important that, after privatization, the MTRCL should continue to retain fare autonomy which will enable it to invest in the development and maintenance of the railway system. Indeed the loss of fare autonomy may run the risk of rendering MTRC shares unmarketable and frustrate the plan for privatization. According to the MTRC, the existing process of setting fares after consultation has also struck a fine balance between the autonomy and accountability of the Corporation. The Corporation has over the years adhered to a self-imposed discipline of ensuring fare increases to remain below the rate of inflation. The proposals to alter the existing fare-setting mechanism will restrict the Corporation's autonomy in fare determination, thus lowering its credit rating and increasing its borrowing costs. These may result in even more pressure on future fare increases. In regard to the fare determination mechanism, the Bills Committee came up with a consensus on the suggestions made by individual members, later, individual members will propose their respective Committee stage amendments.

*Performance Requirements*

The Bills Committee is highly concerned about the performance levels of the MTRCL in future, and whether its performance levels will be affected by the privatization. Some members of the Bills Committee also consider there are insufficient provisions in the OA for the Government to monitor the performance levels of the MTRCL. Some members of the Bills Committee are dissatisfied with the pitching of the proposed performance levels specified in Schedule III to the OA at 1% below the Corporation's historical performance in the past two years immediately before privatization.

The Administration's response is that under clause 9 of the Bill, the MTRCL is obliged to maintain a proper and efficient service, and the performance requirements in Schedule III to the OA are only threshold standards. The real targets which the MTRCL will strive to achieve under the OA are the Customer Service Pledges (CSPs). In view of the concern expressed by members, the MTRC has agreed to raise the CSPs to 1% above the performance requirements instead of the original 0.5%. Members also noticed that the proposed thresholds are extremely high by any international standards. Upon members' requests, the Administration promised to report to the Panel on Transport of the Legislative Council any amendments to the performance requirements in Schedule III to the OA.

The Administration also accepts the Bills Committee's suggestion to establish an interim review mechanism to specify that the MTRCL should review how it can adopt internationally popular advanced railway technologies and skills. Moreover, the Administration promises to review the OA once a year, and the scope of the review includes the performance requirements in Schedule III. If necessary, it can conduct more frequent reviews.

*Railway Safety*

Railway safety is one of the major concerns of members of the Bills Committee. The Bills Committee notices that the Bill has given the Administration adequate power to monitor railway safety. Moreover, the OA has specified that the MTRCL should appoint external independent specialists to review the safety management system at a regular interval of not more than five years. As requested by members, the Administration agrees that the review shall be conducted more frequently at a regular interval of not more than three years.

*Employment-related Matters (clause 41 of the Bill)*

The Bills Committee notes the concern expressed by the staff side of the MTRC regarding employment-related matters.

The Administration and the MTRC have indicated that the specific intentions of the Corporation is that the employment contracts and other employee benefits will remain unchanged after privatization and the obligations and legal liabilities of the MTRC will be transferred to the new company after privatization. The MTRC has said that it does not see any reasons why the existing salaries review mechanism should be changed after privatization.

*Offence of Negligent Act or Omission by Employee (clause 29 of the Bill)*

The Bills Committee has held in-depth discussions on the penalty provisions of clause 29 to an employee who endangers the safety of a person by negligently doing or omitting to do something. The Administration advises that clause 29 of the Bill in fact repeats section 23D of the existing Mass Transit Railway Corporation Ordinance (Cap. 270). Some members agree to the Administration's explanation and find it necessary to retain the relevant clause to safeguard the safety of both commuters and MTRC employees. Yet, some members find the relevant clause too harsh and that it fails to strike a suitable balance between public interest and the protection of employees.

*Committee stage amendments*

In response to the Bills Committee, the Administration has accepted a number of members' suggestions and agreed to move Committee stage amendments to that effect. These Committee stage amendments cover technical amendments and improvements to various provisions in the Bill.

Apart from the abovementioned fare determination mechanism, the Bills Committee also notes that individual members will propose Committee stage amendments to granting property development rights to the MTRCL, corporate governance, performance requirements, employment contracts and negligent act by an employee. Whilst individual members have briefed the Bills Committee on their proposed Committee stage amendments, the Bills Committee has not taken a position on the desirability of each proposal. Individual members will propose their respective Committee stage amendments later.



Upon completion of scrutiny, the Administration indicated that it would propose two additional Committee stage amendments to the Bill. However, as the wordings of the Committee stage amendments were still not ready, members could not discuss them at the meeting. The actual effects of these Committee stage amendments are the same as those of the amendments proposed by Miss CHAN Yuen-han to clauses 29(1) and 41(2) of the Bill.

Madam President, I have briefly discussed the deliberation process of the Bills Committee. The Bills Committee will support the Administration's proposal to resume the Second Reading debate of the Bill today.

Madam President, the above is a report made in my capacity as Chairman of the Bills Committee. I would like to express my personal views on the Bill below.

Madam President, a generally accepted fact is that the MTR in Hong Kong is one of the most efficient and well-managed railway systems in the world. According to a research conducted by Prof Tony RIDLEY of the Railway Technology Strategic Centre at the Imperial College of University of London in the United Kingdom, on average, the MTR only has a delay of one hour for every 6 000 hours of operation, far better than the second most efficient system that has a delay of one hour after every 4 000 hours of operation. Although it has performed extremely well, the fares of the MTR are cheaper than many railways that are far less efficient and subsidized by the government. In addition, the MTR is given an A+A credit rating which reflects that the MTRC has sound management and financial planning.

After privatization, we surely hope that the MTRCL can continue to carry forward the cause and forge ahead into the future, keep up the usual standards and do better. In the course of deliberations, Members have made many suggestions from the point of view of public interest. A few Members will later propose Committee stage amendments including an amendment to introduce a fare determination mechanism. As I have said earlier, I believe these Members are well-intentioned.

I support the passage of the Bill as soon as possible from the point of view of public interest, but I oppose the introduction of any fare determination mechanism in the Bill, also out of good intentions.

I support the early passage of the Bill because the MTRC possesses the conditions for listing. After listing, the MTRCL can generate around \$30 billion public revenue. It will not only lighten the pressure on the Government in levying new taxes but also lighten the pressure of tax increases, and it will give petty people and businessmen some help. I particularly hope that the Government will reduce fuel duties to give the transport sector I represent some help.

Furthermore, after the listing of the MTRC, the general public can own the shares of this railway that Hong Kong people are proud of. While people can invest in a public utility, the MTRCL will be more accountable to the public and the public can also closely monitor the performance of the MTRCL.

In public interest, I oppose the introduction of any fare determination mechanism in the Bill and insist that the MTRCL should retain the existing fare autonomy. Later, I will respond to the proposals made by Members one by one at the Committee stage. Now, I will only briefly explain why I oppose the introduction of such a mechanism.

In the past 20 years, the average increase in the fare of the MTR has been lower than the inflation rate and the fare of the MTR has been maintained at a reasonable level mostly because of the forces of the free market. With fair competition, the MTR operator must consider both market competition and the affordability of commuters. If the MTR does not bother about these and insists on increasing fares, there will be a big gap between its fares and those of other modes of transport, commuters will naturally choose other modes of transport, and it will have less passengers. Take the Airport Express Line as an example, the Airport Railway faces intense competition and its major competitors include franchised buses having substantially improved service quality. Under these circumstances, we can see that the Airport Railway dares not increase fares and it also introduces preferential measures to attract commuters. Why does it do so? Just for survival.

When it comes to regulating railway fares, many Members will beam with enthusiasm. The different modes of regulation proposed today are fantastic and Members have almost proposed all the modes we are aware of. If Members are not cautious about the profit control scheme, I am sure that some Members will propose the mode of specified rate of return.

However, credit rating bodies, financial advisers, securities analysts, bankers and academics do not agree to any mechanism for regulating fare increases by the MTR, and they have given us a clear warning that if a listed company with huge capital is regulated by an external body and it does not enjoy fare increase autonomy, investors will lose confidence. This will not only increase the borrowing costs of the company but also lower its share prices, further affecting the future development of the company and putting railway services into retrogression.

If we look up the history of the regulation of public utilities in foreign countries, we can see that the modes of regulation are progressing. At the very beginning, public utilities were mainly controlled by politicians, in recent years, many countries adopted the mode of pegging the rate of return to the inflation rate as the criteria for fare determination. Changes keep being made. Lastly, I think that this mode of pegging with the inflation rate has a lot of adverse side-effects, and have recently been criticized by many financial academics and specialists. Actually, many countries have started to give up adopting any documented mode of regulation and switch to adopting market competition as a regulation mechanism. It is because they accept the principle that "the less the regulation, the higher the efficiency" as advocated by specialists and academics. The national railway of Canada and the railway of New Zealand are examples of regulation by market competition.

In fact, the method of regulation of the MTR in Hong Kong is much more advanced than that in foreign countries. The outstanding performance of the MTR has always been the goal pursued by railway companies in various countries. Our MTR is admired and its example is followed by various countries in the world. Therefore, while other countries keep making improvements in the hope to narrow the gap between their systems and ours through reduced regulation and more market competition, we have conversely proposed to backtrack and take what others discard. If we do so, I believe that we will only be laughed at by other countries that have tried hard to follow our example.

It is still unknown if the fare determination mechanism proposed by Members will bring the public cheaper railway fares or degrading railway services, but the actual experience of foreign countries tells us that expressly providing for regulation is after all not as effective as market competition. Why do we not maintain a well-tested and effective mechanism?

For public interest, Members should ensure that the public transport service market has a level playing field but this will no doubt restrain the MTR and other modes of public transport. With competition among different modes of public transport, the public can enjoy railway services of improving quality at reasonable fares which is the most favourable to the public.

With these remarks, Madam President, I support the Bill.

**MR LAU CHIN-SHEK** (in Cantonese): Madam President, regarding the privatization of the MTRC, I have raised many doubts and queries, and I suppose the Members and Bureau Secretaries present here today should all know my points very well. Initially, I did not intend to repeat each and every viewpoint today, because I thought that if I really did so, even 15 hours would not be enough, let alone the time limit of merely 15 minutes. But I am sure that all of us will admit that the listing of the MTRC is really a very significant event to all people in Hong Kong. That is why I must make several points clear, as a record in history.

My reference to the privatization of the MTRC as a significant event of course does not stem from any consideration that its listing will give people opportunities to invest in a new type of quality shares. Rather, what I mean to point out is the indispensable role of the MTR as a major means of public transport in the daily life of most people, whether in the past, now, or in the future.

First, I think it is worthwhile for us to conduct some kind of recapitulation, so as to see what the real mission of the MTRC should be.

Even without my telling them, Members should all know that the existing MTRC is a statutory corporation wholly owned by the Government and established by the Mass Transit Railway Corporation Ordinance. In the mid-1970s, because of the emergence of traffic congestion in the urban areas of Hong Kong, the Government decided to construct a mass transit railway system that operated basically underground. At that time, the Government recognized very well that the construction of a mass transit system to improve traffic flow in Hong Kong should be its responsibility. So, naturally, the construction of such a system should be financed by public money. However, Hong Kong was facing a recession in the mid-1970s, and the fiscal reserves of the Government

were at an extremely low level of \$5 billion, which was not even sufficient to meet its expenditure in one year. Under such circumstances, it seemed more feasible to set up a statutory corporation wholly owned by the Government, and to finance the construction of a mass transit railway system in part by a government equity injection and in part by outside loans.

From this, we can see that the establishment of the MTRC was not meant so much as an attempt to privatize public utility services, but largely as an expedient in the face of poor government finances, so that capitals could be tapped from the open market to finance the construction of massive railway systems. The special status of the MTRC as a statutory corporation wholly owned by the Government is thus a clear indication of the policy considerations at that time.

In fact, over the years, in addition to operating railway systems for the commuting public, the MTRC has also been playing a significant role in implementing many government policies, by, for example, expanding its railway networks to cope with transportation demands and developing station superstructures and their neighbouring areas to tie in with the town planning and housing policies of the Government. Besides, the MTR stations in different districts also provide a lot of public areas and walkways linking different localities, and this helps facilitate the flow of pedestrians. A more noteworthy point is that the MTR system is even a separate police region. All this is simply unimaginable for any other public utilities.

The status of the MTRC is unique, and I certainly do not think that the public policy responsibilities it now shoulders can be and should be transferred to a private corporation. The Government has, however, brushed aside all these issues and insisted on the privatization of the MTRC. This is obviously not a sensible step.

The Government may well argue that under the Mass Transit Railway Bill, following privatization, the Executive Council will still have the power to issue directions to the MTRCL. But such directions may make the Government liable to pay huge compensations to the MTRCL, and what arouses even more queries is the provision which gives the Government the absolute power to issue directions outside the scope of supervision to the MTRCL. This is simply unimaginable, and one simply cannot see whether such a provision can be effectively enforced.

Well, people may generally think that since such major changes have been proposed for the ownership of the MTRC, there must be something seriously wrong with its quality of services, and reforms must therefore be introduced to bring in improvement. But this is obviously not the case with the privatization of the MTRC this time around.

The Government has always maintained that the MTRC has been operating very well, and that its operation has earned the commendations from similar transport operators in other places, as well as from credit rating bodies. I therefore cannot help asking, "If both the Government and the MTRC think that the operation of the mass transit railway is already so very perfect, why should there still be any need for such a major change?"

The answer is of course that by rushing in the privatization of the MTRC within this year, the Government actually hopes to realize a total of \$30 billion in the two years between now and next year. As early as the Budget debate last year, I already pointed out that the attempt of the Government to make "quick bucks" by privatizing the MTRC was meant entirely to "spruce up its books" even at the expense of long-term public interests. And, when I now look again at the Financial Secretary's argument last year, I feel even more strongly that the privatization of the MTRC as a means of improving government finances in the medium term has already lost its original meaning.

The Budget last year forecast a deficit as high as \$32 billion for the 1998-99 financial year, and the projected deficit for this financial year was also as large as \$36.5 billion. In other words, the cumulative deficit for these years would be as high as \$68.5 billion. However, as it turns out, the deficit for the 1998-99 financial year was just about \$23 billion, and some sources have recently intimated that the revised deficit for this financial year will be drastically reduced. And, I estimate that the revised deficit will not be higher than \$15 billion in any case. Therefore, just about one year down the road, we are able to see that the cumulative deficit for these two years may eventually be around \$38 billion only. This means that even without the privatization of the MTRC, the medium-term financial position of the Government will still be better than what was originally expected, because the projected deficit will be reduced by as much as \$30 billion. I therefore think that the Government must really offer an open explanation, telling us why it still needs to realize \$30 billion by privatizing the MTRC.

We can notice very clearly from the amendments to be moved today by Members of different political affiliation that regarding the privatization of the MTRC, members of the public are most concerned about the fare determination mechanism. Unfortunately, the position of the Government on this has remained very firm throughout; it has insisted that following privatization, the MTRCL must still retain its fare determination autonomy.

Currently, the fares of nearly all public means of transport are subject to the supervision of the relevant authorities, and their fares can be increased only with government approval. For example, before operators of franchised public bus services can adjust their fares, they must obtain the prior approval of the Chief Executive in Council. For the fares of other transport means such as franchised ferries, taxis and trams, while the approval of the Chief Executive in Council is required, the Legislative Council also has the "final" say, and it can even revise or veto any fare adjustments approved by the Chief Executive in Council. As for yet other means of public transport such as green minibuses and licensed ferries, their fare adjustments are subject to the prior approval of the Transport Department.

Without any exception, all these privately operated means of public transport which closely affect people's livelihood are subject to strict government supervision in respect of their fare levels. The only obvious reason, I believe, is that they are all indispensable to people's everyday life. That is why the Government must step in and prevent the operators from charging unreasonable fares, so as to protect people's livelihood.

Of all the existing major means of public transport, only the three railways operated by the two railway corporations wholly owned by the Government can enjoy the privilege of "fare determination autonomy"; whenever they wish to adjust their fares, all they have to do is to notify the Executive Council beforehand. When the ordinances on these two railway corporations were drawn up years back, the Government decided to give them the privilege of "fare determination autonomy", and this in itself was already a departure from the long-established policy on monitoring the fare structures of public transport operators. Well, as long as these two railway corporations remain wholly owned by the Government, the Government can still say that the two railway corporations are public corporations instead of private corporations, and it may go on to say that their wholly government-appointed Board membership and the power of the Executive Council under the law to issue directions to them in

public interest are all mechanisms which can adequately safeguard people's livelihood. I have always opposed the privilege of "fare autonomy" enjoyed by the two railway corporations, because such an "autonomy" simply means "no control" at all, and is therefore against people's interests. Worse still, following privatization, the above-mentioned justifications for "fare autonomy" will certainly become even more flimsy. That is why the retention of such a privilege must absolutely not be accepted.

Regarding the monitoring of MTR fares, I am going to move an amendment, as Members all know. For this reason, I intend to defer my detailed discussions on this until the Committee stage,

Besides driving fare adjustments out of control, thus adversely affecting people's livelihood, privatization may also produce negative impacts on the service improvement and network development of the MTR.

Let me first talk about service quality. It is obvious that following privatization, the MTRCL will face an even greater pressure of "cutting expenditure", because listing will probably induce its management to pursue profit maximization as a show of accountability to its shareholders. I am worried that the attempts of the MTRCL to cut its expenditure may well affect its various measures of service improvement in the future. For example, are there going to be any adverse effects on the platform screen installation programme which has attracted so much public attention recently? I am certainly not trying to spread alarmist talk, nor do I actually want all this to happen. But I must give a warning beforehand, in the hope that the Government can closely monitor the future development of the MTRC.

In regard to the future development of the MTR network, I am even more worried. I am sure the Government is also aware that there is still a need to construct mass transit systems in quite a number of districts so as to improve the outbound transportation services for the residents. Over the years, the residents of Kowloon City have been voicing an unequivocal demand for an MTR extension. Besides, there is also a need to complete the Island West and Island South extensions of the MTR as quickly as possible. I have always maintained that no district in the urban areas should be deprived completely of a large scale railway system, because this is most unfair to the residents concerned.



Following privatization, I am sure that the MTRCL will most certainly consider the construction of MTR extensions from pure commercial perspectives. This will inevitably mean that districts with relatively small population sizes will be persistently neglected. From the perspective of transport policies, this will surely lead to losses for society as a whole.

Finally, Madam President, I shall talk about the problems relating to MTRC staff.

I am going to move a number of Committee stage amendments aimed at reflecting the demands of MTRC unions and staff members. Specifically, these amendments cover the inclusion of an elected staff representative on the MTRCL Board of Directors, the withdrawal of the provision on holding negligent staff criminally liable and a new provision on ensuring that the pay and fringe benefits of MTRC staff switching to the MTRCL will be no less favourable than before. I shall dwell on each of these amendments in detail when I move them later on at this meeting.

However, I now still wish to raise one point which I think the labour sector should really consider. I mean, once privatization is implemented, the MTRCL will most definitely operate according to pure commercial principles. And, given the climate of costs reduction, I am worried that sooner or later, the employees of the MTRCL will become the targets. The voluntary resignation scheme introduced by the MTRC recently has in fact sounded the alarm. To sum up, the privatization of the MTRC is plagued with many hidden problems when viewed from the perspective of workers' interests.

Madam President, for the various problems I have mentioned, I am opposed to the entire MTRC privatization scheme as a representative of the Hong Kong Confederation of Trade Unions. Mr LEE Cheuk-yan and I will vote against the Bill at Second Reading. Thank you.

**MR CHAN KAM-LAM** (in Cantonese): Madam President, in his Budget delivered early last year, the Financial Secretary proposed to privatize a minority share of the MTRC. At that time, the Democratic Alliance for the Betterment of Hong Kong (DAB) expressed its reservations and thought that the Government should exercise prudence in this matter. We said that unless there was no other way out, assets should not be sold. The DAB is of the view that the Government should continue to ensure that the mass transit system serves a social service function.

As a matter of fact, the listing of the MTRC is proposed with the revenue derived from the sale of share rights in mind. It is meant to offset deficits, add another investment item in the stock market, serve as a forerunner of the privatization of other government departments, and set up a model where regulation is not imposed. All these are more important than enabling this public utility with one of the greatest asset value in Hong Kong improve its service and to exert more stringent regulation on it and increase its accountability.

Doubtless the MTRC has been an important means of public transport over the past 20 years, providing fast mass transit services to the public. Some members of the public may be very interested in the stocks of the MTRC after its privatization. However, as a public utility, the MTRC has to shoulder a certain extent of social responsibility.

Although the MTRC is nominally owned by the Government, there is almost no regulation of the MTRC by the Government. Over the years, the MTRC has made enormous profits, but when it proposes an increase in fares, even when there is an economic downturn or strong opposition from the public, the MTRC is still bent on having its own way. It is blind to public opinion and it has resorted to inventing new charges under all sorts of names just to increase its income, and these include the peak-hour surcharge implemented a few years ago.

Over the past couple of years, the local economy was under an unprecedented economic downturn in the wake of the Asian economic turmoil. The MTRC did freeze its fares but in reality it was adding to the financial burden of the public by cancelling the concessions for non-peak hours and collecting handling charges for student boarding passes.

The DAB thinks that when the MTRC is listed, the Government will remain the majority shareholder, but its role will be changed inevitably. It will be more difficult to oversee the operations of the MTRC. There may also be conflicts between the stances of the shareholders and the public with regard to the issue of fare adjustment. Therefore, there must be a sound monitoring mechanism to balance the interests of the two parties. The DAB proposes that the adjustment of fares by the MTRC should be considered by the Transport Advisory Committee (TAC) whose role will be enhanced and which will have a more representative membership, subject to approval by the Chief Executive in Council.

Madam President, at present, the fares of the different public transport organizations in Hong Kong are subject to different monitoring mechanisms. In the past, there has been public outcry for the regulation of fares for the MTRC and the Kowloon-Canton Railway Corporation (KCRC). The DAB had in the debate held in the former Legislative Council in 1996-97 on the topic of fares of the MTRC and the KCRC made the proposal that the matter should be left to the TAC and the then Governor in Council. We had also successfully made Mr Gordon SIU, the then Secretary for Transport, to make a pledge. It is a pity that Mr SIU's successors have failed to follow up this pledge.

The MTRC emphasizes that market competition is the best monitoring mechanism. We agree to that idea, but we think that there is no market competition in the rail services presently.

First, the railway transport system is presently operated by two corporations wholly owned by the Government and each has its own market. There is no third party corporation which can offer similar services in competition. Second, the different means of transport using the rail and the road belong to different transport systems and cannot be considered on the same par. Those who are used to riding a bus will seldom ride on the MTR and those who are used to using the MTR will seldom ride a bus. Unless the bus companies are allowed to open new routes which are similar to those of the MTR without being subject to any restrictions, and unless road transport is free from congestion, otherwise, there is bound to be a steady growth in the passenger volume of the MTR. It remains, of course, that when the MTR construct new extensions, it will attract some of those who are used to taking buses.

The government policy at present attaches greater importance to mass transit systems and road transport is only of secondary importance. That is to say, buses, taxis and minibuses are supplementary means of transport. But I wish to point out that the relationship of these means of transport with the MTR is complementary in nature. The occasional competition arises between them simply because the MTR is able to make use of its advantage and attract a substantial amount of passengers during the rush hours. But that leads to overcrowdedness.

Many people who commute to and from their home to the office every day often take a bus or a minibus to the MTR station and after that they will walk or ride another vehicle before reaching their destination. May I ask if that involves any competition? Let us take a look at some figures. The daily cross-harbour passenger volume of the MTR is more than 800 000 passenger trips, which is 56.9% of the market share. The three bus companies have a total cross-harbour passenger volume of merely some 500 000 passenger trips daily, and is 36.6% of the market share.

Madam President, if the Government claims that market competition is the best regulatory mechanism, may I ask if the Government intends to remove the regulation on fares of other means of transport so as to prove what it claims is true?

As the Government intends to list the MTRC, the DAB thinks that now is the best time to strengthen the regulation of the company, for otherwise the MTRC will just continue to be subject to no control and it can do anything it likes on fares and invent clever excuses only to charge more.

The Government has repeatedly claimed that the setting up of a fare regulation mechanism would do more harm than good. We think that such a view is simply not acceptable.

In the letter which the Secretary gave to the Honourable Members yesterday, it was mentioned that any regulation would reduce the income from fares and would lead to a reduction in the market value of the MTRC. And that would compel the company to sell its shares at a price below the actual market value. We think that such a view is simply giving a green light to the company to raise fares at its will so as to increase its income and to maintain the value of its shares. This has not taken the impact on the people's daily living into account at all.

Also, the Secretary assumes that once a fare regulation mechanism is in place, it will lead to opposition to any proposal to increase fares. The MTRC has then to resort to layoffs, slashing of benefits, and cutting maintenance costs and trimming investment to improve financial discipline. We think that this is an insult to the Chief Executive, the Members of the Executive Council and the professionals in the TAC. I believe that when the MTRC makes an application to increase its fares, all the parties concerned will carefully take every factor into

account and consider the affordability of the public before making a rational decision on the matter.

Madam President, the MTRC has an annual patronage of more than 790 million passenger trips. If only every passenger pays one extra dollar, the company will make an extra \$790 million annually. No wonder Mr Jack SO, the Chairman of the MTRC, says that the company is a story of success.

Without a regulatory mechanism on fares, the DAB cannot accept the Bill on the listing of the MTRC. We are also outraged to see the Financial Secretary making threats by referring to the fiscal deficits and demands that Members of the Council should give their support to the Bill. The DAB is of the view that the listing of the MTRC can in no way solve the problem of deficits, for the MTR is a public asset, listed or not. It will stay a public asset of the people of Hong Kong. The \$30 billion which the company will get after the listing is only some figures in the company's accounts. Are we also to sell the KCRC and the airport and put the money back into the government accounts?

Madam President, I also wish to make a brief response to the other amendments made by Honourable Members on the fare regulation mechanism.

The amendment proposed by Mr LAU Chin-shek seeks mainly to provide that any fare adjustment by the MTR should be made in the form of subsidiary legislation subject to approval by the Legislative Council. The idea is consistent with the Private Member's Bill moved by Mr SIN Chun-kai in the former Legislative Council. The DAB is of the view that the direction of the amendment is incorrect because the responsibility of regulating the MTR should rest in the hands of the Government rather than in the Legislative Council.

As for the amendment proposed by Mr Andrew CHENG, it may have been influenced by the comments made by the Government and the MTRC and that is why it proposes the idea that the inflation rate should be made a basis for calculation.

Madam President, the MTRC and the Government have stressed many times that the adjustments in fares which the company made in the past were all within the limits of the inflation rate. But we want to make it clear that an increase in fares which does not exceed the inflation rate does not follow that it is justified. The DAB thinks that when vetting the application for fare adjustment,

the company's operation and its service quality should also be considered apart from the inflation rate factor. Therefore, we will not support the amendment proposed by Mr Andrew CHENG.

As for Miss CHOY So-yuk's amendment, we have just been given notice that she will withdraw her amendment. So I would not make any comments here.

Lastly, Madam President, I wish to add one more point. Even if the Government is to remain a majority shareholder of the MTRC for the next 20 years and if we may assume that both the Government and the MTRC will exercise great restraint in fare increase, it remains a fact that the franchise of the MTRC is as long as 40 years and renewable thereafter, so without a sound fare regulation mechanism, how can the interest of the public be protected? All in all, the public will not feel at ease if MTR fares are not subject to any form of control.

Madam President, the DAB thinks that the lifeblood of the Mass Transit Railway Bill lies in the fare regulation mechanism. I therefore implore Honourable Members to support our amendment.

I so submit to support the Second Reading of the Bill.

**DR RAYMOND HO** (in Cantonese): Madam President, I have always supported the listing of the MTRC. During discussions with the Financial Secretary on the Budget at the end of 1998, I also proposed the listing of both railway corporations and the Airport Authority. In my view, the MTRC, as a private corporation after its listing, must strive to improve its operation efficiency in order to remain competitive. On the other hand, the listing of the MTRC could facilitate the Corporation's access to financing in the market, which will be conducive to the long-term railway development of Hong Kong.

Since we allow the MTRC to go public in order to enhance its competitiveness in the market, we should avoid interfering with its operation and market decisions to enable the Corporation to make those decisions according to prudent commercial principles. Therefore, in my view, after the listing of the MTRC, the Corporation's present fare determination mechanism should continue and remain unchanged. Its fares should not be regulated by the Executive

Council or the Legislative Council, or with a fare formula. External regulation of the MTR fares will bring uncertainties to the MTRC in many aspects, especially in respect of future investment. This will also have a negative impact on its credit rating and increase its cost of borrowing. The valuation of the MTRC as a listed company will also be affected.

As the former Chairman of the Transport Advisory Committee (TAC), I am of the view that the fare setting mechanism of the MTR is proven, so external regulation is indeed unwarranted. As a private corporation, the MTRC must and certainly will consider the market factors in determining its fares, including competition from other modes of transport and passengers' affordability. Moreover, the MTRC will also extensively consult the public, the TAC and this Council before setting the fares. Since this fare determination mechanism is working well, it should be used continuously and remain unchanged after the listing of the MTRC.

An Honourable colleague will introduce amendments proposing that the Government should cease the grant of property development rights to the MTRCL to support its development strategies, and making it mandatory that the Government must put the right to develop property above new railway stations and along railway extensions to open tender. This I do not agree. In my view, it is more rational and cost-effective for the MTRCL to be in charge of the development and planning of the sites of railway stations both in terms of operation efficiency and co-ordination. Integrated planning can also ensure safe operation of the railway. We must understand that property development rights are not a government subsidy. A premium charged at the full market value of the land is payable by the MTRC in return for the property development rights. The profits arising from the property development rights are an important consideration of the MTRC in its participation in rail projects which will directly affect the future railway development of Hong Kong. I am concerned that the relevant amendments may have an adverse impact on this.

With these remarks, Madam President, I support the Second and Third Readings of the Mass Transit Railway Bill.

**MR ALBERT HO** (in Cantonese): Madam President, although the Democratic Party supports in principle the Second Reading of the Mass Transit Railway Bill, we in fact still have reservations about the privatization of the MTRC. This is because many parts of the Bill are indeed worrying. To cite a few examples, role confusion on the part of the Government which is both a shareholder and a regulator of the MTRC, unclear relationship between the Government and the MTRC in terms of interests, uncertainties of the situation where the MTRC will compete with other modes of transport, and absence of an effective mechanism to fully protect the rights and interests of the public. Hence, the Democratic Party has proposed four amendments to the Bill to put forward our suggestions regarding the following aspects: fare regulation mechanism, performance requirements, fair competition, as well as development rights of property above MTR stations. While all our proposed amendments may be negated in the end, the Democratic Party will still consider earnestly whether the proposed privatization of the MTRC merits our support in general.

It is very obvious that the Government would like to consider the listing of the MTRC entirely from a financial perspective and to rely on the listing of the MTRC as one of its ways to resolve the fiscal deficit. In this connection, the Government hopes to generate some \$30 billion additional revenue within the coming two to three years. However, the question remains that as the most important mode of public transport in Hong Kong, the MTR should not be considered as a pure commercial service. In preparing for the listing of the MTRC, the Government should never overlook the need to consider the whole matter as a transport policy. More importantly, while the interests of transport policies may not necessarily be in line with that of financial policies, there may even be situations where their respective interests are in conflict with each other. It is by no means an easy task to balance out and cater to the competing interests to resolve the conflicts.

Doubtless the listing of the MTRC would have an immense impact on the general public in Hong Kong. Actually, both the public and this Council should be given ample time to discuss the matter and to seek advice from relevant experts. It is regrettable that because of the Government's wish to realize expeditiously the listing of the MTRC, this Council cannot but rush through the scrutiny of this complicated Bill in only two months' time. As a member of the Bills Committee, I really feel a little bit uneasy because we did rush through the scrutiny process hurriedly. In considering everything from a financial point of view, the Government has all along focused its attention on how the MTRC



could be sold at a higher price and thus attached great importance to how the MTRC could be best packaged as an appealing investment item to attract investors. However, it has never conducted any comprehensive research into how railway services are privatized and listed in other countries, nor has it made any comprehensive comparison between its proposed privatization of the MTRC and the relevant foreign experience. In my opinion, while the Government has never made any effort in this respect, invaluable experience in this respect that could be used as reference is also lacking in this Council.

With regard to privatization exercises overseas, actually the governments of many countries are still retaining in their possession the right to construct railways and the right to own the railway facilities, including the rail tracks, the trains, the signalling system and so on. Since only the operation and management of the railway services would be privatized, the corporations granted with the franchise to operate railway services have to hire the basic railway facilities from the governments concerned. Is this split-and-list model adopted overseas suitable for Hong Kong? We believe we should consider the matter as a whole meticulously. Yet we are not given any chance to consider all the possible options before finalizing our decision. Under such circumstances, the privatization proposal before us now is the best choice available. Naturally, there is little fault with it if we consider the proposal from a purely financial perspective. But should consideration be made from a financial perspective alone? This is most debatable. Rather than carefully considering all possible options, the Government only hopes to find the easiest, most convenient and fastest way to privatize and cash in on the MTRC. While splitting the MTRC for listing purposes could enable the Government to earn a substantial amount of revenue in cash by selling the shares of the MTRC, when taking the long view, we have actually lost a rather stable source of income. Given that the Government is so optimistic about the prospects of the MTRC, why does it not consider adopting a balanced measure to benefit the people of Hong Kong as a whole?

What dissatisfies me most is that upon privatizing the MTRC, the Government would continue to grant subsidy, in a non-open, not fully transparent, or may even be unfair manner, to the MTRCL. The subsidy would be in the form of private contracts granting the MTRCL, without undergoing any competition, the development rights of property above the stations of future MTR extensions. I need to emphasize that whether or not the Government should appropriately subsidize the MTRCL under certain exceptional

circumstances remains a highly debatable issue, albeit I do not absolutely oppose the Government offering subsidies to operators of public transport services. On the surface, my view differs significantly from that of the Government. However, I must stress that subsidies have indeed been granted by the Government. This is a fact that no one can deny. The Government has indeed granted the MTRC the development rights of property above MTR stations by way of private contracts. This is indeed an intangible kind of subsidy from the Government. In fact, the Government should define clearly its role and formulate a set of reasonable policies on qualified subsidies. We consider the granting of property development rights a subsidization policy of the Government. In this connection, we need to stress that all policies on subsidy adopted by the Government must be subject to rules and regulations, reasonable, open, transparent and consistent. This would be the basis on which we strive to ensure that the MTRCL as a private corporation will operate in a fair competitive environment without any form of intangible subsidy not monitored by the public. For this reason, I have proposed an amendment to set out clearly that the MTR franchise shall not include the development rights of property above MTR stations, with a view to ruling out all forms of hidden subsidy and avoiding any hidden conflict of interests. Later on when this Council moves onto the Committee stage, I will explain in greater detail my stance and views on the amendment as a whole.

Moreover, I am also very much concerned with the issue of fair competition. Since the Government has already indicated that railway development would be given top priority in the future, it is estimated that by 2016, the market share enjoyed by the MTR would rise to 40% to 50%, while other modes of public transport would mainly be providing feeder services. From this we could see that in future, the MTRCL would be faced with less and less competition in the mainstream transport services market. With the 50-year franchise granted to it, the MTRCL would develop an increasingly dominant position while competition from other modes of public transport would continue to decline. However, I just cannot see in this Bill providing for the privatization of the MTRC any clues to whether the interests of the public would be adversely affected if competition should be lacking in the public transport market. What is more, I am afraid that the Government might even suppress the development of other bus services just to help enhance the competitiveness of rail services. Upon completion of the Tseung Kwan O Extension, the Ma On Shan Rail Link and the West Rail, will the Government give permission to bus companies to offer comparable or more competitive bus services for the areas

concerned? We have no idea. However, we are really concerned that instead of granting such permission, the Government might even prohibit bus companies from operating such routes. On the surface, the measure to have the MTRCL providing the mainstream public transport services would help to improve the environment and alleviate traffic congestion problems. Yet we are afraid that this measure would also affect adversely the principle of fair competition. We consider this an issue that warrants consideration. Certainly, it would be too complicated a task to incorporate the details for fair competition into the Bill. But then again, Hong Kong does not have in place a comprehensive set of fair competition legislation. On the other hand, we do not consider it appropriate to make use of this Bill to introduce the details of legislation on fair competition, nor do we believe the Democratic Party could afford to put forward such kinds of complicated amendments. In the circumstances, we could only propose a very limited amendment to require the Chief Executive in Council to take into account the principle of fair competition when the Executive Council exercises its power to instruct the MTRCL to implement certain measures. Actually, this is just a very limited amendment which seeks to affirm the principle and spirit of fair competition in the hope that the Chief Executive would also share our view in this respect. This is also the purpose of our proposing to amend the Bill.

As regards the amendments proposed to the fare regulation mechanism and the performance requirements, we hope that the relevant provisions could be incorporated into the schedule of the Bill because we consider them very important. However, I should like to defer that to Mr Andrew CHENG, who will be explaining the details of the amendments in his speech.

I so submit. Thank you, Madam President.

**MISS CHAN YUEN-HAN** (in Cantonese): Madam President, the purpose of our scrutinizing the Mass Transit Railway Bill today is to make preparations for the listing of the MTRC. Undeniably, since the MTR is one of the major modes of public transport in Hong Kong, many issues must be addressed when introducing changes to the mode of operation of the MTRC. In ensuring the smooth transition of the operation of the MTRC as a whole, care must be taken to avoid affecting adversely the original benefits of the employees, to cater to the worries of the employees as a result of the new changes, and to ensure that the public would still be provided with quality public transport services. All these are important issues we must consider.

Throughout the entire examination process of the Bill, apart from researching into the provisions contained therein, Members affiliated to the Hong Kong Federation of Trade Unions (FTU) have all along maintained close liaison with the MTRC employees union. During the meetings, we expressed a number of views on the provisions and eventually came up with several proposed amendments. The amendments proposed by the FTU could be broadly categorized into three parts. Firstly, I will be proposing an amendment to clause 7 to stipulate that one of the directors of the Corporation shall be a staff representative directly elected by the employees of the Corporation. Secondly, regarding the offence of negligent act by employee set out under clause 29, we consider it necessary to classify the criminal liability concerned into two levels. And thirdly, under clause 41, the employee benefits and remuneration as well as the mechanism concerned should be carried to the privatized Corporation. We have proposed amendments to these three aspects of the Bill, and I will describe them in detail at the Committee stage.

However, with regard to the contents of clauses 29 and 41, I should like to specifically point out here that these clauses constitute an indispensable part of the entire Ordinance eventually passed. In particular, the MTRC will be listed in the future, it is of utmost importance to have in place provisions safeguarding the interests of employees during the privatization process of such a large corporation. We have openly explained the importance of these two clauses to employees; besides, we have also made it clear that if the amendments proposed to these two clauses should be voted down by this Council, the three Members affiliated to the FTU would vote against the Third Reading of the entire Bill. Madam President, this is the stance of the MTR employees union. In this connection, the employees union has also told us very clearly that if the amendments proposed to clauses 29 and 41 should be voted down, the employees of the Corporation as a whole would be affected immensely. What is more, the smooth operation of the Corporation as well as its ability to continue to provide quality services would also be affected in the future. For these reasons, we consider it very important to take into account these factors.

Naturally, the FTU welcomes the amendments proposed to clauses 29 and 41 by the Government on its own initiative after taking on board the views expressed by us at the meetings of the Bills Committee. Still, we would keep a close look on the developments today to see if the two proposed amendments would be passed and how they would be implemented upon passage. Hence, Madam President, as you may notice, we have not withdrawn our proposed

amendments to clauses 29 and 41. This is because we want to see how the Government will act today. On the other hand, if the Bill should be passed by this Council, the FTU would remain vigilant, with a view to ensuring that the employee benefits are genuinely respected with due importance. This is one of our important views.

Madam President, we also consider it necessary to incorporate into the Bill a fare regulation mechanism. Although the Government has included in the new Operating Agreement (OA) a mechanism whereby the Corporation will be required to solicit opinions on its fare increase proposals, many people do not have much confidence that the privatized MTRCL would make an effort to further protect the interests of the public. In particular, people just wonder whether the Corporation would, upon listing, strive to maximize profits to the neglect of the OA, thereby putting fare adjustments out of control. As such, we will support the amendments proposed by Mr CHAN Kam-lam and Miss CHOY So-yuk respectively (yet I notice that Miss CHOY has already withdrawn her proposed amendment). This is another point we wish to make clear. Nevertheless, one point I should still like to stress is that if the objective of this Bill is to prepare for the listing of the MTRC, the first question we need to consider is whether or not we support the listing of the Corporation. Our consideration is based largely on the views from the general public and the employees union. According to the employees union, it would support the listing of the Corporation if the amendments proposed to clauses 29 and 41 should be passed. This view is echoed in the messages received from other sources. Hence, if the amendment proposed by Mr CHAN Kam-lam was negated while the FTU's proposed amendments to clauses 29 and 41 were passed, we would support the listing proposal as a whole at the Third Reading of the Bill.

Madam President, we consider it necessary to put in place a regulatory mechanism for fare increases. However, we would also be watching the situation closely to see if the terms set out in the OA are being implemented, and whether the effects achieved are as good as expected. Otherwise, we may be asking for improvements or putting forward amendment proposals.

Madam President, I so submit.

**MISS CHOY SO-YUK** (in Cantonese): Madam President, like many of Honourable colleagues and members of the various sectors of our community, the Hong Kong Progressive Alliance (HKPA) has all along been in support of the privatization of the MTRC to transform it from an entity wholly owned by the Government into a listed company. Still, we are concerned about whether the management of the privatized MTRCL would, when determining fare levels, take into account the public interest in addition to commercial principles. This has been a point of concern of the HKPA all along.

Hence, my proposed amendment seeks to require that when the Government ceases to be the largest shareholder of the MTRC, the fares should be approved by the Chief Executive in Council after taking into consideration the recommendations of the Transport Advisory Committee. Later on I will explain the reason why I withdraw this proposed amendment.

Madam President, I think the task facing this Council at the moment is tantamount to balancing scales. On one side is the need to set up a fare regulation mechanism to prevent the fare levels from becoming too expensive for the public, on the other side is the need to ensure that the changes introduced to the existing mechanism will not cause any uncertainties to the business prospects of the MTRC that would impact on investor confidence. How these two conflicting needs could be catered to at the same time is the most important point in this connection.

Now I should like to discuss further the Mass Transit Railway Bill. According to the contents of the Bill, the Government would still be the largest shareholder of the MTRC even after it has been privatized. In view of the circumstances, I believe very much that the Government should have sufficient power to ensure that the MTRC would take into account the financial capacity of the public when determining fares. Therefore, the MTRC could retain its autonomy in determining fares. Given that the fare determination mechanism is not subject to external supervision, naturally the credit rating of the MTRC would remain unchanged.

On the other hand, if in the future the Government should have any need to cut back the amount of MTRCL shares in its possession to less than 50% of the total amount of shares issued by the MTRCL, the Government would cease to be the largest shareholder of the MTRCL, in which case it would not have enough power to control the determination of fare levels. It would then be natural for

the public to worry whether the MTRCL would fully cater to the interests of the public when determining fare levels. Hence, I have suggested that this should be the only situation where a fare regulation mechanism should be called for. Under this mechanism, the proposed fare levels would need to be approved by the Chief Executive in Council to avoid the fare being fixed at an excessively high level, with a view to ensuring that the interests of the public are protected effectively.

Although the Government has said that in the foreseeable future it would not cut back the amount of MTRC shares in its possession to less than 51%, it has refused to give us a time limit in this regard. In other words, the Government has refused to guarantee that it would remain as the largest shareholder of the MTRCL for a certain period of time.

However, Madam President, after I had put forward my proposed amendment, the Government suddenly announced last evening that it would remain as the largest shareholder of the MTRCL for a period of 20 years. In my opinion, this is a reasonable pledge. Further still, just now when I discussed the issue with the Secretary for Transport, the Secretary has taken into account of my concern and assured me that before deciding on whether to cease to be the largest shareholder of the MTRCL, the Government would first make sure that it has sufficient confidence in ensuring that the MTRCL takes into account the interests of the public when determining fare levels. I hope later on today the Secretary would make this pledge to members of the public directly.

Given that the Government has made the aforementioned pledges, and that neither me nor the HKPA would wish to see my proposed amendment unnecessarily impacting on the credit rating of the MTRC, I have decided to withdraw my proposed amendment.

Madam President, the HKPA will vote in support of both the Second and the Third Readings of the Bill.

Madam President, I so submit.

**MR ANDREW CHENG** (in Cantonese): Madam President, if we consider the issue from a transport policy point of view, from the operation efficiency of the MTRC, or from the public interest point of view, I really cannot see any genuine

need for the MTRC to go public. In other countries overseas, many public services are privatized simply because they need to achieve better operation efficiency, improve their service quality and cut back on expenses, with a view to cutting down the amount of government subsidy granted to them.

However, the situation in Hong Kong has nothing to do with such overseas reason for privatization. To begin with, the mode of operation of the MTRC is actually quite similar to that of a private corporation, since it has all along been operating in accordance with prudent commercial principles. The operation efficiency and service standards of the MTRC are so high that many foreign countries simply make us their example. What is more, the MTR in Hong Kong are one of the rare cases in the world where the revenue from fares can cover more than the operating expenses of the railway but also the capital expenses of the railway network as a whole without any subsidy from the Government. I am sure, and I believe both the Government and the MTRC would agree, that the listing of the MTRC would not be of much help in further enhancing the operation efficiency and service standards of the MTR. That being the case, why must the MTRC be turn into a listed company? As a matter of fact, when we were still in the process of scrutinizing the Bill, I just could not hear from the Government any argument that was strong enough to convince us to support this listing proposal of the MTRC except for the \$30 billion additional revenue that it could generate for the Government.

Certainly, most probably the people of Hong Kong would largely agree with us if we should say that the privatization of the MTRC is partly pushed by the economic development of Hong Kong. Who does not wish to see Hong Kong having bright economic prospects? Nevertheless, more importantly, could the interests of passengers be adequately protected upon the listing of the MTRC? Put more directly, who would be willing to spend a substantial amount of money on transport expenses? Who would be entrusted with the responsibility to monitor the MTR fare levels to ensure that they are fair and reasonable?

Madam President, the Government has all along been saying that the listing of the MTRC could help to further enhance the Corporation's efficiency. However, I doubt it very much. If what the Government says should be the case, why then the series of objective performance requirements set out under the OA would be set at 1% below the performance levels of the MTR over the past two years? If the Government should aim solely at upgrading the standard of



railway services, there is indeed no need for it to privatize the MTRC. Moreover, the post-privatization performance requirements of the MTRC are even lower than the Corporation's performance levels before privatization. It really beats me!

The Government would remain the largest shareholder of the MTRC even after it has been privatized. Naturally, the Government would take into account such issues ranging from the earnings of the MTRC as a whole, the annual dividends payable, to the stock prices and so on. After all, who would wish to suffer losses on his or her investments? But then, should the Government adopt any measures that are biased towards the operator (that would of course include the Government as well)? Given the conflicting roles and the dilemma of the Government, the Democratic Party considers it should be better for the Government to first formulate a set of clear and specific principles for fare determination, with a view to ensuring that the fares charged by the MTRC are reasonable. At the same time, the Government should also establish a comprehensive, accountable and highly transparent monitoring mechanism, so that the general public could effectively monitor the service standards of the MTRC.

Given that the MTRC would be granted a 50-year franchise upon listing, and that the market share to be enjoyed by the Corporation in future would be on the increase, the MTRC may be able to monopolize the market due to the lack of competition. In this case, a sound fare regulation mechanism could help to balance the situation and thereby protect the interests of the public. The interests of MTRCL shareholders should never take precedence over public interests!

Since the MTR is a major mode of public transport, its service standards and fare levels would affect most significantly the daily lives of the people. Looking back on the past, although the MTRC has all along been a public corporation wholly owned by the Government, its fares have always been the most expensive among all modes of public transport. Upon listing, the shareholders of the MTRCL would comprise private investors as well. In order to be accountable to its shareholders, the objective of the MTRCL to ensure return on investment would become all the more explicit. We may perhaps rightly describe it as "profit-oriented". Under such circumstances, the fare increase pressure on the MTRCL would certainly be on the rise. According to a survey conducted by the Democratic Party, of the 522 people interviewed,

some 66.3% have expressed concern that a listed MTRCL would have greater fare increase pressure, only 18% said they were not concerned about that while the remaining 15.7% gave no comments. Even more worrying is that the Government would allow the MTRCL to continue to enjoy autonomy in determining fare levels. From this we could see that the interests of the public have been completely overlooked in the listing proposal of the MTRC. In order to appeal to investors, the Government has abandoned not only its regulatory role but also the interests of the public. The Democratic Party must raise our strong objection in this connection.

Hence, I will be moving on behalf of the Democratic Party an amendment to incorporate into the Bill a fare regulation mechanism. I suggest setting a ceiling on the rate of annual fare increase of the MTRCL. In this connection, the ceiling on fare increase rates for the first five years immediately following the listing of the MTRC shall not exceed the Consumer Price Index as defined under the Bill. As to the details of this regulation mechanism, I will come to that later. I should like to point out here that this ceiling on rate of increase is actually a regulatory measure most commonly adopted in the United Kingdom when privatizing public services. During the period between 1993 and 1998, the rates of increases for local telephone charges were also subject to similar formula of regulation. So, the Government should not be unfamiliar with this.

I hold that the fare regulation mechanism is an indispensable part of the listing proposal of the MTRC, since this is the most important mechanism whereby the interests of the public could be protected.

Madam President, the survey conducted by the Democratic Party also reflected that the public also considered it necessary to put in place a fare regulation mechanism. Despite their different levels of support for different regulation mechanisms, a majority of 53.4% of the 522 interviewees were in support of having the Legislative Council setting a formula to cap the annual rate of fare increase by the MTRC at below the rate of inflation. In this connection, 27% of the interviewees were in support of the Legislative Council directly approving the rate of increase, and 12.6% supported that the rate of increase should be directly approved by the Chief Executive in Council. However, only 1.3% of the interviewees were in favour of having the Board of Directors of the MTRCL determining the rate of increase, while some 5.6% said they did not have any comment on this issue.

When being asked whether they would support the listing of the MTRC if the Legislative Council should be given no power to monitor the rates of fare increases, more than half of the interviewees (which was 55.4%) indicated that they would not support the listing proposal, while 20.5% gave the green light and 24.1 % did not have any comment. From this we could see that members of the public do attach great importance to the issue of MTR fare increases. In this connection, more than half of the interviewees said they would not support the listing of the MTRC if the fare increase regulation mechanism should fail to be passed in the Council.

By the same token, Madam President, I believe it is also very important to require the MTRC to maintain its service standards. Although this is a very important issue, the Government has only suggested setting it out under the OA to be executed between the Government and the eventual MTRCL. I think this is not sufficient. However, what dissatisfies me most is that the performance requirements specified under the OA were set at 1% below the performance levels of the MTRC over the past two years. I therefore suggest incorporating all the performance requirements into the Bill and raising them to 1% above the Corporation's existing performance levels. That way, the Legislative Council could be able to continue monitoring the service standards of the MTRCL in the future. I will explain the details of this proposed amendment to Honourable Members at the Committee stage.

Madam President, just now I have made a clear account of the suggestions and public opinion support for the fare regulation mechanism that the Democratic Party has collected through the survey. Now I should like to speak on behalf of the Democratic Party our voting intention regarding the proposed fare regulation mechanisms. To begin with, Mr LAU Chin-shek has suggested stipulating that MTR fares should only be implemented with the approval of the Legislative Council granted through a positive vetting process. We support this suggestion. As regards the proposal put forward by Mr CHAN Kam-lam to have MTR fares determined by the Chief Executive in Council, although only 12.6% of the interviewees were in support of this option, after discussion the Democratic Party concluded that some form of regulation would at least better than no regulation at all. As such, at the Committee stage, we would vote in support of the amendment proposed by Mr CHAN Kam-lam from the Democratic Alliance for the Betterment of Hong Kong (DAB). Since Miss CHOY So-yuk has withdrawn her proposed amendment, we will not discuss it here. However, I should like to express our views on the decision of the DAB and the Hong Kong Federation of Trade Unions (FTU) to resort again to the "6:4" voting method.

First of all, just now it was mentioned by Miss CHAN Yuen-han that on the basis of considering the Mass Transit Railway Bill as a whole, if her proposed amendments to clauses 29 and 41 of the Bill should be passed, she would still vote in favour of the Third Reading of the Bill even if my proposed amendment regarding the fare regulation mechanism as well as the one proposed respectively by the DAB and Mr LAU Chin-shek were all negated. We regret that very much, because of the joint amendment proposed by the Government and Miss CHAN Yuen-han after discussion. We are afraid that Miss CHAN Yuen-han might have been misled by the amendment to be moved by the Government, so much so that she might have breached her own legislative intent and objective in this connection. This is because Miss CHAN Yuen-han might believe that by ensuring that the existing employee benefits and the existing salary review mechanism shall remain intact after the privatization of the MTRC, the benefits currently enjoyed by MTRC staff would certainly be protected. My colleagues have consulted our Legal Advisor on this issue. The view of the Legal Advisor was that if the amendment proposed jointly by Miss CHAN Yuen-han and the Government should be passed, actually it might not be able to provide the exiting MTRC staff with higher salaries or better benefits; the passage of the amendment could only ensure that their conditions would not be worse off.

According to Miss CHAN Yuen-han, so long as her proposed amendment is passed, she would support the Third Reading of the Bill on this basis even if the amendments proposed in relation to a fare increase regulation mechanism were negated. I am afraid the FTU might have overlooked the issue of whether or not this Council should have the power to monitor the rates of MTR fare increases. Actually, this is a very important issue, since there are plenty of situations where our wage earners have to ride the MTR. I believe wage earners would also wish to have a mechanism whereby an elected council could monitor the fare increases proposed by the MTRC upon listing. For this reason, I hope very much that the FTU could take the matter into further consideration. I hope that the votes held by the four Members affiliating to the DAB would be cast against rather than in support of the Third Reading of the Bill if the amendment proposed by DAB's Mr CHAN Kam-lam providing for a mechanism whereby fare increases shall be determined by the Chief Executive in Council should be negated.

Thank you, Madam President.

**MISS MARGARET NG:** Madam President, the Government has given many reasons for introducing this Bill to privatize the Mass Transit Railway Corporation (MTRC). They all sound attractive to people who want the Government to keep its hands off private enterprise. However, when the Government talks about its "commitment to a free market economy and market discipline", one cannot help feeling somewhat cynical. In view of the Government's persistent interference in the property market, land related projects, the Disney theme park and so on, its track record is certainly dubious and its words now fall somewhat short of giving instant assurance.

I put all these aside and look at the present Bill objectively. This is a self-contained proposal. Whatever the hypocrisy of this Government, this is indeed a proposal to privatize the MTRC, albeit a partial one. Those who advocate free enterprise, and I count myself among their numbers, must support this proposal as a move in the right direction. Imperfect as this Bill and the proposal behind it are, it will not be right to defeat them. Rather, the right thing to do is to follow up by supporting further moves in favour of the metamorphosis of the MTRC, so that it will be thoroughly market regulated, thoroughly genuine as a public transport business, and thoroughly responsive to public needs and criticisms, much more than the extent to which the Government has been responsive in our undemocratic system. I note that after privatization, the MTRC will continue to consult the Legislative Council and to give an account of itself, so as to justify the franchise that it hopes to continue to enjoy. The Legislative Council would exercise the full measure of its powers to monitor, and to assess, incidentally, how sound in practice is the policy of privatization. It may be that a future Legislative Council will be able to recommend further and speedier privatization of the MTRC, if today's proposal proves to prosper and consistent with the public interests.

I am sorry to hear that the Administration appears to be already resiling from its resolve about privatization.

This being the basis of my support of the present Bill, my position with respect to the proposed amendments is also clear.

First, I would like to say, with great respect, that I admire the staunch efforts of my colleagues to protect the interests of the great paying public against steep fare increases. I do not, in the end, agree with setting up these mechanisms, but it is precisely because the Legislative Council is so prepared to strain to keep the balance, that the public may have confidence that future consultation will act as a real sanction.

Going to the particulars, I am not in favour of this Council having a hand in fixing the fare. It is not for this Council to approve any level of fare, or for us to take responsibility of the consequence. The MTRC must take all the consequence, commercial or otherwise, for whatever fare level it has chosen to set.

To sensibly set the fare, one must go into the commercial information and make commercial judgments. It is not the job of this Council to do so.

For the same reason, I do not support giving the power to the Chief Executive or the Executive Council to approve. It is none of their business. Besides, if they have the go ahead or the veto, they must also share in the responsibility for the consequence. This would put them into a weaker position when the occasion arises for them to consider whether or not to discontinue the franchise because of unsatisfactory performance under the Operation Agreement.

I note the views of the financial advice sector that a fare control mechanism will affect the marketability of the MTRC. I am not in the slightest surprised.

Similarly, I cannot support the proposal to remove the development rights of property above Mass Transit Railway stations. I am naturally suspicious — and I believe not without justification — in any ancillary land development rights that the Government attaches to various projects with fanciful names. But I believe that the MTRC is not such a case. The practice has been established for a long time and proved viable. The need is real if the business is to remain viable with reasonably affordable fare. The mass transit is far too visible and affects far too many people directly to become a sideshow. The proposal is about selling a viable business. We may or may not approve of the proposal, but I am not going to approve of a proposal made unviable.

However, this Council continues to have the power to monitor land grants and grants of development rights by the Government and the valuation put on such grounds. I note in the report of the Bills Committee that the Government will charge the MTRC the full market value of land granted for development, and that subsidy in any form will only be granted where, by agreement, commercially unviable railway projects are to be undertaken.

Finally, I have to voice my strong disagreement with imposing criminal liability and imprisonment on the negligence of employees. I note what the Administration told the Bills Committee: That similar provisions already exist in other ordinances. But two wrongs do not make a right — neither do five, or ten or a hundred wrongs.

In this respect, I support the amendment to be proposed by the Honourable LAU Chin-shek, although one part of it is unnecessary since the employer is by law vicariously responsible for the negligence of its employees.

I consider the Administration's acceptance of the amendment originally proposed by the Honourable Miss CHAN Yuen-han unscrupulous and unprincipled. In order to keep criminal liability for negligence, the Administration is prepared to agree that it is punishable by imprisonment only where death or serious injury has resulted from the negligence. The Administration should know that in our legal system, punishment is proportionate to culpability, and not determined by the results which may have been caused by a number of factors not entirely within the defendant's control.

Madam President, with these remarks, I support the Second Reading of the Bill.

THE PRESIDENT'S DEPUTY, DR LEONG CHE-HUNG, took the Chair.

**MR CHEUNG MAN-KWONG** (in Cantonese): Mr Deputy, the listing of the MTRC is more than just a move by the Government to sell its assets and realize cash. What is involved is the process of transforming a formerly public corporation into one which is owned by private investors. Since fundamental

changes in the nature of the corporation are involved, consequential changes should be made to a number of policy measures, which were only applicable to public bodies, so as to effectively balance the interests of the community. However, in an attempt to sell the shares of the MTRCL at a better prices, the Government has, in many aspects, inclined to maintain the status quo by continuing to adopt past policies and turned a blind eye to the interests of the community at large. The Democratic Party is especially concerned about the following issues.

Firstly, without having to go through any fair and open tendering process, the MTRCL will still automatically enjoy the right to develop superstructure projects and share the profits thus generated. As land resources are public assets, such a preferential land policy is tantamount to subsidizing private investors with public funds.

Secondly, for environmental reasons, the Government has laid down a transport strategy according priority to railway development. Instead of engaging in full-scale competition, different modes of transport will supplement one another. We think that this priority strategy can be accepted as long as the MTRC remains a public corporation. However, after the privatization of the MTRC, such a priority strategy, coupled with the pricing policy, will immediately become a policy which obviously offers preferential treatment to MTRCL investors. If the MTRCL is not subject to any regulatory mechanism in terms of fare determination, there will be a huge loophole in the law, making it possible for the MTRCL to abuse its monopolistic position. Therefore, a regulatory mechanism on fare determination should be set up and an anti-trust clause should also be incorporated into the Ordinance, as a means of urging the Government to consider the possibility of promoting fair and full-scale competition among the MTRCL and other modes of transport when it considers its future transport policy.

Mr Deputy, the Democratic Party has raised the above concerns with the Administration on a number of different occasions but has not yet been able to get any positive reply. And, the related information we have received cannot address our concerns satisfactorily.



First of all, on the right to develop superstructure projects, the Government has replied as follows: the MTRC still has to pay to the Government the full market value in land premiums, so such a right is not a form of subsidy. Moreover, the profits which the MTRC acquires from property development is derived from profit-sharing with developers, and the amount of profits which the MTRC can share depends on the market conditions. As such, the MTRC is still subject to development and financial risks.

The Democratic Party does not think that the explanation of the Administration is acceptable. First of all, it is questionable whether the MTRC is really paying land premiums at the full market value under the existing land policy. According to the information published by the Government, the Lands Department, in assessing the regrant premium, will first evaluate the market value of the development project concerned upon its completion and then deduct 20% to 25% as the profits for property development. In other words, the regrant premium assessed by the Government has already guaranteed a minimum profit margin or may have even offered subsidies to the MTRC.

What is most important is that, as the MTRC is acquiring land by means of regrant instead of public tender, the development rights of the property concerned will automatically go to the MTRC instead of any bidder offering higher prices. Even if the MTRC refuses to accept the regrant premium as assessed by the Lands Department, it still retains the bargaining rights. On the other hand, even if other developers find the price acceptable and are willing to pay the assessed amount, they will not have the right to acquire the land and develop it on their own. So far, the MTRC has launched eight appeals to the Lands Department against the assessed land premium, and has been able to reduce the land premium by at least 10% on average each time.

In fact, the Lands Department is often subject to the pressure from property developers, and eventually, it often has to reduce its assessed land premium. Thus, it is questionable whether the regrant premium assessment mechanism is really transparent. For example, in the recent dispute over the land premium chargeable for the superstructure development of the Hong Kong Station of the Airport Express, the Government has, under undue pressure, reached an agreement with the Real Estate Developers Association of Hong Kong. It is agreed that the Government will provide an informal assessment on the regrant premium to developers beforehand, so that a compromise could be reached between both parties. We are really worried that how a full market value premium can ever be assessed under such a mechanism.

Furthermore, since the MTRC can monopolize all superstructure development projects, it does not really have to take any risks as claimed by the Government. At present, apart from undertaking to pay the assessed regrant premium, the developers will also pay an "admission fee" to the MTRC and propose a profit-sharing ratio when they submit their tenders to the MTRC. In the past, when property prices were always on the increase, for reasons of scarcity and favourable location, superstructure development projects could naturally get higher market premiums. In order to be successful in their bids for development rights, developers would usually compete against one another by offering the MTRC the most generous profit-sharing ratio. That way, the MTRC was able to make profits by doing nothing.

Then when the property market is at a low ebb and the prospects are uncertain, the MTRC may finally have to bear some risks in its investment. However, as developers are only willing to offer a low profit-sharing ratio, the MTRC, seeing that the profit is not great, can withdraw and abrogate the whole tender plan at will, thus depriving developers of their opportunities. It can then re-invite the submission of tender when market conditions become more favourable. This is exactly what has happened with the Kowloon Station Phase III Development, where the MTRC unilaterally withdrew the application for development after receiving all the tenders.

Mr Deputy, the approach undertaken by the MTRC has been very much a "bad loser" in its practice and it is not necessary for it to bear any great risk for its property development. The Administration says that the MTRC has only been conducting its business according to prudent commercial principles, and there is nothing wrong about this. However, we must not overlook one important fact: the MTRC can and dares to be such a "bad loser" because the Government has authorized it to monopolize all superstructure development. However, how can the Government justify its actions to property developers and the community at large, if the MTRCL still continues to enjoy and abuse this right after privatization?

The Democratic Party is of the view that we should not hastily pass this Bill until the Administration can provide us with a satisfactory reply to the above questions.

Secondly, I would like to talk about the issue of fair competition. For the sake of reducing air pollution, a heavier reliance on railways as the main mode of transport is an inevitable trend, and the Democratic Party also believes that this is the right direction. In fact, for the sake of environmental protection, we should no longer regard railway simply as one of the many modes of transport, and our transport policy should aim at more than simply providing an environment adequately conducive to competition. To a certain extent, it is inevitable that railways would be accorded certain preferential treatments. As pointed out in the Third Comprehensive Transport Study recently published by the Transport Bureau, the Government plans to increase the patronage of railways from 30% at present to 40% to 50% in the coming 20 years. The Study also pointed out that vicious competition among different modes of transport should also be avoided and co-ordination should be strengthened, so that each mode of transport can perform its own role.

However, in response to the Democratic Party's request for legislation on monitoring the fare determination authority of the MTR, the Administration has stressed that it would strive to maintain a fair and competitive environment in the future and to allow the fares of the MTR to be regulated by market forces. Hence, it maintains that it is unnecessary to legislate for control. We find it surprising that the Administration can actually provide explanations on two entirely different and contradictory policies on different occasions. When the Government talks about environmental protection, it stresses that the MTR would be given priority treatment; but when members of the public request that the fares of the MTR be regulated, it stresses that there should be free competition.

The Democratic Party shares the Government's opinion that our environmental protection policy should be enhanced, and that the railway development priority strategy and co-ordination between different modes of transport should be promoted and strengthened in the new century. Under the new transport strategy, the operations of the MTR can no longer be solely regulated by market forces because this is a self-contradictory and impracticable approach.

Mr Deputy, we still have many doubts on this Government Bill, and certain parts of the Bill even run counter to the basic principles of the existing transport policy. The fact that the Administration has submitted the Bill to this Council before finding ways to clarify our doubts will only lead us to believe that

the listing of the MTRC is solely meant to cover the deficits of the next two years. The Democratic Party thinks that we should first abolish the practice of automatically granting property development rights to the MTRC, and incorporate clauses on price control and fair competition, before this Bill can be passed to allow the listing of the MTRC.

I so submit. Thank you, Mr Deputy.

THE PRESIDENT resumed the Chair.

**MISS CHRISTINE LOH:** Madam President, as I shall not speak again on the individual amendments at the Committee stage, I ask your indulgence to allow me to address very broadly the amendments that I support, and those that I do not support.

The Administration is right to privatize public services that can be better carried out by the private sector. The Financial Secretary announced the plan a year ago and chose the Mass Transit Railway Corporation (MTRC) as its first test case for partial privatization. What has not been done, however, is for the Administration to spell out the framework for its privatization policy. Things are being done on a piecemeal basis, and being rushed through at great speed. Rushing is what the Administration is very good at. Thinking things through does not appear to be its strong suit.

The Administration should state clearly that the objective of privatization is not to raise money, but to improve efficiency, competitiveness and financial discipline. And, it should put in place an independent regulatory regime to monitor price determination, safety, service quality and environmental standards.

The Administration has only partially carried out the objective. Although I did not sit on the Bills Committee, I have read all the papers. My conclusion is that there has not been a proper comparative evaluation of options beforehand. As such, the perceived benefits and finance have not been subject to the most rigorous examination. And, the financial framework has not been stripped of distortions. I would hate to think that the privatization of the MTRC would become the privatization model for the future.

Although I am not satisfied with the structure of the MTRC privatization, I also see no reason to vote against the Bill, as it is an important step in the right direction as the Honourable Miss Margaret NG so eloquently put. I believe that there is time to iron out our thinking in the foreseeable future. I only hope that within the Administration, it is acknowledged that this is a half-baked exercise.

I would have preferred to see a structure whereby the rail business is separate from the property development and management business. To mix the two is to continue to mask the performance of the rail operation from the more speculative property side. By separating the two, we could evaluate their performances more accurately. Inefficiencies in rail operation would not be hidden by profits in property. Such a step would bring greater transparency and accountability. The Government and the MTRC have stated their reasons to me for why they do not want to delink the two parts of the business. I thank them for their time. However, as they know, I am far from convinced. As such, I will support the Honourable Albert HO's amendment.

However, I shall not be able to support other amendments from my other colleagues. Let me first discuss the most controversial ones on the setting of fares. I do not like the current system because I find it too politicized. By this, I mean that it is already influenced by too many sources. I would prefer an independent regulatory system based on the Consumer Price Index. By the way, I do not regard the Administration as equivalent to an independent regulator, as it has sought to argue.

Although I am attracted in principle by the Honourable Andrew CHENG's amendment, it has not been sufficiently thought out. It would be expecting too much for any private Member to work it out all on his own, but I do appreciate the effort. I regret that neither the Administration nor the MTRC is willing to give a formula approach the benefit that it deserves.

Instead, both the Administration and the MTRC want to retain the current system. My colleagues' proposals would make fare determination even more politicized. For example, what is the point of involving either the Executive Council or the Legislative Council? In the first case, determination would be made behind closed doors, and in the second case, in this Chamber. Both of which are too politicized to reach an impartial, objective, cool-headed judgment based on facts and data.

As for other amendments in other areas, Madam President, they range from the well-intentioned to the unnecessary.

Madam President, I support the Second Reading of the Bill.

**MR NG LEUNG-SING** (in Cantonese): Madam President, the regional financial turmoil earlier on has subjected the economy of Hong Kong to very stringent tests. In the midst of this economic recession and restructuring, the financial condition of the Government has also been affected to a certain extent. Right at this moment, the MTRC is making preparation for its transformation into a listed company. The MTR is one mode of mass public transport available in Hong Kong. In order to keep up its development and to further upgrade its service standards, a substantial and continuous injection of capital would be indispensable. In the face of the existing financial difficulties, the Government has proposed to turn the MTRC from a provider of public services into a listed company. That way, the Government could reduce its investment commitment on the one hand, and earn a considerable amount of cash to help alleviate its financial straits on the other. Actually, the Government has submitted this Bill mainly for this purpose, which is to kill two birds with one stone.

In the course of scrutinizing this Bill, many Honourable colleagues have raised many points of concern, such as the fare determination mechanism and the development rights of property along the MTR lines. During this same process, the Government has also provided many reasonable arguments in support of its view that it should be most appropriate to maintain the existing approach. I should like to focus on the fare determination mechanism of the eventually listed MTRCL.

The entire plan to quote the MTRC as a whole is a proposal to turn the operation of the MTRC into fully market-oriented, with a view to enabling the market forces to push the MTRC to improve on and upgrade its service standards. Under this proposal, the assets of the MTRC would be sold to private investors; as such, both the operation and the management of the MTRC would not be like that of any public corporations any more. And this is exactly in line with the principle of a big market and small government. If, in the process of this development in the market-led direction, the fare determination mechanism

which has already possessed some of the market-led features should take a retrogressive path and let the fares be determined by the Government, this Council or other administrative means rather than by the market, the original intent and idea behind this listing proposal would be defeated. This is tantamount to asking a person to swim in the sea but at the same time tying his hands and legs, that poor fellow would eventually be drowned to death.

Madam President, just now many Honourable colleagues have raised different views on the question as to whether the Bill is very complicated and whether more time for discussion is required, but I think the fare determination mechanism should be the core of the entire listing proposal, as well as the key factor affecting the price of the shares. In addition, it should also be the basic factor which investors would consider when assessing the investment project as a whole. In particular, the business development of the MTRC is very much unlike that of any public bus companies, since the capital involved would be far greater in size while the financing arrangement would be much more complicated. If the fare determination mechanism of the MTR is to be regulated by administrative means rather than the market, investors would become less interested in the Corporation or even unwilling to invest their money in it on account of the absence of a free market mechanism. This is because the general investors are able to assess the changes in the market environment but not changes on the political front. We must not forget that one of the objectives behind the listing of the MTRC is to generate for the Treasury an additional amount of revenue at this juncture when the Government is in the midst of financial difficulties; as such, the Government should be cashing in on this public asset in a manner which is accountable to the public, so that the asset could be sold at the highest price possible.

Moreover, because of the existing fare determination mechanism, the MTRC is able to maintain a sound financial position and hence a good credit rating. That way, the MTRC is able to provide world-class services on the one hand and to develop continuously its services and investments on the other. The existing fare determination mechanism has been proven effective in the face of competition from other modes of public transport. Therefore, we can tell from both the facts and the past experience that this mechanism has provided consumers with the best protection. For these reasons, I hold that changing the existing fare determination mechanism at this stage is detrimental to the

implementation of the listing proposal of the MTRC, since this would make it impossible for the Government to cash in on the public asset at the highest price possible. Worse still, the future development of the MTRC in terms of financing arrangement and service standard enhancement would be affected adversely as well. And I do not think such kinds of development would be in the interests of consumers in the end. This is one point which Honourable colleagues should take into careful consideration when discussing the Bill and the relevant amendments proposed to it.

With these remarks, Madam President, I support the Second Reading of the Bill.

**MRS SELINA CHOW** (in Cantonese): Madam President, the Liberal Party has all along been in support of the Government privatizing all services that can be operate commercially. As regards the listing of the MTRC, apart from enabling the Government to generate additional revenue to help alleviate the fiscal deficit, it could also enable the public to invest in the MTR, thus making the MTR genuinely an asset of the people of Hong Kong and thereby enhancing their sense of belonging. Hence, we are in full support of the Government's decision this time around.

As indicated in the results of different surveys, the majority of the public are in support of listing the MTRC. From a consumer's point of view, it should be best if all kinds of fees and charges are set at the lowest levels possible. For this reason, it is understandable that the public would be expressing concern over the rates of fares charged by the eventually listed MTRCL. However, one point we should never overlook is that the investment in railway development and its financing is a massive and long-term undertaking. If the MTRCL should be subject to external regulation upon listing, the uncertainties brought along would definitely impact on the credit rating of the MTRCL, thereby adding to the lending and investment risks. What is more, the MTRCL's capacity to borrow would be impaired while its cost of borrowing would rise. Apart from this, the uncertainties would also affect adversely the MTRC in terms of its estimated value upon listing.



It would be more practical if the fares to be charged by the MTRC upon listing should be regulated through market competition. So long as we could ensure that the market is not being monopolized, and that there is a level playing field, a diversity of choices would then be made available. And this should be the situation where consumers will find themselves at the most advantageous position.

It is learned that the MTRC is currently enjoying a 25% share of the public transport market. In this connection, the Consumer Council has also pointed out that there is sufficient competition in the public transport market. Moreover, the improvements in bus services and road networks have also emerged as strong competitors of the MTR services. As such, the MTRC must appeal to passengers by way of reasonable fares and improvements in service quality. To cite a life example, the Airport Express operated by the MTRC, the round trip fare for a journey between the Hong Kong Station and the Airport was originally set at \$100 for an adult, however, in the face of keen competition from other modes of public transport (for instance, a single trip from Chai Wan to the Airport by bus costs \$45), the MTRC has adjusted the fare to \$70. The fare is still fixed at this rate as the MTRC does not dare to increase it at all. From this we could see that so long as there is competition in the market, the fare levels would be regulated and monitored.

There has been a suggestion that the fare to be charged by the MTRC upon listing should be subject to the final approval of political entities like the Legislative Council. However, in other places of the world, there is not even a single case where the fares charged by a commercial institution are directly determined by a political organization. The operation of the MTRC upon listing should follow to the full the commercial principles of the private sector. If members of the public should be allowed to determine the fares by way of a council representing the consumers at large, would that be fair to the shareholders of the relevant companies? Moreover, could the council concerned be able to strike a suitable balance between fare levels and service standards?

At present, the determination of MTR fares has to take account of both market competition and the acceptability of passengers. Looking back on the past, members of the public could monitor and affect the fare levels through certain effective channels such as the Transport Advisory Committee or by way of public opinion; besides, they have also succeeded in making it necessary for

the Board of Directors of the MTRC to take into full account the public opinion before deciding on whether or not to increase the fare levels or determining the rates of fare increases.

Yesterday, we had a meeting with the Speaker of the New South Wales Council, Australia. During that meeting, he told us in particular that the service provided by our MTR really exceeded the cost for it, since the fare was so inexpensive. Moreover, he also opined that any person who had tried the underground railways overseas should appreciate immensely the various merits of our MTR services. Undeniably, despite the inexpensive fares, our MTR services are efficient and comfortable. Hong Kong really leads the world in this respect. Given that the past performances of the MTRC are proof positive that both the management and the service standards of the Corporation are really reliable, we should give it a free hand to give full play to their expertise in the free market.

To a commercial corporation, there is no reason for its final power to make decisions on revenue be vested in organizations not within the corporation. As to those Honourable colleagues who consider it necessary for such power to be vested in the Legislative Council or the Executive Council, I just do not know whether they are unnecessarily holding fast to the paternalistic mentality or whether they fail to understand even some basic commercial principles.

**MR ERIC LI** (in Cantonese): Madam President, during the 1998 elections, especially after Hong Kong was hit by the financial turmoil, we saw that many public bodies react very slowly to the changes in the economy, while many private companies adapted to the new environment very quickly and became competitive again. This has strengthened my long-held belief that if the private sector can provide good services, the Government should let the private sector provide the services as far as possible. Today, I support this amendment based on this principle. I am sure many colleagues will not feel surprised. Today, I wish to talk about three principles for the privatization of the MTRC and how these principles are consistent with the overall and long-term interest of Hong Kong. I will say a few words about this.

First, in privatizing the MTRC, we should not focus on whether we are selling our assets and whether it can help reduce our short-term fiscal deficit. Personally, I support it on account of a deeper implication. By this deeper

implication, I mean the "small government, big community" that Hong Kong has always boasted, its adherence to the free market economy and the principle of "positive non-intervention", principles which we are all familiar with and which have proven effective. I support these principles but not the fiscal deficit. Although the Government stresses these principles, it has not really adhered to them over the past 20 or 30 years in implementing its policies. This may be because the Government wished to fulfil the people's demand and improve their quality of life more quickly. Over the past few decades, the Government has used a large amount of resources to subsidize some services. For instance, in education, many educational programmes are offered by government primary and secondary schools. In public utility, the Water Supplies Department and the Post Office were established with government capital and use government resources. In transport, we have the MTR, the Kowloon-Canton Railway, the Cross-Harbour Tunnel and the International Airport. In the medical sector, we have government hospitals and clinics. In housing, we have the Housing Authority and public rental housing. All these services can indeed be provided by the private sector. However, the Government participates in these services and provides large amount of resources and even subsidies. Over the past 20 to 30 years, these boundaries have become increasingly vague. In my view, the people are becoming richer and the private sector has increasingly modernized and advanced facilities for providing services and is able to provide services on a larger scale. Under these circumstances, does the Government have to subsidize and provide everything? I believe it is an important issue which will affect Hong Kong's future economic development. For me, the privatization of the MTRC is an important first step. I very much believe that it will be more innovative if some services can be provided by private organizations, and it will make Hong Kong more competitive.

This is not empty talk. In my view, this is an opportunity to tear down conventions. As we can see, over the past 20 years, the United Kingdom and many other countries have taken this path. Of course, there are some successful examples and some failures. But on the whole, this approach can help reduce the government's need for taxation and improve efficiency. I consider it an important economic policy. In my view, the Government must give it a try. Otherwise, it will not know whether it will work. If we have a good start, the policy can ultimately help to achieve better use and allocation of the overall economic resources of Hong Kong. If Members just quibble over the details, they will not see the overall and long-term picture.

Second, I would like to talk about the development of the financial market. As we know, the Mandatory Provident Fund (MPF) Scheme will be implemented soon. We have demanded that no less than 30% of MPF contributions should be invested in the local market. In view of the total value of the present market, in order to allow the huge sum of MPF contributions to be invested slowly in the market, we need many quality, low-risk and safe investments as investment vehicles for these retirement scheme contributions. Investment in the bonds market can be one kind of investment. After the MTR is privatized, it will be a good investment vehicle. In fact, in the course of deliberations on the Bill, if Mr Albert HO or Miss CHOY So-yuk recalls, I was the first to question in the Bills Committee the property developments over MTR stations and whether the franchise period of 50 years is too long and whether it should be shortened. Even today, I agree that the concerns of some Members are theoretically justified. However, I have done some homework myself. I will not propose an amendment hastily. I have talked to members of the industry and discussed with them. It seems to me that their views differ from ours since they look at it from a commercial point of view. From the point of view of property development, they think that the present arrangement can continue. They also think that there should not be any risk for the MTRC, which would just be sharing the spoils. They understand and fully grasp this arrangement. They prefer that the situation remains unchanged. To them, this is a win-win situation. Looking at it from a commercial point of view, they are not too worried.

Third, about the question of the franchise period. I understand that from a commercial point of view, the franchise period could be an uncertain factor. I fear that this uncertain factor, together with various constraints, such as putting a cap on fare increase and not granting the Corporation property development rights, will turn a quality stock with good prospects and development potential into a very ordinary, unprofitable utilities stock. I do not wish to see this important asset of the Government become an organization that does not reflect its potential market value. In my view, regulation does not necessarily require legislation. There are in fact many forms of regulation. If we believe in the free market, we would know that there is a natural regulatory law in the market. If the MTRC is privatized, first, the Government or the MTRC will have to provide more financial data. There are many financial experts in the market who will help us monitor this company. They will provide more analyses so that the people can grasp and know more about the overall operations of the MTRC. The market will also inflict punishment. If the Government secretly

changes some important factors and risk factors, such as reducing its holding of MTRC shares to under 50% or makes any other drastic move, the market will punish them. The market will bring down the share prices and increase the risk of holding. It will not be able to issue bonds on favourable terms. Then, we will know that the organization is punished. The holders of its shares will put up the shares for sale. That is monitoring by the market. In fact, I believe this kind of monitoring is more effective than legislation.

After talking about these three factors, I hope that Members will understand that the privatization of the MTRC is a good thing for the people. It is a first step in the right direction in terms of the economic policy. It is a move towards small government and also provides a safer and low-risk investment vehicle for the people, achieving the effect of "returning to the people that which comes from the people". In Hong Kong, there is little land and a large and growing population. There is limited land for development. In my view, the MTRC is a goose that lays the golden eggs and has very good prospects. If we can manage this enterprise with outstanding prospects by way of flexible business strategies, good profits can be made, which will ultimately benefit investors and MTR staff. In the long run, there will be no need for government funding, which will lessen the taxpayers' burden. This is totally consistent with Hong Kong's overall interest, while the interest of MTR users is only the interest of a minority. I would rather consider the overall interest. Thank you, Madam President.

**MR LAU KONG-WAH** (in Cantonese): Madam President, the Mass Transit Railway Bill is a bill of great importance. Not only can it change the present role of the MTRC as a statutory body and imbues it with the foundation to turn it into a listed company, it will be a milestone in the monitoring of public transport in the territory. For more than a decade, there has been a strong call for regulation on the fares of the MTRC. We all recall clearly that for many years the MTRC and the KCRC would announce plans to raise the fares at the beginning of each year because the law gives them absolute power to determine their fares. Even the highest authorities will only be notified of the decision and that is all. If the Chief Executive makes any decision regarding the MTRC on grounds of public interest and which is going to affect its income, he will have to compensate the MTRC because it is so stipulated in the law. Therefore, the MTRC may set an increase as much as it thinks fit.

In the past, the Legislative Council debated on the question of monitoring the fares of the MTRC. I believe Honourable Members will recall that we have had many debates on monitoring the MTRC. Though the form of monitoring proposed varies, the demand for monitoring is the same.

The Government states that the MTRC will operate under the principle of commercial prudence after privatization, and the company will consider the affordability of the public. In other words, the fares will be set at a reasonable level. If this is really the case, other public transport operators in Hong Kong can imitate the MTRC and adopt the principle of commercial prudence when operating their business and there will be no need for the Government to vet their application to increase the fares.

But the truth of the matter is exactly the opposite. Most of the other public transport operators are worse off than the MTRC in terms of their competitiveness, financial capabilities, credit rating, market share and so on. But they have to be subject to monitoring in fares. Even the licensed ferries and green minibuses, their fare adjustments are subject to the approval of the Transport Department. In our opinion, this kind of regulation on fares is reasonable.

The DAB has proposed an amendment to include a regulation mechanism for fares. It is because a Mass Transit Railway Ordinance which does not have any regulation mechanism on fares will not be in the interest of the territory and will not help it become a level playing field. The introduction of a regulation mechanism is basically a problem of equity in public policy. Even without the proposal to list the MTRC, we will still want to raise the problem from time to time.

The DAB suggests that we may refer to the practice prescribed in the existing Public Bus Services Ordinance. That is to say, the Transport Advisory Committee (TAC) will be consulted first, then the Chief Executive in Council will vet the application for increases in fares. The practice has been in existence for many years. There were cases in the past where the Government took the advice of the TAC and made substantial amendments to the application by the bus company. In this way, public interest was safeguarded<sup>1</sup>. The DAB values the role played by the TAC. One thing that needs to be mentioned is that although the TAC plays an important role in the process, it has never been

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<sup>1</sup> That happened in March 1996 when the TAC only approved of a 2.7% increase in fares while the Kowloon Motor Bus Company Limited applied for an increase of 7.5%.

included in the laws since it is only an advisory body of the Government. That is also the practice found in many laws on public transport.

The DAB has also considered other ways to monitor fares in order to see whether they will have the best results and whether they can achieve the purpose of monitoring. If the application to increase fares is to be approved by the Legislative Council, its decision will certainly be criticized as being biased. What the Legislative Council can do is to propose a better mechanism to monitor public utilities and leave the matter to this specialized body. As for the way to determine the rate of increase by taking the inflation rate of the previous year or the past few years and deduct a certain percentage from it, that is a formula. The basic point about it is that increases in fares can be made within this formula. Factors like service quality and amount of profits will not be factors used to determine whether a proposal to increase fares is reasonable. Moreover, the Cable and Wireless HKT used to adopt a similar mechanism to increase its tariffs every year according to the inflation rate. It is expected that this approach is very likely to result in a mechanism of automatic increases annually.

Madam President, the Government and the top management of the MTRC have issued repeated warnings recently that if a mechanism to regulate fares is introduced, the plan to list the MTRC will be cancelled. They also claimed that the future of the MTRC would be ruined by this mechanism. The financial consultants hired by the MTRC also made remarks on public occasions that the matter had attracted the attention of overseas investors and that if the listing attempt failed, that would erode investor confidence in the MTRC. We must therefore ascertain what the community will stand to lose if a mechanism to regulate the fares of the MTRC is introduced.

The Government has invited a number of financial consultants to speak before the Bills Committee. They told us that a regulation mechanism on fares would affect the Corporation's credit rating. But credit rating is only one of the factors considered by banking syndicates when they determine interest rates. It is not the only factor. These experts were quite frank when they told us that they were looking at the issue of fares of the MTRC from the perspective of the investors. In other words, they did not consider the interests of the passengers. That was not their responsibility. The Government should know better than us in this respect. We cannot just consider what the investor thinks, the interest of the consumers will have to be protected as well.

In fact, this stern position of the Government on this matter smacks of full-blown protectionism. It is quite beyond anyone's expectation as well. For it gives people the impression that once the autonomy in determining fares is removed, the ability of the MTRC in servicing its loans will vanish into thin air all of a sudden. But that is not true. It follows, Madam President, that the interest of the public can in no way be compromised. Thank you, Madam President.

**MR LEE CHEUK-YAN** (in Cantonese): Madam President, Mr LAU Chin-shek has earlier stated the stance of the Hong Kong Confederation of Trade Unions (CTU), therefore I only want to make several supplementary points. First of all, the headline of an article written by Mr CHO Yan-chiu in his column "An investor's diary" in the *Hong Kong Economic Journal* today arrested my eyes. It read, "Jack SO for MTR Listing." In the beginning, I thought that there were some extra advantages in the listing of the MTRC. In fact, the article was only saying that the listing of MTRC was attributable to the lobbying efforts of the Chairman of MTRC, Mr Jack SO. Mr SO had also tried to lobby me for the idea, albeit knowing too well that he was on a "mission impossible". I admired his courage very much and I should emulate the virtues of his determination.

However, when I saw the headline, my major concern was whether there would be any extra advantage or profit in the listing of the MTRC. I have studied the papers issued by the Government. When the Secretary for Transport was lobbying the legislators for the idea, he once told us that one of the advantages with the listing of MTRC would indeed be a golden opportunity for the public to invest in a prime enterprise. I could not help but ask, "Would it be right for the Government to participate in the promotion of speculation in the stock market?" Today, especially when I heard that outside Hong Kong Bank in Mong Kok, people were lining up from Argyle Street in Mong Kok to Yau Ma Tei. It really worried me a lot as I started to wonder if a bubble-economy has revived in Hong Kong. I felt that it would not be appropriate for the Government to make too many moves or comments to take part in promoting speculation in the stock market. Moreover, would there be any actual extra advantage to the public?



In the first place, I would like to remind the public intending to buy the shares as the Government often states in advertisement that "the value of stocks may rise and may fall." In that case, will the public benefit from that in the end? Will the people buying the shares get any benefits? All of these are unknown. However, I feel the most important issue to be raised is whether the general public, especially those unable to become shareholders, will enjoy any benefit as some may become shareholders and some may not? In fact, Mr LAU Chin-shek has already said that the thing which worries us most is the pressure of business. In order to make more profits, the MTRC would increase the fares and shift the burden onto the public, as long as it would increase the profit margin for the company and make the company accountable for its shareholders. By that time, will the interest of the general public be sacrificed as things are getting out of hand? That is our major concern. Furthermore, we feel that it would be a major threat to the public and consumers if the company is listed eventually. It would be an undesirable situation to us, therefore we do not agree to this idea.

The second thing is we are worried about the role of the Government after the MTRC is listed. By then, it would be a "government-cum-business" establishment as the Government is the regulator as well as the operator. The public may query what interest the Government would defend, namely, the interest of the public, or the interest of the Government in the capacity of a major shareholder or the interest of the public in the capacity of minority shareholders. It would probably end up in a situation of neither fish nor fowl since there would be contradictions and conflicts concerning the role and interest of the Government. I believe every decision the Government makes would be questioned in the future, as the public may ask whether the Government is playing the role of an operator or a regulator. For example, if there are discussions on expanding the service of the MTR to certain areas, and the Government is unwilling to make the expansion, the Government may say that it would not be appropriate to expand service to certain areas due to the small population there. Then the public would query if the Government solely makes the decision in the capacity of an operator. On the contrary, if the Government is fully aware of the small population of a certain area, yet it is willing to expand the MTR service to such an area. Then shareholders will query why the Government should go ahead with it when it is fully aware of the fact that the company may lose money, and they may query if the Government is going to stand in the shareholders' light. In fact, how a balance of interests can be struck when the role of the Government is so contradictory? In another case, if the

Government intends to develop a mass transit railway system, since it has been an established government policy, then the railway network should cover as many places as possible. However, will shareholders object to the plan? What will the Government do to cope with the problem of role conflicts? We feel that the situation will end up in a bizarre structure, which is definitely not for the well being of the public.

The third thing is the worry of the employees. I have to mention this point in particular upon hearing the remarks of Miss CHAN Yuen-han, the representative of the Hong Kong Federation of Trade Unions (FTU). The FTU is most concerned about clause 29 and clause 41 of the Bill. Moreover, the FTU's affiliate, the MTRC Staff General Association (SGA), is of the view that as the Government has accepted their amendment, they would acknowledge the offer in return. The amendment to clause 29 divides criminal liabilities into two levels, while clause 41 stipulates the transition of their pay together with their fringe benefits. Despite Miss CHAN Yuen-han's remark that the SGA would consent accordingly, I have to make clear that the affiliate of CTU, the Mass Transit Railway Corporation Staff Union (MTRSU), has declined to acknowledge the amendment proposed by Miss CHAN Yuen-han which has been accepted by the Government. What are the reasons for their refusal? First of all, the employees are not worried about the transition of their current pay and fringe benefits, as they are bound to be transferred to the new company by virtue of the Employment Ordinance. In fact, they are most worried about whether the company will cut their pay and fringe benefits after the transition under the pressure from the company's future shareholders, the pressure of seeking profits and the pressure of being a commercial undertaking. They are not referring to the moment of the transition, because nobody is worried about the moment of transition. I have confidence in telling everyone that no problem would occur during the moment of transition. However, the employees worry about the future problems, and the current amendment cannot solve the entire problem in the future. Therefore, Mr LAU Chin-shek has proposed another amendment on behalf of the CTU to ensure the future pay and fringe benefits of the employees should be no less favourable than the current level. As a result, I feel that our trade union is not going to acknowledge the amendment which has been accepted by the Government, since the worries of the employees lie right in the possible pay-cut in the future. It will not be adequate to relieve the employees of their worries if the Government is just going to keep watch on the transition, and not the arrangement after the transition.

The second argument of our not acknowledging the amendment lies in the issue of criminal liability for negligence. The current amendment only divides criminal liability for negligence into two levels. I really value the view put forward by Miss Margaret NG from the position of a lawyer, which provides me with a new perspective to judge the matter. She said that penalties should not be determined by the results of the offence. According to the current amendment, penalties would be heavier only where death or serious injury is resulted from the negligence. That is exactly determining penalties by the results, not by the extent of negligence. In theory, the result can be incurred by a minor negligence — as the provision has not been invoked for the past 20 years, I am not sure what the ultimate result would be — but the penalties would be heavier where serious injury is resulted from the negligence; whilst the penalties would be less severe where no injury has resulted from the negligence, notwithstanding the grave negligence involved. The two classifications of criminal liability are actually imposing penalties commensurate with results. It seems that this is the case, but is it an appropriate amendment? I believe that I have expressed the worries of the employees clearly. They think that there should not be any criminal liability or criminalization. Therefore, Mr LAU Chin-shek will move an amendment to the effect that there should be no criminalization.

For that reason, I urge the FTU not to acknowledge the amendment, and hope that the FTU will listen to the opinions of our MTRSU before deciding whether to acknowledge the amendment or not. Finally, I have to speak on behalf of our MTRSU that they did not agree on our proposal of fare regulation. They viewed the matter from the position of MTRC's employees. Nevertheless, we have explained to them that we are unable to view everything from the position of the employees, as we have to view from the position of the public as a whole. As a result, we will insist on moving the amendment on fare regulation. Thank you, Madam President.

**MR EDWARD HO:** Madam President, I first declare my interest as a member of the Managing Board of the Mass Transit Railway Corporation (MTRC). However, that would not affect my objectivity in this debate on the Mass Transit Railway Bill. On the contrary, my knowledge in the operations of the MTRC should be of help in discussing various aspects of the Bill.

We must first put into context that we are talking about one of the most successfully run railways in the world, in terms of efficiency, reliability, safety, value for money for passengers, and, it is a corporation that enjoys a sound financial position that does not require government subsidies. It is not what I think. All these achievements have been benchmarked against major railways in major cities in the world by independent organizations, such as the International Union of Public Transport.

The MTRC was able to achieve these remarkable achievements through a well-managed organization the business of which is run on prudent commercial principles. Capital investments and all business decisions are entirely based upon acceptance of the market in a free and competitive economy. It is important that this important principle should be remembered and maintained after the MTRC is privatized.

The foremost question in many Members' minds is whether, after privatization, the MTRC should retain its autonomy in setting its fares. This question has been debated in this Chamber many times in the past. Some Members have, as they do today, suggested that fares set by the MTRC should be subject to the control of either this Council, the Chief Executive of the Hong Kong Special Administrative Region (SAR) or according to some sort of pre-set formula. They made these suggestions probably based upon the opinion that if MTRC were left on its own, unreasonably high fares would result.

I wish to dispel some of these myths. I would question why any fare regulation was necessary, and would point out the damaging effect that such kind of regulation would have on the business of the MTRC and the public as a whole. Mass Transit Railway (MTR) fares have always been set at levels that are acceptable to the customers or the travelling public. There is a gross misconception going around that the MTR is a monopoly, and therefore, its fares should be controlled. Nothing can be further from the truth. The travelling public in Hong Kong have ample choices in public transportation: franchised and non-franchised buses, public light buses and taxis. They would only take the MTR if they consider that they can have better value for money or a better service.

The operation of the Airport Railway is a good example. Ever since it was opened, it has to face severe competition from many different kinds of public transport, such as air-conditioned coaches offering almost door to door service. Currently, it has only a market share of 32%, achieved through concessionary fares for many categories of passengers. Overall, the MTRC has only 25% share of the public transport market. The fact is: if fares are set at an unreasonable level, then ridership would go down as market economy would dictate, and arbitrary high levels of fares without regards to market acceptance do not serve the commercial interest of the MTRC. This is the reason why the MTRC has not raised its fares since September 1997.

It is not only a fact that MTR fares have increased less than inflation in the past 20 years, contrary to what some Members may think, current fare levels of MTR compare favourably with other modes of public transport, such as franchised buses.

For example, the MTR fare from Tsuen Wan to Central is \$11.7 with a journey time of 28 minutes, whereas bus fare for the same journey is \$15.3 and takes 40 minutes. Similar favourable comparisons on other journeys illustrate the point that the MTR, left on its own, provided the best value for money for the travelling public.

Some may argue that MTR fares should consider the public interest. They, in fact, consider that a public utility under a franchise should offer a social service to the public, rather than just a commercial service. These are Members who would not hesitate to ask the Government, in other words, the taxpayers, to subsidize the railway to achieve a low fare for the public. The MTR, as other public utilities, should, of course, be commercial services. Examples of subsidized railways in other parts of the world amply demonstrated that once a strict commercial discipline is abandoned, those railways quickly deteriorated in service and maintenance, requiring more and more government subsidies or subsidies from taxpayers.

This is the real damage of regulated fares as opposed to setting according to commercial principles. One factor that we must recognize is that the construction of railways involve very heavy capital investments, and large capital expenditure in continuous maintenance and improvements. The Airport Railway, for instance, cost \$35.1 billion to build. The MTRC is building the Tseung Kwan O Extension. I am glad to say that it is now under budget and

will probably come in at a cost of \$24 billion. At the same time, the MTRC is also investing some \$5.4 billion on upgrading the railway system in the next five years.

Thus, this is quite different from franchised bus services, where roads are built by taxpayers' money, and the operators only need to build the depots and buy the buses.

The heavy investment required for building a railway means that it has to rely heavily on international financing, unless the cost is borne by taxpayers. The ability to borrow, and to borrow at reasonable cost, depends on how international financial institutions regard the financial status and the management of the MTRC. The MTRC enjoys currently an A+/A credit rating from the international rating agency, Standard and Poor, the same rating as the Government of the SAR. This is not easily given. Many financial experts have advised members of the Bills Committee that if the certainty of fare setting mechanism is lost, for instance by external regulation on political reasons, the MTRC's credit rating will certainly be affected.

Some Members have suggested that property development in conjunction with stations should not be allowed for the MTRC. Apart from the technical difficulties that are inherent in separating the construction of the stations, and the development of property above, real estate development is an essential part of giving some advantages to facilitate the financing of the heavy capital investment necessary for developing a railway system. Remember what I just said, bus companies do not have to build roads. Taxpayers pay for them.

The development of railway stations enhances immensely the value of any development above, it is only right to give the "advantage" of profit sharing of property development to the MTRC that develops the railway. Besides, any development rights will have to be paid for in the form of full market value in terms of land premium. That is why it is only an advantage, not a subsidy. Many other countries now have copied the Hong Kong model of utilizing property development to assist the construction of railways.

Madam President, as a general principle, I support all forms of privatization of government-provided services that can be provided by the private sector. It can certainly enhance efficiency when market economy is introduced. I totally support the privatization of the MTRC, giving members of the public to

share a well-run public utility. I urge Members not to support any amendments that would undermine the inherent strength of the MTRC that is firmly based upon sound commercial principles without the political interference of the Government, politicians or any artificial mechanisms, to the detriment not only of the MTRC, but also the travelling public, and ultimately, the taxpayers.

With these words, Madam President, I support the Second Reading of the Bill.

**MR LEUNG YIU-CHUNG** (in Cantonese): Madam President, it is now almost one year since the Financial Secretary announced in the Budget that the MTRC would become a listed company. During the past year, government officials and the MTRC's management repeatedly extolled the merits of privatizing the MTRC. But will the privatization and listing of the MTRC really bring benefits? Many people have questioned this.

Madam President, I recall that when we discussed the questions raised by Mr LEE about privatization in June last year, Dr Raymond HO made some comments. What did he say? He said, "As a matter of fact, privatization and corporatization of government departments have been practised in some countries, with results varying from place to place. If privatization of the water supply service in foreign countries is to be taken as reference, it is not difficult to discover some undesirable aspects of the implementation. In the case of England, over the six years following the privatization of the water supply service, water charges went up by 150% and the number of pollution cases went up by 50%, with investment in water works, however, reduced by one fifth. There is another case that is more well-known to the people of Hong Kong. During the period between July and September last year (that is, 1998), a lot of parasites were found in the drinking water supplied by the long-privatized Sydney Water Supplies Company of Australia." After citing some problems that arose after the privatization and corporatization of these departments, he went on to say that "As the biggest employer in Hong Kong, the Government should also take into consideration the effects of privatization and corporatization on the employees of the departments concerned. Privatization by the Government might cost many civil servants their jobs, drive many families into financial difficulty, further aggravate the already-weakened Hong Kong economy, and upset social stability." That was Dr Raymond HO's speech in 1999 on privatization. Is privatization all advantageous?

Just now, I cited examples to show that privatization may not be that advantageous. However, in a letter to us yesterday, the Secretary repeated the advantages of privatization. He even said that when the privatization of the MTRC was successfully implemented, it would become the benchmark for the Government's other privatization plans. This causes us a great deal of concern, because if the proposal to privatize the MTRC is passed, we will have further privatization in future. However, after listening to my quotation of Dr Raymond HO's speech, do Members still think it is so desirable? In order to sell the privatization of the MTRC, Secretary Nicholas NG gave some reasons why the plan would be welcomed by the people. I will summarize them in three points. First, the listing of the MTRC will provide people with more investment opportunities. Actually, he is not the only one who said this. Just now, Mr LEE Cheuk-yan also said that it would be a golden opportunity. I wonder why the Government has not learned a lesson from the financial turmoil. In the past, we relied heavily on the bubble economy. What if something goes wrong? The Secretary said that it would be a golden opportunity. What if people lose money after investing in the shares of the MTRCL? Will the Secretary undertake to compensate them? What does he mean by stressing that it is a golden opportunity? Should we encourage the development of the Hong Kong economy into a bubble economy, while ignoring the development of industries? The financial turmoil has taught us such a big lesson. Why do we not learn from our mistakes, instead of encouraging people to repeat them?

With the bubble economy, one can be rich one moment, and be ruined the next by changes that take place in the interval. We also know of examples where people jumped from buildings to commit suicide due to losses sustained in the stock market. What is the solution to these problems? If we develop our industries, there will be fewer such cases. At a time of economic depression, there will only be unemployment but crises will not occur. In my view, by advocating this all the time, the Government has shown that it has not learned from past experience. I do not wish our economy to develop like this. I also do not wish to hear the Government advocate such kind of economic development repeatedly.

The second point made by Secretary Nicholas NG is that privatization can help to improve services. However, as many colleagues said just now, the MTR has been running very well and this has been praised by many countries. However, if the MTRC really goes public, a problem might arise. When the MTRCL puts its shareholders' interests first, will its development be so desirable



all the time? Will the so-called improvement in services referred to by the Secretary be appreciated by the people? From the examples of services cited by Dr Raymond HO that I quoted just now, we can see that the privatization of organizations in some countries can lead to many problems. How will the Secretary deal with such problems? As Members know, the public is not only concerned about the quality of service, but also about the fares of the MTR. What can the people do if the corporation puts its shareholders' interests first and the MTR fares are not regulated? We must take these circumstances into consideration. Can services really be improved to people's satisfaction? This is questionable.

The third point made by the Secretary is that the privatization of the MTRC can bring the Treasury an income of \$30 billion. As Mr LAU Chin-shek made it very clear earlier in the debate, the situation may not be that bad. In fact, with the economic recovery, the deficit has been reduced. I would like to ask the Secretary a question. Today, the Secretary says we have a deficit and have to generate \$30 billion by listing the MTRC. What are we going to do if structural problems again appear in our economy? What else can we sell? Is it our fiscal policy to sell this and that whenever we have a structural deficit? What shall we do one day when everything has been sold? It seems to me that this is totally untenable and without justification. Even if we say this is profitable and will solve the present economic problem, what can we sell if similar problems arise in future? This is the main question. Can the Secretary tell me what else we can sell then?

The fact that the Secretary keeps selling these three points worries me. I feel that I should not support the privatization of the MTRC because of the situations that might develop in these three areas.

Apart from these three areas, the determination of fare causes us even greater concern. What should be done if the fares are not regulated? At present, there is competition and competition will affect the setting of fares. However, can competition ensure that fares remain at a reasonable level? The MTRC keeps stressing that fare increases over the past two years did not exceed inflation. However, we must not be deceived by the overall fare increases. While the overall fare increases may not have exceeded inflation, one cannot say the same of individual fare increases. For instance, the cross-harbour fare increase has far exceeded inflation. Which fare increases did not exceed inflation? Only the increase of fare for short trips. This is a fact. Fare

changes will certainly arouse the people's concern. As we know, by now, the MTR has become an indispensable mode of transport for the public. As some colleagues said earlier, the MTR has become a dominating mode of transport. How can the people not rely on it? The people have a heavy enough burden now. If MTR fares are not regulated, it will only add to the people's burden. For this reason alone, I will certainly not support the non-regulation of fares.

As for the employees, I am still concerned about the protection of employees' rights. In the letter, Secretary Nicholas NG said that if the MTR failed to obtain permission to increase fares in future, it could only save costs by cutting staff and maintenance costs, or by reducing its investment in new railway projects. Actually, the Secretary knows what to do. Madam President, in my view, it would be very difficult for us to regulate the fare increases of the MTR, since the amendments to regulate fare increases that Members will propose later on will probably not be passed. I would like to ask the Secretary if the MTRCL is free to increase its fares, whether he can guarantee that the MTRCL will not cut staff, staff benefits or change other conditions of employment. Even if he can guarantee this, employees' interests will still not be protected, since the MTRCL will put shareholders' interests first in its future development. If the MTRCL needs to increase its income and cut expenditure in order to launch some new projects, it will reduce unnecessary expenditure. In that case, staff benefits may be the first to get the axe.

For this reason, I hope that Members who care about employees' welfare will oppose the privatization of the MTRC, since the greatest risk of privatization is that the corporation will put shareholders' interests first and the welfare and interests of staff will not be protected.

To conclude, Madam President, if the MTRC's privatization can be successfully implemented, it might bring about some harmful effects. Therefore, I hope that the Government can give us a guarantee and tell us how the public interest can be protected.

Madam President, I so submit.

**MISS CYD HO** (in Cantonese): Madam President, I rise to speak on behalf of the Frontier against the Second Reading of the Mass Transit Railway Bill.

In fact, at the deliberation stage, the Legislative Council received many expert opinions and held consultation. According to the opinions received, the MTRC of Hong Kong is better than the underground railway system of other cities in terms of service, efficiency and quality. Well, Members may ask: Why is there still a need to change under these circumstances? The Financial Secretary has told us in advance in his last Budget that, in the face of deficits, it will bring the Government an income of \$30 billion if the MTRC goes public. We are not without other alternatives that can fill the shortfall. The Government still has huge reserves, but we are reluctant to use them. Is it worthwhile for us to make such a big gesture to change the mode of operation of the MTRC so that the future travelling expenses of the public will be fundamentally affected?

Earlier many colleagues mentioned that once the MTRC is listed, it is unlikely that its fares will not rise under commercial pressure because it needs to achieve a balanced budget within a short period of time. This has worried many of my colleagues. On the other hand, some colleagues are of the view that if fares are to be regulated by the Legislative Council that is political by nature, the credit rating of the MTRCL will be affected. These two situations are definitely what we do not hope to see. We agree that a business must be able to break even. Fares must be adjusted in line with inflation; otherwise, the business will be wound up in 20 years, if not in 10 years. A company, therefore, must achieve a balanced budget in order to remain in business.

However, listed companies lack flexibility. A listed company is required to publish its performance every year and, in doing so, its stock prices will fluctuate. This company is therefore under great pressure which forces it to adjust its fares periodically in the short term. In the past two years, we could see that Hong Kong underwent an economic depression and a financial turmoil. During this period, the public have demonstrated low affordability. But since the MTR is wholly owned by the Government, it enjoys the flexibility to freeze its fares. Now that the MTRC has not yet been listed, there is no fluctuation of stock prices. This is an advantage of our existing mode, for the public are not required to shoulder additional burdens in times of hardship. However, the shortfall can be recovered later when the economy improves. What a listed company definitely lacks is room and flexibility of doing it. The advantage of the existing operation mode of the MTRC lies in the fact that its efficiency and quality are maintained in accordance with commercial principles. On the other hand, the MTRC will not try to reap staggering profits by raising its fares indiscriminately. This is why we can be more at ease for the time being.

Madam President, I also disagree that the fares of the MTR should be subject to the approval of this Council. This will actually exert much political pressure on a listed company. If the fares of the MTR were required to be approved by us, what should we do with respect to other public services? Is it necessary for the charges of all public services to be approved by the Legislative Council once every year or every two years as well? In that case, the Legislative Council will only be specially responsible for approving increases of public charges and we will then need to politicize our meetings each time we meet. This is really not what we want to see. I also understand that the credit rating of the MTRCL, as a listed company, will be affected if it is required to seek this Council's approval on each fare increase. Hence, if the Government insists on its privatization decision and holds onto its proposal of determining fares by commercial pressure, it can hardly blame our colleagues for choosing the lesser of the two evils, that is, they prefer taking the fare increase proposal back for politicized approval and allowing this Council to retain the power so as to prevent the MTRCL from raising fares drastically as a result of excessive commercial pressure.

Madam President, the second reason for our objection to the privatization of the MTRC is that the role played by the Government will become very confusing. The Government is now responsible for planning traffic policies. It can make planning for roads, develop new towns, influence the mobility of the population and approve franchises for other modes of public transport. Every single step it takes in determining every policy can have a direct or indirect impact on the profit or loss of the MTR operation. Nevertheless, the Government is wearing many hats at the same time. It is both a policy maker, a major shareholder and a regulator. Whether it offers compensatory payment to the MTRC or collects money from the MTRC as a penalty, it can hardly avoid confusing its roles. Although the Government is currently playing various roles, one point is, relatively speaking, crystal clear: The MTRC is still wholly owned by the Government, whether it is making profits or incurring losses. There is no conflict of interests and the public can put their hearts at ease in this respect. But after the listing of the MTRC, will the Government actually act as a shareholder to protect the interests of the small shareholders or be accountable to the general public of Hong Kong as an executive organ to administer Hong Kong? I recall in a meeting held for the scrutiny of the Bill, a representative of the MTRC sighed with regrets in responding to Members' questions that the Government was wearing many hats at the same time. This is very important as even a representative of the MTRC made such a remark. It is indeed

inappropriate for fares of the listed MTRCL to be regulated by the Legislative Council. Nevertheless, after privatization, the Corporation will be under tremendous commercial pressure to raise fares. This will in turn add to the burdens of the public.

In attending a meeting to answer Members' questions, the consultant commissioned by the Government to study the privatization of the MTRC once remarked that we seemed to have lots of worries. He also raised the question as to whether we really intend to give this Council so much power for approving or monitoring this and that. After that, he told us that even if the legal framework is endorsed, the Legislative Council could still propose or enact a new piece of law to regulate the mechanism if Members find anything wrong a few years after it has been put into operation. Members present at that time were all stunned because the consultant did not realize that it has been stipulated in Article 74 of the Basic Law that the Legislative Council is not allowed to propose a bill that would affect public policies, public expenditure and so on. Hence, I understand that some Members are trying to take advantage of the Government's proposal of the Bill to strengthen the power of the Legislative Council as far as possible or "to grasp as much as possible", so to speak. From this we can see that a legislative organ will still be on guard after the implementation of privatization plans in foreign countries. This is not applicable to Hong Kong for many colleagues dare not let go. As none of my colleagues dare to let go for fear of jeopardizing the commercial principle of privatization and subsequent failure of the privatization scheme, why do we not keep the status quo?

Some colleagues have just mentioned that the MTRC, if listed, will offer a quality stock and provide us with a highly reliable investment vehicle subsequent to the implementation of the Mandatory Provident Fund Scheme. However, there will be a prerequisite that all of us will buy the shares. What about those who are not interested in investing in stocks? These people will then need to pay a high price. Perhaps even families receiving Comprehensive Social Security Assistance (CSSA) need to buy the shares as well. We will then blame these families for buying the shares and subsequently ask for a reduction in CSSA payment. Eventually, the whole community will be divided into two halves — shareholders and non-shareholders. Those who are reluctant or unable to enter the stock market will be required to pay a higher price in terms of travelling expenses. This is something I do not want to see.

Finally, I have to inform Members of the decision made by Honourable colleagues from the Hong Kong Federation of Trade Unions (FTU). We have to attach importance to not only the interests of workers but also the interests of the general public. I therefore hope that Members from the FTU can seriously consider the overall impact of the listing of the MTRC on the public. I hope they will eventually object to the listing. Thank you, Madam President.

**MR FUNG CHI-KIN** (in Cantonese): Madam President, before I express my views, I should like to declare an interest. I am a board member of an investment bank and also a securities dealer, so if the MTRC were listed company, that would mean business for me.

With regard to the listing of the MTRC, Madam President, I have heard many Honourable Members make their points and I should like to raise several of mine here. In my opinion, we should not see this proposal of the Government to privatize and quote the MTRC as simple and pessimistic as an attempt to realize the asset to help resolve the fiscal deficit problem. Certainly, in these two years since the regional financial turmoil, Hong Kong has been living beyond its means. In the face of the heavy financial pressure, the Government cannot generate additional revenue by way of drastic tax increases, nor can it cut back on the various expenses within a short period of time. Nevertheless, although the Government has eventually incurred the problem of a deficit budget, it definitely does not need to adopt such a pessimistic measure as realizing its assets. I have even heard some Honourable Members talking about what would happen if the assets of the Government were all sold. Actually, even if the assets should all be sold, they would become part of the fiscal reserves which is also a kind of monetary asset. The Government is not selling out the assets and give away all the money earned to other people.

On the other hand, if we could turn the public financial resources into better uses, we could realize the assets concerned and put the income into other more needy or more urgent areas. In order to cater for the best interests of the public as a whole, the Government must make such kind of considerations. Moreover, it is possible that our resources may generate better returns this way. As such, it really surprises me to hear some Honourable Members talking about their concern that the MTRC would be introducing fare increases without being subject to any form of regulation. If any fare increases introduced by the MTRC would be impacting on the public interest, then viewing from another

perspective, the government subsidy provided for a publicly-run MTRC could likewise be considered as being detrimental to both the interest of the people as a whole and the public coffers. The results in the end will just be the same, for in any case public interest will be adversely affected since there would not be any return on the continuous subsidy provided by means of the public fund.

Furthermore, there is yet a greater meaning to the listing of the MTRC. As already pointed out by some Members, it may perhaps be a golden opportunity for investors to buy in the shares of the MTRC. Naturally, there are also other Members who fear that the public might be encouraged to invest in stocks and securities, and thereby adding bubble elements to the economy again. However, we, as participants of the financial markets, believe that the listing of the MTRC could serve as a kind of adjustment and help to improve the present situation of the securities market which has focused exceedingly on financial and property stocks. Certainly, the property stocks are not so popular these days, as investors are now interested in the technology stocks which are more speculative in nature — yet, Madam President, some of the technology stocks should be in quotation marks. At present, the market needs to offer stocks that are of longer terms and more stable in nature, so as to appeal to investors who look for long-term and more stable return on their investments. These investors, including not only the local investors but also many others from overseas, all wish to invest in such kinds of stocks, naturally they would wish to have more choices. I dare not comment on whether this is a good time for listing; nevertheless, upon listing, the MTRC could at least have the chance to expand its investment portfolio in the secondary market. This is one point which is conducive to both the expansion and the healthier development of the securities market in Hong Kong. Apart from that, upon listing, the MTRC must operate in a more efficient manner and improve its services. Unless better social effects could be achieved, it would not be able to generate better returns for the shareholders.

Whether during the meetings of the Bills Committee or at this meeting today, I have heard many Members expressing their concern over the protection for the people as a whole and the public interest. I should like to point out that it is not upon the listing of the MTRC that its fare increase proposals are not subject to any regulation. I think we should see some of the issues the other way round. The fare increase proposals made by the MTRC at present are not subject to any regulation either, we are just hoping that this mechanism will not be changed. It is incorrect to say that the present fare increases introduced by

the MTRC are subject to regulation but will not be so upon listing. I think we need to make this concept very clear. Moreover, as far as I understand it, the Government has also promised that within a certain period after the listing of the MTRC, it would not reduce the amount of the Corporation's shares in its hands to less than 50%. In this connection, I am sure the Government would take into full account its two different roles and strike an appropriate balance between them. On the other hand, the MTRC does not have any franchise to monopolize the market but have to face competition from many directions. In particular, given the considerable distance between the Mass Transit Railway (MTR) stations underground and the road surface we need to cover, sometimes we do feel that it is too troublesome to ride the MTR. At present, many modes of public transport are both comfortable and capable of offering point-to-point services. In view of these many efficient choices, we really do not need to worry too much about the MTRC becoming a franchised monopoly.

Some Members have also expressed concern over the employee benefits of the MTRC staff in the future. In this connection, I feel that if employees should fear that upon listing the MTRC might resort to layoffs in order to cater for the interests of shareholders, they are in fact telling me that there are many redundant staff in the MTRC before listing, otherwise they would not be worrying about massive layoffs. I believe things would not develop in this way. So long as the present operation of the MTRC is sound, such kind of worry is really unnecessary. As regards concern for the situations in the longer term, I still do not think we should have any of such worries. Given that society is always developing, we would be worrying too much if we should raise such issues at this stage. Actually, even if the Government had not put forward this listing proposal, we Members of this Council would still be exerting pressure on the Government to require it to explain how the productivity of resources could be enhanced and how the efficiency of the Civil Service could be further enhanced. So, the MTRC does not need to wait until after listing to be faced with the problems concerned. For these reasons, I do not think the problems concerned should be linked directly with the listing of the MTRC. We really do not need to worry too much about these issues. Hence, as a member of the financial services industry, I support the listing of the MTRC.

With these remarks, I support the Second Reading of the Bill. Thank you, Madam President.



**SECRETARY FOR TRANSPORT** (in Cantonese): Madam President, in March last year, the Financial Secretary announced in his Budget speech the intention of the Government to privatize part of the shares of the MTRC. In the past year, the Government, the MTRC and the financial consultants of the Government actively mapped out plans for the privatization exercise. The Mass Transit Railway Bill serves as the legal basis for this cause. The Bill comprises 10 parts. It mainly provides for: (1) the grant and extension of the franchise to operate the MTR network; (2) the regulation of the operation of the railway under the franchise; and (3) the vesting of the whole of the property, rights and liabilities of the MTRC in a company established under the Companies Ordinance, known as the MTRCL operated under a franchise.

The Mass Transit Railway Bill was tabled at the Legislative Council on 13 October last year. A Bills Committee chaired by the Honourable Mrs Miriam LAU has held 15 meetings to conduct detailed and in-depth studies of the Bill. Financial experts, credit rating agencies, international railway experts, academics, the Consumer Council as well as three trade unions of the staff of the MTRC have been invited to appear before the Bills Committee to express their views on the Bill and the privatization of the MTRC. Thanks to the endeavours and dedication of Mrs Miriam LAU and other members of the Bills Committee, the Second Reading debate of the Bill can be resumed today. Here, I wish to express my heartfelt gratitude to them.

In the course of the scrutiny of the Bill, the Government has proposed a number of amendments which are purely technical in nature, and Members have also presented many constructive views on the Bill. In response to Members' proposals, the Government has prepared a total of 15 Committee stage amendments in consultation with the Bills Committee to further refine the Bill. I hope that Members will support these amendments later on.

In the meantime, Members have proposed a total of 18 amendments which mainly focus on the regulation of the MTR fares after privatization. While I will expound the views of the Government on the fare mechanism at the Committee stage, I wish to take this opportunity to briefly explain the several major principles to which the Government adheres in respect of the privatization of the MTRC.

The Government observes three major principles in respect of the privatization of the MTRC. Firstly, it is hoped that the existing fare setting mechanism can be maintained after privatization for this mechanism has proved effective over the past two decades and has brought practical benefits to passengers. Secondly, a set of stringent and transparent passenger service benchmarks shall be drawn up to ensure the continued provision of quality railway services for the public. Thirdly, market competition will be fully capitalized and the existing consultation mechanism further improved to ensure that public acceptability will be taken into full consideration before the MTR fares are determined.

I wish to particularly emphasize that the Government will remain as the majority shareholder of the MTRCL for at least 20 years after the privatization. To wit, the Government's shareholding in the MTRCL and its voting right in the MTRCL's general meeting will be no less than 50%. We consider that in retaining the Government's majority shareholding in the MTRCL, the Government's commitment to the ongoing development of the railway system is thus reflected. It can also demonstrate to both local and overseas investors, and even credit rating agencies, the Government's determination to support the MTRC in its continuing role in the provision of quality railway services and expansion of transport infrastructures in Hong Kong.

The Government's support to the MTRC is a crucial factor for the Corporation to be able to maintain its credit ratings at the same level as the Government's, which helps pare down the Corporation's cost of borrowing. Furthermore, the issuance of the MTRC notes with a repayment period as long as 10 years also rely on the Government's majority shareholding status in the MTRC and a high credit rating of the Corporation. Therefore, the Government's continued majority shareholding is of paramount importance to the MTRC in terms of its present and future access to borrowings.

I appreciate some Members' concern about the Corporation's possible departure from its existing prudent and reasonable fare setting policy if the Government shall cease to be its majority shareholder. Should the Government intend to reduce its shareholding in the Corporation to below 50% in the distant future, it must be confident that the Corporation, in setting the MTR fares, will certainly take into full consideration passengers' acceptability of the fares and public interest.

Let me say a few words about the background of the privatization. In the early 1970s, the Government was vigorously committed to developing a mass transit railway system in Hong Kong. Given that the development of underground railway is a major infrastructure project with massive capital outlay and a long payoff period, coupled with the substantial initial debt that the project entailed, it was impossible for any consortium to take up the project on its own at the time. For this reason, the MTRC, a company wholly owned by the Government, was established in 1975. After 25 years of development, the railway system operated under the MTRC is now among the most efficiently run railway systems in the world. Its solid financial performance and sound corporate management have earned the MTRC credit ratings identical to the sovereign rating of the Government of the Hong Kong Special Administrative Region. Given that the MTRC is absolutely in a position to gain access to equity through commercial borrowings for the purpose of operating and expanding its railway network, the justifications for the 100% government ownership of the MTRC are no longer valid.

The Government firmly believes that the privatization of the MTRC can be beneficial to the various sectors of the community in many ways. First, a successful privatization exercise can honour the Government's commitment to a free market economy. Second, the Initial Public Offering of the MTRC will provide a golden opportunity for public investment, not speculation, in a quality and well-managed company. Third, the introduction of private ownership in the MTR will help enhance the accountability and supervision of the management of the Corporation. The MTRCL will be able to track market discipline closely and adhere to prudent commercial principles in its operation, which will greatly reinforce the quality of its services. Fourth, the privatized Corporation can gain access to equity in the capital market, thus obviating reliance solely on government capital injection or loans. With broadened sources of funding, the MTRCL can play a more active role in the transport infrastructures in Hong Kong. In the meantime, the valuable resources which would otherwise be used for railway projects can be diverted to other public services. Fifth, the listing of the MTRCL, which is a quality and heavily capitalized company, will add stability and diversity to the Hong Kong stock market, and help buttress Hong Kong's status as an international financial centre.

Madam President, I commend this Bill to Members of the Legislative Council. Thank you.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the Mass Transit Railway Bill be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Miss EMILY LAU rose to claim a division.

**PRESIDENT** (in Cantonese): Miss Emily LAU has claimed a division. The division bell will ring for three minutes.

**PRESIDENT** (in Cantonese): Will Members please proceed to vote. (*Members present were talking among themselves*)

**PRESIDENT** (in Cantonese): Are the voting buttons not illuminating? They should be ready now.

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

Mr Kenneth TING, Mr James TIEN, Mr David CHU, Mr HO Sai-chu, Mr Edward HO, Mr Albert HO, Dr Raymond HO, Mr LEE Wing-tat, Mr Martin LEE, Mr LEE Kai-ming, Mr Fred LI, Dr LUI Ming-wah, Mr NG Leung-sing, Prof NG Ching-fai, Miss Margaret NG, Mrs Selina CHOW, Mr Ronald ARCULLI, Mr MA Fung-kwok, Mr James TO, Mr CHEUNG Man-kwong, Mr HUI Cheung-ching, Miss Christine LOH, Mr CHAN Kwok-keung, Miss CHAN Yuen-han, Mr Bernard CHAN, Mr CHAN Wing-chan, Mr CHAN Kam-lam, Dr LEONG Che-hung, Mrs Sophie LEUNG, Mr Gary CHENG, Mr Andrew

WONG, Dr Philip WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Mr Howard YOUNG, Dr YEUNG Sum, Mr YEUNG Yiu-chung, Mr LAU Kong-wah, Mr LAU Wong-fat, Mrs Miriam LAU, Mr Ambrose LAU, Miss CHOY So-yuk, Mr Andrew CHENG, Mr SZETO Wah, Mr Timothy FOK, Mr LAW Chi-kwong, Mr TAM Yiu-chung, Mr FUNG Chi-kin and Dr TANG Siu-tong voted for the motion.

Miss Cyd HO, Mr LEE Cheuk-yan, Mr LEUNG Yiu-chung, Mr LAU Chin-shek and Miss Emily LAU voted against the motion.

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

THE PRESIDENT announced that there were 55 Members present, 49 were in favour of the motion and five against it. Since the question was agreed by a majority of the Members present, she therefore declared that the motion was carried.

**CLERK** (in Cantonese): Mass Transit Railway Bill.

Council went into Committee.

### **Committee Stage**

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

### **MASS TRANSIT RAILWAY BILL**

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Mass Transit Railway Bill.

**CLERK** (in Cantonese): Clauses 1, 3, 10, 11, 12, 16, 17, 22 to 26, 31, 32, 33, 36 to 40, 42 to 47, 49, 50, 52, 55, 56, 58, 60, 61 and 64.

**CHAIRMAN** (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Clauses 2 and 4.

**CHAIRMAN** (in Cantonese): The Secretary for Transport and Mr LAU Chin-shek have separately given notice to move amendments to the definition of "operating agreement" in clause 2 and to clause 4(2).

Committee now proceeds to a joint debate. I will first call upon the Secretary for Transport to move his amendments, as he is the public officer in charge of the Bill.

**SECRETARY FOR TRANSPORT** (in Cantonese): Madam Chairman, I move the amendments to the definition of "operating agreement" in clause 2, and consequential amendments to the provisions on the operating agreement in clause 4, as set out in the paper circularized to Members.

The Government has taken on board the valuable views of the Bills Committee and agreed to propose these amendments to ensure that only the Secretary for Transport is empowered to enter into an operating agreement with the MTRCL on behalf of the Government. These amendments have received the support and approval of the Bills Committee.

I urge Members to support the Government's amendments.

*Proposed amendments*

**Clause 2 (see Annex I)**

**Clause 4 (see Annex I)**

**CHAIRMAN** (in Cantonese): I will call upon Mr LAU Chin-shek to speak on the amendments moved by the Secretary for Transport as well as his own amendments, but I will not ask Mr LAU Chin-shek to move his amendments unless the Secretary for Transport's amendments are negatived. If the Secretary for Transport's amendments are agreed, that will by implication mean that Mr LAU Chin-shek's amendments are not approved.

**MR LAU CHIN-SHEK** (in Cantonese): Madam Chairman, in connection with the Operating Agreement (OA) to be executed between the Government and the Mass Transit Railway Corporation (MTRC), I will propose an amendment by adding provisions to enable the Legislative Council to amend the clauses of the OA by resolution.

My amendment in fact will not hinder the process of concluding the OA by the Government and the MTRC, nor will it hamper the implementation and execution of the OA as agreed by both parties. My amendment incorporates a power to make additions, or a power to make up, that is to say, when most of the Members of the Legislative Council agree that there are deficiencies in the existing OA, they can make amendments and additions by resolution to raise the quality of the services of the MTR and enhance the accountability of the MTRCL to the general public. I believe the Legislative Council will not invoke this power frequently even if it is given this power, and even if Members propose any amendment, it will be very difficult for it to be passed in this Council.

Some critics indicate that since the OA cannot be concluded without the consent of the MTRCL, it is beyond all reason that the Legislative Council be given the power to modify it unilaterally. However, insofar as the monitoring of public utilities is concerned, there are precedents of similar regulations in the Public Bus Services Ordinance. Pursuant to the Ordinance concerning the regulation of public bus services, a franchised bus company must submit a "5-year development programme" to the Secretary for Transport and in the event that the bus company and the Secretary for Transport fail to reach a consensus on the contents of the "5-year development programme", the Secretary for Transport has the power to intervene and make provisions in respect of the "5-year development programme" of the bus company unilaterally and the bus company has a statutory obligation to execute the decisions made by the Secretary for Transport.

I believe that in ensuring performance of public utilities, the law must retain a last "resort" in public interest to ensure that public utilities must provide reasonable services.

Madam Chairman, I hope that Members will oppose the Secretary's amendments and support the amendments to be proposed by me later on. Thank you.

**CHAIRMAN** (in Cantonese): Members can now debate upon the amendment proposed by the Secretary for Transport and Mr LAU Chin-shek's amendment.

**MR HOWARD YOUNG** (in Cantonese): Madam Chairman, this amendment deals with the OA. As we all know, at the Bills Committee, we have discussed on various occasions how to regulate and monitor the listed or privatized MTRCL so that it can provide services of a standard to the satisfaction of the public, thereby achieving the purpose of this Bill. However, the Secretary for Transport and Mr LAU Chin-shek have made different proposals. One of them suggests that the Government should exercise control over it, which has legally binding effect to my understanding. In the event that it breaches the agreement, the Government can impose penalties on it or even revoke its franchise to the extent permitted by law. In case one more party is involved, allowing intervention by the Legislative Council, I can understand that Mr LAU Chin-shek seeks to make this Council the gatekeeper. I worry that if I were the operator who had entered into an agreement, should there be some amendments to its content or a need for me to give any explanation, at least I would have a



"say", I would be able to talk to the Government and I would know where to start. In the case of the Legislative Council, of course the Council has its relevant panel and there is a chairman on the panel. The chairman usually chairs a meeting and does not necessarily represent all members of the panel. In this case, if in the future the operator says he is going to hold a discussion about the relevant subject, is it necessary to require the presence of all the 60 Members or attain a sufficient number of 31 votes before one is aware of one's own position? I worry that this will really cause great trouble. The Liberal Party, therefore, supports the amendments proposed by the Transport Bureau and the Government and opposes Mr LAU Chin-shek's amendments.

**MR ALBERT HO** (in Cantonese): Madam Chairman, we have carefully considered Mr LAU Chin-shek's opinions. Of course I agree that even if we are vested with this power, the Legislative Council will not necessarily exercise it rashly. However, if we stipulate in law that the Legislative Council has the power to modify this agreement unilaterally, then the Legislative Council will become part of a signatory or even possess an overriding power so that in view of the whole framework, it seems that the Legislative Council is playing a role which has almost become the role of an operator. We might need constant participation or might even have to participate in laying down new conditions. The situation will then become rather obscure so that the operators or potential investors really do not know with which party they would sign an agreement. Of course I understand the situation and I agree with what Mr LAU Chin-shek has said, that is, the Legislative Council is playing a supervisory role, but in my opinion, even though the role is supervisory, it should be set out and restricted more specifically within a framework, which is acceptable to the Democratic Party. First, we think the benchmarks of operation should be incorporated into the schedule of the ordinance; second, regarding the fare, we think we should play a more active role, which is acceptable to us. So if we should play a role, I would rather it be incorporated into the OA, that is to say, under what circumstances will the Legislative Council exercise supervision. But if the Legislative Council is allowed to modify the OA unilaterally, that will be excessive premacy to render the contract meaningless. I am therefore sorry that we can hardly support Mr LAU Chin-shek's proposal. As to the proposal made by the Secretary for Transport, we have held discussions and we consider it necessary to have a public officer oversee the OA; otherwise, if other public officers and the MTRC have entered into any correspondence or have reached some agreement that has become part of the OA, it will become very complicated, so what is the OA after all? As the OA is part of the franchise, this will give rise to ambiguities with the terms of the franchise itself. Hence, I consider the

amendments by the Secretary for Transport necessary and we will support the Government's amendments. Thank you.

**CHAIRMAN** (in Cantonese): Secretary for Transport, do you wish to speak in reply?

**SECRETARY FOR TRANSPORT** (in Cantonese): Madam Chairman, clause 9 of the Bill expressly provides that the MTRCL shall maintain a proper and efficient service during the franchise period in accordance with the provisions of the Bill and the OA. The OA clearly defines the rights conferred on and the obligations required of the MTRCL on acceptance of the franchise. The OA is similar to franchise agreements with buses, ferries and tunnel companies in nature and is a legally binding document.

In the Bills Committee, the Government has made a clear undertaking to Members to report to the Legislative Council Panel on Transport on any amendments to the OA. This arrangement will enable the Legislative Council to fully exercise its monitoring function. Therefore, we consider it unnecessary and inappropriate to empower the Legislative Council to modify the franchise at any time it so wishes. I urge Members not to accept Mr LAU Chin-shek's amendments and vote in support of the amendments moved by the Government.

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

(Members raised their hands)

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

(Members raised their hands)

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

**CHAIRMAN** (in Cantonese): As the amendments moved by the Secretary for Transport have been passed, Mr LAU Chin-shek may not move his amendments which are inconsistent with the decision already taken.

**SECRETARY FOR TRANSPORT** (in Cantonese): Madam Chairman, I move the amendment to the definition of "extension" in clause 2, as set out in the paper circularized to Members. This is a technical amendment to give greater clarity to the clause. The amendment has received the support and approval of the Bills Committee. I urge Members to support the Government's amendment.

*Proposed amendment*

**Clause 2 (see Annex I)**

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Clause 2 as amended.

**CHAIRMAN** (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

**SECRETARY FOR TRANSPORT** (in Cantonese): Madam Chairman, I move the amendment to clause 4(1), as set out in the paper circularized to Members. This is a necessary consequential amendment in the light of the amended definition of "extension" as passed by Members earlier on. This amendment has received the support and approval of the Bills Committee. I urge Members to support the Government's amendment.

*Proposed amendment*

**Clause 4 (see Annex I)**

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Clause 4 as amended.

**CHAIRMAN** (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Clause 5.

**MR LAU CHIN-SHEK** (in Cantonese): Madam Chairman, I move that clause 5 be amended, as set out in the paper circularized to Members. This amendment provides that the Executive Council must obtain the consent of the Legislative Council if it needs to approve an extension of the franchise of the Mass Transit Railway Corporation Limited (MTRCL) in future.

If this Bill is approved today, it means that the Legislative Council approves granting to the MTRCL of a franchise for a term of 50 years, and after half a century, in principle all the assets and services of the MTRCL will automatically revert to the Government. I believe that a franchise period of 50 years is already very long. As to the issue after 50 years, it must be left to the general public to make a decision on it.

Since this Council today shall make the decision of granting the MTRCL a 50-year franchise, I think any extension of the franchise in the future should first obtain the approval of this Council as well. It is not appropriate for the Legislative Council to sign a "blank cheque" today so that in future the Executive Council can unilaterally determine to extend the franchise of the MTRCL indefinitely.

If we refer to the existing law regulating other franchised bodies, the situation will be more obvious. Currently, public utilities which have been granted franchises by law, including the Eastern Harbour Crossing, Western Harbour Crossing and Tate's Cairn Tunnel, have a franchise period of 30 years as required by law and thereafter they have no choice but to transfer the franchised operation to the Government unless this Council has enacted a new law making new provisions. In addition, I believe we all know that the existing law also provides that if the Government should set up a "trading fund" operation, then it must have the approval of this Council by resolution irrespective of setting up or terminating any "trading fund". Obviously, the Legislative Council will retain the final right of approval, which is necessary and reasonable.

I have to reiterate that subjecting any future extension of the franchise granted to the MTRCL to the approval of the Legislative Council will not affect the operation of the MTR in the next 50 years at all. I hope Honourable colleagues will support my amendment.

With these remarks, I propose the relevant amendments.

*Proposed amendment***Clause 5 (see Annex I)**

**MR HOWARD YOUNG** (in Cantonese): Madam Chairman, regarding the extension of a franchise, in addition to the MTR, other transportation systems such as buses, ferries and tunnels are regulated by their respective ordinances.

**CHAIRMAN** (in Cantonese): Mr YOUNG, please put on the microphone.

**MR HOWARD YOUNG** (in Cantonese): Let me start with the buses and ferries. To my understanding, they also have a monitoring mechanism; that is, any extension of franchise is also subject to the approval of the Chief Executive in Council. In regard to the case with tunnels mentioned by Mr LAU Chin-shek just now, according to our understanding, tunnels are slightly different. It is stipulated that the management of tunnels shall be returned to the Government beyond a time limit and so the question of extension does not exist. If extension should be necessary, then there will be a new law; in that case, we do not see any particularly convincing argument to support a special arrangement for the franchise of the MTRC alone. But we hope that the Government can explain clearly that if in the future the Government remains as a controlling majority shareholder and the Legislative Council has any comments as to the extension and transfer of the franchise, then the Government must account to the relevant panel of the Legislative Council as is the case with the Government's undertaking in other projects. We in the Liberal Party will not support this amendment.

**MR ALBERT HO** (in Cantonese): Madam Chairman, I state our stance on behalf of the Democratic Party. We can hardly support this amendment made by Mr LAU Chin-shek. In fact, very often we adopt the same stance as Mr LAU Chin-shek, but in regard to the points raised by him just now, we have had a thorough debate. Although the reasons given by Mr LAU Chin-shek just now are convincing to some extent, we find that one of the questions involved is whether this Council should play a certain role regarding the examination of franchises. Our consideration is based on this principle. Considering the situation on the whole, if a council is involved in the functions of approving a

franchise, we might be facing a lot of choices. For example, the question of whether the franchise of the MTRCL should be extended might then involve the question of whether there are other bidders who are interested. In that case we will need to make a comparison between extension and non-extension to see how many choices there are. Every choice will involve many considerations of commercial interests, which not only include its operational efficiency, business projects and service programmes, but also some complicated overall economic factors that require consideration. Should this Council actually take up these administrative responsibilities? This is what we are concerned about. In that case, we wonder whether this Council should play such a role in relation to the future extension or even transfer of the franchise. This role is responsible for approval. I consider it a heavy burden to be shouldered by an executive body. So after internal debates, we find this improper in principle. As I have said, the Legislative Council has set a number of affordable limits in respect of the regulation of the whole public utility. For example, we can make use of a simple approval mechanism in respect of the fare. As we usually see that the Panel on Transport is accustomed to consultation, we know which indicators must be taken into consideration. This is what we are more familiar with, but once the approval of the franchise is involved, it will be an over-complicated issue indeed. Hence, after debate, we end up finding it inappropriate to support this amendment.

**CHAIRMAN** (in Cantonese): Secretary for Transport, do you wish to speak?

**SECRETARY FOR TRANSPORT** (in Cantonese): Madam Chairman, given that the MTR involves massive investment with a payoff period as long as 40 or 50 years, it is necessary to put in place a mechanism to enable the franchise of the MTRCL to be extended provided that the MTRCL can meet certain capital investment requirements. This will be an incentive to the MTRCL to continue its investment for the improvement and expansion of the MTR system. The Bill provides that the MTRCL may apply to the Chief Executive in Council for an extension of the franchise at any time but not later than five years before the expiry of the franchise. It is also provided in the Bill that the extension of the franchise must be approved by the Chief Executive in Council. This is an identical provision also contained in other ordinances regulating public transport operators, such as the governing ordinances for buses, ferries, tunnels, and so on. As the Government will remain as the majority shareholder with a controlling



stake in the privatized MTRCL, the Legislative Council can still put questions to the Government at any time at meetings of the Legislative Council or the Panel on Transport to address its concerns on the extension of the franchise. Moreover, the Government has also undertaken to consult the Legislative Council Panel on Transport through normal channels on matters relating to the extension of franchise. This arrangement should enable the Legislative Council to fully exercise its monitoring function. I urge Members to vote against the amendment.

**CHAIRMAN** (in Cantonese): Mr LAU Chin-shek, do you wish to reply?

**MR LAU CHIN-SHEK** (in Cantonese): Madam Chairman, after listening to Honourable colleagues' speeches, I would like to raise three points: First, regarding the role played by the MTR in public transport, I trust it is not comparable to other modes of transport; second, privatization is unprecedented and this is the first privatization programme in the public sector; third, what I wish to propose is that for the purpose of the franchise itself, in the event that 50 years later, the transferred shareholding is acquired by a single company or an individual, does it mean that the franchise need not be subject to our examination at all? I think Members must consider the matter over and over again. Thank you, Madam Chairman.

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

(Members raised their hands)

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

(Members raised their hands)

**CHAIRMAN** (in Cantonese): I think the question is not agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections and by the Election Committee, who are present. I declare the motion negated.

**CHAIRMAN** (in Cantonese): As the amendment moved by Mr LAU Chin-shek to clause 5 has been negated, Mr LAU Chin-shek has my permission to revise the terms of his amendment to clause 62 to be proposed later on.

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That clause 5 stand part of this Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Clause 6.

**MR LAU CHIN-SHEK** (in Cantonese): Madam Chairman, I move that clause 6 be amended, as set out in the paper circularized to Members. This amendment provides that in future if the Executive Council agrees to transfer the franchise of the MTRCL, it must submit proposals to the Legislative Council for approval before implementation.

I have moved this amendment for a very obvious reason. The current franchise of the MTRCL granted under this Bill is premised on the condition that the Government shall remain as the majority shareholder of the MTRCL in the foreseeable future and that the management and personnel of the MTRC will undergo a smooth transition to the new corporation and maintain the original style of work. But if one day another private company takes over the whole franchise of the MTRCL, it will certainly be a different picture from what this Council can imagine today.

For example, more than a month ago, the HK Yaumati Ferry Company Limited transferred its ferry service to the New World Group. Although it is said that the new company will still provide services in compliance with the conditions of the original licence, no doubt the new company will be different from the old company in terms of staffing arrangements, service attitude, development strategies and the difference may even be extreme.

In my opinion, if the franchise of the MTRCL is transferred, it will actually be a major amendment to the whole principle of the Bill that may be passed today. It is therefore beyond all reason that the transfer of the franchise is not subject to the decision of this Council other than the unilateral consent of the Executive Council. The original provisions of the Bill are in fact another "blank cheque". I hope that Members will support my amendment by vesting the Legislative Council with the power to set up a due checking mechanism.

Thank you.

*Proposed amendment*

**Clause 6 (see Annex I)**

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

(No Member indicated a wish to speak)

**CHAIRMAN** (in Cantonese): Secretary for Transport, do you wish to speak?

**SECRETARY FOR TRANSPORT** (in Cantonese): Madam Chairman, given that the extension of franchise requires the approval of the Chief Executive in Council, it is most reasonable that the transfer of the franchise should also require the approval of the Chief Executive in Council. Other ordinances governing public transport operators, such as those regulating buses, ferries and tunnels also contain an identical provision. I urge Members to vote against this amendment.

**CHAIRMAN** (in Cantonese): I now put the question tot you and that is: That the amendment moved by Mr LAU Chin-shek be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

**CHAIRMAN** (in Cantonese): I think the question is not agreed by a majority respectively from each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections and by the Election Committee, who are present. I declare the motion negatived.

**CHAIRMAN** (in Cantonese): As Mr LAU Chin-shek's amendment to clause 6 has been negatived, I now put the question to you and that is: That clause 6 stands part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Clause 7.

**MISS CHAN YUEN-HAN** (in Cantonese): Madam Chairman, I move that clause 7 be amended, as set out in the paper circularized to Members.

Madam Chairman, clause 7 of the Bill deals with the composition of the board of directors of the MTRCL. I will add part 2 to the original provision, specifying that one of the directors of the MTRCL shall be a staff representative directly elected by the employees of the Corporation.

Madam Chairman, regarding the composition of the board of directors of the MTRCL, we think a representative directly elected by the employees should be included on the board on the merit that the employees' views can go straight to the management. If the Mass Transit Railway Bill is passed today, I think the management of this huge mass transit system should have a representative reflecting the employees' views so as to perfect the services of the MTR. I would stress that this viewpoint is not invented by us, nor is it made especially for the Corporation. In some advanced countries, the similar practice of admitting a staff member into the board of directors is common. I hope Honourable colleagues can support my amendment. Thank you, Madam Chairman.

*Proposed amendment*

**Clause 7 (see Annex I)**

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

**MR HO SAI-CHU** (in Cantonese): Madam Chairman, I speak on behalf of the Liberal Party against this amendment. I find this amendment unnecessary because it is never expressly stipulated in law that a company, especially a company operating according to commercial principles shall specify who must join the board of directors. In fact, the law of Hong Kong does not forbid a company from admitting someone into its board. The question of who should join the board of directors of a company should simply be decided by that company's own shareholders rather than by legislation requiring that who can, who cannot or who must join the board.

In fact, there is no listed company providing public services in Hong Kong that requires that its staff representatives must join its board. Internationally, as in the United Kingdom and the United States, neither is there any international financial centre that will enact laws to require that a staff representative must join the board of directors. Of course, as Miss CHAN Yuen-han has just mentioned, some companies will appoint a staff representative to the board, but this is not a legal provision. That company might just think that there is such a need. The company can certainly do so, but we cannot stipulate in law or through amendments to laws to require that a company must do so.

Besides, we know that a staff organization of the MTR which is most representative (as that organization is formed by election, I find it most representative) — the MTR Corporation Staff Consultative Council, has expressed clearly to us its objection to this amendment. Since the employees have divergent views on the amendment, I think Members of the Legislative Council should not impose their own views on the 8 000 employees of the MTRC. In fact, in my opinion, if we appoint a staff representative to the board by force, it will not necessarily produce a good effect on the operation of the MTRC. What Miss CHAN Yuen-han has said is right. She said the practice might make the MTR do better. We have just heard that every Member thinks that the MTRC is a transportation corporation that is recognized worldwide as a well-run business. In that case, I do not consider it necessary to make this provision in law. If it is really necessary, it should be subject to that company's own discretion. I therefore oppose this amendment on behalf of the Liberal Party.

**MR ALBERT HO** (in Cantonese): Madam Chairman, in my opinion, the practice of admitting a staff representative into the board of directors will do no harm; instead, it will enhance communication between management and staff by providing a better channel for communication and boost the employees' sense of belonging to the Corporation. I find this a good thing. Although many Hong Kong companies do not stipulate in its memorandum and articles of association the system of having a staff representative on its board of directors, I feel that it is no bad deed to be a pioneer. In fact, many overseas companies have long established this system and most importantly, this staff representative does not play a decisive role and he is only one of a dozen directors. So I think that having a voice representing the employees on the board will enhance communication between management and staff. What I am concerned is in what way this staff representative will be chosen.

We know that apart from Miss CHAN Yuen-han's proposal, Mr LAU Chin-shek has also made another proposal. What is the difference between the two proposals? Miss CHAN's proposal requires that a staff representative shall be elected at a general meeting of shareholders. This is rather odd because under the general practice of Company Law, a general meeting of shareholders shall be entirely at liberty to decide whom they will choose. Thus it seems a bit strange to require that a general meeting must elect a representative from a certain social stratum. Currently, there is a characteristic in the composition of the MTRC, that is, there are several members on the board who come into office by appointment. We call them additional directors. These directors are determined by the Chief Executive in Council whereas Mr LAU Chin-shek has proposed to add a special additional director under this special system. This director shall be elected from among the employees themselves. I would think that this proposal goes well with the current situation of the MTRC. Since the MTRC has such a special system, we can make use of this special system to elect a staff representative and it is better for him to be elected by the Executive Council or the Chief Executive rather than imposing a restriction on the voting right of the general meeting of shareholders. In that situation, the Democratic Party has decided to support the amendment subsequently proposed by Mr LAU Chin-shek. As regards Miss CHAN Yuen-han's proposal, I do not find it inappropriate, but in principle I am not totally against it either. For this reason, the Democratic Party will abstain from voting.

**MR JAMES TIEN** (in Cantonese): Madam Chairman, the composition of a board of directors is mostly decided by investors or people who inject capital. Mr HO Sai-chu has spoken on behalf of the Liberal Party. I only wish to add a few words. Members seem to have some misunderstanding with this. They feel that if no staff representative is admitted into the board of directors, the employees' views will be completely neglected by the board. I do not think this is the case. To most businessmen, human resources are very important and companies will spend considerable resources on staff training and staff benefits. Directors of all major companies, be they independent directors or directors of the company, will spend much time discussing staff benefits and staff demands. They will usually hold meetings with their staff. It is not necessary to elect a staff representative onto the board for them to hold meetings with staff.

This example does not exist in the United Kingdom and the United States. Currently such case is found in a few European companies. The trade unions in these countries usually exert a strong influence or it might be that the company are caught in difficulties and compelled to undergo restructuring. For example, the United Airline of the United States has essentially been taken over by its employees. Staff representatives can certainly act as directors. In fact, I would like to point out that it is not necessarily the case that the composition of a board cannot have a staff representative. A board can appoint a staff representative, but it is not necessary to require by law that the employees shall elect a representative to the board. A board of directors or investors may also find that a certain staff representative will be useful to the operation of the board and appoint that representative to the board as a result.

**MR ANDREW CHENG** (in Cantonese): Madam Chairman, I just wish to say a few words about the voting inclination of the Hong Kong Federation of Trade Unions (FTU) towards the Mass Transit Railway Bill this time.

Last time when we examine the Bill for "scrapping of the Municipal Councils", I felt sorry for making Miss CHAN Yuen-han a bit unhappy on the question of whether the FTU stayed on the side of workers. However, this time around throughout the scrutiny of the Mass Transit Railway Bill, I see that Miss CHAN Yuen-han has taken a firm position in support of the grass roots, especially on the question of including a staff representative in the board of directors, she has strived to admit staff into the board. Just now Mr Albert HO has expressed the stance of the Democratic Party on this amendment. In fact, there are some disputes inside the Democratic Party and the reason for our abstention is purely technical. Under the existing Company Law, the practice



of requesting employees to directly elect a staff representative to a board is rather special indeed. We have therefore abstained from voting, but in principle we support the admission of staff representatives into the board of the MTRCL.

Miss CHAN Yuen-han has proposed a total of three amendments. At the resumption of the Second Reading, she mentioned two of the amendments, being the amendments currently identical to those of the Government. She said at the time that should these two amendments be passed, she would support the Third Reading, otherwise she would object it, but she had omitted this amendment. I hope that Miss CHAN Yuen-han can insist on striving for the admission of staff representatives into the board. If this amendment is not approved, would she please give serious consideration to opposing the Third Reading on behalf of the FTU, so that we can see that the FTU's concern for the admission of staff representatives into the board, criminal liability arising out of negligence and staff benefits represents the FTU's entire intention of proposing amendments to the Bill. Thank you, Madam Chairman.

**SECRETARY FOR TRANSPORT** (in Cantonese): Madam Chairman, on the proposal to include a directly-elected staff representative as a director of the MTRCL to facilitate employment relationship, we consider it unnecessary and inappropriate. The MTRC has always been on good terms with its employees, and the management has maintained effective communication with the staff side regularly through the existing channels. At the meeting of the Bills Committee on 4 January this year, the deputation from the MTR Corporation Staff Consultative Council expressly stated that adequate and candid communication had been maintained between the management and the staff side. At present, the statute book of Hong Kong contains no explicit provision stipulating the inclusion of directly-elected staff representatives on the board of directors of a corporation. As far as we know, none of the listed companies in Hong Kong comprises directly-elected staff representatives on the board of directors. The proposal on legislation for staff representation on the board of directors has obviously overlooked the concern of both local and overseas investors about possible attempts by the legislature to change Hong Kong's business culture through radical measures. In fact, the directors have a fiduciary duty to the company under the Companies Ordinance. They must act in the interest of the company as a whole and must not serve only for the interest of a small coterie. I urge Members to vote against this amendment.

**MISS CHAN YUEN-HAN** (in Cantonese): Madam Chairman, I wish to respond to the speeches made by Honourable colleagues and the Government on this amendment.

Mr HO Sai-chu said representatives of the staff of the MTRC had made representations to us regarding this amendment. In fact, two trade unions and a staff consultative council did make their views known to us. The staff consultative council that Mr HO expressly mentioned comprises some members appointed by the employer. I, however, do not wish to dwell on this point. On the day we listened to the views of the two trade unions, I repeatedly sought their views on our amendment. The two trade unions representing the staff side — I mean the trade unions, not the staff consultative council — opined that there should be staff representatives on the board of directors. So, I think they made their views abundantly clear on this point.

The concept I discussed just now was something that I learned when I took business administration. Colleagues from the Liberal Party also mentioned that this is a practice in some advanced countries and places that attach more importance to staff management. Some have legislated to that effect while some have not. Some even use the quality circle system. In the 1970s and 1980s, the United States advocated that system, which has since become an important topic in management studies. The main reason is that the quality circle includes staff representation. For example, the industrial safety committees that we have been talking about and the trade unions in the construction industry require staff participation. As society develops, we need to reflect the views of the staff at different levels. I hope Honourable colleagues can support us. This proposal is not our invention. But I think it is very important for the management of such a gigantic mass transit system to allow staff participation.

In addition, I would like to respond to the speeches of Members from the Democratic Party. I very much agree with Mr Albert HO. In fact, not only can staff representation on the board of directors facilitate the smooth operation of the Corporation as a whole. It will also enhance the sense of belonging of the staff. I think this is a very important premise. Regarding the technical problems that he mentioned in respect of clauses 7 and 8, I wish to stress that we put this amendment under clause 7 with a view to adding a new provision under clause 7 to specifically provide for the inclusion of staff representatives directly

elected by employees on the board of directors. I do understand that clause 8 is about appointed directors. I do not think there is any conflict between the two clauses and it is not difficult to make the arrangement. I hope they can support us.

On the point that Mr Andrew CHENG reminded me of just now, I have conducted consultations in that regard. Before I decided on my vote today, I had time and again listened to the views of the trade unions for I hope that our views are genuinely representative of the 8 000-odd employees. They are most concerned about clause 29 concerning the definition of negligent act and clause 41 concerning salaries, benefits and the salary review mechanism. In this connection, I asked them which of the three amendments should be considered more important. They responded that if one of the three amendments was not passed, I would have to vote against the Third Reading of the Bill. I will surely vote entirely from the position of the employees. However, the message that they put across to me was that clauses 29 and 41 are their major concerns. I thank Mr Andrew CHENG for his reminder.

Madam Chairman, I urge Members once again to support my amendment. Thank you.

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That the amendment moved by Miss CHAN Yuen-han be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Miss CHAN Yuen-han rose to claim a division.

**CHAIRMAN** (in Cantonese): Miss CHAN Yuen-han has claimed a division. The division bell will ring for three minutes.

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

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

Functional Constituencies:

Mr LEE Kai-ming, Mr CHAN Kwok-keung and Mr CHAN Wing-chan voted for the motion.

Mr Kenneth TING, Mr James TIEN, Mr Edward HO, Dr Raymond HO, Dr LUI Ming-wah, Miss Margaret NG, Mrs Selina CHOW, Mr Ronald ARCULLI, Mr HUI Cheung-ching, Dr LEONG Che-hung, Mrs Sophie LEUNG, Dr Philip WONG, Mr Howard YOUNG, Mr LAU Wong-fat, Mrs Miriam LAU, Mr Timothy FOK and Dr TANG Siu-tong voted against the motion.

Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Mr WONG Yung-kan and Mr LAW Chi-kwong abstained.

Geographical Constituencies and Election Committee:

Mr LEE Cheuk-yan, Miss CHAN Yuen-han, Mr LEUNG Yiu-chung and Mr LAU Chin-shek voted for the motion.

Miss Christine LOH, Mr Andrew WONG, Mr David CHU, Mr HO Sai-chu, Mr NG Leung-sing, Prof NG Ching-fai, Mr MA Fung-kwok and Miss CHOY So-yuk voted against the motion.

Mr Albert HO, Mr LEE Wing-tat, Mr Martin LEE, Mr Fred LI, Mr James TO, Mr Gary CHENG, Dr YEUNG Sum, Mr LAU Kong-wah, Mr Andrew CHENG, Mr SZETO Wah, Mr TAM Yiu-chung, Mr CHAN Kam-lam and Mr YEUNG Yiu-chung abstained.

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

THE CHAIRMAN announced that among the Members returned by functional constituencies, 24 were present, three were in favour of the motion, 17 against it and four abstained; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 26 were present, four were in favour of the motion, eight against it and 13 abstained. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the motion was negatived.

**DR LEONG CHE-HUNG** (in Cantonese): Madam Chairman, pursuant to Rule 49(4) of the Rules of Procedure, I move that in the event of a division being claimed by a Member in respect of each of the other amendments to the Mass Transit Railway Bill, the Committee of the whole Council do proceed to the relevant division immediately after the division bell has rung for one minute.

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That in the event of a division being claimed by a Member in respect of each of the other amendments to the Mass Transit Railway Bill, the Committee of the whole Council do proceed to the relevant division immediately after the division bell has rung for one minute. Does any Member wish to speak?

(No Member responded)

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

(Members raised their hands)

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

(No hands raised)

**CHAIRMAN** (in Cantonese): I think the question is agreed by a majority respectively from each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections and by the Election Committee, who are present. I declare the motion passed.

**CHAIRMAN** (in Cantonese): I now order that in the event of a division being claimed by a Member in respect of each of the other amendments to the Mass Transit Railway Bill, the Committee of the whole Council do proceed to the relevant division immediately after the division bell has rung for one minute.

**CHAIRMAN** (in Cantonese): As Miss CHAN Yuen-han's amendment to clause 7 has been negatived, I now put the question to you and that is: That clause 7 stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Clause 8.

**MR LAU CHIN-SHEK** (in Cantonese): Madam Chairman, I move that clause 8 be amended, as set out in the paper circularized to Members. This amendment seeks to increase the number of additional directors that the Chief Executive may appoint from not more than three persons to not more than four persons, and to stipulate that these additional directors shall include a person nominated by employees of the Corporation through elections.

My proposed amendment is quite similar to the one proposed by Miss CHAN Yuen-han to clause 7 just now. However, I believe that by appointing an employee representative as an additional director, the situation where the shareholders of a private corporation are required by the Government at their Annual General Meeting (AGM) to appoint an employee representative as a director of the Corporation could be avoided. As a matter of fact, the additional directors to be appointed by the Chief Executive are obviously of a nature different from the directors elected at the shareholders' AGM. This is because the persons to be appointed by the Chief Executive should in principle be representatives of public interest rather than representatives of any of the shareholders' interests. As such, it is a reasonable measure to include in the additional directors a person nominated by employees of the Corporation through elections.

Perhaps some may raise questions about the role to be played by the employee representative as a director on the board. In addition to fulfilling the obligations and responsibilities of a director on the board, I believe his role would be very much the same as that of the other additional directors, which is to monitor the operation of the board of the MTRCL on behalf of the public. The only difference is that the employee concerned also has a responsibility to reflect the views of MTRCL staff and to ensure that their employee benefits would not be jeopardized.

On the other hand, there have also been views that we do not have any precedents for appointing an employee into the board of directors of any corporations. My response to these remarks is that we do not have in Hong Kong any precedents similar to the privatization of the MTRC either. So, there is nothing unreasonable about introducing an unprecedented measure.

Last but not least, I must point out that regardless of whether the amendments proposed in relation to respectively the criminal liabilities of MTRCL staff and the salary and benefit arrangements during the transfer process

would be passed later on, I believe that the system of ensuring the appointment of an employee representative into the board of directors would be an important guarantee of the employee's rights and interests. Without this guarantee, I just could not imagine how the MTRC staff would support the privatization of the Corporation.

With these remarks, I beg to move. Thank you.

*Proposed amendment*

**Clause 8 (see Annex I)**

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

**MR HO SAI-CHU** (in Cantonese): Madam Chairman, on behalf of the Liberal Party, I reiterate that we oppose the amendment. I have put forward my argument a moment ago, and I would like to respond to some views expressed by some Honourable Members just now.

A moment ago, Miss CHAN Yuen-han said some employees might have to participate in some organizations on behalf of the company. I can tell her that it is not a must for employees to join the board of directors. Very often, employees may join some groups, such as industrial safety group. In fact, it is very common to have representatives of employees in such kind of organization. However, to people who are conversant in economic and business operation like us, we worry that the Government may draft legislation to restrict the operation of the board of directors, the company or any party concerned. In the context of economic operation, we disagree with rigid stipulations restricting the way the company discharges its duties, because it will seriously disturb investors and internal operatives of the company. With these remarks, we oppose the amendment.

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

(No Member responded)



**SECRETARY FOR TRANSPORT** (in Cantonese): Madam Chairman, the Government is unequivocally opposed to the proposed inclusion of a staff representative in the board of directors by way of legislation. We have already explained our arguments when we responded to Miss CHAN Yuen-han's amendment to clause 7.

All the existing ordinances governing buses, ferries and tunnels have provided for the appointment of additional directors by the Chief Executive. I must point out clearly that Mr LAU Chin-shek's amendment, if passed, will empower the Legislative Council to reject the Chief Executive's nominations of additional directors. The system of additional directors is integral to the Government's supervision of public transport operations. So far, only government officials from the Transport Bureau and Transport Department have been appointed as additional directors. This system has been in place for years. It has never come to us that the legislature has any negative comments on the appointment of additional directors by the Chief Executive to the board of directors of various public transport companies. Mr LAU Chin-shek's amendment will give the legislature the power to overrule the decision of the Chief Executive in the appointment of additional directors, which will obviously undermine government regulation on the public transport sector. Moreover, the words "..... a person nominated by employees ..... through elections" as in Mr LAU's amendment cover an extensive scope. The director can be a member of the staff, but he can also be an outsider nominated by employees through elections. This is obviously undesirable. I urge Members to vote against this amendment.

**CHAIRMAN** (in Cantonese): Mr LAU Chin-shek, do you wish to reply?

(Mr LAU Chin-shek indicated that he did not wish to reply)

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

(Members raised their hands)

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

(Members raised their hands)

Mr LAU Chin-shek rose to claim a division.

**CHAIRMAN** (in Cantonese): Mr LAU Chin-shek has claimed a division. The division bell will ring for one minute.

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

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

Functional Constituencies:

Mr LEE Kai-ming, Mr CHEUNG Man-kwong, Mr CHAN Kwok-keung, Mr CHAN Wing-chan, Mr SIN Chung-kai and Mr LAW Chi-kwong voted for the motion.

Mr Kenneth TING, Dr Raymond HO, Mr Eric LI, Dr LUI Ming-wah, Miss Margaret NG, Mrs Selina CHOW, Mr Ronald ARCULLI, Mr HUI Cheung-ching, Dr LEONG Che-hung, Mrs Sophie LEUNG, Dr Philip WONG, Mr Howard YOUNG, Mr LAU Wong-fat, Mrs Miriam LAU, Mr Timothy FOK and Dr TANG Siu-tong voted against the motion.

Mr WONG Yung-kan abstained.

Geographical Constituencies and Election Committee:

Mr Albert HO, Mr LEE Wing-tat, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Miss CHAN Yuen-han, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Mr LAU Chin-shek, Mr Andrew CHENG and Mr SZETO Wah voted for the motion.

Miss Christine LOH, Mr Andrew WONG, Mr TAM Yiu-chung, Mr David CHU, Mr HO Sai-chu, Mr NG Leung-sing, Prof NG Ching-fai, Mr MA Fung-kwok and Miss CHOY So-yuk voted against the motion.

Mr Gary CHENG, Mr LAU Kong-wah, Mr CHAN Kam-lam and Mr YEUNG Yiu-chung abstained.

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

THE CHAIRMAN announced that among the Members returned by functional constituencies, 23 were present, six were in favour of the motion, 16 against it and one abstained; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 26 were present, 12 were in favour of the motion, nine against it and four abstained. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the motion was negatived.

**CHAIRMAN** (in Cantonese): As the amendments moved by Mr LAU Chin-shek to clauses 5 and 8 have been negatived, Mr LAU may not move his amendment to clause 62, which is inconsistent with the decisions already taken.

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

(Members raised their hands)

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

(No hands raised)

**CHAIRMAN** (in Cantonese): It appears that some Members are confused. I shall repeat it, I now put the question to you and that is: That clause 8 stand part of the Bill.

**MRS SELINA CHOW** (in Cantonese): Madam Chairman, we have already voted.

**CHAIRMAN** (in Cantonese): Very good, Mrs Selina CHOW, your reminder is appreciated.

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

**MR ANDREW CHENG** (in Cantonese): Madam Chairman, since the Rules of Procedure stipulate that any new schedule shall be considered after the clauses, any proposed new clauses and the schedules of a bill have been disposed of, may I seek your consent to move under Rule 91 of the Rules of Procedure that Rule 58(7) of the Rules of Procedure be suspended in order that the Committee of the Council may consider new schedule 5A ahead of the remaining clauses and schedules of the Bill.

**CHAIRMAN** (in Cantonese): Mr Andrew CHENG, as only the President may give consent for a motion to be moved, without notice, to suspend the Rules of Procedure, I order that Council do now resume.

Council then resumed.

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

**MR ANDREW CHENG** (in Cantonese): Madam President, I move that Rule 58(7) of the Rules of Procedure be suspended to enable the Committee of the whole Council to consider new schedule 5A ahead of the remaining clauses and schedules of the Bill.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That Rule 58(7) of the Rules of Procedure be suspended to enable the Committee of the whole Council to consider new schedule 5A ahead of the remaining clauses and schedules of the Bill.

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

(Members raised their hands)

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

(No hands raised)

**PRESIDENT** (in Cantonese): I think the question is agreed by a majority respectively from each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections and by the Election Committee, who are present. I declare the motion passed.

Council went into Committee.

### **Committee Stage**

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

**CLERK** (in Cantonese): New schedule 5A Performance Requirements.

**MR ANDREW CHENG** (in Cantonese): Madam Chairman, I move that new schedule 5A, as set out in the paper circularized to Members, be read the Second time. Madam Chairman, I propose to incorporate the performance levels specified in Schedule III to the Operating Agreement (OA) into the Bill as a schedule, too. There are three reasons to support my proposal. Firstly, I consider the performance levels of the MTRC are very important to passengers. However, as the OA is just an agreement between the Government and the MTRC, the legislature has no right to take part in the formulation and modification of the content of the agreement. Therefore, I have proposed to incorporate the schedule into the Bill, so that the legislature shall be empowered to regulate the performance levels and shall be able to take part in reviewing the performance levels.

Secondly, I am dissatisfied with the pitching of the proposed performance requirements specified in Schedule III to the OA at 1% below the MTRC's historical performance in the past two years immediately before privatization. When we look at the privatization of public utilities around the world, we should find out that they all share a common goal, which is to increase operation efficiency and to improve performance. However, it is virtually unacceptable to me that the privatization of the MTRC is reducing the performance levels by 1% rather than upgrading them. Furthermore, even if the MTRCL is unable to upgrade the performance levels after listing, we consider it should at least maintain its past performance levels. Otherwise, how can the public be convinced that the performance of the MTRC could be improved after its listing? In view of the fact that the Government is reluctant to raise the performance levels specified in Schedule III to the OA by 1%, I therefore propose to incorporate the performance levels of the MTRCL into the Bill pitching at 1% above the current level. Despite the MTRC agreeing to pitch the Customer Service Pledges at 1% above the performance levels, the Customer Service Pledges and the performance levels specified in Schedule III to the OA are not identical. According to clause 4.9 of the OA, in each operating period, the MTRCL shall at least meet the performance levels specified in Schedule III to the OA. Should the MTRCL fail to meet the relevant performance levels, it should furnish the Commissioner for Transport with explanations in writing for its

inability to meet such levels, together with information on any action it is taking to improve the situation. However, according to clause 4.11.4, the Customer Service Pledges are voluntary targets rather than performance requirements or obligations relating to performance, therefore the MTRCL has no obligation to honour such pledges. Accordingly, we can see that it is virtually impractical to agree only on upgrading the Customer Service Pledges.

Thirdly, I consider the reliability of platform screen doors vital to the safety of passengers. Yet, the Government has declined to incorporate the relevant performance levels into Schedule III to the OA. As a result, I propose to incorporate the reliability level of platform screen doors into the performance requirements, with a numerical benchmark pitch at 98%, which is drawn up on the basis of two performance criteria, namely passenger journeys on time and train punctuality.

Madam Chairman, I so submit.

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That new schedule 5A be read the Second time.

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

**MR HOWARD YOUNG** (in Cantonese): Madam Chairman, I oppose the amendment on behalf of the Liberal Party. The Liberal Party indeed hopes that the MTRC will gradually improve its performance to new horizons after the privatization and listing. Objectively, we can see that the MTRC has achieved acclams for its performance over the years. In fact, the achievement reflects that its operation has reached world-class standard. Many colleagues perhaps have travelled in big cities around the world. Whilst we often said that we should keep up with cities such as London and New York, we have regularly experienced if not suffer the underground train services of such cities. Meanwhile, the performance level of underground train services in Hong Kong is undeniably high comparing with its counterparts. In modern management study, operation performance and service pledges tend to total quantification.

Yet, we should bear in mind that all of these criteria often turn out to be means for the management to observe the performance of its subordinates, or even turning into criteria for determining increment and bonus, which I believe is a common practice in many enterprises. In the meantime, modern management lessons also teach us that, being the management, we should take two factors into account when we draw up objectives for our staff or ourselves. Firstly, the objective has to be challenging. If the objective is not challenging, there will be no objective for everybody to pursue, as everybody will only do his or her jobs with a weary attitude. Nevertheless, the objective should be achievable. If the objective is too high, the staff will query why they have to do their utmost persistently, as they are fully aware of the fact that the objective is simply impossible to achieve. Therefore, that will also have an impact on the morale of the management as well as the staff, and we have to keep the balance of the two aspects accordingly.

On the other hand, I would like to state that the operation criteria or service standards of a certain company should evolve along with and keep abreast with the times. Any good standard of today does not necessarily fit tomorrow's need. Thus we should not overlook the high level of performance of the MTRC over the years. Apart from the new lines, we should also be aware of the ageing of older lines. We should know that as time goes by, things would grow old that even their original standards could hardly be met. For example, in the aviation industry, the fuel consumption of aircraft engines is proportional to the service life. The performance will drop no matter what has been done to them. This is pure objective reality. Therefore, I doubt if it is appropriate to handle these very micro matters by means of a "piecemeal" approach or legislation. I feel that regulation should be effected from a more macro angle, otherwise the management will be kept constantly on the run, fearing that they will be unable to meet the requirements. This kind of penny-wise and pound-foolish action will only give rise to more serious consequences. Therefore, we cannot support this motion. However, it does not mean that we are not going to request the Secretary for Transport and the Government to supervise and review the performance level from time to time, so as to access if the performance is in keeping with the times, and if the performance levels can fulfill the current demand as well as future aspirations of the public.

Madam Chairman, I so submit.



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

(No Member responded)

**CHAIRMAN** (in Cantonese): Secretary for Transport, do you wish to speak?

**SECRETARY FOR TRANSPORT** (in Cantonese): Madam Chairman, the objective of the amendment is to, in the first place, remove the function of the Commissioner for Transport to amend the performance requirements under the OA and transfer this function to the Chief Executive in Council, and then require the decision of the Chief Executive in Council to be submitted in the form of a subsidiary legislation for the approval of the Legislative Council through the proposed amendment to clause 62.

I think the amendment will undermine the regulatory functions of the Commissioner for Transport. To ensure that the MTRCL will provide proper and efficient services, the Commission for Transport, as the regulator, must review the performance requirements specified in Schedule III from time to time, and revise them in the light of passengers' demands or technological and technical progresses made by the MTRCL for the management and operation of the railway. It will be beneficial to passengers of the MTR if the Commissioner for Transport could make prompt and effective changes and adjustments to the requirements. If the performance requirements are incorporated as a Schedule to the Ordinance, any changes will have to be effected by way of subsidiary legislation, the enactment of which will take time.

Another effect of the amendment is to pitch the performance requirements at a level corresponding to the performance of the MTRC in the past two years and allows no fluctuation. We do not support this proposal for the following reasons:

- (1) It is necessary to give the MTRCL some allowances for minor fluctuations in respect of its performance to cater for situations beyond its control. For instance, when there is a sudden increase in the number of passengers far exceeding the average patronage of the MTR system, the MTRCL will have to allow more time for passengers boarding and alighting the train to ensure safety, in

which case delays may be resulted. Under the circumstances, we consider that the regulator should allow minor downward adjustments in the performance levels for "passenger journeys on time" because the delays are not caused by mistakes on the part of the MTRCL;

- (2) Overseas experts have confirmed to the Bills Committee that the performance requirements in Schedule III that the MTRCL is required to meet are much higher than the international standards; and
- (3) The performance requirements are minimum standards prescribed by the OA. They are not the targets of the MTRCL in its operation. The target of the MTRCL is to honour the Customer Service Pledges.

I urge Members to vote against the amendment.

**CHAIRMAN** (in Cantonese): Mr Andrew CHENG, do you wish to reply?

**MR ANDREW CHENG** (in Cantonese): Madam Chairman, one of the major arguments of the Government in opposing my amendment was that had the performance requirements been written into the law as a schedule, any changes would have to be effected by way of subsidiary legislation, the enactment of which will take time. However, I do not agree with the opinion of the Government. The purpose of our proposal is to facilitate the Legislative Council to move objection or amendment to the relevant subsidiary legislation within 28 days after the relevant notice is gazetted, provided Members are not satisfied with the modified performance level. This is called the procedure of negative vetting. The relevant subsidiary legislation will take effect automatically if the Legislative Council has no objection to the concerned subsidiary legislation. Therefore, it is a very simple approach that will not entail too many administrative or legislative procedures. I hope Honourable colleagues will understand that the performance levels I intended to incorporate into the Schedule of the Bill is in fact part of the stipulations of the OA.

Regarding the OA, the Democratic Party opposes Mr LAU Chin-Shek's amendment to require that any modifications to the OA should seek the approval of the Legislative Council, because the OA is a contract and we respect the spirit of contract. As the Legislative Council is not a contractual party to the OA, we cannot modify the performance levels stipulated by the Government and the MTRC in the OA. For this reason, we hope the Legislative Council is able to take part in the modification and supervision concerning the OA as well as the drawing up of the performance requirements in the following disciplines. First of all, concerning performance requirements, train service delivery is one of the examples. Secondly, the passenger journeys on time should be prescribed, as it is also stipulated in the Airport Express Line and other lines. The third point is punctuality. All these criteria are in connection with the punctuality of train service, since we all know that punctuality is very important. It is not uncommon that during the constant delay in train service, such as delay on the Airport Express Line, the Tung Chung Line or the Tsuen Wan Line, the public usually does not know what channels they can pursue to monitor the performance of the MTRC, or how they can find out what sort of mistakes the MTRC has committed. It is very important to incorporate the Schedule concerned into the Bill, because the staff of the MTRC will understand that they have certain kind of social responsibilities to bear.

Lastly, we would like to incorporate the reliability of platform screen doors into the Schedule, which has not been mentioned in the OA. Madam Chairman, please understand that the MTRC would proceed with a phased programme of retrofitting these doors at stations on existing lines. The public is concerned whether the reliability of platform screen doors will enhance the safety of train service or not, therefore we suggest to incorporate the clause into the schedule, and we hope Honourable Members will support this amendment. I have to reiterate that this amendment will not stand in the way of any future modifications to the performance levels in the Schedule to the Bill whenever the Government desires, because it is subject to the negative vetting procedure of the Legislative Council. Thank you, Madam Chairman.

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

(Members raised their hands)

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

(Members raised their hands)

Mr Andrew CHENG rose to claim a division.

**CHAIRMAN** (in Cantonese): Mr Andrew CHENG has claimed a division. The division bell will ring for one minute.

**CHAIRMAN** (in Cantonese): Will Members please take their seats and proceed to vote.

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

Functional Constituencies:

Mr CHEUNG Man-kwong, Mr SIN Chung-kai and Mr LAW Chi-kwong voted for the motion.

Mr Kenneth TING, Mr James TIEN, Mr Edward HO, Dr Raymond HO, Mr Eric LI, Mr LEE Kai-ming, Dr David LI, Dr LUI Ming-wah, Miss Margaret NG, Mrs Selina CHOW, Mr Ronald ARCULLI, Mr HUI Cheung-ching, Mr CHAN Kwok-keung, Mr Bernard CHAN, Mr CHAN Wing-chan, Dr LEONG Che-hung, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Mrs Miriam LAU, Mr Timothy FOK and Dr TANG Siu-tong voted against the motion.

Geographical Constituencies and Election Committee:

Mr Albert HO, Mr LEE Wing-tat, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Mr LAU Chin-shek, Mr Andrew CHENG and Mr SZETO Wah voted for the motion.

Miss Christine LOH, Miss CHAN Yuen-han, Mr Gary CHENG, Mr Andrew WONG, Mr LAU Kong-wah, Mr TAM Yiu-chung, Mr David CHU, Mr HO Sai-chu, Mr NG Leung-sing, Prof NG Ching-fai, Mr MA Fung-kwok, Mr CHAN Kam-lam, Mr YEUNG Yiu-chung, Mr Ambrose LAU and Miss CHOY So-yuk voted against the motion.

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

THE CHAIRMAN announced that among the Members returned by functional constituencies, 27 were present, three were in favour of the motion and 24 against it; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 27 were present, 11 were in favour of the motion and 15 against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the motion was negatived.

**CHAIRMAN** (in Cantonese): As the motion moved by Mr Andrew CHENG has been negatived, Mr Andrew CHENG may not move his amendment to clause 9. He has my permission to revise later the terms of his amendment to clause 62.

**CLERK** (in Cantonese): Clause 9.

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That clause 9 stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Clause 13.

**MR ALBERT HO** (in Cantonese): Madam Chairman, I move that clause 13 be amended, as set out in the paper circularized to Members.

Madam Chairman, the purpose of this amendment is to enhance clause 13 of the Bill. That is, when the Chief Executive in Council gives directions to the MTRCL, he should also take public interest into consideration. Furthermore, he should maintain and facilitate competition in the public transport market, and to provide other competitive modes of transport affordable to the public. In order to ensure that the Government will not intentionally inhibit the development of other modes of public transport under the railway development priority policy for the total monopolization of MTRCL in the market, and to prevent the deprivation of the rights of the public in selecting the desirable mode of public transport, I propose to amend clause 13 of the Bill, and request the Chief Executive in Council to take fair competition policy into account when he must give directions to the MTRC in public interest.

In the light of environmental protection and cost effectiveness considerations, I admit that we should give priority to the development of railway networks, so as to perfect the railway network in Hong Kong. In fact, a perfect railway network will not only stimulate the development of newly developed communities, but will also reduce road traffic congestion and immensely shorten the travelling time on public transport. Although the development of railway is worthy to encourage and support, we should never overlook the functions of other modes of public transport and the benefits of competition among them. In order to defend the public's right to choice, it is necessary and very important to maintain a level playing field for different modes of public transport.

According to the Government's Third Comprehensive Transport Study, priority would be given to railway development. The objective of the Government was to increase the proportion of railway's passenger trips in public transportation system, from 33% in 1997, to 40% or to 50% by 2016. By that time, railway would become the backbone of passenger transportation system, and as the construction of major railway arteries was completed, other modes of transport should provide feeder services, so as to make full use of the new railway system. It is obvious that under the government propulsion, railway companies will gradually monopolize the public transport market in Hong Kong, especially in artery transportation. My colleagues from the Democratic Party and I cannot help but to worry about the MTRC's monopolization or its dominant tendency of monopolization after the listing, and given the lack of sufficient regulation, the public would lose their right of choosing the mode of transport.

When responding to the Government's viewpoint of its intention to facilitate healthy competition among the MTRC and other public transport corporations after the listing, the Consumer Council had put forward the following points. Although the Consumer Council welcomed the Government's guarantee of ensuring the protection of consumers' rights through the mechanism of competition, it worried that some government policies *per se* might affect or even inhibit market competition. The Consumer Council considered that despite giving priority to the development of railway might be helpful to the improvement of the cost effectiveness of the transport system and the reduction of environmental pollution, any consideration of these aspects should also ensure that different modes of transport can compete on a comparatively, if not totally, fair basis. Furthermore, the Government should ensure a level playing field where different modes of transport with acceptable fare prices would still be in place for the public to choose. Therefore, the Consumer Council once urged the Government to introduce clauses or amendments to the MTRC's OA to reflect the Government's willingness of implementing the fair competition policy. It was disappointing that the Government rebuffed the proposal over and over again during the meetings of the Bills Committees, which was attributable to the moving of today's amendment by the Democratic Party.

Madam Chairman, just as I said a short while ago, there is no comprehensive fair competition legislation in Hong Kong. Although the Democratic Party has considered whether or not to introduce some specific clauses to ensure the Government's adherence to the principle of fair competition, we found it overly complicated. As a result, we feel that perhaps we are unable to make the precedent complicated amendment in this Bill. In view of this circumstance and the shortcomings, we can only introduce a provision to clause 13, to request, or at least to request in principle that when the Executive Council exercises its right to make such directions, it should take fair play in public interest into account, so as to ensure the public may choose other desirable modes of public transport affordable to them, and facilitate genuine healthy competition in the market.

With these remarks, I beg to move. Thank you, Madam Chairman.

*Proposed amendment*

**Clause 13 (see Annex I)**

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

**MRS MIRIAM LAU** (in Cantonese): Madam Chairman, I do not have any doubts about the good intentions of Mr Albert HO's amendment. However, it is absolutely inappropriate to move the amendment to require competition among modes of public transport merely for amending clause 13.

First of all, I would like to talk about clause 13 of the Bill. In fact, there are similar provisions in the Mass Transit Railway Corporation Ordinance. According to the Ordinance, the Chief Executive in Council may, if he considers the public interest so requires, give directions to the MTRC. However, the Government is liable to pay compensation to the MTRC for losses or damages sustained by the MTRC which is attributable to the Corporation's compliance with a direction contrary to prudent commercial principles. Perhaps because of the compensation, the MTRC has never invoked the relevant provision of the existing Mass Transit Railway Corporation Ordinance over the past 20 years since its commissioning. I do believe that even if the provision is incorporated into the existing clause 13, the Chief Executive may not give directions to the



Corporation, and perhaps there will be no competition among the various modes of public transport in the coming 20 years. Therefore, I think it is absolutely inappropriate to incorporate the provision into clause 13.

I personally support the idea of healthy competition among modes of public transport, and I believe maintaining a level playing field can ensure the public to enjoy a diversified public transport network with reasonable fares and quality services. However, if there is no competition in the market itself, we are unable to create any competition even if we incorporate a competition provision into the clause. Competition does exist in the market. Should there be no competition, it will not have any effect even if we incorporate the competition provision into the clause. The key to competition lies in whether there is already sufficient competition in the market itself. I genuinely believe that the Consumer Council has confirmed that there is sufficient competition in the public transport market. For these reasons, I cannot support the amendment of Mr Albert HO.

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

(No Member responded)

**CHAIRMAN** (in Cantonese): Secretary for Transport, do you wish to speak?

**SECRETARY FOR TRANSPORT** (in Cantonese): Madam Chairman, before I respond to Members' viewpoints, I wish to point out that clause 13 will be invoked only under exceptional circumstances. Further, the Government must pay compensation to the MTRCL for losses or damages sustained by the MTRCL in enforcing the directions.

The amendment requires the Chief Executive, in giving directions to the MTRCL under clause 13, to consider:

- (a) preserving and promoting competition in the market for public transport; and

- (b) the availability of competing modes of transport at affordable prices.

As Members may agree, these two principles should be matters that the Transport Bureau, as the Policy Bureau overseeing transport matters, must take into consideration every day. It is unnecessary to legislate to that effect and what is more, we should not take account of these matters only when the Chief Executive in Council gives directions under very exceptional circumstances. Competition in the market and fees for public transport should be the everyday issues of discussion. As the MTR takes up a market share of a mere 20% in the overall transport sector, the assertion that the MTR enjoys a monopoly in the market or that it deters competition is unfounded. In its submission to the Bills Committee, the Consumer Council clearly stated that the public transport service sector presently operates in a highly competitive environment, and that the Council welcomes the Government's commitment to relying on the competitive process to ensure appropriate standards of consumer welfare. Moreover, let us bear in mind that the Government will remain as the majority shareholder after the privatization of the MTRC. We will ensure that all the activities of the MTRCL are consistent with the Government's policy objectives to facilitate competition. Therefore, the amendment has no clear objectives and is not necessary at all. I urge Members to vote against the amendment.

**CHAIRMAN** (in Cantonese): Mr Albert HO, do you wish to reply?

**MR ALBERT HO** (in Cantonese): Just as I said a moment ago, the amendment is moved in response to the suggestion of the Consumer Council. We considered it a rather reasonable demand to incorporate a policy principle into the OA, so as to embody a genuine level playing field in the public transport sector, to put it into effect, and to allow the public choices. However, the Government did not officially respond to the demand, other than emphasizing that a level playing field was already in place. Let us not argue if it is right or wrong in the first place, since all we have to say is to look forward. Will the situation change by 2016, as the Government indicated that the growth of the market share of the MTR reaches 40% to 50%? This is exactly where our concern arises. Just because of this reason, we feel that it is worthy for us to respond to the concern raised by the Consumer Council.

Certainly, Madam Chairman, perhaps you will also agree that it is unlikely for me to incorporate any provision into the Bill to urge the Government to implement a fair competition policy in the public transport sector. It is because if I do that, the subject matter involved will go beyond the fundamental nature of the entire Bill, that is, the franchise to operate the MTR. Therefore, unless I itemize all the principles we consider favourable to the promotion of fair competition in the entire Bill, I could not change anything at all. However, just as I have said, the amendment involves enormous complexities. I am going to expound the reasons why I think we must incorporate the provision into clause 13. Firstly, I hope that by means of accepting this amendment, the Government will definitely have respect for this policy principle when the Chief Executive in Council exercises its rights. That is to say, the Government in any case will observe and adhere to this principle. Secondly, although clause 13 has not been invoked over the past 20 years, it is still unknown whether the clause will be invoked or not after the privatization. Why I feel that clause 13 is so relevant? It is because the clause will involve our amendments in other aspects, to be exact, the future property development rights above MTR stations and depots should not be monopolized by the MTRCL. Under such circumstances, once development has staged, it will be relatively possible in comparison with the past. I am not saying it is a must, but we cannot dismiss the likelihood of the Chief Executive in Council being compelled to exercise the power under clause 13, to oblige the MTRCL to develop some extensions which the MTRCL considered short-term return is improbable.

In summary, I feel the amendment to clause 13 has not violated the Government's existing policy principle in the first place, because the Government has exemplified that it is the policy. Secondly, since it has no practical application, then it is probably insignificant. However, in case the power is exercised in the future, why we should not take this policy principle into consideration again? Is there anything wrong with it? Therefore, under such circumstances, the objective is definitely not as vague as the Secretary said. In fact, the objective is very clear. The problem is simply whether the Government likes to be fettered by the incorporation of this provision, or its consideration of public interest centres around only commercial principles to the neglect of fair competition. Is this really the case? If not, why the Government is reluctant to incorporate the provision into the Bill? For that reason, I feel the objective is very clear and hope Honourable colleagues will support the amendment.

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

(Members raised their hands)

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

(Members raised their hands)

Mr Albert HO rose to claim a division.

**CHAIRMAN** (in Cantonese): Mr Albert HO has claimed a division. The division bell will ring for one minute.

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

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

Functional Constituencies:

Mr CHEUNG Man-kwong, Mr CHAN Kwok-keung, Mr CHAN Wing-chan, Mr SIN Chung-kai, Mr WONG Yung-kan and Mr LAW Chi-kwong voted for the motion.

Mr Kenneth TING, Mr James TIEN, Mr Edward HO, Dr Raymond HO, Mr Eric LI, Mr LEE Kai-ming, Dr David LI, Dr LUI Ming-wah, Miss Margaret NG, Mrs Selina CHOW, Mr Ronald ARCULLI, Mr HUI Cheung-ching, Mr Bernard CHAN, Dr LEONG Che-hung, Mrs Sophie LEUNG, Dr Philip WONG, Mr Howard YOUNG, Mr LAU Wong-fat, Mrs Miriam LAU, Mr Timothy FOK, Mr FUNG Chi-kin and Dr TANG Siu-tong voted against the motion.

Geographical Constituencies and Election Committee:

Mr Albert HO, Mr LEE Wing-tat, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Miss CHAN Yuen-han, Mr LEUNG Yiu-chung, Mr Gary CHENG, Mr Jasper TSANG, Dr YEUNG Sum, Mr LAU Chin-shek, Mr LAU Kong-wah, Mr Andrew CHENG, Mr SZETO Wah, Mr CHAN Kam-lam and Mr YEUNG Yiu-chung voted for the motion.

Miss Christine LOH, Mr Andrew WONG, Mr TAM Yiu-chung, Mr David CHU, Mr HO Sai-chu, Mr NG Leung-sing, Prof NG Ching-fai, Mr MA Fung-  
kwok, Mr Ambrose LAU and Miss CHOY So-yuk voted against the motion.

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

THE CHAIRMAN announced that among the Members returned by functional constituencies, 28 were present, six were in favour of the motion and 22 against it; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 28 were present, 17 were in favour of the motion and 10 against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the motion was negatived.

**SECRETARY FOR TRANSPORT** (in Cantonese): Madam Chairman, I move that clause 13 be amended, as set out in the paper circularized to Members. The purpose of the amendment is to avoid unnecessary confusion, and to expressly state that the MTRCL has the responsibility to fulfill certain specific obligations under the franchise even without directions given by the Chief Executive in Council under the clause.

The second part of the amendment seeks to improve the Chinese version of the provision to ensure consistency in the meaning of the Chinese and English texts. The amendments have received the support and approval of the Bills Committee. I urge Members to support the Government's amendments. Thank you, Madam Chairman.

*Proposed amendment*

**Clause 13 (see Annex I)**

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Clause 13 as amended.

**CHAIRMAN** (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Clause 14.

**SECRETARY FOR TRANSPORT** (in Cantonese): Madam Chairman, I move that clause 14 be amended, as set out in the paper circularized to Members.

These are technical amendments to revise the term "財務罰則" to "罰款" in the Chinese text. The amendment has received the support and approval of the Bills Committee. I urge Members to support the Government's amendment.

*Proposed amendment*

**Clause 14 (see Annex I)**

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

**MR ANDREW CHENG** (in Cantonese): Madam Chairman, I move that clause 14 be further amended, as set out in the paper circularized to Members.

Madam Chairman, this clause is about financial penalties to be imposed on the MTRCL once it fails to comply with the provisions for performance levels, which are contained in clause 14. Madam Chairman, although clause 15 contains penalty by way of suspension or revocation of franchise, we think the MTRCL is not replaceable and therefore the suspension or revocation cannot induce any deterrent effect in the future. The real deterrent comes in the financial penalties under clause 14; hence we want to enhance them. In the amendment proposed by us, we increase each fine by one level. So, in the case of a first imposition, the maximum fine is increased from level 3 (that is, \$10,000) to level 4 (that is, \$25,000), and a second imposition from level 4 (that is, \$25,000) to level 5 (that is, \$50,000), and a third imposition or thereafter, from level 5 (that is, \$50,000) to level 6 (that is, \$100,000). In respect of any failure which is of a continuing nature, the maximum fine is increased from a maximum of \$10,000 to a maximum of \$25,000 for each day on which failure continues.

With these remarks, Madam Chairman, I beg to move.

*Proposed amendment*

**Clause 14 (see Annex I)**

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

**MRS MIRIAM LAU** (in Cantonese): Madam Chairman, I rise to speak against Mr Andrew CHENG's amendment. There are several reasons for my opposition. First, in the existing ordinances in relation to public transport, similar penalty is contained in, say, section 23 of the Ferry Services Ordinance and section 22 of the Public Bus Services Ordinance. Both sections have prescribed similar financial penalty, which may be imposed by the Chief



Executive in Council on the public transport operators. Mr Andrew CHENG said just now, compared with the original proposal of the Government, his amendment serves to raise the penalty by one level. But he did not explain why he is raising it by one level but not two or three. Nor did he explain why he had not proposed relaxing the penalty by one or two levels. So, his amendment appears to be arbitrary, that means, to be harsher to the MTRC, he proposes to raise penalty by one level. Why then should we impose different penalties on other public transport companies? Does it mean other modes of public transport are not important to the people? Why should we pinpoint at the MTRC for harsher penalty?

In addition, what is the purpose of penalty? Penalty is meant to induce a deterrent effect. Only when that effect is not prominent do we need to increase the penalty. But in the Ferry Services Ordinance and the Public Bus Services Ordinance to which I alluded just now, there are similar penalties, divided into three levels and set at similar standards. As far as I can recall, there was only one incident in which the then Governor in Council imposed a penalty of \$8,000 on the China Motor Bus Company Limited. So, to public transport operators, the penalty suffices as a deterrent. Even at the present level, public transport operators find the penalty very intimidating. Of course I do not mean they are afraid of the fine of ten thousand or several thousand dollars, or even a hundred thousand dollars or so. What they are afraid of is that once they have been penalized, there will be public opinions or criticisms against them, which may have negative effects. Thus they will act very cautiously.

For the above reasons, I do not think there is sufficient justification to impose penalties different from that applicable to other public transport operators. Furthermore, the Liberal Party does not believe existing penalty fails as a deterrent. Therefore, we cannot support Mr Andrew CHENG's amendment.

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

(No Member responded)

**SECRETARY FOR TRANSPORT** (in Cantonese): Madam Chairman, this amendment seeks to adjust the financial penalty upward by one level in each stage to the effect that a fine at level 4, that is, \$25,000, will be imposed for the

first time; one at level 5, that is, \$50,000, for the second time; and a fine at level 6, that is, \$100,000, in the case of a third and subsequent imposition of the penalty. In the case of non-compliance which is of a continuing nature, the financial penalty for each day is increased from \$10,000 to \$25,000. As Mr CHENG did not put forward this amendment in the Bills Committee, I only learned of the purpose of his amendment just now. The original proposal of the Government is entirely modelled on the Public Bus Services Ordinance and the Ferry Services Ordinance in respect of the level of financial penalty imposed on franchise operators for similar acts of non-compliance. To subject the MTRCL to a higher level of financial penalty *vis-a-vis* other public transport operators constitutes an obvious violation of the principle of fairness. I must point out that the imposition of financial penalty on public transport operators does not aim at undermining or destroying their financial strength. We believe that in the event of penalty imposed by the Government under clause 14, the incident *per se* carries a far greater impact than the amount of fines so imposed. Allegations of non-compliance on the part of the company, if substantiated, will surely have a severe impact on the reputation of the management. Some argued that unsatisfactory MTR services will affect numerous passengers, so the MTRCL should be subject to heavier penalty as a deterrent. In fact, since the commissioning of the MTR 20 years ago, the patronage of the MTR has never outnumbered bus passengers on the Kowloon side.

Finally, as Members may know, of all the complaints about public transport services lodged with the Transport Complaints Unit of the Transport Bureau in the past two years, the number of cases against the MTR accounted for a mere 0.8% (that is, less than 1%), which is much lower than those against ferries (6%), buses (26%) and taxis (39%). Thus we can see that the proportion of complaints against the MTR is the lowest among the various modes of public transport. The same conclusion was drawn from the results of a survey released by the Democratic Alliance for the Betterment of Hong Kong (DAB) last year. According to the results of the DAB's survey conducted from the 9th to 12th July last year, the services of the MTR earned the highest ranking among the services provided by the 11 public transport operators. I urge Members to vote against this amendment.

**CHAIRMAN** (in Cantonese): Mr Andrew CHENG, do you wish to reply?

**MR ANDREW CHENG** (in Cantonese): Madam Chairman, I thank the Secretary for citing the survey conducted by the DAB. I have not studied in detail but I will. Given the high efficiency and good performance of the MTRC, I would like to respond to the comments of Mrs Miriam LAU of the Liberal Party on our amendment.

First, the number of commuters affected by the MTRC is large, when compared with the commuters who take the ferry or the bus. In a disruption of service, for example, a 30-minute disruption of service of the railway compared with a 30-minute breakdown of a bus would mean vast differences in the extent to which passengers are affected. Mrs LAU accused us of not having explained why we propose increasing penalty by one level rather than two. By the same token, we may ask why the Government has set the fine at levels three or four rather than one or two.

Basically, penalty is prescribed on an arbitrary basis so that a deterrent effect is deemed to have been produced. Our principle is clear when we propose raising the penalty for each category by one level. When the Secretary said we had not put forward our amendment in the Bills Committee I was profoundly confused as we had proposed the amendment in one whole package. Maybe there were too many amendments so that the Secretary overlooked some. It is due to the levels of penalty set and the DAB survey quoted by the Secretary that we think that given the scale of service, efficiency and performance expected of the MTRC, it should be more strictly penalized when it fails to comply with the relevant provisions. That is because MTRC services have a much greater impact than other modes of mass transit such as buses, ferries and trams. Thank you, Madam President.

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That the further amendment to clause 14 moved by Mr Andrew CHENG be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mr Andrew CHENG rose to claim a division.

**CHAIRMAN** (in Cantonese): Mr Andrew CHENG has claimed a division. The division bell will ring for one minute.

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

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

Functional Constituencies:

Mr CHEUNG Man-kwong, Mr SIN Chung-kai and Mr LAW Chi-kwong voted for the motion.

Mr Kenneth TING, Mr James TIEN, Mr Edward HO, Dr Raymond HO, Mr Eric LI, Mr LEE Kai-ming, Dr David LI, Dr LUI Ming-wah, Miss Margaret NG, Mrs Selina CHOW, Mr Ronald ARCULLI, Mr HUI Cheung-ching, Mr CHAN Kwok-keung, Mr Bernard CHAN, Mr CHAN Wing-chan, Dr LEONG Che-hung, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Mrs Miriam LAU, Mr Timothy FOK, Mr FUNG Chi-kin and Dr TANG Siu-tong voted against the motion.

Geographical Constituencies and Election Committee:

Mr Albert HO, Mr LEE Wing-tat, Mr Martin LEE, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Mr LAU Chin-shek, Mr Andrew CHENG and Mr SZETO Wah voted for the motion.

Miss Christine LOH, Miss CHAN Yuen-han, Mr Gary CHENG, Mr Andrew WONG, Mr Jasper TSANG, Mr LAU Kong-wah, Miss Emily LAU, Mr TAM Yiu-chung, Mr David CHU, Mr HO Sai-chu, Mr NG Leung-sing, Prof NG

Ching-fai, Mr MA Fung-kwok, Mr CHAN Kam-lam, Mr YEUNG Yiu-chung, Mr Ambrose LAU and Miss CHOY So-yuk voted against the motion.

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

THE CHAIRMAN announced that among the Members returned by functional constituencies, 28 were present, three were in favour of the motion and 25 against it; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 28 were present, 10 were in favour of the motion and 17 against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the motion was negatived.

**CLERK** (in Cantonese): Clause 14 as amended.

**CHAIRMAN** (in Cantonese): Since the Committee in Council has earlier on passed the amendment to clause 14 moved by the Secretary for Transport, the motion before you now is that clause 14 as amended by the Secretary for Transport stand part of the Bill.

**CHAIRMAN** (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Clauses 15, 18, 19, 20, 21, 27, 28, 30, 35, 48, 51, 53, 54, 57, 59 and 63.

**SECRETARY FOR TRANSPORT** (in Cantonese): Madam Chairman, I move the amendments to clauses 15, 18 to 21, 27, 28, 30, 35, 48, 51, 53, 54, 57, 59 and 63, as set out in the paper circularized to Members.

These amendments are purely technical in nature and have received the support and approval of the Bills Committee. I urge Members to support these amendments of the Government.

*Proposed amendments*

**Clause 15 (see Annex I)**

**Clause 18 (see Annex I)**

**Clause 19 (see Annex I)**

**Clause 20 (see Annex I)**

**Clause 21 (see Annex I)**

**Clause 27 (see Annex I)**

**Clause 28 (see Annex I)**

**Clause 30 (see Annex I)**

**Clause 35 (see Annex I)**

**Clause 48 (see Annex I)**

**Clause 51 (see Annex I)**

**Clause 53 (see Annex I)**

**Clause 54 (see Annex I)**

**Clause 57 (see Annex I)**

**Clause 59 (see Annex I)**

**Clause 63 (see Annex I)**

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Clauses 15, 18, 19, 20, 21, 27, 28, 30, 35, 48, 51, 53, 54, 57, 59 and 63 as amended.

**CHAIRMAN** (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Clause 29.

**CHAIRMAN** (in Cantonese): Mr LAU Chin-shek has given notice to move the deletion of clause 29 while the Secretary for Transport and Miss CHAN Yuen-han have separately given notice to move an amendment to clause 29. I will call upon Mr LAU Chin-shek to move his amendment. Whether the Secretary for Transport, as the public officer in charge of the Bill, may or may not move his amendment will depend on the decision of the Committee on Mr LAU Chin-shek's amendment to the clause. Furthermore, as the amendments by the Secretary for Transport and Miss CHAN Yuen-han are identical and have the same effect, I shall not call upon Miss CHAN Yuen-han to move her amendment irrespective of whether the amendment moved by the Secretary for Transport has been passed or negated, since the Committee will have already taken a decision on this amendment.

**CHAIRMAN** (in Cantonese): Committee now proceeds to a joint debate. I will first call upon Mr LAU Chin-shek to move his amendment.

**MR LAU CHIN-SHEK** (in Cantonese): Madam Chairman, I move that clause 29 be amended, as set out in the paper circularized to Members. This amendment serves to delete the provision under which MTRC staff is held criminally liable for negligent act or even omission.



It is very unusual and unreasonable to hold employees liable for a criminal offence or liable to imprisonment for negligence. Under the Bill, there is no clear indication that employees are criminally liable only when they act in a negligent way under specified circumstances of high danger. It is only loosely defined that under "any" circumstances "any" negligence of employees leading to "anything" that may be related to safety would incur criminal liability on employees. This is obviously a draconian law.

For example, I believe under the provisions of the Bill, a cleaner who carelessly spill water for cleaning the floor may have committed an offence because the staff has committed a negligent act and the spilled water may lead to passenger injuries. Hence I would steadfastly refuse to pass a provision, which is loosely defined and which is used to threaten employees.

Other ordinances regulating public transport companies such as companies that provide bus services, ferry services or manage the cross-harbour tunnels do not contain similarly draconian provisions. They just classify as offences specified dangerous acts such as a breach of safety rules by drivers in their driving duties. Therefore I think the relevant provision related to criminal liability should be removed altogether. In addition, I think it should be noted that there is a separate clause in the Bill on offence of wilfully endangering safety. That part of the Bill should be adequate protection for public safety.

Also, irrespective of whether there are provisions about offences of employees due to negligence, anyone may sue the MTRCL or its employees through civil proceedings for damages. So, I think the interests of passengers will not be prejudiced if the provision is deleted.

With these remarks, Madam Chairman, I beg to move.

*Proposed amendment*

### **Clause 29 (see Annex I)**

**CHAIRMAN** (in Cantonese): I will call upon the Secretary for Transport and Miss CHAN Yuen-han to speak on the amendment moved by Mr LAU Chin-shek as well as their amendments. However, no amendment may be moved by the Secretary for Transport at this stage.

**SECRETARY FOR TRANSPORT** (in Cantonese): Madam Chairman, clause 29 is originally intended to retain section 23D of the existing Mass Transit Railway Corporation Ordinance. We are deeply concerned about and appreciate the worries of Members of the Legislative Council as well as employees of the MTRC over clause 29 which provides for a maximum penalty of six months' imprisonment for negligent act by employees.

After detailed consideration, the Government agreed with Members that discretion can be exercised to make certain adjustments to clause 29 subject to the other provisions of the Bill and the Operating Agreement. Under the Government's amendment, a mechanism with two levels is proposed in respect of the penalty on negligent act by employees under clause 29.

On the first level, if, by a negligent act of an employee, the safety of a person being on the railway is endangered, or is likely to be endangered, but such an act does not result in serious injury to or the death of any person, the employee is only liable to a fine at level 2, that is, \$5,000, at the maximum excluding imprisonment. However, if the negligent act by an employee results in serious injury to or the death of any person, including employees or passengers, the Court may impose on the employee a maximum penalty of a fine at level 2 and six months' imprisonment.

The Government believes that the two-tier system can duly strike a balance between the need to protect the safety of passengers and employees and to allay concerns of employees of the MTRC on the relevant provisions.

I hereby urge Members to vote against Mr LAU Chin-shek's amendment which proposes the deletion of clause 29 in its entirety. Mr LAU's amendment will certainly give the public a wrong impression that it would be unnecessary for the privatized MTRCL to provide guarantees against negligent acts by its employees to the detriment of the passengers. This, I think, is grossly unwise.

Moreover, in making presentation to the Bills Committee, employees of the MTRC stated that the removal of the six months' imprisonment in clause 29 is already a compromise fully acceptable to them. The employees have not raised any objection against a maximum fine of \$5,000.

Here, I urge Members to vote against the amendment of Mr LAU Chin-shek.

**MISS CHAN YUEN-HAN** (in Cantonese): Madam Chairman, I welcome the Government's endorsement of our suggestion. When we scrutinized the Bill, we thought the definition of "negligence" under clause 29 was too broad. By that I mean negligence may be caused by many factors, such as excessively heavy workload or unreasonable work arrangement. Negligence due to other causes may not lead to serious traffic accidents. That was part of the opinion expressed by us on behalf of the staff during the scrutiny by the Bills Committee. The relevant staff also expressed similar worries to the Bills Committee. They thought their work was heavy every day and they would be very worried if there was no clear distinction between what was serious "negligence" and what was slight "negligence".

In the course of scrutinizing the Bill, the Government held the view that the provision had been part of the Mass Transit Railway Corporation Ordinance for 21 years and questioned why it should not be kept in the new law. Hence the Government thought no amendment was necessary. We sought legal opinion, which pointed out that under common law unless negligence is serious, imprisonment should not be imposed. Thus we made an amendment for a two-tier mechanism, which, to our delight, was later accepted by the Government.

As regards Mr LAU Chin-shek's amendment, we would have supported it if it had deleted the three words "and to imprisonment" from the original phrase "a fine ... and to imprisonment". It was, however, only at a very late stage that we knew he had proposed deleting the entire clause. We consulted with the staff and they wanted to strike a balance between public safety and staff responsibility. Thus we think that the present amendment for a two-tier mechanism is better as it can reasonably cater to public safety and the practical work situation of staff. Therefore we will not support the amendment to delete the entire clause 29. Thank you, Madam Chairman.

**CHAIRMAN** (in Cantonese): Members may now debate the amendment moved by Mr LAU Chin-shek as well as the amendments by the Secretary for Transport and Miss CHAN Yuen-han.

Does any Member wish to speak?

**MISS MARGARET NG** (in Cantonese): Madam Chairman, I think the Secretary for Transport's amendment is extremely ridiculous because there is a difference between serious negligence and negligence which results in serious consequences. Using Mr LAU Chin-shek's example, a female or a male cleaner may be fined if he or she spilled water onto a platform leading to someone suffering from a sprained leg. And if the person suffers from serious injuries from a fall caused by the spilled water, the cleaner will be imprisoned. I think this is a most ridiculous treatment because negligence should not be penalized by imprisonment unless it is a very serious negligence, in which case a criminal offence will have been committed but that is very unusual. Therefore we must have very clear definitions. But what needs to be clearly defined now is not a difference between negligence and serious negligence, rather it is a difference between serious negligence and negligence leading to serious consequences. That difference is very important.

Although Miss CHAN Yuen-han and the staff may think they should be compromising in attitude, the Government should adhere to its principles and should not amend the law in such a manner. Therefore I find it impossible to support the position of the Government.

**MR LEE CHEUK-YAN** (in Cantonese): Madam Chairman, I am going to make a last ditch attempt to convince Miss CHAN Yuen-han to support Mr LAU Chin-shek's amendment because I think Miss CHAN has some misunderstanding about the Government's amendment.

Miss CHAN said she wanted to separate negligence into two tiers: negligence and serious negligence. But that is not the kind of separation we are talking about. What we are talking about is a differentiation between consequences with serious injuries and those without any injuries. The two tiers are defined in this way, not in how serious the negligence is. So, according to the present amendment, a slight negligence may cause a worker to be imprisoned if that negligence results in injuries to others. On the other hand, if the negligence is very serious but if no one is injured, the worker needs not be imprisoned. I hope Miss CHAN can understand that the differentiation is not between negligence and serious negligence, but it is between consequences in which people are injured and consequences in which no one is injured.

I hope Miss CHAN will come back to support the idea that negligence at work should not be criminalized because we do not think in principle that negligence at work should be criminalized. Even in the Civil Service, negligence at work is not criminalized. In the disciplined forces, staff who have to carry arms will not be charged with criminal offences for negligence. Of course, it goes without saying criminality is implicated if a serious negligence leads to manslaughter. However, our discussion at present is about whether staff should face criminalized consequences for negligence.

Thank you, Madam Chairman.

**MR JAMES TIEN** (in Cantonese): Madam Chairman, the MTRC has been in operation for more than 20 years, and section 23D has never been invoked to charge staff. Some may say that since it has never been invoked it had better be repealed altogether. But some others may say it is because of the provision do staff act more carefully at work, and drivers drive more carefully so that there has not been any serious accident over the years.

Mr LAU Chin-shek, Miss CHAN Yuen-han and several Members from the labour sector are particularly concerned about the clause. But I think there are just 8 000 MTRC employees, against several million passengers, who cannot all be employers. I trust most are employees. Should their interests be looked after as well? I find it strange when Mr LAU Chin-shek does not accept a penalty of a fine of \$5,000 and imprisonment of six months when a MTRC worker causes serious injuries or death to others out of negligence (The penalty is only a possibility, pending judgment from the Court: the judge may not mete out the highest penalty.). Is he doing that really in the interest of the 8 000 employees? How about the interest of the millions of passengers of the mass transit railway? Most of these passengers are workers, not employers.

I think we need to balance the interests of the whole community. I do not think staff would like to see any accidents, be they caused by negligence or otherwise. Nor would I believe staff would act in a negligent way on purpose, causing injuries, serious or otherwise, to passengers. If an accident does happen, and minor injuries are caused, the case has been covered in Miss CHAN Yuen-han's amendment, to which the Government has shown support. The Liberal Party will also lend support to that amendment. As regards the case in which staff negligence leads to serious injuries or death, I do not understand why

Mr LAU Chin-shek would want to go overboard in protecting the interests of the MTRC staff in such a way as to compromise the interest of the majority of the general public. Therefore the Liberal Party will not support Mr LAU's amendment, but we will support the Government.

**MR LEUNG YIU-CHUNG** (in Cantonese): Madam Chairman, I think we must clarify one point. Negligence is negligence and it cannot be purposeful. If someone does something on purpose, the situation would be different. If it is negligence, the doer would not want that to happen and so it should not constitute an act of negligence, although some consequences may have been caused which no one would like to see. If the staff is lucky, the consequence could be a sprain and a fine would be imposed. For more serious cases, in which extravasated blood is found in the brain of the injured, the staff may be imprisoned. This by itself is a threat to the staff. What is originally not negligence will become negligence. Under such circumstances, a worker will have to consider the possible criminal liabilities for whatever he or she does or for whatever act he or she performs.

We are not oblivious of public safety. That is not the case. Our view is that matters relating to public safety can be settled through civil claims. What we are discussing is a criminalization issue arising out of an act not done on purpose. So, we need to consider carefully the question of intention. The staff may just be negligent. Just now Miss Margaret NG argued from the perspective of serious consequences and I do not want to repeat the argument here. I only want everyone to know it is just negligence, not an act done on purpose, that we are talking about.

Madam Chairman, on this subject, I cannot agree to the view of the Government.

**MR ALBERT HO** (in Cantonese): Madam Chairman, I want to express my opinion from the perspective of legal principles.

First, we should not attach any class character to the clause, thinking that it focuses only on basic rank workers. In fact, the clause is applicable to all staff. So, those who are affected are not limited to basic rank workers such as female cleaners or platform workers. They include engineers and maintenance

workers. They should understand they have a responsibility to shoulder as far as their work involves public safety. Hence, anyone in the company, including senior staff, will be affected. The clause will be applicable to those senior staff sitting on the public gallery if their work affects the safe operation of the mass transit railway. Thus it is not just a labour issue and we should not hold an antagonistic attitude.

Second, from my understanding of the law, there are indeed many occasions under our law in which criminal liabilities arise out of negligence. A simple example is "careless driving". In the most serious cases, a driver may be imprisoned for driving carelessly. Although this is rare, this is possible if the Court considers the case is serious. Another example is objects falling from height. The law provides that it is an offence to let objects fall from height causing death or injury to others if one does not keep proper custody of objects at home. The offence may lead to imprisonment. This Council, in discussing responsibilities of building contractors, proposed penalty by imprisonment if a contractor is proved negligent. Everyone may recall the issue regarding "hoists". A hoist fell from a construction site in the Eastern District and I remember someone from the contractor who was found to be responsible was jailed for the incident. I trust in the incident, no one was found to have a malicious intent but as negligence was involved and the law provides that the contractor has a legal responsibility to shoulder, someone had to be jailed for failing, out of negligence, to fulfil the legal obligations. So, I would not say in general it is not reasonable or not acceptable for one to be jailed for having failed, out of negligence, to fulfil some legal obligations. That is not the kind of conclusion I have.

Third, about serious negligence and what constitutes it. There was no clear description about what serious negligence is in clause 29 and the Government's amendment. Under the various laws involved in the examples given by me, will people be sentenced to imprisonment easily? I think in the imposition of a sentence, the Court will consider all factors and will not readily send someone to jail. Eventually the Court will consider compassionate grounds: whether the offender is acting out of sheer carelessness and whether it is a first offence or a repeated one. So, there are many considerations by the Court. In fact, as the Court imposes a sentence, heavier penalty is often imposed for more serious consequences.

The present amendment by the Government specifies that an offender will be imprisoned only when serious consequences are caused. I would not say this is definitely against legal principles generally accepted by us. Therefore, considering the fact that clause 29 affects the safe operation of the entire mass transit railway, I think it is not totally appropriate to delete the whole clause. I think the amendment moved by the Government should be a suitable restraint so that the Court can impose prison terms only when certain consequences have arisen, failing which no prison terms should be imposed. But even if the prescribed consequences have arisen, must imprisonment be imposed? The answer is: not necessarily. If under certain circumstances the offender should not be so penalized or if no special deterrent effect is desired, the Court should not haphazardly impose imprisonment as penalty.

For the above reasons, our final decision is that we support the amendment by the Government. Of course, as everyone knows, the combination resulting from this decision, that is, our support for the Government and the Hong Kong Federation of Trade Unions and our opposition to Mr LAU Chin-shek's amendment, is a rare one. However, after careful consideration, we came to this final decision.

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

(No Member responded)

**CHAIRMAN** (in Cantonese): Secretary for Transport, do you wish to speak?

(The Secretary for Transport indicated that he did not wish to speak)

**CHAIRMAN** (in Cantonese): Mr LAU Chin-shek, do you wish to reply?

**MR LAU CHIN-SHEK** (in Cantonese): Madam Chairman, I thank Mr Albert HO for his comments. After listening to his comments, I am more convinced that I should put forward my amendment.



Mr HO mentioned the case of careless driving. I think he knows very well what constitutes careless driving. He also mentioned "hoists". Obviously, working with "hoists" involves high risks and therefore a substantial responsibility is involved in such work. But now the clause under discussion is highly general in nature, and it thus drives staff of the MTRC into a trap. This is the first point I want to make.

The second point is that I want to stress there is a problem using consequences to determine the severity of negligence, although this has been discussed by Members. Using the example I gave again, a cleaner who spills water on the floor will need to bear criminal liabilities if the spilled water causes someone to fall. If another worker, who is even more careless, is even more negligent, but because no one suffers injuries from a fall, he or she is lucky enough not to have to shoulder criminal liabilities. I do not think this is fair.

I hope Members may reconsider my amendment and support it.

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

(Members raised their hands)

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

(Members raised their hands)

Mr LAU Chin-shek rose to claim a division.

**CHAIRMAN** (in Cantonese): Mr LAU Chin-shek has claimed a division. The division bell will ring for one minute.

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

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

Functional Constituencies:

Mr LEE Kai-ming and Miss Margaret NG voted for the motion.

Mr Kenneth TING, Mr Edward HO, Dr Raymond HO, Mr Eric LI, Dr David LI, Dr LUI Ming-wah, Mrs Selina CHOW, Mr Ronald ARCULLI, Mr CHEUNG Man-kwong, Mr HUI Cheung-ching, Mr Bernard CHAN, Dr LEONG Che-hung, Mrs Sophie LEUNG, Mr SIN Chung-kai, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Mrs Miriam LAU, Mr Timothy FOK, Mr LAW Chi-kwong, Mr FUNG Chi-kin and Dr TANG Siu-tong voted against the motion.

Mr CHAN Kwok-keung and Mr CHAN Wing-chan abstained.

Geographical Constituencies and Election Committee:

Mr LEE Cheuk-yan, Mr LEUNG Yiu-chung and Mr LAU Chin-shek voted for the motion.

Mr Albert HO, Mr LEE Wing-tat, Mr Martin LEE, Mr Fred LI, Mr James TO, Miss Christine LOH, Mr Gary CHENG, Mr Andrew WONG, Mr Jasper TSANG, Dr YEUNG Sum, Mr LAU Kong-wah, Miss Emily LAU, Mr Andrew CHENG, Mr SZETO Wah, Mr TAM Yiu-chung, Mr David CHU, Mr HO Sai-chu, Mr NG Leung-sing, Prof NG Ching-fai, Mr MA Fung-kwok, Mr CHAN Kam-lam, Mr YEUNG Yiu-chung, Mr Ambrose LAU and Miss CHOY So-yuk voted against the motion.

Miss CHAN Yuen-han abstained.

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

THE CHAIRMAN announced that among the Members returned by functional constituencies, 27 were present, two were in favour of the motion, 23 against it and two abstained; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 29 were present, three were in favour of the motion, 24 against it and one abstained. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the motion was negatived.

**SECRETARY FOR TRANSPORT** (in Cantonese): Madam Chairman, I move that clause 29(2) be amended, as set out in the paper circularized to Members. I urge Members to support the amendment proposed by the Government.

*Proposed amendment*

**Clause 29 (see Annex I)**

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

(Members raised their hands)

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

(Members raised their hands)

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

**CLERK** (in Cantonese): Clause 29 as amended.

**MISS CHAN YUEN-HAN** (in Cantonese): Madam Chairman, I claim a division.

**CHAIRMAN** (in Cantonese): It is too late now.

**MISS CHAN YUEN-HAN** (in Cantonese): Well, that's fine. *(Laughter)*

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That clause 29 as amended stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

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

**CLERK** (in Cantonese): Clause 41.

**CHAIRMAN** (in Cantonese): The Secretary for Transport and Miss CHAN Yuen-han have separately given notice to move amendments to clause 41. As their amendments are almost identical and have the same effect, I shall call upon the Secretary for Transport to move his amendment as he is the officer in charge of the Bill. I shall not call upon Miss CHAN Yuen-han to move her amendment irrespective of whether the amendments moved by the Secretary for Transport have been passed or negatived, as the Committee will have already taken a decision on the amendment.

**SECRETARY FOR TRANSPORT** (in Cantonese): Madam Chairman, I move that clause 41(2) be amended, as set out in the paper circularized to Members.

The standard of the operation of the MTRC to date has earned the Corporation a position as one of the best railway companies in the world. The Corporation's remarkable performance is attributed to the dedication and endeavours of its 8 000-odd employees. The MTRC has expressly stated that its employees are the most important assets of the Corporation. To ensure adequate protection of employee benefits, the Government has incorporated in the Bill specific provisions which are legally binding on the MTRCL.

Firstly, clause 41(1) of the Mass Transit Railway Bill provides for the vesting in the new MTRCL of contracts of employment with the MTRC and the continuity of those contracts, so that each contract of employment is deemed to constitute a single continuing employment. A contract of employment as referred to in this clause covers not only all the basic employment contracts entered into by an employee from the date of employment. It also covers other contractual arrangements including benefits granted by the Corporation to an employee during the term of employment. In other words, all the terms and conditions of employment will be unaffected by the transfer.

Secondly, clause 41(2) specifically provides that pensions, allowances and gratuities of all employees payable by the MTRC will be vested in the MTRCL. Its purpose is to provide for the inclusion of the current retirement schemes and those for the payment of gratuities on completion of employment under the MTRC.

While clauses 37, 38 and 41, by implication, already cover the benefits that employees will continue to enjoy, but in view of the concerns of Members and staff of the MTRC, the Government agreed to specify the existing employee benefits separately under clause 41 in order to allay the worries of the staff. Moreover, the existing pay review mechanism of the MTRC has been in place for over 20 years. The employees are conversant with this mechanism which they consider to be comparatively fair and reasonable. For this reason, Members as well as employees of the MTRC strongly call for assurance on the continuity of the mechanism under clause 41. In this connection, the Government agreed to make specific reference to the pay review mechanism in clause 41 to make the employees feel more at ease.

We trust that the amendment will be of tremendous help to shoring up the confidence of employees. I urge Members to support the Government's amendment. Thank you, Madam Chairman.

*Propose amendment*

**Clause 41 (see Annex I)**

**MISS CHAN YUEN-HAN** (in Cantonese): Madam Chairman, regarding clause 41, some staff members expressed worries during our scrutiny of the Bill. It was also the Government's view that in the entire transfer process, staff worries could be addressed. But after seeking legal opinion, we felt worried by the part of the Bill on welfare and salary, especially the part on the salary increase mechanism which is not included in the Bill. That was why we put forward an amendment to the Bill, and at a later stage the Government accepted our opinion and proposed a corresponding amendment. We welcome this and hope Members can support us.

In addition, Mr LAU Chin-shek will move a further amendment, adding the words "no less favourable than before". As a labour union, the Hong Kong Federation of Trade Unions will give full support to Mr LAU's amendment to be moved later on.

Thank you, Madam Chairman.

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

**MR LEE WING-TAT** (in Cantonese): Madam Chairman, with regard to clause 41 of the Bill, we have done some research within the Democratic Party, in particular on the legal consequences of amending the provision. As pointed out just now by the Secretary, Mr Nicholas NG, the text of the clause has been very clearly written. To sum up, it says that the listed MTRCL shall offer to all existing employees of the Corporation the same benefits and terms of employment as they are now enjoying. In addition, the MTRC also undertakes to maintain unchanged the exiting salary levels, benefits as well as other relevant conditions of these employees, including the salary review mechanism.

Actually, the amendment proposed by the Government to clause 41 only seeks to add very limited new provisions to the clause. If viewed from a certain perspective, the amendment in fact only rewrites the intended effect of the existing clause of the Bill in black and white, and from another perspective, the amendment only serves to set out the content of the clause in a more specific manner. What if no amendments should be proposed to clause 41, would such effect cease to exist? Today, after consulting the Legal Advisor of the Council on this matter, we have learned that actually there would not be any difference in effect. As pointed out by Secretary Nicholas NG, he believes that the existing clause has already contained all the necessary protection for the employees, including their benefits, salary levels as well as other relevant terms and conditions. Then I should like to ask this question: Why must the Government propose amendments to it? Would it be possible that the amendments were proposed out of worries? Would the proposed amendment give additional protection to the MTRC employees union and the MTRC staff, or would it cause the MTRC to undertake additional employee benefit commitments? As a matter of fact, the answer is no, which means that the employees concerned will not be entitled to any additional protection or any forms of additional benefits and salaries. In other words, even if the amendment proposed by the Government in conjunction with Miss CHAN Yuen-han should be passed, the MTRC could, upon listing, adjust upwards or downwards the salary levels and benefits of its employees by way of the existing salary adjustment mechanism. I wonder if Secretary Nicholas NG interprets the clause in much the same way as we do. Why must I raise such a question? This is because if the clause has contained *per se* the provisions concerned, there is indeed no need for this amendment. I hope that Secretary Nicholas NG and Miss CHAN Yuen-han would respond to the following question when they give their reply speeches: Would the absence of this proposed amendment equate to cutbacks in the benefits enjoyed by MTRC staff, or would it equate to forfeitures of the salaries and benefits, employment conditions, as well as the salary review mechanism presently enjoyed by the MTRC staff? According to my understanding and to the views of our Legal Adviser, the answer should be in the negative. If my conclusion should be correct, then I would like to raise this question: Why must the amendment be introduced? To me, the only rationale for doing so is to give the provision greater clarity. However, as I said before, the proposed amendment only serves to set out the original content of the clause in clearer terms, and no new substance has been added to it whatsoever.

An article in today's *Hong Kong Economic Journal* has quoted a remark made by Deputy Secretary CHOW Tat-ming. I think he was right in saying that this proposed amendment was a mere formality. He said, "The concession made by the Government in accepting the two proposed amendments of the Hong Kong Federation of Trade Unions is but a mere formality." To a certain extent, this proposed amendment is a technical amendment which carries no additional content. Perhaps it is introduced just to make the FTU or the MTRC employees union feel better. Actually, this proposed amendment will not cause the MTRC or Jack SO to incur any additional workload, and it will not bring about any advantages to the employees union either. *(Laughter)* This proposed amendment will not provide any additional protection for the MTRC staff, yet the Government is introducing it to the clause. What is more, the Government is introducing it with a fanfare. Last week, the Government acted as if it could relax a little bit and said three votes from the FTU would be cast in support of the Third Reading of the Bill on account of, *inter alia*, the protection for the employee benefits. Actually, this statement is both untrue and incorrect, since the employee benefits and protection would remain unchanged even in the absence of the proposed amendment. Nevertheless, given that the Government is willing to write down everything in the clause, in addition to giving the FTU certain form of reassurance, this might as well give the FTU a good excuse for supporting the Third Reading of the Bill. Certainly, it would be another story if my interpretation of the clause were wrong.

I feel that the speeches made today by the FTU Members of this Council have all failed to answer this question: Will the passage or otherwise of the proposed amendment have any effect on the existing interest of the employee union and that of the MTRC staff? Actually, the answer is in the negative. Why then must the FTU use this as a criterion determining whether it should support or oppose the Third Reading of the Bill? Is it advisable to make use of a vague amendment without any concrete content as an excuse for taking certain action? The answer is, again, in the negative.

I should like to raise one more point. In deliberating this proposed amendment and on the voting decision regarding the Third Reading of the Bill, the three Honourable colleagues from the FTU should take into account the two different capacities in which they function in this Council. Firstly, in their capacity as members of the FTU, they must represent and strive for the benefits of both the employees union and the MTRC staff. However, they must also bear in mind that many workers are not members of the MTRC employees union.



In this connection, I believe workers who are not members of the MTRC employees union must have out-numbered that of the MTRC unionized staff. While the MTRC employee union has a membership of just 8 000 strong, some 2 million to more than 3 million people are riding the MTR daily. Of these MTR passengers, more than 50% are adults and most probably many of them are workers. What the public asks for is not only protection for the benefits of the MTRC employees union but also protection for the interests of the general public as provided under the Mass Transit Railway Bill, and one of which is the fare increase mechanism. I am really surprised to see the FTU associating its support or otherwise for the Third Reading of the Bill with clause 41. I would consider it more logical and reasonable if the FTU should associate its voting decision with the fare increase mechanism.

I hope the FTU could understand that we must not concentrate on the "trees" to the negligence of the "forest". The "trees" here refer to the interests of and protection for the MTRC employees union, while the "forest" is the interest of the MTR passengers as a whole. It is regrettable that the "trees" as perceived by the FTU are in fact seedlings only, since the proposed amendment could not bring about any concrete effects or additional protection. Why must the FTU choose this as its excuse? I just hope that the FTU will not become an indiscriminate supporter of the Government's unreasonable policies. Last time they have already played such a role in the "scrapping" of the two Municipal Councils. But this time around, I feel the situation is even more incomprehensible.

Madam Chairman, today we can have more time to speak because this is the Committee stage, we could rise to speak for many times. However, I do not wish to repeat the various views raised. I just wish to ask the Secretary and Miss CHAN whether they also feel that the proposed amendment to clause 41 would not make any difference, and that the protection for MTRC staff would remain unchanged. This clause only serves to transfer the responsibilities and other matters concerned from the present statutory corporation to the new listed entity, which is the Mass Transit Railway Corporation Limited. I hope that when discussing this issue, Honourable Members will not consider solely from the point of view of the MTRC employees union. Please be reminded that several million people are riding the MTR every day. Thank you, Madam Chairman.

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

**MR ALBERT HO** (in Cantonese): Madam Chairman, just now Mr LEE Wing-tat has already given this Council a clear account of the views held by the Democratic Party in relation to these two proposed amendments. I wish to further point out that the amendment proposed by Mr LAU Chin-shek could actually provide the public with some protection in real terms. I believe Mr LAU will explain that in greater detail when he speaks on the amendment later. Given the considerable importance of employee benefits, and that the FTU also attaches great importance to clause 41, why does the FTU not associate its support or otherwise for the passage of the Bill with the passage or otherwise of the amendment proposed by Mr LAU Chin-shek to provide employees with some concrete protection? Actually, the proposed amendment of the FTU is a mere formality, since it has failed to give the employees or the staff union a clear explanation to enable them to understand the nature of the two proposed amendments.

Last but not least, I should also like to point out that while the benefits of the unionized employees are in most cases in line with that of the non-unionized employees, the benefits of the employees are also in line with that of the general public, including the MTR passengers. We should not consider the benefits of the two parties separately. It is true that employee interest must always be protected, but that does not mean we could neglect the interest of passengers or members of the public who frequently rides the MTR. For this reason, I hope very much that the FTU could explain clearly why it only chooses clause 41 as its excuse for supporting the passage of the Bill.

**CHAIRMAN** (in Cantonese): Secretary for Transport, do you wish to reply?

(The Secretary for Transport indicated that he did not wish to reply)

**MR LEE WING-TAT** (in Cantonese): Madam Chairman, although the Secretary decided not to answer my question, can I speak for the second time according to the Rules of Procedure?

**CHAIRMAN** (in Cantonese): Mr LEE Wing-tat, you may speak again at the Committee stage.

**MR LEE WING-TAT** (in Cantonese): Madam Chairman, I am extremely disappointed. This is a venue for public debate, I therefore feel that the Secretary should answer the question raised by me earlier. I would like to urge the Secretary to give me a response. Will the amendment to clause 41 give workers of the MTRC additional benefits so that, without the amendment, the new private organization will not give the workers the existing protection given to them by a statutory organization? If the analysis I made is correct, the Government will then be susceptible of "collaborating" with the FTU. A newspaper headline saying that the amendment will give the MTRC workers and trade unions greater protection is in fact a beautiful misunderstanding. If my understanding is correct, the Government should tell the public frankly that this amendment only serves to state the meaning of the original text clearly without adding anything. I think there is a negligence of duty on the part of the Government if it refuses to accede to this request made by the Democratic Party in public. It is incumbent upon colleagues in this Council to be informed of the legal effect of the Bill for the purpose of voting on it. As far as I understand it, this amendment has not added anything to the original provision. Thank you, Madam Chairman.

**MR CHEUNG MAN-KWONG** (in Cantonese): Madam Chairman, as far as today's Bill is concerned, this part is very important. This is because the passage of the Bill is dependent upon how an organization — the FTU — is going to vote at Third Reading.

Actually, there is no "collaboration" between the Democratic Party and Mr LAU Chin-shek today because Mr LAU has basically no idea of how the Democratic Party voted at the very beginning. Our original consideration is whether Miss CHAN Yuen-han's amendment can give employees of the MTRC more protection in concrete terms. We need to ask this question before deciding on whether to support Mr LAU Chin-shek's amendment. This is why we consulted the Legal Adviser of this Council.

The advice given by the Legal Adviser is pretty clear. He is of the view that if a Legislative Council decides to add an extra pair of brackets in the original Bill and then add a few lines in the brackets, he should be allowed to do so as long as what is added is entirely in compliance with the protection offered by the original provisions so that the actual protection will remain unchanged. However, we should bear in mind that all agreements previously signed between the MTRC and its employees will remain valid by virtue of this provision and yet these agreements might entail provisions for retaining review the mechanism for the welfare and allowances of employees in future. If the future MTRCL decides to carry out a review, the welfare and allowances enjoyed by the employees might either change or remain unchanged. In other words, even if the commitments made by the MTRC in its previous agreements remain unchanged upon the passage of Miss CHAN Yuen-han's amendment, the MTRCL can still slash the welfare entitlement of its employees in future through the mechanism provided for in the agreements. Of course, the review will be carried out some days later, definitely not on the day immediately following the passage of the amendment.

The greatest difference between Mr LAU Chin-shek's amendment and Miss CHAN Yuen-han's amendment is that Mr LAU has drawn an unalterable bottomline with respect to the agreements. This is similar in nature to Article 100 of the Basic Law where a bottlomline has been set for the protection of civil servants beyond 1997 with respect to welfare and conditions of service. According to the bottomline set by Mr LAU Chin-shek's amendment, should the MTRCL choose to alter the conditions contained in the agreements, the conditions must not be less favourable than all the original welfare provided for the employees before the transfer as a result of the privatization of the MTRC, regardless of any past agreements and whether the agreements contain any provisions allowing for a review. After deliberation as well as from the legal point of view, we can see that Mr LAU's amendment can at least provide employees with minimum or transitional protection. In other words, the original welfare and wage levels shall be retained. There will be no drop in welfare and salaries. If we really aim at a peg to the welfare of employees, we must aim at a peg to Mr LAU Chin-shek's amendment. If we aim at a peg to Miss CHAN Yuen-han's amendment, the employees might eventually have part of their welfare slashed.

For these reasons, this provision is very important. Is adding a pair of brackets the same as adding something to the original provision? As far as this question is concerned, the Government must give us an answer. This is at least what we have got from the Legal Adviser of this Council. Of course, the Government has the right not to answer this question. In that case, we will presume that the Government has admitted it tacitly. Thank you, Madam Chairman.

**MR LEE CHEUK-YAN** (in Cantonese): Madam Chairman, I only hope that the Secretary for Transport can answer the relevant question later. I would like to briefly verify a point here. As a member of the Hong Kong Confederation of Trade Unions, I need to verify the correctness of the legal advice quoted by Mr LEE Wing-tat and Mr CHEUNG Man-kwong. However, there is something I still want to add.

Actually, no problem will arise even without clause 41 of the Bill. This is because, even without clause 41, employees of the MTRC will still be employed by the MTRCL. It is only that the MTRCL will privatize only part of the shares. There is basically no change with the employer. To put it in simple terms, many listed companies and enterprises constantly change their shareholders. Even with a change from shareholder A to shareholder B, the employer will still remain as a limited company. Being a body corporate, the limited company is basically the same as before. The MTRC is not going to change its name. It will not be changed from the "MTRC" to the "Eternal MTRCL". Its employer will still remain the same. There is basically no problem even without clause 41 because the employer will remain unchanged. Nevertheless, it is always better for us to make everything clear in the provisions.

Thank you, Madam Chairman.

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

(No Member responded)

**SECRETARY FOR TRANSPORT** (in Cantonese): Madam Chairman, I very much regret that Members sometimes do not listen carefully to what the Government has said. In fact, I already explained why the Government had proposed this amendment when I spoke on clause 41 earlier. I have clearly explained the rationale and responded to the concerns of Mr LEE Wing-tat.

Yet, let me now repeat a part of my earlier speech. I said, "While clauses 37, 38 and 41, by implication, already cover the benefits that employees will continue to enjoy, but in view of the concerns of Members and staff of the MTRC, the Government agreed to specify the existing employee benefits separately under clause 41 in order to allay the worries of the staff." This is what I said just now and Members may as well check the recordings. If it can make the employees feel at ease and if it can allay their worries, does it not tantamount to greater protection for the employees?

Thank you, Madam Chairman.

**CHAIRMAN** (in Cantonese): Mr LEE Wing-tat, you have claimed the floor thrice already.

**MR LEE WING-TAT** (in Cantonese): Madam Chairman, I shall be very brief. In the course of drafting a piece of law, we can always make every provision extremely long. In this debate, I want to raise a question. I am very grateful for the Secretary, Mr Nicholas NG, for he has indirectly confirmed that we have a correct knowledge of the legal effect of clause 41. The Government has proposed this amendment in the light of the concerns of Members and employees just for the sake of allaying the employees' worries. But actually, nothing has been added. Therefore, I will not ask Mr NG anymore. However, I would like to ask Miss CHAN Yuen-han a question: As this amendment has not provided employees of the MTRC with any additional protection, why does the FTU find it necessary to link up this redundant amendment with its decision as to support or not to support the Third Reading of the Bill? I simply cannot understand it at all. The only explanation I can find is because this amendment will definitely be passed. Therefore, Miss CHAN told the relevant employees that she would aim at a peg to the amendment. However, this amendment is actually very abstract and carries no concrete significance. Is this a proper way of handling the matter? We should let the public make their own decision. Thank you, Madam Chairman.

**SECRETARY FOR TRANSPORT** (in Cantonese): Madam Chairman, I wish to clarify that I did not agree with the views or explanation of Mr LEE Wing-tat. Meanwhile, I wish to add that before this amendment was proposed, we had consulted our legal experts who advised that this is legally in order.

**MISS CHAN YUEN-HAN** (in Cantonese): Madam Chairman, I am very grateful to Honourable colleagues from the Democratic Party for asking me the same question again and again. I would like to share with Members how we conducted the whole discussion.

Before we proposed making an amendment to clause 41, some staff indicated to us that they were worried that there would be a change in their fringe benefits. We did consult the Government and our Legal Adviser. We were given to understand that the transfer would be restricted only to the entry salary mechanism, that is, the mechanism providing for the signing of contracts of employment by the staff, without mentioning other benefits in particular. Some staff have worked for the MTRC for 21 years. Their staff unions have done a lot in collaboration with the MTRC with respect to benefits though some of the work done has not been recorded. The staff are worried for they are not sure if other benefits can be transferred upon the passage of the Bill as well. One of their serious concerns is related to the pay-rise mechanism. The current practice of the MTRC is to set its pay rise target on the basis of the pay rise trends of 20 companies. However, this has not been clearly reflected in the relevant document.

Similar to the responses given by Honourable colleagues from the Democratic Party, the preliminary reply given by the Government in response to clause 41 is that everything will be fine. Although the then Deputy Secretary for Transport indicated repeatedly that all relevant benefits had been included, I was still not assured in the light of my experience in deliberating legislation — I have been working in this Council for five years. This is because the benefits of the staff and the pay-rise mechanism have not been explicitly set out in clause 41. We have held a number of meetings with the MTRC staff unions. They have all along been holding the view that there are some problems though the Government holds the opposing view. Our Legal Adviser noted that over the past 21 years, the MTRC and its staff had laid down many conditions of benefits. The staff are extremely worried that their employer will change some of the conditions soon after the transfer and that they might lose if the case were taken

to the Court. We can always find different legal points of view. For instance, Miss Margaret NG and Mr Albert HO were divided on how clause 29 should be interpreted just now. As far as the staff unions are concerned, we must play safe. In other words, we must be able to win if we are to take a case to the Court. At first, the Government reacted strongly in response to our request to incorporate the pay-rise mechanism into the provisions for it was considered to be impossible to list all of the 20 companies referenced by the MTRC. This is exactly what happens to the Human Reproductive Technology Bill under deliberation at the moment. We were given some very vain information by the Government when discussing some hereditary diseases. In the light of this, Mr Michael HO from the Democratic Party is prepared to propose an amendment to require the relevant hereditary diseases be itemized. The reason for his doing this is the same. Perhaps colleagues from the Democratic Party did not listen to the discussion we made with the Government in the course of deliberation.

I can definitely not agree to the saying that the FTU is "collaborating" with the Government. I can also definitely not agree that this is not a matter of concern to the staff. I will propose three amendments respectively to clauses 7, 29 and 41 of the Bill. I have asked the staff repeatedly what they will do if our amendments are negated at the Committee stage. What they concern most is whether the amendment proposed by the FTU to clause 29 and 41 can be passed. In other words, if my proposed amendment to clause 41 is not passed today, the three votes of the FTU will be used for opposing the Government at Third Reading. If Members from the Democratic Party want us to vote against the Government when the Bill is read the Third time, fine, they can vote against my proposed amendment now. Thank you, Madam Chairman.

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

**MR JASPER TSANG** (in Cantonese): Madam Chairman, Members are not supposed to be legal experts. All the 10 Members from the Democratic Alliance for the Betterment of Hong Kong (DAB) are no legal experts either. However, we can always seek legal advice from our Legal Adviser.

The parliamentary group of the DAB have proposed four different interpretations and conducted a heated debate in the course of discussing the amendments proposed by the Government and Miss CHAN Yuen-han and by Mr



LAU Chin-shek with respect to clause 41 of the Bill. First, concerning Miss CHAN Yuen-han's proposed amendment, like what was debated earlier, will the amendment to clause 41 make a difference in protecting the staff's interest? We have two divided views: some agree and some disagree. As for Mr LAU Chin-shek's amendment, we also have two different views on it. I am also one of those who spoke. Some of our members share the view held by friends from the Democratic Party, saying that Mr LAU's amendment can make a marked difference as far as protection for staff interest is concerned. If this amendment is passed, the protection will be guaranteed to last forever, meaning that it is really going to be eternal. Terms of benefits offered after the listing of the MTRC will be exactly the same as those provided at present, that is before the listing or immediately before the listing. In addition, any terms offered in future can only be better, not worse than before. The way I look at this issue is different: How should we interpret the requirement whereby the future conditions of service are guaranteed to be comparable to the present conditions? If it has been stated clearly in the former conditions of service that a wage cut will never be allowed, the conditions of service offered by the future company shall be deemed less favourable than before if the company asks for a wage cut. Or if it has not been stated clearly in the former conditions of service that benefits, wages and so on must not be adjusted downward, we can then interpret it to mean that no one will be allowed to add a provision providing for the downward adjustment of benefit or salary levels. However, if the former conditions of service do not contain anything about making a downward adjustment to the benefit or salary levels, why can we not do it? This is why I think there is no difference. We did have a heated debate among ourselves. It seems to me quite unreasonable for someone to say that there is really such a marked difference, or Mr LAU Chin-shek's amendment can serve to guarantee, regardless of what happens or under what situation, the staff's benefits, salaries, treatment and so on to remain comparable to what the staff receive the moment immediately before the listing. I also interpret Article 100 of the Basic Law in the same way. According to this provision, all conditions of service related to public servants must be comparable to those offered before the reunification. Yes, this is a means of protection. I was told that this was the reason why the salaries of public servants must not be reduced. This is because it has been provided for before the reunification that the salaries of public servants should be adjusted in accordance with surveys of private organizations and no pay cut will be allowed. In that case, we have to keep this rule — that is, only pay rises will be allowed. If this is really what has been laid down in the conditions of service, we will have to keep it. If not, there is no question of it.

Madam Chairman, please forgive me for having delivered such a long speech. I dare not say how much legal knowledge the 10 Members from the DAB possess. Nevertheless, I do not believe the Hong Kong Confederation of Trade Unions definitely is more conversant with the law than we are. In other words, if we argue among ourselves when discussing the provision, I believe the Hong Kong Confederation of Trade Unions will do the same thing in the course of their discussion. This is not just an argument among common people like us.

Mr LEE Wing-tat quoted the opinion given by the Legal Adviser of this Council just now. During our discussion, other lawyers did offer us their advice, which was divided as well. Even if Mr LEE looks at the meaning by this provision from the strictest legal point of view, he will find that the provision has actually clearly spelt out what he wants to tell the MTRC staff with respect to how their benefits are going to be protected and how the Corporation is going to keep its obligations and responsibilities.

Thank you, Madam Chairman.

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

(No Member responded)

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

(Members raised their hands)

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

(Members raised their hands)

Mr CHAN Wing-chan rose to claim a division.

**CHAIRMAN** (in Cantonese): Mr CHAN Wing-chan has claimed a division. The division bell will ring for one minute.

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

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

Mr Kenneth TING, Mr David CHU, Mr HO Sai-chu, Mr Edward HO, Mr Albert HO, Dr Raymond HO, Mr LEE Wing-tat, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Eric LI, Mr LEE Kai-ming, Dr David LI, Mr Fred LI, Dr LUI Ming-wah, Mr NG Leung-sing, Prof NG Ching-fai, Miss Margaret NG, Mrs Selina CHOW, Mr Ronald ARCULLI, Mr MA Fung-kwok, Mr James TO, Mr CHEUNG Man-kwong, Mr HUI Cheung-ching, Miss Christine LOH, Mr CHAN Kwok-keung, Miss CHAN Yuen-han, Mr Bernard CHAN, Mr CHAN Wing-chan, Mr CHAN Kam-lam, Dr LEONG Che-hung, Mrs Sophie LEUNG, Mr LEUNG Yiu-chung, Mr Gary CHENG, Mr SIN Chung-kai, Mr Andrew WONG, Dr Philip WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Mr Howard YOUNG, Dr YEUNG Sum, Mr YEUNG Yiu-chung, Mr LAU Chin-shek, Mr LAU Kong-wah, Mr LAU Wong-fat, Mrs Miriam LAU, Mr Ambrose LAU, Miss CHOY So-yuk, Mr Andrew CHENG, Mr SZETO Wah, Mr Timothy FOK, Mr LAW Chi-kwong, Mr TAM Yiu-chung, Mr FUNG Chi-kin and Dr TANG Siu-tong voted for the motion.

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

THE CHAIRMAN announced that there were 55 Members present and 54 were in favour of the motion. Since the question was agreed by a majority of the Members present, she therefore declared that the motion was carried.

**MR LAU CHIN-SHEK** (in Cantonese): Madam Chairman, I move that clause 41 be further amended, as set out in the paper circularized to Members.

This amendment specifically provides that the future remuneration and allowances payable to former MTRC staff shall remain at a level not lower than the original standard upon transfer of the staff to the newly established MTRCL. Mr Jasper TSANG mentioned this point and asked what it really meant. What it means is the MTRCL is not allowed to have its remuneration reduced to a level lower than the original standard. Pay may be cut subsequent to a pay rise but it shall remain at a level not lower than before.

This amendment serves to address the staff's concerns in response to the privatization of the MTRC and aims at setting the lowest standard for protecting their future remuneration and benefits through legislation.

Members who have read my amendment should be aware that the wording of the amendment is based on Article 100 of the Basic Law. A colleague has also mentioned this point. The difference between the two lies in that the Basic Law aims at providing protection for incumbent public servants while my amendment aims at providing protection for the MTRC staff, who are now working under a statutory organization.

I believe only through giving the MTRC staff protection similar to that offered to public servants before the reunification can we put them really at ease. The MTRC will definitely hold the key to success if it can give its staff a sense of stability so that they can work without worrying.

Some Honorable colleagues have already dealt with the amendments proposed by the Government and Miss CHAN Yuen-han. I want to point out that I have based my argument on facts. I have not pegged my voting preference to support or otherwise for the Bill's Third Reading. This is why I have voted in support. Nevertheless, I want to reiterate that this amendment only aims at reaffirming the existing Employment Ordinance. Nothing new has actually been added. To this end, I hope colleagues can reconsider the matter. I feel it quite hard to accept to take this amendment, which is aimed at reaffirming the Employment Ordinance only, as a criteria in determining

whether we should support the Bill at Third Reading. I hope the FTU can consider this point in determining its voting preference. I would also like to urge Members to join me in voting against the Bill when it is read the Third time should my amendment be negated.

Madam Chairman, I so submit.

*Proposed amendment*

**Clause 41 (see Annex I)**

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

**MR JASPER TSANG** (in Cantonese): Madam Chairman, I would like to thank Mr LAU Chin-shek for explaining the implication of his amendment. However, I find it extremely doubtful if that is really the case.

Is it reasonable for us to set the pay and benefits enjoyed by the staff at a certain moment before the listing of the MTRC as the lowest standard to be adopted in future (regardless of the length of time)? From the experience we have gained over the past three years, we can see that it is extremely difficult to predict the economy. Even our extremely smart Financial Secretary was not able to make an accurate prediction every time. We do not know what will happen in the coming few years. It is not hard to imagine that it is basically not very meaningful if we peg the lowest standard to today's level if inflation runs wild. According to Mr LAU, it is still possible to have a wage reduction after a pay rise but the new wage must not be lower than the current standard. Should that be the case, it will depend on how much more the staff have received. If the overall wage level has risen sharply, that is, when inflation has run high, the staff will still find it hard to accept even though their wages are maintained at the current level after a big slash. The protection we are now talking about will then become meaningless. On the contrary, is it reasonable if, at a time of serious deflation or economic recession, the pay enjoyed by the MTRC staff can still be "fixed" at the current level in spite of the general tendency to cut wages? Is it reasonable to set the salary payable to the staff on a specific date in a specific month as the lowest standard? I am really extremely doubtful.

**MR LEE CHEUK-YAN** (in Cantonese): Madam Chairman, Mr Jasper TSANG should propose amending Article 100 of the Basic Law should he consider it unreasonable.

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

**MR JASPER TSANG** (in Cantonese): Madam Chairman, according to my understanding of Article 100 of the Basic Law, there is absolutely no need to make changes. I have expressed what I understand earlier and that is, the conditions of service shall not be less favourable than before.

Article 100 of the Basic Law addresses the reunification. This is because, prior to the reunification, public servants were not sure what would happen after the reunification. Therefore, they would fear that there would be dramatic institutional changes. To this end, Article 100 guarantees that the conditions of service of public servants will not be less favourable than before regardless of changes.

According to my understanding, there is no need to amend Article 100 of the Basic Law. This is entirely different from the objective of Mr LAU Chin-shek in moving his amendment.

**MR CHEUNG MAN-KWONG** (in Cantonese): Madam Chairman, according to Mr Jasper TSANG's understanding, whether the reunification would lead to changes in conditions of service was definitely an issue of concern for public servants throughout the territory. It was also for this reason that Article 100 of the Basic Law was drafted. By the same token, Mr LAU Chin-shek is trying to "do exactly the same" in proposing his amendment. For the staff of the MTRC, this is a special day for whether their Corporation will go public and whether their conditions of service will be affected subsequent to the listing will be decided today. It is on this basis that Mr LAU Chin-shek has proposed his amendment.

Therefore, if the explanation put forward by Mr Jasper TSANG in response to Mr LEE Cheuk-yan's question holds water, Mr LAU Chin-shek's amendment will naturally hold water.

**DR YEUNG SUM** (in Cantonese): Madam Chairman, I hope civil service bodies in Hong Kong can get in touch with Mr Jasper TSANG to discuss with him what he said just now.

Article 100 of the Basic Law sets forth the following: Public servants serving in all Hong Kong government departments, including the police department, before the establishment of the Hong Kong Special Administrative Region, may all remain in employment and retain their seniority with pay (please note), allowances, benefits and conditions of service no less favourable than before.

Mr Jasper TSANG has mentioned the conditions of service only. Actually, apart from conditions of service, benefits, allowances and pay shall be retained and shall not be less favourable than before. It is very strange that Mr Jasper TSANG has only mentioned the conditions of service.

**MR LEE CHEUK-YAN** (in Cantonese): Madam Chairman, I hope Mr Jasper TSANG can understand that, like what he described Mr LAU Chin-shek's amendment just now, Article 100 of the Basic Law has similarly "pegged" the pay of public servants at the 30 June 1997 level, and this resembles the photographic effect mentioned by Mr TSANG earlier.

If Mr TSANG agrees that Article 100 of the Basic Law can protect the interests of public servants and give them confidence in the reunification, he should bear in mind that both the transfer of public servants and the listing of the MTRC give people the impression that the future is unpredictable. Although one of them take places only once in 150 years, both of them are, insofar as the staff are concerned, exactly the same in the sense that they have something to do with the unpredictable future. Therefore, I hope both Mr TSANG and the DAB can support Mr LAU Chin-shek's amendment.

**CHAIRMAN** (in Cantonese): Mr LAU Chin-shek, you raised your hand earlier to ask for my permission to allow you to speak. But I need to remind you that you will be given a chance to reply later. Does any Member wish to speak?

**MR MARTIN LEE** (in Cantonese): Madam Chairman, I find today quite strange for if the argument advanced by the FTU is valid, the amendment mentioned earlier will be able to make the staff of the MTRC feel at ease in spite of the fact that they are not given any concrete benefits. Members from the FTU can then "make a U-turn" when the Bill is read the Third time and "gain something from it", so to speak.

However, I think many public servants are shocked by what Mr Jasper TSANG's remarks. What is meant to be welcome news for more than 8 000 staff of the MTRC will become a cause of concern for so many public servants as they might not be paid according to what has been stipulated in the Basic Law. Therefore, we might incur "losses" over major issues as a result of something we "gain" over minor issues.

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

**MR JASPER TSANG** (in Cantonese): Madam Chairman, as the matter was described by Mr Martin LEE as being so serious, I think I must clarify.

In my speech, I have never said, nor have I advocated, that public servants can be paid not in compliance with the Basic Law.

**SECRETARY FOR TRANSPORT** (in Cantonese): Madam Chairman, I think we are now discussing Mr LAU Chin-shek's amendment to clause 41.  
(*Laughter*)

As I pointed out when I spoke on the Government's amendment to clause 41 earlier on, both the Government and the MTRC fully appreciate the employees' concern that the Corporation, after privatization, may cut manpower and thus jeopardizing their job security. Besides, some employees are concerned that after the listing of the MTRC, their salary and benefits will be less favourable than the existing package. Clause 41, as amended by the Government's amendment which was passed just now, should be able to fully address their concerns.



Mr LAU Chin-shek's amendment serves not only to protect the employees' salary and benefits from being affected by the privatization. His amendment also has an objective effect to provide, by way of legislation, permanent guarantees to ensure that the employees' conditions of service will be no less favourable than their entitlements before privatization. To protect job security by legislative means as such is unprecedented.

The amendment has the effect that the employees' salary, allowances and benefits will be protected to be no less favourable than their previous entitlements before privatization. This arrangement undoubtedly offers permanent safeguards for the employees. While the Government absolutely supports the principle that the employees' salary and benefits should not be affected by the privatization, this is obviously not the objective effect of Mr LAU Chin-shek's amendment.

I urge Members to vote against the amendment.

**MR LEE CHEUK-YAN** (in Cantonese): Madam Chairman, the Secretary, Mr Nicholas NG was only reading from his script. He should have listened to the debate earlier. He said it was unprecedented. In fact, he is under such constitutional protection under Article 100 of the Basic Law at the moment. It is really surprising that he referred to it as unprecedented.

**CHAIRMAN** (in Cantonese): Mr LAU, could you please reply?

**MR LAU CHIN-SHEK** (in Cantonese): Madam Chairman, I would like to thank the Secretary for referring to my amendment as a kind of protection. Thank you.

I would also like to point out that what Mr Jasper TSANG said precisely reflects the concerns of the staff.

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That the amendment moved by Mr LAU Chin-shek be passed. Will those in favour please raise their hand?

(Members raised their hands)

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

(Members raised their hands)

Mr LAU Chin-shek rose to claim a division.

**CHAIRMAN** (in Cantonese): Mr LAU Chin-shek has claimed a division. The division bell will ring for one minute.

**CHAIRMAN** (in Cantonese): Will Members please proceed to vote, and check whether they have cast their votes.

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

Functional Constituencies:

Mr LEE Kai-ming, Mr CHEUNG Man-kwong, Mr CHAN Kwok-keung, Mr CHAN Wing-chan, Mr SIN Chung-kai and Mr LAW Chi-kwong voted for the motion.

Mr Kenneth TING, Mr Edward HO, Dr Raymond HO, Mr Eric LI, Dr David LI, Dr LUI Ming-wah, Miss Margaret NG, Mrs Selina CHOW, Mr Ronald ARCULLI, Mr HUI Cheung-ching, Mr Bernard CHAN, Mrs Sophie LEUNG, Dr Philip WONG, Mr Howard YOUNG, Mr LAU Wong-fat, Mrs Miriam LAU, Mr Timothy FOK, Mr FUNG Chi-kin and Dr TANG Siu-tong voted against the motion.

Dr LEONG Che-hung and Mr WONG Yung-kan abstained.

Geographical Constituencies and Election Committee:

Mr Albert HO, Mr LEE Wing-tat, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Miss CHAN Yuen-han, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Mr LAU Chin-shek, Mr Andrew CHENG and Mr SZETO Wah voted for the motion.

Miss Christine LOH, Mr Andrew WONG, Mr TAM Yiu-chung, Mr David CHU, Mr HO Sai-chu, Mr NG Leung-sing, Prof NG Ching-fai, Mr MA Fung-  
kwok, Mr Ambrose LAU and Miss CHOY So-yuk voted against the motion.

Mr Gary CHENG, Mr Jasper TSANG, Mr LAU Kong-wah, Mr CHAN Kam-lam and Mr YEUNG Yiu-chung abstained.

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

THE CHAIRMAN announced that among the Members returned by functional constituencies, 27 were present, six were in favour of the motion, 19 against it and two abstained; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 28 were present, 12 were in favour of the motion, 10 against it and five abstained. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the motion was negatived.

**CLERK** (in Cantonese): Clause 41 as amended.

**CHAIRMAN** (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Clause 34.

**SECRETARY FOR TRANSPORT:** Madam Chairman, I move the amendment to clause 34, as set out in the paper circularized to Member. The amendment is technical in nature, and has received the support and approval of the Bills Committee. I urge Members to support the Government's amendment.

*Proposed amendment*

**Clause 34 (see Annex I)**

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

**CHAIRMAN** (in Cantonese): We will now deal with the parts of the Bill relating to "prescribing and determining the fares". In this relation, Mr LAU Chin-shek has given notice to move amendment to clause 34, Mr CHAN Kam-lam has given notice to move amendments to add the heading before new clause 14A and new clause 14A to the Bill, and Mr Andrew CHENG has given notice to move amendments to add the heading before new clause 14A, new clause 14A and new schedule 5B to the Bill.

**CHAIRMAN** (in Cantonese): Committee now proceeds to a joint debate. I will first call upon Mr LAU Chin-shek to move his amendment.

**MR LAU CHIN-SHEK** (in Cantonese): Madam Chairman, I move that clause 34 be amended, as set out in the paper circularized to Members. By virtue of this amendment, the future MTRCL shall seek the approval of this Council before prescribing the fares payable by passengers travelling on the MTR.

This amendment is undoubtedly the most crucial part of the Bill for the fare adjustment mechanism will involve the livelihood of the public direct.

The Government has always pointed out that although the privatized MTRCL will be able to keep its "fare autonomy", it does not mean that it can raise fares indiscriminately because, under competition from other modes of public transport, its fare levels will be subject to constraints imposed by the market. I can absolutely not agree with the Government's view. This is because although there is competition from other modes of transport (especially buses) along the MTR routes, the MTR, as the only mass transit railway system in the urban areas, is in a far more dominant position than other modes of transport in terms of speed, convenience, reliability and so on. The so-called "competition" is indeed limited.

Protected by having the privilege of "fare autonomy", the MTRC has been able to do away with checks and balances over the past two decades in determining its fares, which can well be reflected from the rise trend of MTR fares. Since the MTR came into operation in 1979, its fares have been adjusted upward annually in line with inflation rates. It was only until recent years that its fares were frozen because of the adversity of our economic conditions. Except for the MTR, no other public utilities in Hong Kong has been able to raise fares annually as a "routine practice" over the past two decades. According to information on hand, from the date the MTR came into operation, the annual inflation rate over the past two decades was 7.9% on average while the annual fare increase of the MTR was 7.3% on average. The two increases were indeed extremely close.

Over the past two decades, the financial conditions of the MTRC have changed from incurring losses every year at the very beginning (losing \$800 million in one year at its peak) to reaping huge profits every year afterwards (the net profit for the MTRC in 1998 was \$2.8 billion). As in the past, the MTRC has, however, chosen to raise fares in line with inflation every year. This demonstrates the fact that MTR fares were unaffected by the market and that the MTRC had done absolutely nothing to lower its fare increases even when it was reaping huge profits. The public were most dissatisfied that the MTRC had once "taken advantage of peak hours and tried to reap money" by introducing peak-hour surcharges. The surcharge was not formally abolished until 1993 after years of objection from non-governmental organizations. I remember I was prepared to sleep on a railway track in a bid to protest against the upward adjustment of peak-hour surcharges by the MTRC in 1991. The MTRC was eventually forced to withdraw its proposal to raise the surcharges in the same year.

At present, the MTRC can be said to enjoy full autonomy in determining its own fares without being subject to any regulation. The public will definitely find it hard to protect their interests if the MTRC, after listing, can still have its automatic fare-raising mechanism after turning into a private company.

Another reason cited by the Government for objecting to the regulation of the MTR fares is that a regulatory mechanism will affect the borrowing power of the MTRCL. At the same time, it will affect the share prices of the MTRCL upon its listing. It must be noted that the Government and the MTRC have never presented us any concrete data to prove the extent of influence of the

MTRCL's fare determination mechanism, if amended, will have on its borrowing ability. On the contrary, according to my observation, the fact that the Government wholly owns the MTRCL or acts as the largest shareholder of the MTRCL will hold the key to continuous support given by international rating institutions to the MTRCL for the purpose of safeguarding its borrowing ability. The argument that the exercise of regulation will affect the share prices of the MTRCL will only show the existence of serious contradictions between privatization and the protection of the people's livelihood in a more explicit manner.

As for the ways to regulate MTR fares, we have before us four proposals. I would like to discuss them briefly here.

My basic position is that any regulatory measures taken to tackle the current situation in which the MTRC operates "without control" is at least, to a certain extent, an improvement over the present situation in which the people's livelihood is being neglected. To start with, I need to point out once again that, at present, only the MTRC and the Kowloon-Canton Railway Corporation, both wholly owned by the Government, enjoy fare autonomy without being subject to regulation. The fare levels of the other modes of public transport are all subject to certain form of regulation, which makes it impossible for them to raise fares indiscriminately. Therefore, I consider it normal and reasonable for the Government to regulate the fares of the MTR. Problems will only arise if the MTRCL is not subject to any form of regulation.

Undoubtedly, the entire regulatory mechanism will be able to reflect public opinions in a most effective manner if this Council is to be responsible for approving fare rise applications lodged by the MTRCL. This is because this elected Council still remains the most representative framework of public opinions. We can often hear people criticize that fares of public utilities will become politicized if this Council is tasked to vet fare increases of the MTRC. But what are they really referring to? As the MTR fares are bound to affect the people's livelihood, they should naturally be regulated. This elected Council is definitely the best organ to guard this gate. If it is inappropriate for this Council to vet fares, does it mean that we should prevent this Council from enacting legislation and scrutinizing the Government's Budget as well?

Mr CHAN Kam-lam from the DAB suggests that the cap on MTR fares be decided by the Chief Executive in Council. He is of the view that the MTR's

proposed fare increases should be scrutinized by the Executive Council, which is appointed by the Chief Executive, rather than by the elected Legislative Council. This is mainly because, in his opinion, this Council will "politicize" the matter should it be given the responsibility of guarding the gate. The Executive Council, on the contrary, will be able to balance the interests of the public and the MTRCL. I have pointed out earlier that if someone raises objection simply by saying that the Legislative Council will "politicize" the matter if it is given the responsibility of vetting fare increases of public utilities, he is not only trying to belittle our democratic electoral system, but also showing his distrust in the general public. If someone says that this Council will "politicize" the matter in vetting the fare increases of the MTRCL, does it mean that the Executive Council will definitely not "politicize" the matter? Definitely not. It is only that the non-elected Executive Council will not take into account the interests of the general public and the needs of the people.

As far as I remember, Members from the DAB have all along been advocating that applications for fare increases by public utilities, including the MTRC, should be vetted by a representative and independent statutory body. Now they have only suggested to give the vetting power back to the Executive Council in proposing an amendment to the bill on the privatization of the MTRC. Are they trying to put an end to the matter hastily in spite of having made a good start? Mr CHAN once remarked that the Executive Council should consult the Transport Advisory Committee (TAC) before deciding whether or not to approve fare increases proposed by the MTRC for this can indirectly guarantee the neutrality of the vetting mechanism. I believe Honourable colleagues from the DAB will also agree that the TAC is lack of representativeness, in spite of having a lot of professionals as members, and is unable to reflect the aspirations of the public effectively.

As for the amendment proposed by Mr Andrew CHENG with respect to the regulation of fare increases proposed by the MTRC, that is the exercise of "price control", Hong Kong did have experiences in regulating the fare levels of public utilities by this means. From 1993 to 1998, a form of "price control" was introduced for the purpose of regulating the local telephone service provided by the Hongkong Telecom. To achieve this, the annual tariff increases for the local telephone service were capped at inflation rate minus 4 percentage points, with the increase for the monthly fares for residential lines capped at inflation rate minus 3%. On the whole, capping the telephone service fares can, to a certain extent, provide effective protection for the people's livelihood as this will



inhibit excessive fare increases. Judging from the fact that the Hongkong Telecom raised its fares for residential lines drastically by 30% in the middle of last year after the abolition of the "price control" in 1998, we can see that the control has obviously played a definite regulatory role during the period when it was implemented. Nevertheless, for those people who consider the control to be definitely capable of providing incentive to public utilities being regulated to raise their productivity in order to secure maximum profits, they may find it disappointing that the result does not necessarily turn out like this. For instance, when the price cap of "inflation rate minus 4%" was implemented, the rise in productivity of the local telephone service provided by the Hongkong Telecom was less than 2% per annum, which was not even comparable to the rise in productivity when the "price control" was in force at the end of the '80s. From this, we can see that "price control" is not necessarily a "panacea".

Moreover, according to the proposal made by the Democratic Party, the MTRC, after privatization, can have an annual fare increase in line with inflation for the first five years. This has actually given the MTRCL great flexibility for it will be at liberty to raise fares every year per inflation rate. The public's interests are actually not adequately protected.

For these reasons, I still believe that only this elected Council can provide the most effective protection for the people's livelihood with respect to the vetting of fare increases proposed by the MTRCL.

With these remarks, Madam Chairman, I beg to move.

*Proposed amendment*

**Clause 34 (see Annex I)**

THE CHAIRMAN'S DEPUTY, DR LEONG CHE-HUNG, took the Chair.

**DEPUTY CHAIRMAN** (in Cantonese): I now call upon Mr CHAN Kam-lam and Mr Andrew CHENG to speak on the amendments in accordance with the order in which they submitted their amendments. However, no amendment may be moved by Mr CHAN Kam-lam and Mr Andrew CHENG at this stage.

**MR CHAN KAM-LAM** (in Cantonese): Mr Deputy, the main objective of my amendment is to introduce a regulatory mechanism for fare adjustment by the MTRCL. As Members are aware, the MTR accounts for more than half of the total commuter population of the urban areas. I have to point out that I am referring to the total commuter population of the urban areas. According to the Government, the MTR only accounts for one fourth of the overall commuter population. We should not ignore the fact that the MTR serves mainly the Hong Kong Island and Kowloon. It was not until recently that the MTR was extended to Lantau and the Airport. In future, it is going to have a new line serving Tseung Kwan O. At the moment, a vast part of the New Territories is still not served by the MTR. Therefore, we should not deliberately stress the point that the service provided by the MTR in relation to the total transport volume remains on the low side. Actually, the public relies heavily on the MTR. It is not at all difficult to imagine the importance of the MTR to a community relying mainly on mass transit. On the contrary, it is hard to imagine, so to speak, if MTR fares are not subject to regulation. At present, fare adjustments of such modes of public transport as buses, taxis, ferries, and minibuses are all subject to different forms of regulation. But eventually, they will still need to be submitted to the Transport Advisory Committee (TAC) for discussion before being handed to the relevant approval body for final decision. There is simply no justification for us to support giving the Corporation exemption from being regulated. The Government has repeatedly stressed the point that the introduction of a fare regulatory mechanism will lower the credit rating of the Corporation. We fully understand the consortia's resistance for a regulatory mechanism will definitely give rise to uncertainties and affect investor confidence in the prospects. However, we think the lowering of the credit rating will only be temporary. As long as the Corporation can adhere to its previous operating principles, it will remain a quality enterprise for investment and its rating will surely rise again. On the other hand, we must not abandon the responsibilities we owe to the community just because of the short-lived worries expressed by international consortia.

It has been the community's long-standing policy to exercise appropriate regulation on public utilities. How can we change this long-standing administrative principle just because of \$30 billion? At present, what transport operation (except for the two railways which are wholly owned by the Government) is not subject to regulation? Even tunnel tolls are regulated by different operating agreements.

Mr Deputy, the DAB has considered the matter seriously before proposing the introduction of the regulatory mechanism. We fully understand that some members of the community are worried that regulation of public utilities, if tinted with political elements, will be used as a tool for securing votes. This is because whenever public utilities propose fare adjustments, politicians or pressure groups will have an opportunity to show off. We suggest that the Government should expand the functions of the TAC and appoint more independent professionals and passenger representatives to turn it into an advisory framework with representativeness and credibility for the purpose of regulating the quality of service and fare levels of various modes of public transport effectively. The DAB also is of the view that the Government should consider the setting up of an effective regulatory mechanism as a long-term policy. If we fail to make up our minds in choosing a good regulatory mechanism today, despite having such a good chance, fare disputes will never end and will never be resolved. This will actually do no good to passengers, operators as well as the community.

Mr Deputy, probably owing to the fact that Hong Kong was suffering from an economic downturn in the past two years since the reunification and the repeated occurrence of deflation years after years, many transport operators have chosen to freeze their fares. For this reason, disputes among members of the community on fare adjustments by transport operators have slightly subsided. It is also for this reason that the TAC has failed to give prominence to the importance of its functions and role. Mr Deputy, the setting up of an independent professional regulatory body can not only balance the community's demand for transport services, but also help to make public enterprises feel at ease in making investment in developing quality transport services. Therefore, I consider this proposal worth supporting. I hope Honourable colleagues in this Council can support my amendment.

Thank you, Mr Deputy.

**MR ANDREW CHENG** (in Cantonese): Mr Deputy, on behalf of the Democratic Party, I propose to incorporate a mechanism for regulating the fares of the MTR into the Bill so that the eventually listed MTRCL, will still be regulated, to a certain extent, by this Council in order that the interests of the public can be protected.

The proposal we make this time is a price-cap regulatory approach introduced by the United Kingdom. According to its characteristic, fee increases of public utilities services will be regulated by applying a formula of "Consumer Price Index (CPI) minus X (an incentive variable)" while X will be determined in accordance with the growth in productivity of trades and businesses over the past several years and their estimated growth in productivity in future. In other words, the rate of fare increase will be regulated by the formula of  $CPI - X$ .

First of all, I will explain my proposal to Members clearly. The Democratic Party proposes that, for the first five years after the listing of the MTRCL, the value of X of the  $CPI - X$  formula should be pitched at zero. There are three reasons for this: First, owing to the lack of information, we have been unable to acquire data on the previous growth in productivity of the MTRC; second, as I said during the debate on the resumption of the Second Reading of the Bill, the operation efficiency of the MTRC is quite high already. It is only for the sake of addressing the deficit problem that the Government decided to list the MTRC. It is expected that the listing will not have any obvious impact on boosting the operation efficiency of the MTRCL. Moreover, there is a fear that adding one more X variable will force the MTRCL to further cut its staff for deflation has been with us for the past two years and, third, Mr Jack SO, Chairman of the MTRC, once remarked that fares will still be subject to internal regulation within the MTRCL after listing. Such being the case, the Democratic Party decided to allow the MTRCL to maintain its past practice at the preliminary stage of the listing. After the operation of the MTRCL has gradually run in and entered a mature stage, the MTRCL and the Government can then examine the value of X in detail before giving this Council an account of the case. Therefore, I propose that the value of X in the formula should be reviewed at least once every five years and adjusted in the light of the productivity of the MTRCL. At the same time, this Council is empowered to raise objection and make amendment to any revision made by the Government to the value of X within 28 days after the tabling of the relevant order to this Council. Taking into account the fact that deflation might hit Hong Kong, it will be set out in the provisions that no increases will be allowed if the CPI in the formula turns out to be a negative number.

Mr Deputy, the regulatory approach proposed by the Democratic Party is not so simple as to restricting the annual fare increases to the inflation level of the previous year only. Instead, reference will be made to the average inflation rate of the preceding five years. For instance, for the purpose of raising fares this year, the average increase for this year and the years 1999, 1998, 1997 and 1996 should be pitched at a level not higher than the average inflation rate of the five years from 1995 to 1999. This regulatory approach will look after the MTRCL's need to make long-term and huge capital investment. Having a five-year cycle as an index of reference, the MTRCL will enjoy greater flexibility in dealing with the fare increase issue. Yet the relevant protection enjoyed by the public will not be reduced.

Mr Deputy, at the mention of fare regulation, the Government and the MTRCL will definitely say that it will affect the credit rating of the MTRCL. They will also point out that it will bring uncertainties to investors and thus affect share prices. The Legislative Council will also be described as politicizing the issue if it is given a chance to take part in any regulatory mechanism. The Democratic Party would like to raise some questions with respect to the abovementioned allegations. To start with, electricity companies, bus companies and private tunnel companies in Hong Kong and even the Hongkong Telecom, all being subject to a price cap, are listed companies. Why are their credit ratings unaffected even though there is government regulation? Furthermore, no expert has been able to tell us in concrete terms in the numerous meetings we have held what impact the introduction of a price cap will have on the credit rating of the MTRCL and the magnitude of such an impact. What I have heard is instead a series of estimates and speculation. More importantly, is the credit rating so sacrosanct in the eyes of the Government that it should take precedence over public interests?

Second, I want to refute the argument that price-cap regulation will bring uncertainties. Can anyone tell me what uncertainties there are with the formula, drafted in such a concise and precise manner, which has already clearly set out an index of reference for increases and the review of the formula will only be conducted once every five years? As far as members of the public are concerned, real uncertainties will only arise if the annual fare increase is to be decided only by the board of directors of the MTRCL, which is not prepared to give the public an account of its decision and its criteria for consideration, and fares can be raised indiscriminately by the MTRCL in the absence of regulation!

Third, as far as this Council is concerned, it is at present the most powerful body in Hong Kong in terms of representativeness of public opinions. As Members of this Council, we are obliged to monitor the operation of the Government on behalf of the public and fight for their interests. I think it is extremely irresponsible of some of us here in this Chamber to think that they would rather give up their regulatory power for fear that this Council will become politicized if it is given such power. For me, they have virtually admitted that they have not examined the matter and analysed the outcome sensibly before making their decision. It is incumbent upon us, as elected Members, to fight for the rights for this Council to regulate fare increases of the MTR. This regulatory approach is actually not devised by the Democratic Party arbitrarily. Instead, it is based on a regulatory approach commonly adopted in the United Kingdom in the privatization of public utilities. Objective standards for calculation are included in the relevant formula. In fact, the price-cap formula was once applied in Hong Kong from 1993 to 1998 for the purpose of regulating tariffs for local telephone services. The amendment moved by the Democratic Party is in fact based on the Telephone Regulation enacted in 1993. I really cannot see how this regulatory mechanism is going to politicize the decision we are going to make.

Lastly, Members should be well aware that the main reason for the Government's intention to list the MTRC is to resolve its fiscal deficit problem. The Government has basically not seriously addressed or considered other issues. It only aims at keeping the MTRC unchanged as far as possible to ensure the sale procedures to be carried out smoothly. But actually, the listing of the MTRC is going to involve extensive problems and there will be significant impact on our future transport development and the daily lives of the public. Therefore, I hope Members can support the amendment moved by the Democratic Party with respect to the imposition of a price cap so as to ensure that the public will continue to enjoy reasonable fares after the listing of the MTRC.

Mr Deputy, I would like to go on to express the views of the Democratic Party on Mr CHAN Kam-lam's amendment. As I said during the debate on the resumption of the Second Reading of the Bill, we support the amendment moved by the DAB for it is always better to have some form of regulation.

I would like to respond to some of the remarks made by Mr CHAN Kam-lam in his letter addressed to Honourable colleagues on 21 February 2000 (a few days ago). In Mr CHAN's letter, it was mentioned that the DAB was of the view that the MTR's fare adjustment should be scrutinized by the Transport Advisory Committee (TAC), which will become a representative body an expansion of its functions, and then endorsed by the Chief Executive in Council. However, of what Mr CHAN has said, only the last remark he made is clear and true. This is because we can see that his amendment has only embodied this proposal. Not only has he failed to reflect his other proposals, I have also never heard any commitment made by the Government with respect to the expansion of the composition and functions of the TAC. It has only been stated clearly in the operating agreement that the TAC will be consulted. Therefore, even if Mr CHAN's amendment is passed, I still cannot see how the DAB's proposal can be put into implementation in concrete terms to enable the functions of the TAC to be truly expanded.

Expanding the composition of the TAC and enhancing its representativeness are both integral elements of the amendment proposed by the DAB. But regrettably, I could absolutely not feel that the DAB has taken a strong position in urging the Government to accede to its request in the meetings of the Bills Committee. Nor did I notice the DAB present detailed proposals and submissions with respect to its recommendations. It is really doubtful that the DAB is actually "trying to offer a big help under the pretext of mild condemnation" in this voting with a view to handing the scrutiny power to the Chief Executive in Council, which is lack of a popular mandate. On the one hand, it can save the Government's face and, on the other, front a certain degree of accountability to the public. The so-called request for expanding the TAC is only used as an excuse to gloss over what it has done.

Mr Deputy, I hope the DAB can support the amendment moved by the Democratic Party — that is, to empower this Council to regulate fare increases by means of a formula — to show that it is really standing by members of the public by supporting the exercise of a certain degree of regulation over the listed MTRCL in future.

Thank you, Mr Deputy.

**DEPUTY CHAIRMAN** (in Cantonese): Members may now debate the amendments moved by Mr LAU Chin-shek as well as the respective amendments by Mr CHAN Kam-lam and Mr Andrew CHENG.

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

**MRS MIRIAM LAU** (in Cantonese): Mr Deputy, a debate was held in May 1997 when Mr SIN Chung-kai moved a Member's Bill on the MTR in the former Legislative Council. At that time, both the Liberal Party and I strong objected to the Bill and I pointed out that "if the fare is determined by a government or if politicians can interfere with any increase, that would give rise to a vicious cycle in which low income leads to poor service and reduced passenger volume. When the railway operator finds that its operation is regressing, the government will have to step in by providing huge subsidy".

The Committee stage amendment moved by Mr LAU Chin-shek today is exactly the same as the Member's Bill moved by Mr SIN Chung-kai on the day I mentioned, in the sense that both Members seek to give the legislature power to curb MTR fare rises. The argument I used for refuting the Bill moved by Mr SIN on that day still applies today. I am convinced that political interference in the determination of MTR fares will only lead to retrogression of the railway which we have been so proud of because of the lack of the required resources. In the long run, this will definitely do the public no good. Therefore, the Liberal Party strong opposes Mr LAU Chin-shek's amendment. Some people may hold the view that the privatization of the MTRC is different now and therefore we should consider the matter from a different perspective. Nevertheless, I want to point out that we have made reference to a number of other countries where there are examples of privatization of railways. There is not a single — not a single, I repeat — railway the fares of which are determined by a parliamentary assembly.

The Liberal Party will not support the Committee stage amendments moved by Mr CHAN Kam-lam and Mr Andrew CHENG too.

First of all, I will talk about Mr Andrew CHENG's amendment. Mr CHENG proposed a price-cap regulatory approach, that is CPI (-) X. This proposal is not suitable for Hong Kong's MTR. What is more, we have to be



careful with the side-effect produced by this formula. We should also take note of the fact that this formula has actually been criticized by many financial consultants and academics who suggested that this formula should be abandoned.

Mr Simon LINNETT, Managing Director of NM Rothschild & Sons Limited, who was behind the privatization exercise of the British railways, specifically pointed out that a similar mechanism was adopted by British Rail for the purpose of determining its highest fares. Although there was a rise in cost-effectiveness, it was achieved, to a very large extent, through large scale retrenchment.

The calculation of the value of "X" is not a simple task at all. We are told by the British experience that, for the purpose of implementing this fare determination mechanism, the regulatory authorities will need to deploy huge manpower and boost administrative expenses significantly. As far as the railway company is concerned, it will need to deploy huge manpower and resources to deal with vetting procedures as well as its regulator. As a result, it will be unable to give due consideration to the injection of resources needed for raising general efficiency and performance. Although a review will only be conducted once every five years as a general rule, it will take three years for the review to be carried out. While those being regulated need to do something to deal with their regulators (that is, the regulatory authorities), regulators need to do something to deal with those being regulated as well. It will then take considerable time for both parties to resolve their disputes. In spite of the fact that those being regulated are required to provide the regulatory authorities with a lot of information, the authorities usually do not believe in the information they receive. An economics academic from the Stanford University once remarked that this would give rise to a "barman problem". What he meant is assuming that there is a bar owner who is trying to employ a barman. As the bar owner believes the barman will steal money from the till of the bar very easily, he decides to factor this into his consideration when employing the barman by offering him a very low wage. As a result, the barman is forced to steal money because of his extremely low wage. This theory is put forward by an economics academic from the Stanford University, not me.

Actually, the formula of  $CPI (-) X$  can only be applied to some overseas businesses which have been suffering from poor efficiency over a long period of time and have ceased constructing more extensions or have been subject to full monopoly. It is not applicable to the MTRC for it is highly efficient.

Moreover, the MTRC needs to continue developing new extensions to cope with the development of Hong Kong and, more importantly, face keen competition from other modes of public transport. To forcibly apply this fare increase formula to the MTRCL will only put more pressure on it to cut staff. In this respect, Members who care about labour interests must consider the matter more seriously.

Furthermore, the determination of the value of "X" in the fare determination formula once every five years will only bring more uncertainties. As I said earlier, in addition to the uncertain element, this will also give rise to a lot of administrative and practical difficulties. Because of the uncertain element, the financing and borrowing costs will rise, thereby lowering the valuation of the MTR for the purpose of listing. Therefore, this proposal will only bring losses to the MTRCL.

As it will be impossible for the formula to reflect the investment situation, we can hardly expect new capital investment. We can also hardly expect the MTRCL to have long-term development. This proposal will therefore also bring losses to the public. The Democratic Party once described this proposal as a win-win proposal. But as I explained earlier, this is actually a lose-lose proposal.

The amendment moved by Mr CHAN Kam-lam is apparently aimed at preventing politicians from interfering with railway fares. However, he seems to have forgotten that Article 45 of the Basic Law has clearly provided that the Chief Executive will ultimately be returned by universal suffrage. Members should still recall the story about the subway in New York. For more than 40 years after the New York subway has come into operation, its fare has been subject to the control of the Mayor of New York, who has made use of the fare as his chips for securing votes. As a result, the fare has for many years maintained at the level of 5 US cents without subject to any rises. And because of a lack of resources, the entire subway system is poorly maintained. Can any Members who are sitting in this Chamber guarantee that the future Chief Executive will not become another New York Mayor?

Furthermore, it will go against clause 13 of the Bill if the Chief Executive is allowed to determine fares. This is because the Government will have to give compensation if, in order to comply with an instruction given by the Chief Executive, the MTRCL is not allowed to operate in accordance with prudent

commercial principles and thus incurs losses. On the contrary, the Government is seemingly not required to give compensation even if the losses are caused by the determination of fares by the Chief Executive. This is indeed unreasonable. I note that although Mr CHAN has proposed to put in place a fare determination mechanism, he has failed to propose deleting clause 13. This is why such a contradictory situation may arise.

The three Members have separately put forward their own fare determination mechanism, thinking that they are doing it in the public interest. However, does the public interest really hinge on the fare determination mechanism? Does it mean that the public interest will definitely be jeopardized without a fare determination mechanism? In my opinion, it will be more consistent with the public interest if there is no such a mechanism.

The MTRCL must face investors because of its need to raise huge capitals. There is even a greater need for the MTRCL to face international and local investors in a more extensively manner for the sake of going public. It has been pointed out by two credit rating institutions separately that it will produce a negative impact on the MTRCL's rating if its fare adjustment is regulated for this might lead to a rise in the borrowing costs of the MTRCL.

A securities analyst also pointed out that should this Council impose constraints on the fares after the privatization of the MTRCL, the interest-bearing rate of its 10-year bonds will rise. This will not only result in the depreciation of the value of bonds issued by the MTRCL, but also raise its borrowing costs. For instance, the MTRC issued 10-year bonds of approximately US\$750 million early this year. If its fares have already been regulated by this Council at that time, an additional US\$40 million to US\$50 million will need to be paid as interests expenses.

The banking sector is extremely concerned with the fare determination mechanism. Some bankers have pointed out that if the MTRCL loses its fare autonomy which the MTRC is enjoying at the moment, the confidence of lenders will be seriously undermined in assessing the future proceeds and repayment ability of the MTRCL. Diminishing confidence in borrowers will naturally lead to a drop in the lending amount and a rise in interest rate.

Of course, we can ignore the opinions given by credit rating institutions, securities analysts, financial consultants, bankers and so on and continue to act

according to what we believe is right by regulating MTR fares by our own method and harbour the wishful thinking that this is going to do the public good. Nevertheless, I have to point out that this Council cannot regulate the attitude of investors and how they look at the matter. As at the end of 1999, the total amount of outstanding debts of the MTRC reached \$23 billion. In future, the MTRCL will need to raise \$30 billion in the market, mainly for constructing the Tseung Kwan O Extension. Should we continue to cling obstinately to our course by bringing uncertainty to MTR fares, it will only increase the risks of the MTRCL in borrowing and making investment, thereby undermining its borrowing ability and increasing its capital costs. On the contrary, this will not do the public any good for the development and services of the railway will be affected. In the absence of a fare determination mechanism, however, the MTRCL will be able to raise adequate funds without the need to pay for high interests as well as constantly improving and developing its services. The pressure for raising fares will also be reduced because of the comparatively low interests rate. The public will then be offered one more choice of transport at reasonable fares. For these reasons, no fare determination mechanism is ultimately the most favourable option for the public.

Actually, it will benefit the public most if market competition is allowed to play its role. Competition among various public transport operators can not only keep their fares at the lowest level, but also give the public different choices. Even the Consumer Council, which is absolutely in favour of protecting the interests of consumers, agrees that market competition can protect the interests of consumers most effectively. It also agrees that there is already sufficient competition in the public transport services market.

With the transformation of the MTRC into a listed company, its shares will be held by shareholders who will, for their personal interests, naturally monitor the railway in respect of operation, management and so on. In order to better gear to the need of the market, the MTRCL will lower its costs and raise its efficiency. Furthermore, for the purpose of competing with other modes of public transport, the MTRCL must maintain excellent service to attract passengers in order to maintain its profits at a reasonable level. Under this competitive environment, the MTRCL must keep its fares at a reasonable level in order to attract passengers to travel on the railway. For these reasons, market competition is always more effective and better than any fare regulation.

Mr Deputy, I so submit. I am sorry that the Liberal Party cannot support the Committee stage amendments moved by the three Members.

THE CHAIRMAN resumed the Chair.

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

**MR CHAN KAM-LAM** (in Cantonese): Madam Chairman, enhancing the functions and representativeness of the TAC is the goal of the DAB in fighting for the establishment of an effective transport services monitoring mechanism over the years. When the former Legislative Council debated monitoring the fares of modes of public transport in 1997, we proposed a reform to the TAC. The then Secretary for Transport, Mr Gordon SIU, undertook to conduct a review of the composition and functions of the TAC. Yet, the Government has not taken any follow-up actions so far. However, the DAB still thinks that it is feasible to enhance the functions of the TAC in order to monitor transport services and it is consistent with the existing mode of monitoring.

In the course of deliberations on the Mass Transit Railway Bill, I have raised the reform of the TAC time and again and submitted our proposal in writing to members of the Bills Committee. However, Mr Andrew CHENG said that he had not heard of our proposal. I find it really strange and it shows how careless Mr CHENG has been in the deliberation process. Mr CHENG also said that my proposal was made to spice up the show. Evidently, Mr CHENG has gauged the heart of a gentleman with his own mean measure. When Members hold discussions, I hope that they will not make malicious remarks against one another. Thank you, Madam Chairman.

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

**MR ANDREW CHENG** (in Cantonese): Madam Chairman, it is already very late now but there are two more bills and two more motion debates, and I am the mover of one of these debates. If Mr CHAN Kam-lam thinks that I have made malicious remarks, I must apologize to him. But I have really not made any malicious remarks. Madam Chairman, you were not in the Chamber just now but your Deputy was here, and I have all along been presenting my arguments only. When I mentioned Mr CHAN Kam-lam's letter, I only said that he had tried to convince Members to support the DAB's proposal. He said, "we (the DAB) proposed that the fare adjustment of the MTR should be vetted by the TAC with expanded functions and representativeness, and approved by the Chief Executive in Council." I said that his amendment could only reflect the last sentence, that is "approved by the Chief Executive in Council". As to the phrase "vetted by the TAC with expanded functions and representativeness", I was present when he made the remarks at the Bills Committee, but if he thought that I was too careless, I really have nothing more to say. In my view, they have made the proposal but the Government has not complied. Yet, they have not taken further actions or pointed out how the legislation should be amended so that the TAC will have expanded functions and representativeness. I have only made this point in the hope that the DAB would not just defend the Government's cause in respect of this proposal made by them. I hope that they can support a certain degree of regulation by the Legislative Council that represents the will of the people.

Thank you, Madam Chairman.

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

**MR ALBERT HO** (in Cantonese): Madam Chairman, in this Bill, the mechanism for vetting fare increase is actually an important consideration. There are several very important points in the Bill, for instance, the arrangement for the future transfer of staff to the new company and their welfare protection, how we are going to ensure the quality of MTR services, fare determination, and whether the future MTRCL will continue to be granted property development rights in respect of properties over MTR stations.

The DAB has made this proposal. Although we in the Democratic Party do not think that the mechanism is fully satisfactory, after consideration, we think that it is after all a mechanism that can give a certain extent of protection. Without such protection, we are very worried that the MTRC will become a monopolized private company after listing. We all know that the railway is exclusively operated by the MTRCL. While the general public chooses the MTR as their daily mode of transport, how are their interests protected? This is a crucial question. Therefore, I stress time and again that I am astonished that colleagues of the FTU still think that this issue is not important and they only regard it as a very narrow issue related to labour interests. I have stated again and again that Miss CHAN Yuen-han's amendment looks after only psychological protection, and they have even used the more specific amendment proposed by Mr LAU Chin-shek to determine that workers ..... from the moment the MTRC is privatized .....

**CHAIRMAN** (in Cantonese): Excuse me, Mr Albert HO, the point you made has been debated by Members. I do not think you should raise the point again.

**MR ALBERT HO** (in Cantonese): I am only .....

**CHAIRMAN** (in Cantonese): Mr HO, please speak to the present question.

**MR ALBER HO** (in Cantonese): I would only like to stress once again that I do not think we should continue to consider some other narrow issues. The criteria for fare determination should be an important consideration and I think that those who are concerned about the interests of labour at large should not neglect this issue because a lot of people definitely rely on the MTR as their mode of transport. There are two FTU colleagues present, and I hope that they will call an urgent meeting to consider carefully whether they should vote that way.

**CHAIRMAN** (in Cantonese): If no other Member wishes to speak, I would ask the Secretary for Transport to speak.

**SECRETARY FOR TRANSPORT** (in Cantonese): Madam Chairman, since the announcement of the privatization of the MTRC, Members and the media have been most concerned about whether the MTR fare determination mechanism which has operated for over 20 years should be retained after privatization. After lengthy discussions in the Bills Committee, many financial experts, academics and employees of the MTRC indicated their wish for the existing fare determination mechanism to be retained to prevent the process from being politicized.

Established in 1975, the MTRC has been operating on prudent commercial principles as required by statute under the Mass Transit Railway Corporation Ordinance. Since the commencement of its operation in 1979, the MTR's average fare increase has been 7.5% per annum, which is lower than that in Consumer Price Index (A) of 8.2% for the same period. Over the past two decades, the MTRC enjoyed autonomy to determine MTR fares. Notwithstanding the MTRC's fare autonomy in the last 20 years, why is it that the Corporation has so conscientiously contained its fare increase at a level below inflation? We think that this is attributed to two factors:

- (1) A highly competitive operating environment; and
- (2) Full consultation prior to fare adjustments.

We trust that these two factors pertinent to the regulation of MTR fares will continue to play their roles after the privatization of the MTRC.

It has always been the policy of the Government to encourage healthy competition between the MTR and other modes of public transport, especially buses. The MTR, which has been in operation for 20 years, only takes up a share of 20% in the public transport service sector. Some contend that the competition-based mechanism is not working properly as MTR fares are still higher than bus fares. This I do not agree. Roughly speaking, MTR fares are about 15% to 20% higher than bus fares but passengers are provided with more expedient, reliable and comfortable services in return. The differential in the fares reflects the differences amongst the various modes of transport in terms of function and efficiency. At present, the MTRC generally consults the Legislative Council Panel on Transport and the Transport Advisory Committee (TAC) before effecting fare adjustments. But consultations are purely on a voluntary basis under the existing consultation mechanism. To protect the interest of passengers, the Government considers it necessary to further improve this consultation mechanism. Furthermore, the privatized MTRCL will be



required to consult the Legislative Council Panel on Transport and the TAC prior to fare adjustments in compliance with the provisions of the Operating Agreement. This new arrangement which is legally binding will greatly strengthen the existing consultation mechanism. It also ensures that the MTRCL will fully take public acceptability into consideration before determining its fares.

Mr LAU Chin-shek's amendment is similar in nature to the Member's Bill sponsored by the Democratic Party in 1996. The then Legislative Council spent one whole year conducting thorough studies and discussions. In February 1997, a delegation comprising Members of the then Legislative Council visited foreign countries to conduct in-depth studies on overseas railway systems. In its report, the delegation observed that "direct involvement in the fare-setting process and the right to endorse or veto fare adjustment (by the Parliament) is not common" (paragraph 3.10), and that "there is no evidence to suggest that a Government or Parliament-driven fare-determination mechanism will necessarily result in lower subsidy with taxpayers' money or lower fares for commuters" (paragraph 3.12). In May 1997, the Member's Bill was negated by the former Legislative Council by a majority vote. This decisive move of the former Legislative Council had greatly bolstered the confidence of lending banks and investors of the MTRC notes. In his speech, Mr LAU Chin-shek did not present any new arguments against the sensible decision taken by the former Legislative Council in 1997. Mr CHAN Kam-lam's amendment seeks to empower the Chief Executive in Council to vet and approve MTR fares. Mr CHAN opined that regulation by the legislature would politicize the fare setting process, and that the Executive Council is independent with credibility. The Government considers that the thrust of the matter lies not in whether we should confer on the Legislative Council or the Executive Council the power to vet and approve MTR fares, but whether there is the need to invite intervention from the Executive Council or the Legislative Council in a highly competitive market underpinned by a sound and proper consultation system, and the impact of such arrangements on the services of the MTR.

In the course of deliberation by the Bills Committee, experts from lending banks, investment banks and credit rating agencies expressly stated that fare regulation either by the Executive Council or the Legislative Council would bring about grave consequences. As pointed out by the credit rating agencies, the current credit rating of the MTRC, which is identical to the sovereign rating of the SAR Government, largely hinges on the Corporation's fare autonomy. The abolition of the existing fare mechanism will certainly result in a lower credit rating for the MTRC. British experts on privatization of railways making

representations to the Bills Committee stated that the CPI-based regulatory mechanism would entail a succession of negative impacts, such as cutting down the number of staff, increasing capital requirements and a higher cost of regulation, hence causing difficulties in financing. Hong Kong should not borrow the policy of another country for domestic application blindly. I think Mr Andrew CHENG would agree that the railway system in Hong Kong is distinctly different from that in Britain. The CPI(-)X formula used in Britain has never been applied in any company similar to the MTRC which operates in a competitive environment, which features years of majority shareholding by the Government, and which has shown good track records in terms of service efficiency. Mr CHENG did not put forward any concrete arguments to convince the 2.2 million passengers travelling on the MTR every day of the actual benefits in adopting a foreign and yet not proven regulatory system for our mass transit railway in Hong Kong.

All in all, changes to the existing fare mechanism would result in a higher cost of borrowings for the MTRC, whilst the fares payable by passengers would inevitably go up at the same time. Uncertain financial outlook would undermine the Corporation's investment sentiments and viability, eventually belying aspirations of the commuting public for continuous improvement in service quality and continuous development of the railway network. I believe that these adversities are unacceptable to Members.

The Government's endeavours in fare regulation through a two-fold mechanism based on market competition and extensive consultation are acknowledged by the Consumer Council. In making its representation to the Bills Committee on 4 January this year, the Consumer Council explicitly stated that the public transport service sector in Hong Kong presently operates in a highly competitive environment, and expressed support for the Government's commitment to relying on the competition process to ensure appropriate standards of consumer welfare. It also supports retention of the existing *modus operandi* whereby the MTRC consults the Legislative Council Panel on Transport and the TAC prior to fare adjustments.

I urge Members to support the Government's position to retain the existing fare mechanism and vote against the three amendments. Thank you, Madam Chairman.

**MR LAU CHIN-SHEK** (in Cantonese): Madam Chairman, just as the Secretary has said, we have held countless debates over this issue. I have joined the legislature for 10 years and such a debate has been held every Session. The Secretary has said that there is nothing new but there is indeed a new change. The MTRC was not a private company but it will be so in future. This is an important change, therefore, we have raised the issue for debate again. This is a very important factor, and how are we going to choose between the shareholders' interests and public interests? Shall we let public interests take precedence over that of shareholders? We have obviously asked for monitoring on this basis.

Secondly, the Secretary often says that the MTRC only asks for fare increases according to inflation. May I ask the Secretary whether the fare increase of the MTRC, a public utility, drives inflation? Or inflation increases its costs so that it has to ask for a fare increase again? Which is the case? We should also consider how inflation accounts for the costs of the MTRC. Is it equal to inflation or does it only account for a percentage of inflation? Why does the MTRC ask for a fare increase despite making profits?

I would also like to say that there was an occasion on which the MTRC refrained from increasing fares. It was in 1997. When the legislation was enacted at that time, some public utilities even described us as putting a knife on their necks, therefore, they failed to increase fares. Yet, what was the result of not increasing fares? It did not make the companies suffer losses; they still had profits and their passenger volume still increased. So, why does the MTRC have to increase fares habitually as if it is a ritual?

We have proposed a few amendments, if none of them is passed, there will not be any monitoring. Will this be acceptable to the public after the privatization of the MTRC? What can we do if there is no mechanism? If the rate of increase is unreasonable, the public may resort to stronger actions. Do we want this to happen? Thank you, Madam Chairman.

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

(Members raised their hands)

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

(Members raised their hands)

Mr LAU Chin-shek rose to claim a division.

**CHAIRMAN** (in Cantonese): Mr LAU Chin-shek has claimed a division. The division bell will ring for one minute.

**CHAIRMAN** (in Cantonese): Will Members please proceed to vote. Will Members who have yet to vote please cast their votes as soon as possible.

**CHAIRMAN** (in Cantonese): If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Mr CHEUNG Man-kwong, Mr SIN Chung-kai and Mr LAW Chi-kwong voted for the motion.

Mr Kenneth TING, Mr Edward HO, Dr Raymond HO, Mr Eric LI, Mr LEE Kai-ming, Dr David LI, Dr LUI Ming-wah, Miss Margaret NG, Mrs Selina CHOW, Mr Ronald ARCULLI, Mr HUI Cheung-ching, Mr CHAN Kwok-keung, Mr Bernard CHAN, Mr CHAN Wing-chan, Dr LEONG Che-hung, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Mrs Miriam LAU, Mr Timothy FOK, Mr FUNG Chi-kin and Dr TANG Siu-tong voted against the motion.

Geographical Constituencies and Election Committee:

Mr Albert HO, Mr LEE Wing-tat, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Mr LAU Chin-shek, Mr Andrew CHENG and Mr SZETO Wah voted for the motion.

Miss Christine LOH, Miss CHAN Yuen-han, Mr Gary CHENG, Mr Andrew WONG, Mr Jasper TSANG, Mr LAU Kong-wah, Mr TAM Yiu-chung, Mr David CHU, Mr HO Sai-chu, Mr NG Leung-sing, Prof NG Ching-fai, Mr MA Fung-kwok, Mr CHAN Kam-lam, Mr YEUNG Yiu-chung, Mr Ambrose LAU and Miss CHOY So-yuk voted against the motion.

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

THE CHAIRMAN announced that among the Members returned by functional constituencies, 27 were present, three were in favour of the motion and 24 against it; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 28 were present, 11 were in favour of the motion and 16 against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the motion was negatived.

**CLERK** (in Cantonese): Clause 34 as amended.

**CHAIRMAN** (in Cantonese): As the Committee has passed the amendment moved by the Secretary for Transport to clause 34, I now propose the question to you and that is: That clause 34, as amended by the Secretary for Transport, stand part of the Bill.

**CHAIRMAN** (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

**CHAIRMAN** (in Cantonese): As the amendment moved by Mr LAU Chin-shek to clause 34 has been negatived, Mr CHAN Kam-lam may move his amendment.

**MR CHAN KAM-LAM** (in Cantonese): Madam Chairman, since the Rules of Procedure stipulate that any new clause shall be considered after the clauses of a bill have been disposed of, may I seek your consent to move under Rule 91 of the Rules of Procedure that Rule 58(5) of the Rules of Procedure be suspended in order that the Committee of the whole Council may consider the heading before new clause 14A and new clause 14A ahead of the remaining clauses of the Bill.

**CHAIRMAN** (in Cantonese): Mr CHAN Kam-lam, as only the President may give consent for a motion to be moved, without notice, to suspend the Rules of Procedure, I order that Council do now resume.

Council then resumed.

**PRESIDENT** (in Cantonese): Mr CHAN Kam-lam, you have my consent.

**MR CHAN KAM-LAM** (in Cantonese): Madam President, I move that Rule 58(5) of the Rules of Procedure be suspended in order that the Committee of the whole Council may consider the heading before new clause 14A and new clause 14A ahead of the remaining clauses of the Bill.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That Rule 58(5) of the Rules of Procedure be suspended in order that the Committee of the whole Council may consider the heading before new clause 14A and new clause 14A ahead of the remaining clauses of the Bill.

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

(Members raised their hands)

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

(No hands raised)

**PRESIDENT** (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections and by the Election Committee, who are present. I declare the motion passed.

Council went into Committee.

### **Committee Stage**

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

<b>CLERK</b> (in Cantonese):	Heading before new clause 14A	<b>PART IIIA</b> Determination of Fares
	new clause 14A	Fares.

**MR CHAN KAM-LAM** (in Cantonese): Madam Chairman, I move that the heading before new clause 14A and new clause 14A, as set out in the paper circularized to Members, be read the Second time.

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That the heading before new clause 14A and new clause 14A be read the Second time.

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

(Members raised their hands)

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

(Members raised their hands)

Mr CHAN Kam-lam rose to claim a division.

**CHAIRMAN** (in Cantonese): Mr CHAN Kam-lam has claimed a division. The division bell will ring for one minute.

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

**CHAIRMAN** (in Cantonese): If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Mr CHEUNG Man-kwong, Mr CHAN Kwok-keung, Mr CHAN Wing-chan, Mr SIN Chung-kai, Mr WONG Yung-kan and Mr LAW Chi-kwong voted for the motion.



Mr Kenneth TING, Mr Edward HO, Dr Raymond HO, Mr Eric LI, Mr LEE Kai-ming, Dr David LI, Dr LUI Ming-wah, Miss Margaret NG, Mrs Selina CHOW, Mr Ronald ARCULLI, Mr HUI Cheung-ching, Mr Bernard CHAN, Dr LEONG Che-hung, Mrs Sophie LEUNG, Dr Philip WONG, Mr Howard YOUNG, Mr LAU Wong-fat, Mrs Miriam LAU, Mr Timothy FOK, Mr FUNG Chi-kin and Dr TANG Siu-tong voted against the motion.

Geographical Constituencies and Election Committee:

Mr Albert HO, Mr LEE Wing-tat, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Miss CHAN Yuen-han, Mr LEUNG Yiu-chung, Mr Gary CHENG, Mr Jasper TSANG, Dr YEUNG Sum, Mr LAU Chin-shek, Mr LAU Kong-wah, Mr Andrew CHENG, Mr SZETO Wah, Mr CHAN Kam-lam and Mr YEUNG Yiu-chung voted for the motion.

Miss Christine LOH, Mr Andrew WONG, Mr TAM Yiu-chung, Mr David CHU, Mr HO Sai-chu, Mr NG Leung-sing, Prof NG Ching-fai, Mr MA Fung-kwok, Mr Ambrose LAU and Miss CHOY So-yuk voted against the motion.

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

THE CHAIRMAN announced that among the Members returned by functional constituencies, 27 were present, six were in favour of the motion and 21 against it; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 28 were present, 17 were in favour of the motion and 10 against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the motion was negatived.

**MR ANDREW CHENG** (in Cantonese): Madam Chairman, since the Rules of Procedure stipulate that any new schedule shall be considered after the clauses, any proposed new clauses and the schedules of a bill have been disposed of, may I seek your consent to move under Rule 91 of the Rules of Procedure that Rule 58(7) of the Rules of Procedure be suspended in order that the Committee of the

whole Council may consider new schedule 5B proposed by me ahead of the remaining clauses and schedules of the Bill.

**CHAIRMAN** (in Cantonese): Mr Andrew CHENG, as only the President may give consent for a motion to be moved, without notice, to suspend the Rules of Procedure, I order that Council do now resume.

Council then resumed.

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

**MR ANDREW CHENG** (in Cantonese): Madam President, I move that Rule 58(7) of the Rules of Procedure be suspended in order that the Committee of the whole Council may consider new schedule 5B proposed by me ahead of the remaining clauses and schedules of the Bill.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That Rule 58(7) of the Rules of Procedure be suspended in order that the Committee of the whole Council may consider new schedule 5B as proposed by Mr Andrew CHENG ahead of the remaining clauses and schedules of the Bill.

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

(Members raised their hands)

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

(No hands raised)

**PRESIDENT** (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections and by the Election Committee, who are present. I declare the motion passed.

Council went into Committee.

### **Committee Stage**

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

**CLERK** (in Cantonese): New schedule 5B                      Revision of Fares.

**MR ANDREW CHENG** (in Cantonese): Madam Chairman, I move that the heading before new clause 14A, new clause 14A and new schedule 5B, as set out in the paper circularized to Members, be read the Second time.

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That the heading before new clause 14A, new clause 14A and new schedule 5B be read the Second time.

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

(Members raised their hands)

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

(Members raised their hands)

Mr Andrew CHENG rose to claim a division.

**CHAIRMAN** (in Cantonese): Mr Andrew CHENG has claimed a division. The division bell will ring for one minute.

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

**CHAIRMAN** (in Cantonese): If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Mr CHEUNG Man-kwong, Mr SIN Chung-kai and Mr LAW Chi-kwong voted for the motion.

Mr Kenneth TING, Mr Edward HO, Dr Raymond HO, Mr Eric LI, Mr LEE Kai-ming, Dr David LI, Dr LUI Ming-wah, Miss Margaret NG, Mrs Selina CHOW, Mr Ronald ARCULLI, Mr HUI Cheung-ching, Mr Bernard CHAN, Dr LEONG Che-hung, Mrs Sophie LEUNG, Dr Philip WONG, Mr Howard YOUNG, Mr LAU Wong-fat, Mrs Miriam LAU, Mr Timothy FOK, Mr FUNG Chi-kin and Dr TANG Siu-tong voted against the motion.

Mr CHAN Kwok-keung, Mr CHAN Wing-chan and Mr WONG Yung-kan abstained.

Geographical Constituencies and Election Committee:

Mr Albert HO, Mr LEE Wing-tat, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Mr LAU Chin-shek, Mr Andrew CHENG and Mr SZETO Wah voted for the motion.

Miss Christine LOH, Mr Andrew WONG, Mr TAM Yiu-chung, Mr David CHU, Mr HO Sai-chu, Mr NG Leung-sing, Prof NG Ching-fai, Mr MA Fung-  
kwok, Mr Ambrose LAU and Miss CHOY So-yuk voted against the motion.

Miss CHAN Yuen-han, Mr Gary CHENG, Mr Jasper TSANG, Mr LAU Kong-wah, Mr CHAN Kam-lam and Mr YEUNG Yiu-chung abstained.

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

THE CHAIRMAN announced that among the Members returned by functional constituencies, 27 were present, three were in favour of the motion, 21 against it and three abstained; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 28 were present, 11 were in favour of the motion, 10 against it and six abstained. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the motion was negated.

**CLERK** (in Cantonese): Clause 62.

**CHAIRMAN** (in Cantonese): As the earlier amendments to clause 9 and to add new clause 14A to the Bill moved by Mr Andrew CHENG have been negated, Mr Andrew CHENG may not move his amendment to clause 62.

**CHAIRMAN** (in Cantonese): As the earlier amendments to clauses 5 and 8 moved by Mr LAU Chin-shek have been negated, Mr LAU Chin-shek may not move his amendment to clause 62.

**SECRETARY FOR TRANSPORT** (in Cantonese): Madam Chairman, I move that clause 62 be amended, as set out in the paper circularized to Members. These amendments are technical in nature. The purpose is to ensure consistency with the drafting of other similar provisions in the laws of Hong Kong. I urge Members to support the Government's amendment.

*Proposed amendment*

**Clause 62 (see Annex I)**

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Clause 62 as amended.

**CHAIRMAN** (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

<b>CLERK</b> (in Cantonese): Heading before new clause 8A	Part IIA Development Projects Along the Railway
new clause 8A	Development Projects.

**MR ALBERT HO** (in Cantonese): I move that the heading before new clause 8A and new clause 8A be added to the Bill.

Madam Chairman, I question why the Government should permit the privatized MTRCL to continue to have development rights to properties above MTR stations. For this, I have moved amendments to the Bill to specify that the operation franchise of the MTR does not include property development rights to properties above MTR stations, and that the relevant development rights must be granted by way of public tender.

The Democratic Party thinks that property development rights to properties above MTR stations are invisible subsidies.

According to the Government, provided that the rights are granted at market prices, the granting of property development rights to properties above MTR stations to the MTRCL is not a provision of subsidies. However, can development rights obtained not through public tender or auction fairly and objectively reflect the actual market prices? Conversely, it can be seen from past cases that after making premium payment, the MTRC obtained property development rights to properties above MTR stations and then can successfully secured by way of tender from property developers preferential terms of co-operation for joint development. These preferential terms include that the MTRC does not need to pay cash to support the relevant development. Developers also guarantee that the profits made will be shared with the MTRC equally. In many cases, the MTRC can be assured of certain rates of profits.

As the MTRC still have much room to jointly develop with property developers properties above MTR stations after making premium payment for profits from the development, this reflects that there is a big difference between the premium paid by the MTRC in obtaining the development rights and the market prices.

Mr CHEUNG Man-kwong has also said that the so-called premium payment procedure very often involves repeated negotiations. As the MTRC automatically has this right, it has many chips and ample room to force the Government to make concessions or compromise. I believe the facts adequately prove that the Government's granting to the MTRC property development rights to properties above MTR stations in the past was actually invisible subsidies. The MTRC has also admitted that if it was not granted property development rights to properties above MTR stations in the past, it could not operate or develop the railways. Therefore, many people and financial analysts have questioned if this listing proposal will turn the MTRC into a public transport service company or a property company in future. A lot of analyses have shown that people who are prepared to buy the shares will generally regard the MTRCL as a property company rather than a public utility.

After the privatization of the MTRC, the Democratic Party strongly believes that the Government should not continue to invisibly subsidize the future business of the MTRCL by granting it property development rights to properties above MTR stations.

In the past, the Government's subsidization of the MTRC was allowed and accepted entirely because the MTRC was a wholly owned public body, and subsidizing it was just like indirectly injecting capital into a public body to perform the Government's duty of providing the public with public transport services. After the privatization of the MTRC, if the Government continues to give it any subsidies (unless under the special circumstances otherwise specified in the Bill such as when the Chief Executive in Council instructs it to carry out development that will possibly incur losses), it is just like giving public money as gifts to a private company and the private investors in the company. This obviously runs contrary to the policy and principle of public financial management and fairness to the detriment of public interests. I believe the community and taxpayers will definitely find this hardly acceptable.



According to the Democratic Party, without the subsidies in the form of development rights to properties above MTR stations, the privatized MTRCL still have much room to continue to develop extensions, that is, it is financially capable of developing extensions. Why do we say so? We have made the following analyses:

If the MTRC must depend on government subsidies for operation and profit making, the MTRC should not be privatized or listed. The MTRC is an organization providing mass transit railway services but not a property company, therefore, it should not depend on property projects to maintain railway development or depend on government subsidies for operation. The Government has emphasized time and again, especially at meetings of the Bills Committee, that if the MTRCL cannot continue to enjoy the development rights to properties above MTR stations, it will not be able to develop extensions because railway development requires enormous capital. Yet, we think that this remark is open to question:

1. If the Government supports the development of extensions by the MTRCL by way of subsidies, the visible result is that it is just like giving the extensions or parts thereof as gifts to the MTRCL including its shareholders. Therefore, if the franchise of the MTRCL expires in future, the Government needs to make huge expenses to buy back the railways according to the law;
2. If the Government asks the MTRCL to develop extensions that are not cost effective, the Government must make compensations according to the law. The determination and calculation of the compensations are explicit and objective as well as monitored by the Legislative Council and the public. However, the interests arising from the invisible subsidy of the right to develop properties above MTR stations is hardly explicit, it is hard to calculate objectively and is not monitored by the public and the Legislative Council, therefore, it is not acceptable at all. I would like to say once again that we know that this invisible subsidy is made through the so-called evaluation, and we know that such evaluation is a highly artistic and flexible act. We also know that the professionals making the evaluation can make substantial upward or downward adjustments. Therefore, unless public tender is made, otherwise, it is often difficult to determine and really reflect market prices. I think that this is an extremely important point.

3. At present, the transport policy of the Government is that it will only construct railway extensions when the population of a certain area reaches a certain number. The purpose is certainly to ensure that the MTR has adequate passenger volume to yield reasonable returns on its financial commitments. Therefore, in view of longer term returns, I do not think that the development of extensions at present will certainly incur losses. Actually, if it is purely a capital turnover problem, the MTRC can achieve the objective by raising funds or financing, expecting to recover such capital investments within a certain time-horizon. In that case, even though the Executive Council thinks that it is necessary to make compensations, under the existing transport policies, the Government may not necessarily resort to this compensation measure.

Is it technically feasible for other developers to develop the properties above MTR stations? In fact, the MTRC often says that there will be a lot of technical difficulties, but many properties above MTR stations were actually offered by the MTRC for development by other property developers through tender. Therefore, the development rights can be split up. The problem lies with how the tender documents should be drawn up to specify that the development of properties above MTR stations must meet certain requirements such as the technical requirements for station designs or the overall operation of the MTR. To solve this problem, I do not see why the MTRCL cannot be entrusted as an agent in tender design, and be held responsible for monitoring the tender or even the entire development. The MTRCL only needs to play the role of a manager, charging certain management fees. In fact, this proposal can conversely assure the MTRCL of a certain amount of income. The Government often says that if the MTRCL acts on the basis of market prices, it will equally bear risks. Let us think about this: if the MTRC still encounters risk under its present situation, can any other company in the world operate? I really have no idea. Therefore, the MTRCL actually has ample room to grant development rights through private tender, and it will definitely make profits in the process.

In that case, I think that the technical problems can absolutely be solved. The Government only needs to make arrangement in future to entrust the MTRCL with tender design, monitoring of the tender process and supervise the entire development process of properties above MTR stations, in order to ensure that the development meets the operational needs of stations or the entire rail corridor. I really do not see why we should not do so to overcome the technical difficulties.

Summing up, after the privatization, the MTRCL should definitely not remain a public body as it was before. In the past, we found acts "transferring money from the left pocket to the right" acceptable, and that it was no big deal even if the Government gave a public company plenty of interests. But if what we called "arm's length transaction" is not involved and a transaction is clearly carried out between the Government and a private organization, we can hardly accept it. Madam Chairman, I would like to emphasize again that the biggest problem is that, although the Democratic Party thinks that it is possible to negotiate over the matter, for this subsidizing policy to be feasible, it must be open, transparent, consistent and monitored. The Government should not make an artistic evaluation and give a private company development rights that can be exchanged into money without our knowing. If so, it will be criticized by outsiders and I believe that many local and foreign investors taking part in property development will also wonder if there is still a level playing field in Hong Kong.

With these remarks, I hope Honourable colleagues will support my amendment. Thank you.

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That the heading before new clause 8A and new clause 8A be read the Second time.

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

**MRS MIRIAM LAU** (in Cantonese): Madam Chairman, Mr Albert HO has based his amendment on two assumptions. Firstly, for the MTRC, the property development rights are certainly subsidies. Secondly, these subsidies are not favourable to the general public, and thus inappropriate. As we all know the MTRC were required to pay the full market value of the land granted for such property developments and it did not and will not get the rights free of charge. After the MTRC has obtained the property development rights, it must pay the advance development expenses and bear certain investment risks because property prices fluctuate. We can clearly see from the financial turmoil that there can be very big and astonishing fluctuations in property prices. Therefore, just like other private companies, the MTRC will not necessarily make profits from such developments.

Moreover, the development of properties above MTR stations is different from other property developments. It is because the planning of railways and property development must be mutually co-ordinated. For example, the foundations of buildings integrating stations and railways, the channelling of public conduits and such infrastructure as carriageways must be matched perfectly. It will be most proper, efficient and cost-effective for the MTRC to act as the sole co-ordinator. The mode just mentioned by Mr Albert HO is certainly feasible but I find it very complicated, overlapping and inefficient. Is it essential to adopt such a complicated and inefficient method? Certainly, all methods will work but if it is too complicated, will the relevant expenses be very high? Will the loss outweigh the gain? I would like to ask Members to take these into consideration.

Even if property development is separated from railways and independent tender is made, as property developers are generally very shrewd, they know how to make careful calculation and strict budgeting, and their tender prices may not be higher than the market prices would otherwise be paid by the MTRC because the planning of railways and property developments need to be mutually co-ordinated as I have just said. In connection with the increase in the expenses on advance works and the engineering complexity, the property developers will naturally lower the tender prices. At that time, the situation will not be as satisfactory as what Mr Albert HO has envisaged. He thought that property developers will certainly offer higher prices, but they may offer very low prices instead. Therefore, I think that the assumption that they will certainly be subsidies is not tenable. Yet, even if they are subsidies, what is wrong and who will find it inappropriate? As the railway is a huge investment, the MTRC has to absorb adequate resources from various channels including equity injection by the Government, foreign loans, internal resources and earnings from the development of properties above MTR stations. In fact, granting property development rights to the MTRC is absolutely favourable to the general public. When the MTRC has more earnings, it will have adequate resources for continuous development and improvement to services, and its fares will also remain stable. In the past 20 years, MTR fares were maintained at lower than inflation levels probably because there were earnings from property developments. Property developments are indeed very important to railways. Although the Kowloon-Canton Railway Corporation (KCRC) is unlike the MTRC, it also provides railway services. I recall that a few years ago, as the KCRC earned a lot from property developments, even if the inflation rate stood high in a certain year, it did not increase fares. If the development rights to properties above MTR stations are excluded from the franchise of the MTRC, and the Government makes an equity injection into the MTRC in the form of

loans or share capital, it implies that the Government may have to reduce expenditures on other public services such as education and welfare. Furthermore, the Government emphasizes returns, no matter whether it extends loans or injects share capital, it will increase the expenditures of the MTRC in terms of interests or dividends, and such expenditures will pressurize the MTRC into increase fares.

From the public interest point of view, I support that the Government should continue to grant to the MTRC the development rights to properties above new stations and along the corridor of new railway extensions. With these remarks, Madam Chairman, I oppose the amendment.

**MR CHEUNG MAN-KWONG** (in Cantonese): Madam Chairman, I would like to respond to Mrs Miriam LAU's remarks. Mrs Miriam LAU has just said that nobody can guarantee that the MTRC will make profits from property development. If what Mrs Miriam LAU said is true, it can still not solve a problem. Now that it will not necessarily make profits and it still bear risks, why is it the only organization that is given the rights? Why is a public tender not called to let the public and property developers consider who can make profits? The tenderers will bear the risks as to when profits will be made and when losses will be incurred. It is not essential to put the MTRC to such inconvenience of bearing the risks all along. This is the first issue.

The second issue is that, as Mrs Miriam LAU has said in the end of her speech, while the property development by the MTRC may not necessarily bring earnings, she admitted that property earnings did subsidize the development of the MTRC in the past. She has asked a question: What is wrong even if the rights are subsidies? They are subsidies. If the MTRC is wholly owned by the Government, there is no question about the subsidies. But we should not forget that the MTRC will be privatized, and 50% of its shares will belong to minority shareholders and the public in future. If subsidies are given to a government organization, money is only transferred from the left pocket to the right and there is no problem at all. Why should earnings from the property developments subsidize the 50% minority shareholders? If so, why should the MTRC be privatized? Why should the 50% minority shareholders benefit from the subsidies? Why do we hold a meeting here today? We have to discuss the privatization which will lead to fundamental equity changes. Why are subsidies still needed?

Another issue is that Mrs Miriam LAU has just asked if the method proposed by Mr Albert HO is feasible and whether it will be efficient. Is there mutual co-ordination? But she has admitted that the method proposed by Mr Albert HO is feasible. In other words, planning can be separated from development. She mentioned efficiency but the MTRC is precisely exercising the privilege under the pretext of efficiency, and then cashes in on that to subsidize the 50% minority shareholders in the market. Does she think that this complies with the operation of businesses in Hong Kong? Mr Albert HO has at least proposed an open tender. Once the MTRC has been privatized, it must participate in fair, open and impartial competition. The MTRC enjoys the privilege today and it may be able to evade this now, but it cannot do so later. Let us consider the case of the Cyberport. In the past, the MTRC enjoyed the privilege because it was a government organization and the public would not have doubts. As the Government made money through property development for the development of railways, what doubts could the public have? But we must note that, after the privatization, the MTRCL will have 50% market shareholders. The Government has also said that it intends to hold the equity of the MTRCL for 20 years. What about 20 years later? At that time, most of the equity will belong to members of the public, minority and majority shareholders. If the Government still grants the MTRCL privilege to property development, as Mr Albert HO has said, the MTRCL will become a MTR property company, and even a protected MTR property company having privileges. Does this comply with the principle of social development? Does this comply with the commercial principles in Hong Kong? Does it comply with the fair, free, open and competitive commercial principles trusted by the Liberal Party? Therefore, in this regard, we should not defend something that is obviously unfair. If we do so, we must note that there will be many property developers in future, and even if the MTRCL gets the property development to a site, what will happen if it meets challenges from other people for another site? What if the challengers are willing to take risks? In the final analysis, the problem lies with why the MTRCL can still enjoy the privilege to property development after privatization when it will have 50% market shareholders? Why can it not offer the privilege for public tender?

If one says that the MTRC pays the full market value of the land granted for such property developments, we might as well offer the property development rights to properties above MTR stations for public tender to see whether full market value can be attained. I consider this feasible. Therefore, the point just made by Mrs Miriam LAU is not fair, and it even fails to comply with the philosophy of a free and competitive society. Why should we protect the MTRCL in respect of this fundamental issue? I fail to understand this and I am even more puzzled when the remark is made by the Liberal Party. Do they represent a free and competitive society? Have they absorbed the experience of the Cyberport? Ten property developers lodged complaints with the Council, asking why the Cyberport was given the privilege to property development. Do Members recall this incident? If it remains fresh in our memory, why do we still permit such a big loophole and give the MTRCL such privilege and subsidies that will remain unchanged for 50 years? If the MTRC can evade this now, can it evade this later? It may not be able to evade this very soon, and the problem lies here. When we fail to reconcile the contradictions, we have to face them, and the best method is to make a public tender as proposed by Mr Albert HO for the tenderers to bear risks on their own. This method will be impartial, open, transparent and everlasting.

Thank you, Madam Chairman.

**MRS MIRIAM LAU** (in Cantonese): Madam Chairman, I certainly believe in free competition, but the Liberal Party also understands that Hong Kong must develop its railways. In fact, many extensions of the MTR must be developed in future but not all of the extensions are cost-effective. If the relevant extensions are needed by the general public, the available options are: firstly, the MTRCL should look for the requisite resources to develop the relevant extensions; and secondly, the Chief Executive should instruct the relevant companies to carry out the development of the extensions under clause 13 of the Bill. But if the latter is done, the Government has to compensate the MTRCL for its losses.

In the past, the MTRC used to use the property developments to finance its development and improvement of services (at least partly because of this). Why can we not allow the system to continue so that the MTRCL can continue to develop our railway network in future and provide sound railway networks to serve the community? Thank you, Madam Chairman.

**DR YEUNG SUM** (in Cantonese): Madam Chairman, Mrs Miriam LAU has not answered Mr CHEUNG Man-kwong's question at all. The most fundamental problem is: If the Liberal Party supports a free economy and the market forces, how can it allow a listed company to be subsidized by property development? Mrs Miriam LAU is talking about subsidizing the operation of the MTRCL with property development. But that is only the result that will be achieved. Now that there are good results, we should continue to allow its operation to be subsidized by property development, according to her. However, Mrs LAU has not answered Mr CHEUNG Man-kwong's question. How does she respond with respect to free economy and market competition? She has not answered the question at all. Thank you, Madam Chairman.

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

(No Member responded)

**SECRETARY FOR TRANSPORT** (in Cantonese): Madam Chairman, in granting property development rights to the MTRC, the Government has always charged the Corporation the full market value of the land so granted based on the professional valuation of the Lands Department, so this is not considered to be a form of subsidy. The property-oriented profits made by the MTRC arise from the increase in the value of land through the Corporation's development of rail projects, and also from a sharing of profits generated from the sale of property between the Corporation and the developers.

The MTRC's share of profits depends on market conditions. So, the MTRC is required to bear development as well as financial risks in the process. At the Bills Committee the Government has pointed out that for planning, safety and technical reasons, the Government considers it necessary, where appropriate, to make property development above railway stations and depots, and on land adjacent to the railway an integral part of the railway development. Such arrangements are considered desirable. For the past 25 years, the MTRC has been designing and constructing above-station property. The integration of property and railway developments also ensures that safety and operational aspects of the railway are safeguarded. With one organization managing the railway and the related property development, responsibilities are clearly defined, and any incident arising from property development that has an effect on the railway can be properly managed.



The profits made by the MTRC from a sharing of profits with developers are of great assistance to the Corporation in operating on a commercially prudent basis without requirement for government subsidy. If the property development right is to be put to open tender, and the Government is to inject the proceeds from the tender into the MTRC in the form of share capital or loans, the MTRC would bear an additional financial burden for it is expected to provide a return on such equity or repay such loans at commercial rates. This will certainly put pressure on the fares to go up. Should the Government give up its right to a return or be repaid at commercial rates, it would virtually entail a government subsidy for the MTRC.

I urge Members to vote against the amendment. Thank you, Madam Chairman.

**MR ALBERT HO** (in Cantonese): Madam Chairman, it is actually a very simple issue. I have this question: Has past evaluations really come up with the full market values? Did the MTRC really pay the so-called objective market value for the development right? History proved that it did not. On every occasion in the past, before the MTRC obtained the development right, many a property developer would offer to pay the MTRC more for the development rights to the land, and they were willing to jointly develop the properties with the MTRC. They even guaranteed profits to the hundreds of million dollars. What sort of evaluation was that? I am really puzzled.

It was said that subsidies were not given, but we can see that the profits made by the MTRC in the past from property developments accounted for a fairly astonishing proportion of the overall operating profits of the MTRC. Let me give a few examples. In 1988, it made \$1.3 billion operating profits and \$720 million were brought by property development; in 1989, it made \$1 billion operating profits and \$579 million were brought by property development. Although there were some fluctuations, let me give some more examples, in 1990 it made \$1.2 billion operating profits and \$200 million were brought by property development; it made less profits in 1991, 1992 and 1993, and it sometimes made only several millions, but in 1998 it made \$1.8 billion operating profits and \$1.4 billion were brought by property development. It can be seen that in the history of the MTRC, property development accounted for a large proportion of its profits for quite some time. Why did this happen? Obviously, the MTRC must have much room to make profits by getting the development

rights. Therefore, history told us that it was not true that the MTRC was charged the full market value.

If, as Mrs Miriam LAU has said, property development will not necessarily make profits, why is it said that the MTRC may not be able to stay in business without such development? The logic is shaky. Not only has Mrs Miriam LAU said so, the *Hong Kong Economic Journal* also reported the remarks made by two controllers, the Property Development Controller and the Corporate Controller, of the MTRC yesterday. Although one controller stated that subsidies were not given, another said that the MTRC would not be able to stay in business without these developments. Mrs Miriam LAU has asked how the future development and operation will continue if losses are incurred. Everybody knows that the developments will certainly make profits, and the problem only lies with how we can guarantee that profits will certainly be made. The Government needs only grant the MTRC property development rights by charging it less than the market value. Madam Chairman, as you know, the Cyberport is a good example. After the Government had proposed the land premium, a property developer urgently indicated without delay that it was willing to pay billions more for the development right. Is that market value?

When the Government proposes a certain land premium, a property developer loses no time to indicate that it is willing to pay more and jointly develop the property with the MTRC, and this adequately reflects whether the land value is "full market value of the land". The logic is very simple. Madam Chairman, the logic that if the MTRC is not given the development rights to properties above MTR stations then it will not have money to develop extensions is made on the assumption that the developments must make profits. How can we guarantee that profits will certainly be made? The granting of the rights is *de facto* subsidies, otherwise, profits will not certainly be made. We know this from the remarks made in the past and we should not deceive ourselves as well as others. Moreover, I have not made assumptions.

The second issue so deduced is that if I have not made an assumption and they are really subsidies, is that necessarily wrong? This is open to debate. The Government will not admit it even if it has given subsidies. Yet, I think that certain points in respect of public transport policies should be considered. The problem is that clear principles should be formulated in respect of transport policies to specify the circumstances under which subsidies can be given. Mr CHEUNG Man-kwong has just said that the Government cannot subsidize

private companies. It can certainly not subsidize private companies before principles have been formulated. We all know that there are examples in foreign countries in which the governments are sometimes willing to offer certain sums as excess when inviting tenders for the development of railway extensions. In other words, besides the tender prices, the governments will offer certain sums as excess that may be regarded as development funds. Such subsidies are often given in foreign countries.

But I must stress that subsidization policies must be explicit and built on objective bases and established guidelines. They must be open, transparent, consistent and monitored. The Government should definitely not decline to admit that they are subsidies and then give subsidies secretly by means of artistic evaluation to defeat monitoring. This is absolutely unacceptable. I stress again that the relationship between the MTRCL and the Government in future will not be the same as before. I believe this Bill will certainly be passed, so after this evening the relationship between the two will certainly become different. Giving invisible subsidies and making illicit transfers were things of the past and we can no longer accept them. It is impossible for the MTRCL to act as it did before as if it is still a public utility.

I have to stress time and again that many provisions in the Bill are contentious. I know that the Government has strong views on fare determination. Although I do not agree with it, I think that some of its views are respectable. In other words, the Government may have its views while the investors may have different views. But I want to stress that I do not understand why the Government can put up with some inexplicit, unclear, unfair, non-transparent and inconsistent policies. It gives more subsidies to support the operation of the MTRC if it likes and gives less if it does not like. It has also pointed out that the MTRC needs capital for the development of extensions. We should be clear about the fact that the extensions so developed will be owned by the MTRCL. The MTRCL will have shareholders and if its rights to operate the MTR are terminated in future, the Government must buy back the MTR with public money. Therefore, if the MTRCL after listing still continues to operate in the present manner, I cannot accept it. I think that the Government should accept my amendment. If the Government thinks that the MTRCL in future should make capital-intensive investments in the development of new extensions, it should propose policies, discuss the roles it should play, specify the circumstances under which fund raising and financing should be made, and consider formulating some acceptable and reasonable subsidization policies that

have explicit limits. The existing practice is absolutely unacceptable. If we permit the Government to continue to maintain such a relationship with the future MTRCL, this will strike a strong blow at the fairness principle of public policy administration, and damage the time-honoured reputation of the Government of being clean and not having ambiguous relationships with the business sector. Furthermore, the Government will not be able to maintain its image of having no conflict of interests with the business sector.

Thank you, Madam Chairman.

**MR JAMES TO** (in Cantonese): Madam Chairman, I just want to add one point. If a tender is not made and the relevant railway company, the MTRC in this case, is allowed to select a developer or in any manner it deems fit (in fact, both are giving subsidies), there will be another opportunity for corrupt practices. Why? Theoretically speaking, even if the Government takes back the development right and then grants it again, just like the case of the Cyberport, it can grant it to one developer only. In comparison, in respect of the relationship between the MTRC and the Government, if the Government grants the development right by tender, it should at least be politically accountable and it has to be accountable to this Council.

Let us take the KCRC's granting the development right of the properties over the Hung Hom station to a single consortium as an example, why was the project granted at that time? It was said that the reason was related to the traffic flow and the incident caused an enormous outcry a few years ago. How will the KCRC continue to develop in the near future? Will it continue to develop this way? We have to wait and see. As far as I understand it, the situation has somewhat changed, and it is now said that traffic is no longer a problem. These scandal-like incidents may lead to corrupt practices that involve substantial amounts of money.

Therefore, if we consider these calmly, subsidies are actually given in both cases. In the first case, after a public tender, the Government may subsidize the operation of the MTRC in a certain form, otherwise, it may not be able to survive or it may suffer losses or even need to increase fares. But this is after all better than the other case in which the MTRC is allowed to select a developer for that will only be another opportunity for corrupt practices. There were actually many such scandals and denounced acts in the past.

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

(Members raised their hands)

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

(Members raised their hands)

Mr Albert HO rose to claim a division.

**CHAIRMAN** (in Cantonese): Mr Albert HO has claimed a division. The division bell will ring for one minute.

**CHAIRMAN** (in Cantonese): While the division bell is ringing, I would like to greet Members "Good Morning".

*(Members also greeted the Chairman "Good Morning")*

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

**CHAIRMAN** (in Cantonese): If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Mr CHEUNG Man-kwong, Mr SIN Chung-kai and Mr LAW Chi-kwong voted for the motion.

Mr Kenneth TING, Mr Edward HO, Dr Raymond HO, Mr LEE Kai-ming, Dr David LI, Dr LUI Ming-wah, Miss Margaret NG, Mrs Selina CHOW, Mr Ronald ARCULLI, Mr HUI Cheung-ching, Mr CHAN Kwok-keung, Mr Bernard CHAN, Mr CHAN Wing-chan, Dr LEONG Che-hung, Mrs Sophie LEUNG, Dr Philip WONG, Mr Howard YOUNG, Mr LAU Wong-fat, Mrs Miriam LAU, Mr Timothy FOK, Mr FUNG Chi-kin and Dr TANG Siu-tong voted against the motion.

Mr Eric LI and Mr WONG Yung-kan abstained.

Geographical Constituencies and Election Committee:

Mr Albert HO, Mr LEE Wing-tat, Mr Martin LEE, Mr Fred LI, Mr James TO, Miss Christine LOH, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Mr Andrew CHENG and Mr SZETO Wah voted for the motion.

Miss CHAN Yuen-han, Mr Andrew WONG, Mr TAM Yiu-chung, Mr David CHU, Mr HO Sai-chu, Mr NG Leung-sing, Prof NG Ching-fai, Mr MA Fung-  
kwok, Mr Ambrose LAU and Miss CHOY So-yuk voted against the motion.

Mr Gary CHENG, Mr Jasper TSANG, Mr LAU Kong-wah, Mr CHAN Kam-lam and Mr YEUNG Yiu-chung abstained.

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

THE CHAIRMAN announced that among the Members returned by functional constituencies, 27 were present, three were in favour of the motion, 22 against it and two abstained; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 26 were present, 10 were in favour of the motion, 10 against it and five abstained. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the motion was negatived.

**CLERK** (in Cantonese): New clause 62A                      Service of notices.

**SECRETARY FOR TRANSPORT** (in Cantonese): Madam Chairman, I move that new clause 62A, as set out in the paper circularized to Members, be read the Second time.

The new clause serves to set out the arrangements for giving notices to the MTRCL by the Secretary for Transport and vice versa under the Bill. This is a technical amendment which has been agreed and approved by the Bills Committee.

I urge Members to support the Government's amendment.

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That new clause 62A be read the Second time.

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): New clause 62A.

**SECRETARY FOR TRANSPORT** (in Cantonese): Madam Chairman, I move that new clause 62A be added to the Bill. I urge Members to support the Government's amendment. Thank you, Madam Chairman.

*Proposed addition*

**New clause 62A (see Annex I)**

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That new clause 62A be added to the Bill.

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Schedules 1, 3, 4 and 5.

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That schedules 1, 3, 4 and 5 stand part of the Bill.



**CHAIRMAN** (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Schedules 2 and 6.

**SECRETARY FOR TRANSPORT** (in Cantonese): Madam Chairman, I move that Schedules 2 and 6 be amended, as set out in the paper circularized to Members.

These are technical amendments which include the deletion of the section that makes reference to section 88 of the Public Health and Municipal Services Ordinance in Schedule 2 for that provision has already been deleted from the laws of Hong Kong.

Besides, the term "ordinary share capital" is to be amended as "share capital".

These amendments have been agreed and approved by the Bills Committee. I urge Members to support the Government's amendments.

*Proposed amendments*

**Schedule 2 (see Annex I)**

**Schedule 6 (see Annex I)**

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Schedules 2 and 6 as amended.

**CHAIRMAN** (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Long title.

**SECRETARY FOR TRANSPORT** (in Cantonese): Madam Chairman, I move that the long title be amended, as set out in the paper circularized to Members.

As Members have passed an amendment to amend the term "extension" to "extension to the railway" in the English text of the Bill earlier on, it is necessary to make this consequential amendment.

The amendment has received the support and approval of the Bills Committee. I urge Members to support the Government's amendment.

*Proposed amendment*

**Long title (see Annex I)**

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That the amendment moved by the Secretary for Transport be passed.

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

(Members raised their hands)

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

(No hands raised)

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

**CHAIRMAN** (in Cantonese): Council now resumes.

Council then resumed.

### **Third Reading of Bill**

**PRESIDENT** (in Cantonese): Bill: Third Reading.

### **MASS TRANSIT RAILWAY BILL**

**SECRETARY FOR TRANSPORT** (in Cantonese): Madam President, after the long debate in the past two days, the

Mass Transit Railway Bill

has passed through Committee with amendments. I move that this Bill be read the Third time and do pass.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Mass Transit Railway Bill be read the Third time and do pass.

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

(Members raised their hands)

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

(Members raised their hands)

Mr Albert HO rose to claim a division.

**PRESIDENT** (in Cantonese): Mr Albert HO has claimed a division. The division bell will ring for three minutes.

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

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

Mr Kenneth TING, Mr David CHU, Mr HO Sai-chu, Mr Edward HO, Dr Raymond HO, Mr Eric LI, Mr LEE Kai-ming, Dr David LI, Dr LUI Ming-wah, Mr NG Leung-sing, Prof NG Ching-fai, Miss Margaret NG, Mrs Selina CHOW, Mr Ronald ARCULLI, Mr MA Fung-kwok, Mr HUI Cheung-ching, Miss Christine LOH, Mr CHAN Kwok-keung, Miss CHAN Yuen-han, Mr Bernard CHAN, Mr CHAN Wing-chan, Dr LEONG Che-hung, Mrs Sophie LEUNG, Mr Andrew WONG, Dr Philip WONG, Mr Howard YOUNG, Mr LAU Wong-fat, Mrs Miriam LAU, Mr Ambrose LAU, Miss CHOY So-yuk, Mr Timothy FOK, Mr TAM Yiu-chung, Mr FUNG Chi-kin and Dr TANG Siu-tong voted for the motion.

Miss Cyd HO, Mr Albert HO, Mr LEE Wing-tat, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Mr CHEUNG Man-kwong, Mr CHAN Kam-lam, Mr LEUNG Yiu-chung, Mr Gary CHENG, Mr SIN Chung-kai, Mr WONG Yung-kan, Mr Jasper TSANG, Dr YEUNG Sum, Mr YEUNG Yiu-chung, Mr LAU Chin-shek, Mr LAU Kong-wah, Miss Emily LAU, Mr Andrew CHENG, Mr SZETO Wah and Mr LAW Chi-kwong voted against the motion.

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

THE PRESIDENT announced that there were 57 Members present, 34 were in favour of the motion and 22 against it. Since the question was agreed by a majority of the Members present, she therefore declared that the motion was carried.

**CLERK** (in Cantonese): Mass Transit Railway Bill.

**Resumption of Second Reading Debate on Bill**

**PRESIDENT** (in Cantonese): This Council now resumes the Second Reading debate on the Exchanges and Clearing Houses (Merger) Bill.

**EXCHANGES AND CLEARING HOUSES (MERGER) BILL****Resumption of debate on Second Reading which was moved on 10 November 1999**

**PRESIDENT** (in Cantonese): In accordance with the Rules of Procedure, I have permitted Mr Ronald ARCULLI, Chairman of the Bills Committee on the Exchanges and Clearing Houses (Merger) Bill, to address the Council on the Committee's Report.

**MR RONALD ARCULLI:** Good morning, Madam President. I did not realize that by my standing up, Members would start disappearing. *(Laughter)*

As Chairman of the Bills Committee on the Exchanges and Clearing Houses (Merger) Bill, I wish to report on the work of the Bills Committee by giving a summary of our deliberations.

The Bills Committee is aware that the Bill is an integral part of a comprehensive reform for the securities and futures market to enhance its competitiveness. There are at present five financial institutions in Hong Kong dealing with securities and futures trading, including two exchanges and three clearing houses. The reform, as the Bill seeks to provide for, is to merge these five basically self-regulatory and member-owned organizations under a single holding commercial entity known as the Hong Kong Exchanges and Clearing Limited (HKEC).

In the course of our deliberation, we have considered broad principles such as the Government's involvement and position in the HKEC, the relationship between the HKEC and its subsidiaries, namely, the five institutions, as well as the technical aspects of the HKEC's operations.

Before we put forward our views to the Administration, we had solicited views from those in the industry and other related professional bodies. We share the concerns expressed by the industry that the Government would have excessive control over the new HKEC, particularly in the long term. We note that under the current proposal, the HKEC Board will comprise a maximum of 15 directors, with no more than six directors to be elected by shareholders. The Financial Secretary, on the other hand, may appoint up to eight members to the Board. The Chairman of the Board, though elected by directors, will be appointed with the approval from the Chief Executive. The appointment of the Chief Executive Officer of the HKEC will also be subject to the approval of the Securities and Futures Commission (SFC).

The same situation is also reflected in the HKEC's Risk Management Committee, which has the responsibility to formulate policies on risk management matters relating to the activities of the HKEC Group. This Committee is made up of the HKEC Chairman, three to five members appointed by the Financial Secretary, and no more than two members appointed by the HKEC Board.

The Bills Committee accepts that there is a need to ensure that the HKEC, apart from pursuing its commercial interests, will perform public functions of ensuring an orderly and fair market in securities and futures trading as well as prudent risk management of activities of the HKEC. We, therefore, do not object to the composition of the HKEC Board at its inaugural stage. However, we consider it necessary to ensure adequate representation of shareholders on the Board in the long term. The Administration finally acceded to our request and will put forward a Committee stage amendment that by 2003, the number of directors appointed by the Financial Secretary will not exceed the number of those allowed to be elected by shareholders under the constitution of the HKEC.

The Administration has also agreed to move amendments to stipulate that, of the two Risk Management Committee members appointed by the Board, at least one shall be a director elected by shareholders. In addition, the Administration has accepted the view of the Bills Committee that the decision of the Risk Management Committee should not be binding on the HKEC Board, which carries ultimate responsibility for the HKEC. We welcome the Administration's amendments to stipulate that the Risk Management Committee will only submit risk management proposals to the Board for consideration.

As regards the imposition of a 5% limit of a voting power at any general meeting of the HKEC under the proposal, we understand that the limit is set to prevent control of the HKEC by any individual party or parties acting in concert. A person is required to seek the approval of the SFC in order to be a minority controller being able to exercise 5% or more of the voting power at a general meeting. We are concerned that the fund managers, custodians, nominee companies and those carrying on normal company activities, such as appointing the same person as a proxy to exercise voting rights at a general meeting, might be considered as associates and the proxy may therefore fall within the definition of "minority controller".

The Administration has, in this respect, agreed to improve clarity of the provisions and to make amendments to refine the definitions of "associates", "indirect controller" and "minority controller", and to give specifications of persons or classes of persons who do or do not fall into the definitions in the new Schedules 1 and 3 respectively.

We notice that the proposed amendments still do not exclude fund managers, custodians and nominee companies from being caught by the definition of "minority controller". The Administration considers it more appropriate to deal with their applications on a case-by-case basis.

As regards application for approval of becoming a minority controller, the Administration has agreed to make amendments to stipulate in the Bill that the SFC will not approve an application unless it is in the interests of the investing public or in the public interests. When it refuses an approval, it is also required to give reasons for the refusal.

We also take note of the need to re-delineate the Financial Services Functional Constituency following the separation of the shareholding of the two exchanges from the right to trade on and through the respective exchanges upon the merger. Some Members are, however, concerned about the 21 non-trading members in the Stock Exchange of Hong Kong Limited (SEHK) who might not be eligible to become electors under the proposed re-delineation of the constituency. The Administration has clarified that, upon the merger, each member of the exchange will be issued a trading right for each share held in the respective exchanges. He will be deemed to be an exchange participant under clause 23 of the Bill, and will be able to continue to trade on or through the exchanges provided that he has satisfied the requirement imposed by the HKEC and registered with the SFC as a dealer.



In line with the general policy and the existing delineation of the Financial Services Functional Constituency, the Administration has proposed that, upon the merger, exchange participants of the SEHK and the Hong Kong Futures Exchange Limited will be eligible to register as electors of the constituency. The Bills Committee is satisfied that the 21 members, same as other SEHK members, will be deemed to be exchange participants and will be eligible as electors for the Financial Services Functional Constituency unless their registrations with the SFC are suspended or revoked.

Madam President, the Bills Committee supports the amendments proposed by the Administration and the Second Reading of the Bill. Thank you, Madam President.

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

**MR FUNG CHI-KIN** (in Cantonese): Madam Chairman, I would like to declare my interests before I speak. I am a securities and futures dealer.

I am very grateful to Mr Ronald ARCULLI, Chairman of the Bills Committee, and other members of the Committee for their full co-operation. Government departments have also made great efforts so that the Second Reading debate of the Bill can be resumed within the pressing time limit, and the Bill may be read for the Third time.

It has only been one year since the Financial Secretary proposed merging the SEHK and the HKFE and the Clearing Houses until the Bill is read the Second and Third times today. This is the result of the support and co-operation of Members of the Council. Having absorbed the experience and learnt a lesson from the 1997 financial turmoil, the merger of the SEHK and the HKFE will be a very important starting point from which Hong Kong as a regional and international financial centre will stride forward. I trust that the new HKEC, with its very strong competitiveness, can provide diversified products and comprehensive services. The HKEC will serve this region and satisfy the needs of the international community.

During the past year, the trade has been very positive and active in conducting negotiations with the Government and various parties in the hope that a "win-win proposal" can be attained so that the Government will achieve its aim and the concerns of the trade about various issues can be addressed.

I would like to restate some of the views that I have advanced during the year. We will continue to look closely at the operation of the HKEC in future. I have said that the Government should not deny the efforts made by the trade in the past 12 years in promoting the redevelopment of the securities and futures markets after the collapse of the stock market in 1987. The lay council members and directors appointed and recommended by the Government have contributed to the rapid development of the financial market in the past 12 years.

In the past 12 years, the governance structures of the SEHK and the HKFE and the Clearing Houses were definitely unconventional and not complacent or conservative as described by the Financial Secretary, and they stopped being private clubs long ago. A rare financial turmoil in history led to the closure of a few securities companies and investment banks. We could not simply blame the sluggish governance, short-sightedness and lack of initiative of the trade for these. All along, the local financial market has been extremely open, and precisely because of this, many financial derivatives have been introduced within a short time which led to the speculative sniping of Hong Kong dollar by "international predators". Therefore, I think that the governance structures in the past were well-tested but we must look forward and we have also accepted the view that we must look forward.

The Growth Enterprise Market that has already been launched, the upgrade to a straight-through electronic trading system under development as well as the electronic trading of Hang Seng Index futures are competitive measures taken with the available resources within the existing governance structures. They are not products after the merger as mentioned by the Government. The credits could not be snatched by the HKEC after the merger.

If I have not misunderstood it, apart from reducing the proportion of brokers, that is, specialists, how will those governing the HKEC produce a new group of brilliant people within the existing structure? How will they make everything the specialists do profitable so that it will give dealers more profit-making opportunities and provide the shareholders of the HKEC including the public investors with reasonable returns?

Mr Ronald ARCULLI has just elaborated on the concerns of the Bills Committee about the composition of the HKEC Board in great length. I am very grateful for Members for raising their concerns. The Government has also agreed that the second Board formed after 2003 will comprise directors appointed by the Financial Secretary but the number of such directors should not exceed the number of directors elected by shareholders. Why is the Bills Committee so very much concerned about this? The Bills Committee hopes that the management will comprise more people representing the interests of shareholders and the trade so that they can have more opportunities to express their views.

Unfortunately, however, we have recently learnt that although the Government agrees to amend clause 20, that is, the number of directors appointed by the Government shall not exceed the number of directors elected by shareholders, shareholders still do not have the right to nominate the directors they want to elect and candidates will be nominated by the Government or a nomination committee. In that case, we think that the efforts of the Bills Committee have been washed somewhat down the drain because they fail to achieve the desired effect. A probable outcome may be: eight directors will be appointed by the Government and six will be elected by shareholders. But the Government will ask the shareholders to elect certain candidates. For example, the shareholders may elect six out of nine candidates chosen by the Government, or six out of 12 candidates. In that case, the Board will comprise 100% of people desired and picked by the Government. How can this make the trade convinced and fully support this merger?

Some people said that I must reflect this situation because we seem to have been doubled crossed. Similarly, we may have Set A, Set B or Set C as breakfast or lunch but Secretary Rafael HUI told us that we could only choose between Set A or Set B but not Set C. In that case, will shareholders actively participate in the election of directors who represent their interests? Is it necessary to do so? Is it necessary to be so strict? Should shareholders be deprived of their due right to choose and nominate? I hope that the Government will respond to this point and explain this to the trade and the future shareholders.

After the merger of the SEHK and the HKFE in future, we will continue to keep watch on the material changes that will be made to the overall operation and supervision. I have joined two Bills Committee at the same time. We have just spent a very long time discussing the Bill on the privatization of the MTRC but we may have to spend very little time discussing the Exchanges and Clearing Houses (Merger) Bill. In respect of fares, while a Policy Bureau says that there should not be any monitoring, the Government will not even have \$1 equity in the HKEC but it has 100% governing authority. In that case, the Government will still let the Securities and Futures Commission assume the supervisory role. When the Bills Committee discussed the Risk Committee, it almost said that the Risk Committee could override the Board. We turned down this proposal afterwards as this could not be done. If the majority members of the Board vote against the views of the Risk Committee, their views will be turned down.

But I wonder why the Government is still worried about the trade and wants to tie them up. Why can it not adopt more open and broad-minded governing methods? I am very worried about the point that it seems that everyone chosen as a member of the governance structure of the future HKEC will be "well-chosen" but even pressing a button will often have very serious consequences. Actually, only a specialist will understand the effects this will have on the overall operation, and those who do not understand will only know how to turn the machines on or off. As regards disputes and contradictions, market participants have to accept their fate and resolve disputes on their own. Will this be effective governance that caters for the interests of all parties?

I want to take some time to express the closing views of the trade. We do not oppose the merger, we support it but we hope that the Government will not act wilfully in respect of many issues. Let me give a simple example. When the SEHK and the HKFE evaluated the value of the merger, each of them spent millions on consultant fees. Two world-class financial consultants were appointed but they failed to reach a consensus. Finally, someone proposed a "3:7" split, then it was decided to adopt "3:7". Some said that if they had known this beforehand, they did not need to spend money to appoint the consultants. Why could that person be so good at calculation? If the issue is raised for discussion two months later, I believe the "3:7" proposal would not facilitate a successful merger. It is because there will have been great changes in the market, and the business of the HKFE may not be satisfactory while the

dealing of shares may be very prosperous. In that case, the value will become completely different. I believe that the market price of a SEHK broker licence will reach over \$10 million while that of the HKFE may still be \$3 million to \$4 million. There are considerable changes in the market. Yet, we did not oppose the merger at that time. So long as we supported the merger, the problem was solved very quickly. However, this illustrates that we are really puzzled about many issues involved.

I have taken this opportunity only to reveal some continuing concerns of the trade, and the trade and I support the proposed merger.

**MR JASPER TSANG** (in Cantonese): Madam President, the Democratic Alliance for the Betterment of Hong Kong (DAB) supports the merger and demutualization of the two exchanges and the three Clearing Houses. In his report on the deliberations of the Bills Committee, Mr Ronald ARCULLI, Chairman of the Committee, set out the concerns of the Committee relating to the composition of the board of directors (namely, the respective proportion of government-appointed directors and directors elected by shareholders) and the composition and powers of the risk management committee. These are also the concerns of the DAB. Therefore, the DAB will support the Committee stage amendments to be moved by the Government to address the relevant concerns of the Committee.

Madam President, we wish to comment on the concerns mentioned by Mr FUNG Chi-kin a moment ago. The first one is the election of directors by shareholders of the new exchange. Since the method of electing directors by shareholders is not included in the Bill, the Bills Committee did not discuss this issue during its process of scrutiny. It was only after the Bills Committee had finished the deliberations that we learnt of the discontent felt by some industry participants. Some of these people even said that they were very worried — they found not only that government-appointed directors would constitute a majority in the board of directors, but also that the directors elected by shareholders might not be adequately representative as well, because a nomination committee made up of a small minority would monopolize the power of nomination.

Mr FUNG Chi-kin asked the Government to offer an explanation, and I can remember that officials from the Financial Services Bureau have actually offered explanations on some public occasions. According to them, this arrangement is meant to ensure that the directors elected by shareholders are adequately representative. Their argument is that if shareholders are allowed to elect directors without any control on nomination, there may be problems: In the new exchange to be formed, members from the SEHK will far outnumber those from the HKFE, and among members of the SEHK, most of them are small companies. So, if there is no control over nomination, there will be very little representation from the HKFE, and small companies will become dominant among members from the FEHK. Therefore, the Government maintains that there should be control over nomination, so as to ensure that all sides are represented. The sectors as a whole will of course think that this is not an open and fair method of election.

We are of the view that despite the need imposed by the special circumstances surrounding the inception of the new exchange, that is, despite the need to look after the interests of original shareholders from the SEHK and the HKFE, there should still be some alternative ways to handle this matter in a fair and open manner. One example is the fixed allocation of board membership adopted currently by the SEHK. We may, for example, specify that at least two directors must be elected from among shareholders from the SEHK, or we may specify that the SEHK or the FEHK should each have at least two seats. A fixed allocation of seats coupled with open nomination and election among all shareholders is in fact a more reasonable method. That way, industry participants will be satisfied that all the six directors elected by them can genuinely represent them and reflect their views in the board of directors. For all these reasons, I do not think that it is at all desirable to introduce any control over nomination.

Another concern of ours is the opening up of trading rights. The Government proposes in the Bill that in case the new exchange enters into alliances with exchanges of other countries, it may issue new trading rights free from the two-year moratorium on the issue of new trading rights stipulated in the merger agreement. The DAB supports the forging of alliances with other exchanges. Last year, during the motion debate on reforming the local securities and futures markets, we also mentioned that following its establishment, the new exchange should take active steps to forge alliances with other Asian exchanges located in the same time zone as ours, saying that this could broaden our sources of foreign investment and increase the transaction volume of our markets. However, we must add that the opening up of trading

rights will inevitably arouse the worries of the local securities and futures sectors. The reason is that although this will help broaden the source of foreign investment, local small and medium securities companies may well suffer as a result. For example, with the operation of international alliances, can they still survive by, say, obtaining trading rights from overseas exchanges? And, we must not forget that foreign securities companies may well make use of their huge financial strength to try to establish a presence in the Hong Kong market. This will certainly exert some kind of pressure on local small and medium securities companies. In brief, will reciprocal trading rights enable foreign securities companies to enter our market much easier than before and to get much greater benefits? This is also one of our concerns.

Madam President, the DAB hopes that the new exchange can be set up as scheduled, and that following its establishment, it can create better conditions for the development of our securities and futures markets.

**MISS MARGARET NG:** Madam President, I rise with reluctance to oppose the Second Reading of the Bill. Reluctant, because I have not joined the Bills Committee and have not expressed my concerns to them while the Bill was still under deliberation. My attention was drawn to certain problems with the Bill only very recently by the submission of Miss Betty HO of the Law Faculty of the University of Hong Kong. Her submission has come a day too late for the Bills Committee. However, Miss HO is a highly respected author of many learned texts on the contracts, securities and bills of exchange laws of Hong Kong. Her views are well worth considering. Certainly, the arguments in her submissions are sufficient to convince me that I cannot support the Second Reading of the Bill today.

I am concerned about the overall effect of the Bill and specifically about clauses 9, 20 and 22. Although the Bill is called "the Merger Bill", which sounds innocuous enough, what is less emphasized is that it is also to bring about demutualization. The five financial institutions, the Stock Exchange of Hong Kong Limited, the Hong Kong Futures Exchange Limited and the three clearing houses are such mutually-owned and self-regulating companies. The Bill converts each of them into a company limited by shares and controlled by its shareholders through the Board of Directors, except, however, in this case, the Board of Directors is controlled by the Government.

Clause 20 provides that the Financial Secretary may appoint eight other directors, so that nine out of the 15 directors are government-appointed. That is nearly two thirds. By contrast, the shareholders can only elect six directors. Under clause 9, the all-important Risk Management Committee is likewise firmly in the Government's control. The Financial Secretary can appoint three to five of its members. The Board can only appoint two. This has been referred to by earlier speakers. Although the Administration will propose Committee stage amendments later to somewhat mitigate or shorten the term of the absoluteness of government control, the fundamental situation is unchanged.

Little wonder that Miss HO came to this view in her submission at paragraph 78, and I quote:

"The accumulative effect of these provisions is to place the Hong Kong Exchanges and Clearing Limited (HKEC) firmly and comprehensively in the control of the Administration, far in excess of any other utility in Hong Kong. This is the result of design and not by accident. The Secretary for Financial Services has stated, 'the Board members of the enlarged Exchange and its three subsidiaries will need to achieve the policy objectives of the Government.'"

At paragraph 79, she says:

"The evils of government control are apparent. I need not enumerate these."

It is understandable that the Government sees its rule as being all good, the impartial protector of the public good, moving in to replace all sorts of people who are unprofessional and only care for themselves or worse. But the Government is frequently less impartial, less efficacious and less wise than it thinks it is. Indeed, after the astonishing buying sprees of the Financial Secretary two years ago, with promises that he will not preclude doing it again, with the Government being the major shareholder of the Mass Transit Railway Corporation (MTRC), the shadow of conflict of interest certainly looms.

Government control is another name for political control. I find that such control, and the use that it can be put to without anybody knowing about it or doing anything about it, simply shuddering. It is ironical that only a few hours ago, this Council debated the Mass Transit Railway Bill, where the Government



pledged its conviction in private ownership and its faith in the free market, in how harmful it is for public bodies to interfere. Now, it seems to be arguing in exactly the opposite direction. Just as I have supported the Mass Transit Railway Bill, I will now oppose this Bill. There is too much in this Bill which is unexplained.

Miss HO looks at it analytically. She says at paragraph 17 of her submission:

"Given the premise of demutualization, exchanges are only firms competing in the market and not public utilities. The Administration's decision simultaneously to demutualize and to maintain the exchanges' monopolies requires an explanation which has not been forthcoming."

She also queries how full and frank the Administration's disclosure to Members has been in pushing through this Bill. This is certainly worrying. Well, I cannot gauge the exact extent. I have certainly seen enough to consider it necessary to withhold my support for the Second Reading of the Bill.

Thank you, Madam President.

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

**MR SIN CHUNG-KAI** (in Cantonese): Madam President, the Democratic Party will support the Second Reading of the Bill, and it will also support the relevant amendments.

The first time the Democratic Party proposed to demutualize the SEHK was in July 1998, well before the Government intervened in the market. The proposal to demutualize the SEHK is very much in line with the global trend, and, as a matter of fact, the SEHK has been repeatedly criticized by members of the public for operating like a private club. Mr FUNG Chi-kin said a moment ago that this is no longer the case now, but I do not quite agree with him.

Tom.com, which attracts long queues of prospective share subscribers today, has donated \$800,000 and is thus able to get the share code of 8001 without having to draw lots. The listing of Tom.com is also given exemption

from many requirements. All these facts tell us that the operation of the SEHK nowadays is still marked by some unfair practices. Can listing and demutualization rectify the situation completely? I dare not say that they will definitely be able to do so. But what is most important is that we should realize the problems relating to these practices. If we really wish to attract investors and achieve internationalization, we must uphold the principle of fairness. I hope that the Government can pay attention to this point. Even if it is not going to do this today, it must still do it some time in the future.

A moment ago, Mr Ronald ARCULLI discussed the worries felt by members of the Bills Committee during the course of deliberations. After discussions, the Government has accepted some of our proposals. We make it very clear in the amendments that in the second board of directors, the number of directors appointed by the Government must be smaller than that elected by shareholders. We hope that the Government can realize that ..... During the process of scrutiny, the Bills Committee actually wished to tell the Government very clearly that in the long and medium run, the new company must be released from the kind of government "control" as described by Miss Margaret NG. I am sure that this is our consensus. But we certainly appreciate that we must first spend some time on correcting the current unfair practices before we can eventually dispense with government intervention and let the market conduct itself on the basis of competition.

I wish to emphasize that market liberalization is of immense importance. On a number of occasions during the course of scrutiny, I actually wanted to raise objection to the proposal of imposing a two-year moratorium on the issue of new trading rights. I even thought about the idea of deleting this proposal. But well, ever since the Government proposed the merger a year ago, on 3 March last year — well, since it subsequently promised to liberalize the market two years later — so because of this, I eventually refrained from proposing to delete the proposed moratorium. I mean, as long as the Government can set down a specific timetable for liberalization, I am prepared to accept the moratorium. However, if any further protectionist steps are taken to thwart the continued liberalization of the market, I will certainly rise in opposition.

As for the issue of trading rights in respect of alliances with other exchanges, I believe that Members can all appreciate the worries expressed by Mr Jasper TSANG a moment ago. I think that this in fact involves the issue of reciprocal arrangements. I mean, if we want to do business in others' markets,

we must allow others to do the same in our own market. Because of this consideration, I can see no reason why we should refuse to liberalize our market when entering into alliances with other exchanges. It is only with a liberalized market that our stock exchange can ever be expected to grow in both size and strength. And, without market liberalization, many more quality companies are bound to abandon Hong Kong as a place of listing and choose other places instead. This will not be a good thing to Hong Kong. The more shareholders try to protect their interests, the more they may find that the transaction volume or aggregate value of the market will go down. Only a liberalized market can induce more companies to apply for listing in Hong Kong. That way, there will be more business, and the whole industry will thus be able to develop rapidly.

Actually, in many overseas countries, including Singapore, people have long since started to take the path of demutualization, and we may already be lagging behind them. In this connection, the Government must always adhere firmly to its timetable of market liberalization, or else we will defeat the very objective of merging the exchanges and clearing houses.

Madam President, I support the Second Reading of the Bill.

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

(No Member responded)

**PRESIDENT** (in Cantonese): Secretary for Financial Services, do you wish to reply?

**SECRETARY FOR FINANCIAL SERVICES** (in Cantonese): Madam President, the Exchanges and Clearing Houses (Merger) Bill was read the First time on 10 November last year. As I pointed out then, the purpose of the Bill is to modify the existing legislative framework governing the securities and futures market to enable the implementation of the proposed merger of the two Exchanges and their associating Clearing Houses.

The existing market framework has become increasingly inadequate to respond to new challenges from technological advances, globalization of the international financial markets and the needs of the increasingly sophisticated investors both locally and overseas. The local securities and futures markets must be reformed to enhance our competitiveness so that Hong Kong can maintain its leading position as a global financial centre.

In March last year, the Financial Secretary announced in his Budget speech this reform proposal, which has been well-received by various sectors, including the local community, industry participants, the brokerage, the Legislative Council as well as the international community. Meanwhile, since the announcement of the reform proposal in March last year, the international financial markets have undergone many developments which facilitated broader and more in-depth discussions of alliance and collaboration proposals between exchanges. Some long-established overseas exchanges also embarked on studies of reforms and liberalization to various degrees with a view to enhancing their competitiveness in the international arena. In view of these developments, we are all the more convinced that our reform direction is correct and necessary.

After the announcement of the merger plan, the boards of the Stock Exchange of Hong Kong, the Hong Kong Futures Exchange and the Hong Kong Securities Clearing Company Limited all indicated their support. The two Exchanges immediately commenced negotiations on the terms of the merger and an agreement was concluded at the end of July. The schemes of arrangement documents for the merger were endorsed by an overwhelming majority of members of the two Exchanges present at their respective extraordinary general meetings on 27 September last year, and subsequently sanctioned by the Court on 11 October.

The Bill mainly provides for, *inter alia*, a regulatory system for a new class of body to be known as "recognized exchange controller", and the new system will also apply to the Hong Kong Exchanges and Clearing Limited (HKEC) after the merger. In order to prevent manipulation of exchanges, clearing houses and their recognized exchange controllers by any person, either alone or with associates, the Bill also prescribes a shareholding limit in such institutions. Moreover, a recognized exchange controller is required to set up a Risk Management Committee to perform prudent risk management. The Bill also proposes consequential amendments to other related ordinances in order to tie in with the new regulatory regime for recognized exchange controllers.

In the course of the scrutiny of the Bill, the Bills Committee has expressed concerns on certain aspects and received representations from a number of organizations on the Bill. The major concerns of the Bills Committee include the power of the Financial Secretary to appoint members of the board of the HKEC, and the powers and responsibilities of the Risk Management Committee. Having considered Members' concerns and views, the Government has proposed amendments to the relevant clauses. I will give a more detailed explanation when I move the relevant amendments later on. Moreover, the Bills Committee also conducted very useful discussions on some other issues, such as associates and minority controller. After consideration, the Government accepted the proposals of the Bills Committee and agreed to make amendments accordingly. The relevant proposals are incorporated into the Committee stage amendments which have been circularized to Members.

The question of trading right has been discussed at meetings of the Bills Committee. I understand that it concerns the interest of the brokerage, as well as market liberalization and competition in future. A condition attached to the merger of the two Exchanges is that the new HKEC will establish a moratorium on the issue of new trading rights for a period of two years after the merger; and for a further period of two years, an upset price is to be set for the issue of new trading rights in respect of spot and futures transactions. This is specified in the schemes of arrangement documents for the merger of the two Exchanges, and is also an undertaking of the new HKEC to members of the two Exchanges. I appreciate the concerns expressed by some people over the implementation of this agreement given that the arrangements pertaining to trading right are not incorporated in the Bill. The Government has reflected these concerns to the HKEC, and has been assured that the board of the HKEC will honour its undertaking in respect of trading right in compliance with the provisions in the schemes of arrangement documents. In fact, preparations have already been made to give effect to the arrangements for trading right in accordance with the details set out in the documents for the merger.

Just now Mr FUNG mentioned that some members of the industry are still concerned that such arrangements will constitute pressure on small and medium brokers in Hong Kong. Mr Jasper TSANG expressed similar views that alliances between exchanges may facilitate access by overseas brokerage firms to the local market through the exchanges with which they are affiliated. I trust that as a well-managed and commercial-oriented company, the HKEC will certainly consider each alliance proposal and the various reciprocities in a

judicious manner. An alliance which is beneficial to just one party but not to the other seldom takes place. So, under the existing arrangements, we all know that new brokerage firms or overseas companies can still acquire an existing licence and gain access to the local market. The two-year restriction will not necessarily block access by newcomers completely. As we all know, this merger is a step taken in the light of global competition and an initiative to continue opening up the Hong Kong market. Only in this way can we gather momentum for our market and maintain our position as a global financial centre.

Now I wish to respond to two points made by Honourable Members, including Miss Margaret NG, earlier on. The first is about excessive government control on the HKEC, and second, nominations for the inaugural board.

On the first point, I cannot agree that the governance structure is under the control of the Government. We understand, and have consistently emphasized, that the HKEC is a profit-driven commercial entity and a financial institution with very important public functions. Hong Kong is different from those foreign countries with a large-scale financial market, such as the United States where there are several exchanges. Theoretically, other trading systems may be introduced into Hong Kong, particularly in view of the present-day technological advances so it is absolutely possible that we may develop along this line in future. But so far, spot and futures exchanges have been the backbone of our financial centre. This is not only directly related to the interest of members of the industry, but also pivotal to preserving the broader interest of the Hong Kong Special Administrative Region as a whole in its future development. Therefore, the related legislation must have regard for the distinct feature of the HKEC which is a commercial entity but with very important public functions at the same time. So, the governance structure must reflect this fact.

I believe that Members may not agree to bring the demutualized exchanges under the control of the Government or corporate management, or to make them a franchise company not subject to any form of control. Nonetheless, these are not necessarily results of demutualization. Since the announcement by the Financial Secretary in March last year and the subsequent publication of two policy papers, we have never evaded or concealed the point that this reform is initiated by the Government and that there is indeed government intervention in the process. This would not have been possible without government intervention.

Let us look at developments overseas, such as that in New York. The long-established and the largest New York Stock Exchange (NYSE) adopts a membership-based system which is now found to be riddled with problems. However, it does not necessarily mean that the stock broking industry is to blame. The case is that under the membership-based system, priority must be accorded to the interest of members. Faced with the competition from electronic trading systems and from transactions through the Internet, the NYSE is also aware that its transaction volume has been contracting increasingly. However, demutualization is impossible due to incompatibility among the interests of members. Another case in point is the securities regulatory body in the United States, which has the intention to introduce non-member directors for many years but is unable to do so because of the membership-based system. The NYSE Chairman is very concerned about whether the NYSE can remain at the forefront of international financial markets in three or five years.

Hong Kong is a relatively small market. From the perspective of the Government, if we do not grasp this opportunity and act proactively to allow us more time to adapt to the international financial markets that breed novelties every day, I believe that Hong Kong's position as a global and regional financial centre will certainly regress after a couple of years. I hope Miss NG will understand this point. I personally hold Prof HO in high esteem and her views were made for the benefit of the future development of the HKEC. Prof HO's views on Company Law are tremendously helpful to us and we do hope that we will have the opportunity to explain the progress to Prof HO in future.

Let me turn to the nomination of directors to be returned by shareholders. The proposed arrangements are set out in paragraph 5.9 of the paper on the corporate governance and regulatory structures of the new HKEC published by the Government on 8 July last year. It is proposed that the preparatory board of the HKEC will also act as the nominating committee. So, this is actually not a new arrangement as this is already stated in the paper published on 8 July. This nominating committee will be responsible for nominating no less than nine candidates for election by shareholders of the new HKEC. The shareholders will be required to return six of the candidates as directors of the HKEC's inaugural board after the merger. For the second board and thereafter, both the incumbent board and shareholders of the HKEC may nominate candidates for election by shareholders as directors. Therefore, the arrangement for the election of the second board is not the same as that for the inaugural board.

This arrangement is proposed after discussions by the Co-ordinating Committee on Market Structure Reform, and it has also been discussed at meetings of the Bills Committee. Given that an overwhelming majority of shareholders of the new HKEC will be the incumbent members of the two Exchanges when the HKEC is newly established after the merger, we consider the proposed nomination arrangement necessary and appropriate, particularly for the inaugural board, in order to ensure a balance of interests among all sectors, especially those among the various markets. As I have pointed out, following the gradual diversification of ownership of the new HKEC, a more broadly-based nomination procedure will be established for the election of the second board. Mr SIN Chung-kai also mentioned this point just now.

With regard to the nomination of shareholders to be directors, the actual list of candidates has not yet been finalized. While it is said that no less than nine candidates will be nominated, the actual number of candidates is subject to discussions among all parties concerned. Yet, the basic mechanism will be in line with the proposal made in the paper published in July last year, and no changes will be made to it now.

Madam President, the Bills Committee formed to study the Bill has completed the scrutiny process within a very short span of time, and Members have put forward many valuable opinions. Here, I wish to express my sincere gratitude to them. If the Bill is passed by the Legislative Council today, the proposed merger of the exchanges and clearing houses will be implemented on 6 March.

With these remarks, I hope that Members will support the passage of the Bill and the Committee stage amendments proposed by the Government.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the Exchanges and Clearing Houses (Merger) Bill be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)



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

(No hands raised)

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

**CLERK** (in Cantonese): Exchanges and Clearing Houses (Merger) Bill.

Council went into Committee.

### **Committee Stage**

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

### **EXCHANGES AND CLEARING HOUSES (MERGER) BILL**

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Exchanges and Clearing Houses (Merger) Bill.

**CLERK** (in Cantonese): Clauses 5, 11 to 14, 17, 19 and 23.

**CHAIRMAN** (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

**SECRETARY FOR FINANCIAL SERVICES** (in Cantonese): Madam Chairman, since the Rules of Procedure stipulate that any Schedule shall be considered after the clauses and any proposed new clauses of a bill have been disposed of, may I seek your consent to move under Rule 91 of the Rules of Procedure that Rule 58(7) of the Rules of Procedure be suspended in order that the Committee of the whole Council may consider Schedules 1 and 2 and new Schedules 1 and 3 ahead of the remaining clauses of the Bill.

**CHAIRMAN** (in Cantonese): Secretary for Financial Services, as only the President may give consent for a motion to be moved, without notice, to suspend the Rules of Procedure, I order that Council do now resume.

Council then resumed.

**PRESIDENT** (in Cantonese): Secretary for Financial Services, you have my consent.

**SECRETARY FOR FINANCIAL SERVICES** (in Cantonese): Madam President, I move that Rule 58(7) of the Rules of Procedure be suspended to enable the Committee of the whole Council to consider Schedules 1 and 2 and new Schedules 1 and 3 ahead of the remaining clauses of the Bill.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That Rule 58(7) of the Rules of Procedure be suspended to enable the Committee of the whole Council to consider Schedules 1 and 2 and new Schedules 1 and 3 ahead of the remaining clauses of the Bill.

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

(Members raised their hands)

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

(No hands raised)

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

Council went into Committee.

### **Committee Stage**

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

**CLERK** (in Cantonese): Schedules 1 and 2.

**SECRETARY FOR FINANCIAL SERVICES** (in Cantonese): Madam Chairman, I move the amendments to Schedules 1 and 2 of the Exchanges and Clearing Houses (Merger) Bill, as set out in the paper circularized to Members.

Schedule 1 sets out the provisions applicable where there is contravention of notice by the Securities and Futures Commission (SFC) under clause 3(6), 4(1) or 6(5) of the Bill. The Bill provides that the SFC may, under specified circumstances, serve a notice on any person who contravenes the relevant stipulations. It will constitute a contravention for any person to become or continue to be the controller of an Exchange Company or clearing house without the consent of the SFC or in contravention of the relevant provisions, or to become a minority controller of a recognized exchange controller, Exchange Company or clearing house without the consent of the SFC or not in compliance

with the conditions specified in the SFC's approval in respect of the minority controller. The purpose of the notice is to direct the person concerned to take such steps as are specified in the notice to cease to be a controller or minority controller. Major amendments to Schedule 1 include the following:

- (1) Section 1(2) of Schedule 1 sets out the various restrictions on the shares as a result of contravention of notice. Having considered Members' views, we proposed to include a new subsection to the effect that the SFC may serve a notice on the person concerned to direct the person to transfer the shares to a nominee specified by the SFC within a specified period;
- (2) Section 1(2)(b) and new section 1(2)(e) of Schedule 1 provide that the person concerned shall not exercise his voting rights in respect of the shares which are subject to restrictions, and/or he must transfer the shares in such way as is directed by the SFC. These actions may inadvertently increase the shareholding of, or voting rights exercisable by, other persons in respect of a controller, Exchange Company or clearing house, thus making such other persons become a controller or minority controller as referred to in clause 3(1) or 6(2) of the Bill. Having considered Members' suggestions, we proposed to add new section 1(12) to Schedule 1 to the effect that the operation of subsection (2)(b) or (e) shall not of itself cause any person to contravene provisions on the becoming of controller or minority controller. Apart from the above amendments, the others are either technical or consequential amendments with no policy implications.

Since we have proposed to add a new Schedule to the Bill, Schedule 1 will be renumbered as Schedule 2 accordingly. Major amendments to the original Schedule 2 are highlighted as follows:

- (1) The Stamp Duty Ordinance and its subsidiary legislation, namely, the Stamp Duty (Jobbing Business) (Options Market Makers) Regulation, contain provisions on brokers and members of the Unified Exchange, both of which refer to members of an Exchange Company established under the Stock Exchanges Unification Ordinance. As the "members" as referred to in the legislation will be replaced by "exchange participants", it is necessary to make

consequential amendments to the provisions concerning brokers and members in the Stamp Duty Ordinance as well as in its subsidiary legislation, the Stamp Duty (Jobbing Business) (Options Market Makers) Regulation.

- (2) The definition of "financial regulator" under section 2(1) of the Personal Data (Privacy) Ordinance includes the two exchanges and their associating clearing houses. As a new class of body known as "recognized exchange controller" will be included in the existing regulatory system under the Bill, it is proposed that the relevant section be amended to include "recognized exchange controller" in the definition of "financial regulator".
- (3) As part of the reform to rationalize market regulation, the SFC will be fully responsible for the regulation of exchange participants after the implementation of the merger. To tie in with the transitional arrangements, it is necessary to retain section 34 of the existing Stock Exchanges Unification Ordinance and to make certain consequential amendments of a technical nature to it. Yet, the retention of this section will be no longer necessary after the SFC has taken over the regulation of exchange participants from the exchanges. In view of this, we also proposed the addition of a subsection to empower the Secretary for Financial Services to repeal the provision by notice in the Gazette in future.
- (4) Furthermore, in order to remove possible conflicts between the Unified Exchange's regulation over its holding companies and the listing of these companies on the Unified Exchange, it is proposed to include a new subsection under section 34 of the Stock Exchanges Unification Ordinance so that the relevant listing rules can deal with such conflicts of interest that may arise.

Lastly, Schedule 2 will be renumbered as Schedule 4 in the light of the numbering of another new Schedule. With these remarks, Madam Chairman, I urge Members to support the amendments.

*Proposed amendments*

### **Schedule 1 (see Annex II)**

**Schedule 2 (see Annex II)**

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Schedules 1 and 2 as amended.

**CHAIRMAN** (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): New Schedule 1      Specification of persons who are associates, specification of persons who are not associates, and specification of persons who are not indirect controllers, for specified provisions of this ordinance

New Schedule 3      Persons who are not minority controllers and exemption from section 3(1) of this ordinance.

**SECRETARY FOR FINANCIAL SERVICES** (in Cantonese): Madam Chairman, I move that new Schedules 1 and 3 of the Exchanges and Clearing Houses (Merger) Bill, as set out in the paper circularized to Members, be read the Second time.

In order to prevent recognized exchange controllers and clearing houses from being controlled by any person alone or with any associates, clauses 3(1) and 6(2) stipulate that a person shall not become a recognized exchange controller or minority controller of a recognized exchange controller, Exchange Company or clearing house except with the approval of the Securities and Futures Commission. With regard to the definition of "associate" under clause 2(1), Members are of the view that given the excessively broad coverage of the definition, in carrying out company-related businesses or participating in relevant activities some people might have unintentionally associated with others and become minority controllers or shareholder controllers. This is certainly not the legislative intent of the Government. Hence, after careful consideration, we now propose to add a new Schedule 1 to the Bill to specify, on top of the definitions set out under clause 2, persons who are "only associates", persons who are not associates and persons who are not indirect controllers.  
(Laughter)

Schedule 1 also stipulates that a person is not an indirect controller insofar as the person is a person in accordance with whose directions or instructions the directors of a company are accustomed to act by reason only that they act on advice given by the person in the person's professional capacity.

As regards Schedule 3, its objective is to specify on top of the relevant definition set out under clause 2 persons who are not minority controllers. In addition, given that in certain situations described under Schedule 3 some persons may be exercising voting rights in excess of the approved limit for recognized exchange controllers, Schedule 3 also stipulates the conditions under which the persons concerned will be exempted from clause 3 of the Bill, which provides for the recognition of controller of an Exchange Company or clearing house.

Madam Chairman, I beg to move and urge Honourable Members to support the motion.

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That new Schedules 1 and 3 be read the Second time.

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)



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

**CLERK** (in Cantonese): New Schedules 1 and 3.

**SECRETARY FOR FINANCIAL SERVICES** (in Cantonese): Madam Chairman, I move that new Schedules 1 and 3 be added to the Exchanges and Clearing Houses (Merger) Bill.

*Proposed additions*

**New Schedule 1 (see Annex II)**

**New Schedule 3 (see Annex II)**

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That new Schedules 1 and 3 be added to the Bill.

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Clauses 1 to 4, 6 to 10, 15, 16, 18, 20, 21, 22 and 24.

**SECRETARY FOR FINANCIAL SERVICES** (in Cantonese): Madam Chairman, I move the amendments to clauses 1 to 4, 6 to 10, 15, 16, 18, 20, 22 and 24 and the deletion of clause 21, as set out in the paper circularized to Members. The proposed amendments cover mainly the following aspects.

In order to enable the Hong Kong Securities Clearing Company (HKSCC) to be converted from a company limited by guarantee before the merger to a company limited as a wholly-owned subsidiary of the Hong Kong Exchanges and Clearing Limited (HKEC), clauses 22(1) and 22(2) of the Bill have to take effect before the rest of the Bill. For this reason, we now introduce new clause 1(3) to enable clauses 22(1) and 22(2) to commence on the same date the Bill is gazetted.

As regard the commencement date of the main body of the Bill, it will be announced by notice in the Gazette together with the gazettal of the Bill. If the Bill is passed today, the commencement date of the remaining part of the Bill will be 6 March.

According to clauses 3(6), 4(2) and 6(5), the Securities and Futures Commission (SFC) may issue notice to the persons concerned requiring them to adopt the procedures as set out in the notice to cease or to discontinue to be the controllers, recognized exchange controllers or minority controllers of Exchange Companies or clearing houses. Members consider that the relevant persons should be allowed, with the permission of the SFC, to adopt their own procedures to achieve the aforementioned purposes. For this reason, we propose to add clauses 3(6A), 4(2A) and 6(5A), so that the procedures set out in the notice shall include those suggested by the persons concerned.

Clause 6 stipulates that unless with the approval of the SFC in consultation with the Financial Secretary, a person shall not become a recognized controller, a minority controller of an Exchange Company or clearing house, or increase his interests and rights as a minority controller. Members are of the opinion that the approval should be given under the condition that it is in line with public interest. We therefore propose to add new 6(2A) to stipulate that the approval concerned must be granted in line with the interests of the public and that of investors.

Clause 8 stipulates that recognized exchange controllers shall ensure that the market is operating in a fair and effective manner. Recognized exchange controllers are also required under the clause to ensure that their respective

Exchange Companies or clearing houses are in compliance with the responsibilities described in the relevant laws and regulations. In addition, the Bill also stipulates that in discharging their duties as recognized exchange controllers, the recognized exchange controllers shall ensure that the public interest is safeguarded. After discussion with the Bills Committee, we now propose to specify in the clause that Exchange Companies and clearing houses shall be held accountable for their respective responsibilities.

In order to ensure that recognized exchange controllers discharge their risk management responsibility, and that such function of the recognized exchange controllers concerned will not be affected by any commercial interests, recognized exchange controllers are required under clause 9 to set up a Risk Management Committee (RMC) to be vested with the responsibility to formulate policies in relation to the risk management of the relevant Exchange Companies and clearing houses. The clause also stipulates that the RMC shall be chaired by the chairman of the board of directors of the recognized exchange controller and comprise three to five members appointed by the Government, and no more than two members appointed by the recognized exchange controller. Besides, the decision of the RMC will prevail unless overruled by a two-third majority of the members of the board of directors. Members are of the view that this majority requirement is excessive and that the decision of RMC should not override the board of directors, which carries ultimate decision making responsibility for the recognized exchange controller. In addition, some Members are of the view that the proposed composition of the RMC may not be able to ensure that shareholders' views are represented by members of the RMC.

Madam Chairman, from a policy making point of view, I need to stress that through the two Exchanges and three Clearing Houses under its control, the HKEC will focus on the trading and account settlement businesses of the securities and futures markets. As such, an important part of the financial activities in Hong Kong would be in the hands of the HKEC, while the clearing and settlement departments under it would become a vital part of the local financial structure. Any major mistakes committed by the clearing department would impact on not only the stability of the markets concerned, but also the confidence of market participants and that of investors. For this reason, the HKEC needs to ensure the proper management of risks in the markets, with a view to minimizing them as far as possible. And, more importantly, the prudent management of risks shall never be affected by any commercial interests. We therefore hold that the design of the management structure of the HKEC

must be able to ensure that its risk management function could operate effectively and independently. However, after taking into consideration the views of Members and having adjusted the governance structure of the HKEC, we now propose to amend the clause to stipulate that the policy proposals formulated by the RMC shall be submitted to the recognized exchange controller for consideration, and to repeal the proposed provision that the decision of the RMC will prevail unless overruled by a two-third majority of the members of the board of directors. In other words, the board of directors can handle the RMC recommendations in accordance with the general procedures for transacting other businesses on the agenda. Apart from that, we also propose that of the two members appointed by the board, at least one member shall be a board director elected by shareholders.

Clause 20 stipulates that the Financial Secretary may appoint not more than eight persons to the board of directors of the HKEC. According to the constitution of the HKEC, after the merger, the inaugural board of the HKEC will comprise 15 members, including eight directors to be appointed by the Financial Secretary to represent public interest and that of the markets, six directors to be elected by shareholders, and the chief executive officer who will be a director ex-officio. Some Members hold that as a commercial entity, the HKEC should operate independently, but with more than 50% of the directors being appointed by the Financial Secretary, they are concerned that the Government may have an exceedingly strong influence over the HKEC or may even intervene in its operation. We appreciate very much their concern in this connection. However, we must also point out that although the HKEC is a profit-making commercial entity, it is also vested with important public functions to ensure that activities in the markets are conducted in a fair, impartial and orderly manner, and that prudent risk management is effected. As such, it is important for the HKEC to have an appropriate governance structure to ensure that it could function properly to achieve both the public and commercial objectives, and to strike a balance between these objectives if they should be in conflict.

Nevertheless, the Government has also taken into consideration the fact that the ownership of the HKEC will diversify gradually. In particular, upon listing, the HKEC will eventually be transformed from a company owned by the members of the two existing Exchanges into one owned by the general public. Hence, we agree that in the long run, the number of directors to be appointed by the Government may not exceed the number of directors to be elected by

shareholders. We now propose an amendment to the Bill to stipulate that by 2003, the number of directors appointed by the Financial Secretary to the board to be established after the Annual General Meeting of the HKEC will not exceed the number of directors to be elected by shareholders. We believe this arrangement should be able to ensure that the board of directors of the HKEC will continue to balance effectively the interests of its shareholders, as well as that of the investors and markets concerned.

As regards clause 24, some Members are of the view that the provision protecting the board of directors appointed by the Financial Secretary or any of the members on it from being dismissed are too loosely written. After taking into consideration the views from Members, we now propose to amend the relevant provision to specify clearly that "other members of the board of directors are not permitted to dismiss those directors appointed by the Financial Secretary by way of resolutions or special resolutions passed by the HKEC."

Last but not least, according to clause 3(1), if the Stock Exchange of Hong Kong and the Hong Kong Futures Exchange cannot continue to be the controller of their respective subsidiary clearing houses unless with the approval of the SFC. Yet under clause 21, the two Exchanges are deemed to be exempted from clause 3(1). In this connection, it has been pointed out by Members that since the Financial Secretary may exercise the power conferred on him by clause 7 to grant exemption to the two Exchanges, there should be no need for a separate exemption provision. We accept this view and therefore propose to delete clause 21.

With the exception of the aforementioned amendments, the rest of the proposed amendments are either technical in nature or consequential amendments which are policy neutral.

Madam Chairman, I so submit and urge Honourable Members to support the motion.

*Proposed amendments*

**Clause 1 (see Annex II)**

**Clause 2 (see Annex II)**

**Clause 3 (see Annex II)**

**Clause 4 (see Annex II)**

**Clause 6 (see Annex II)**

**Clause 7 (see Annex II)**

**Clause 8 (see Annex II)**

**Clause 9 (see Annex II)**

**Clause 10 (see Annex II)**

**Clause 15 (see Annex II)**

**Clause 16 (see Annex II)**

**Clause 18 (see Annex II)**

**Clause 20 (see Annex II)**

**Clause 21 (see Annex II)**

**Clause 22 (see Annex II)**

**Clause 24 (see Annex II)**

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

**MR FUNG CHI-KIN** (in Cantonese): Madam Chairman, as the Secretary pointed out, all these important clauses can be revised. The composition of the risk management committee can be revised, and so can the respective number of members elected by shareholders and appointed by the Government to the second board of directors. Why then does the Secretary insist that it is not possible to revise clause 59 on the nomination method for shareholders to elect directors? I am a bit puzzled. If the Bill can suitably address the concern of shareholders

and allow them to elect the representatives nominated by themselves, I am sure that it will receive more favourable responses from the industry. I of course understand that this is well outside the scope of the Bill, and I will support clause 20. But I hope that the Government can reconsider the whole matter carefully, and ask itself why it has accepted an amendment which specifies that in the second board of directors, the number of government-appointed members shall not be larger than that of those elected by shareholders.

Thank you, Madam Chairman.

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

(No Member responded)

**CHAIRMAN** (in Cantonese): Secretary for Financial Services, do you wish to reply?

**SECRETARY FOR FINANCIAL SERVICES** (in Cantonese): Madam Chairman, I will make a brief response.

Regarding the mechanism used for nominating the board of directors as mentioned by Mr FUNG earlier, this point does not fall into the scope of the Bill under discussion at the moment, so the question concerning why we need to reconcile or compromise with respect to certain amendments whereas we do not need to do so with respect to other amendments simply does not exist. This is because the nomination mechanism is basically not part of this Bill.

Thank you, Madam Chairman.

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

(Members raised their hands)

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

(No hands raised)

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

**CHAIRMAN** (in Cantonese): As the amendment to clause 21, which deals with deletion, has been passed, clause 21 will therefore be deleted from the Bill.

**CHAIRMAN** (in Cantonese): Clauses 1 to 4, 6 to 10, 15, 16, 18, 20, 22 and 24 as amended.

**CHAIRMAN** (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

**CHAIRMAN** (in Cantonese): Council now resumes.

Council then resumed.

### **Third Reading of Bill**

**PRESIDENT** (in Cantonese): Bill: Third Reading.



**EXCHANGES AND CLEARING HOUSES (MERGER) BILL**

**SECRETARY FOR FINANCIAL SERVICES** (in Cantonese): Madam President, the

Exchanges and Clearing Houses (Merger) Bill

has passed through Committee with amendments. I move that this Bill be read the Third time and do pass.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Exchanges and Clearing Houses (Merger) Bill be read the Third time and do pass.

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Exchanges and Clearing Houses (Merger) Bill.

**Resumption of Second Reading Debate on Bill**

**PRESIDENT** (in Cantonese): We will resume the Second Reading debate on the Firearms and Ammunition (Amendment) Bill 1999.

**FIREARMS AND AMMUNITION (AMENDMENT) BILL 1999****Resumption of debate on Second Reading which was moved on 27 January 1999**

**PRESIDENT** (in Cantonese): Under the Rules of Procedure, I have permitted Mr James TO, Chairman of the Bills Committee on Firearms and Ammunition (Amendment) Bill 1999, to address the Council on the Committee's Report.

**MR JAMES TO** (in Cantonese): Madam President, in my capacity as the Chairman of the Bills Committee on the Firearms and Ammunition (Amendment) Bill 1999, I now wish to give a report on the major deliberations of the Bills Committee.

The object of the Bill is to tighten the existing statutory controls on the possession and use of firearms and ammunition for the protection of public safety. Under the Bill, only a licensee or his agent who is approved by the Commissioner of Police (the Commissioner) for instructing others in the use of firearms may give such instruction; and the Commissioner is also empowered to approve a person as a range officer who conducts and supervises the use of a shooting range. Members consider that the criteria under which the Commissioner may grant or revoke an authorization of an arms instructor and an approval of a range officer should be spelt out in the Bill. The Administration has agreed to move Committee stage amendments to the effect that when considering applications for the appointment of an arms instructor, a range officer or an agent, the Commissioner will consider whether the applicant is a fit and proper person to take up the appointment and whether there are any objections in terms of public safety and security. For the purpose of clarity, the Administration would move a Committee stage amendment to spell out that the major function of a range officer is to ensure the safe use of a shooting range.

Members have expressed the concern that there are no criteria governing the consideration of applications for licences for the possession of arms and ammunition. The Administration has explained that in processing an application for a licence and renewal of a licence, and in considering the cancellation of a licence, the Commissioner will consider whether the applicant is a fit and proper person, whether he has a good reason for holding the licence and whether there are objections in terms of public safety and security. Other

relevant factors such as criminal records, storage facilities for the firearms, his experience and training in the use of firearms and his involvement in the shooting activities for recreational and sporting purposes would also be considered. To address Members' concerns, the Administration has agreed to move Committee stage amendments to spell out the considerations of the police when making such decisions. At Members' request, the Administration has undertaken to mention in its speech to be delivered later at this meeting that interest in shooting would be considered as a good reason.

On the proposal to give the Commissioner the power to amend a licence, the Administration has explained that it would allow the Commissioner the necessary flexibility in regulating the possession of and dealing in arms and ammunition in the interest of public safety and security. The Commissioner would take into account all relevant factors before making a decision. Any person who is aggrieved by the Commissioner's decision to amend the licence could appeal to the Administrative Appeals Board.

Under the Firearms and Ammunition Ordinance, all application forms are prescribed in the relevant regulations. The Bill proposes to empower the Commissioner to specify forms for the purpose of the principal Ordinance. To address Members' concern about this proposal and the uncertainty arising from the proposed specified forms, the Administration has agreed to move Committee stage amendments to the effect that all application forms under the Ordinance will be specified by the Commissioner by publication in the Gazette. These forms will not be subsidiary legislation. The general licensing criteria will be set out in the information note for each type of licence and exemption for applicants' reference.

Madam President, the Bills Committee has discussed in detail the regulation on the use of modified firearms, commonly called dummy guns, in TV/film production. Some Members are of the view that as modified firearms used for TV/film production can only fire blank ammunition to produce audio and visual effects, they should not be subject to the stringent controls as genuine firearms. They have suggested that the control of modified firearms used for TV/film production should be relaxed by removing it from the definition of "arms" under the Ordinance.

The Administration has explained that these modified or deactivated firearms can easily be reverted to function like genuine firearms. It is therefore necessary to regulate the possession and use of modified firearms as other types of arms for the sake of public safety. The Administration is of the view that the proposed removal of modified firearms used for TV/film production from the definition of "arms" would undermine the existing control over the possession and use of firearms in Hong Kong.

The film industry is very concerned about the requirement on applications for exemption permits for the possession of firearms. At present, individual actors involved in the handling of modified firearms in a TV/film production are required to obtain exemption permits. This has created difficulties for the film industry as it is often difficult to provide the number and details of the actors who will be involved in the handling of firearms in the production. The requirement for each actor to obtain an exemption permit and pay the permit fee has also increased the production costs. Members have suggested that more flexible arrangements should be introduced, such as allowing a TV/film producer or any specified person to apply and hold an exemption permit on behalf of all actors for using modified arms in a TV/film production. Alternatively, reference may be made to the use of firearms in a shooting range under the supervision of an authorized arms instructor.

The Administration has explained in detail what difficulties would arise from the enforcement of this proposal, why it is therefore not feasible and what dangers are likely to result. The Administration is of the view that the implementation of this proposal would undermine the existing control over the possession and use of dummy guns. In order to ensure the safety of users and other people in the vicinity, there is a genuine need to require users of firearms to apply for exemption permits and to hold them responsible for the consequences arising from their actual use of firearms.

Having considered the concerns of the television and film industry and Members, the Administration proposes a new permit system for the use of modified firearms for TV/film shooting. Under the new system, the Commissioner will issue exemption permits giving a blanket approval to the holders for the use of modified firearms for TV/film shooting purpose for a specified period of one year. Hence, actors are no longer required to apply for permits for each production, and TV/film producers do not have to confirm the full cast of actors in advance in order to apply for exemption permits for the

actors. The Administration stresses that the proposed regulation over modified arms is the bare minimum and the new permit system should be able to strike a balance between the concern about public safety and the interest of the film industry. The Administration would move the relevant Committee stage amendments.

The film industry is not fully satisfied with the proposed new permit system and has required the Administration to consider asking the arms dealers instead of the actors to assume full responsibility for the security of the modified firearms used in a TV/film production.

The Administration has reservations about the proposal. The Administration has explained that according to legal advice, imposing a strict liability on the arms dealers for the security of the modified arms might infringe the right to presumption of innocence. As an arms dealer does not have the capability to examine and decide whether each actor involved is fit and proper to possess and use the modified arms, it would be unreasonable to impose a licensing condition requesting the dealer to take full care of the firearms and be held responsible for any loss of the firearms which are being used by the actors. It is also very difficult to fix upon the arms dealers criminal liability for the acts of the actors who actually possess and use the firearms. The proposed new permit system would allow more flexibility for both actors and TV/film producers, and serve as an effective tool for the police to effect necessary control on the possession and use of dummy guns for TV/film production purposes. To enhance the transparency of the new system, the Administration proposes to provide applicants with criteria with which the Commissioner will take into account in considering applications for exemption permits, namely, whether the applicant is a fit and proper person; and whether there is a legitimate need for possession and use of firearms.

The film industry has strong objection that the criminal record of an applicant will be a factor for considering whether an applicant is a fit and proper person. The film industry is of the view that this factor is discriminatory and unreasonable. Some Members share the views of the film industry. They consider that whether "the applicant is a fit and proper person" should be excluded from the criteria for considering an application for an exemption permit.

Some Members consider the Administration's proposed new exemption permit system acceptable. They also consider that the two criteria for considering an application reasonable. They point out that the criminal record of an applicant as a factor for considering permit application is also found in other licensing regimes.

Madam President, another matter which has been discussed in detail by the Bills Committee is the proposal to add a provision to section 4 of the Summary Offences Ordinance to the effect that any person who without lawful authority or excuse knowingly or negligently discharges an air gun to the danger and annoyance of any person shall be liable to a fine of \$500 or to imprisonment for three months.

Some Members consider the proposal overly stringent in making a person criminally liable for negligently discharging an air gun to the annoyance of any person, in particular an air gun may be discharged simply due to ignorance or by naughty children in some cases. The proposed provision warrants careful consideration. They suggest that such an act of negligence should be dealt with separately.

The Administration has explained that at present, low-powered air guns with a muzzle energy of not greater than two joules are not defined as arms and hence are not regulated by the Firearms and Ammunition Ordinance. The proposal is necessary in order to induce greater care in the handling of air guns which could be potentially harmful. The police would examine the individual merits of each case when deciding whether a person discharges a gun to the danger or annoyance of any person or he simply discharges an air gun carelessly. The "reasonableness" test inherent in the proposed provision would be able to address Members' concerns about the scope and nature of behaviour to be covered.

The Bills Committee supports the Second Reading of the Bill today.

Thank you, Madam President.

**MR TIMOTHY FOK** (in Cantonese): Madam President, regarding the legislative amendment proposed by the Government to require artistes acting in films and TV shows to apply to the Commissioner of Police for exemption permits allowing them to use dummy guns for the purpose of film/TV production, I have consulted the film/TV industry in my capacity as its representative on the Legislative Council. People engaged in the industry are in general rather worried because dummy guns have been widely used in the industry as props. Actually, the industry and the police have, over the past decade or so, established a sound and effective mechanism on the use of dummy guns in film and TV production, and so far, no problem and abnormality have occurred. Why then must people seek to destroy such a highly co-operative spirit and thus deal a severe blow to the normal development and operation of the film/TV industry? This seems to run counter to the Chief Executive's avowed intention of supporting the film industry in his policy address.

Following discussions with the industry, I have the following point to make. The Entertainment Special Effects Bill now being proposed by the Government for enactment aims basically to enhance the efficiency of supervision and facilitate the operation of the entertainment industry. Under the Bill, all licences shall be handled by the Television and Entertainment Licensing Authority as a central regulatory body. The industry is of the view that besides producing no effects on public safety, the use of dummy guns will not pose any greater dangers than the production of pyrotechnic effects. If dummy guns are brought under the ambit of the Firearms and Ammunition (Amendment) Bill 1999 instead of the Entertainment Special Effects Bill, the whole regulatory mechanism will become kind of illogical, and the development of the Hong Kong film industry will be adversely affected.

I oppose the amendment in question.

**MR MA FUNG-KWOK** (in Cantonese): Madam President, in a bid to enhance public safety, the Government is now proposing to step up the current statutory control over the possession and use of firearms and ammunition. Such an attempt should be supported. In the time to follow, I wish to focus on how the Bill is going to affect the shooting sport and the film/TV industry.

First, the Government proposes to enhance its regulation of shooting clubs by requiring the approval from the Commissioner of Police on matters relating to the testing and appointment of arms instructors and range officers. This will doubtlessly provide some help in terms of ensuring the safety at shooting clubs and shooting ranges. However, the proposal on the appointment of arms instructors by the Commissioner of Police has aroused the concern of the shooting sport sector. The reason is that the shooting sport is actually subdivided into many different areas of specialization, each requiring different professional expertise. So, the adoption of the traditional arms training standards of the police as the sole assessment basis is actually out of keeping with the development needs of the shooting sport. I hope that the Government can pay more heed to the views of the shooting sport sector, so as to ensure that the assessment mechanism can ensure both the safe use of shooting ranges and the sound development of the shooting sport. That way, a proper balance can be struck. Moreover, the best way to achieve this goal, as advised by the shooting sport sector, should be the establishment of a consultative committee for the purpose of collating different views and striking a right balance.

On the film/TV industry, the Bill proposes to broaden the definition of "arms" to cover dummy guns (that is, deactivated, modified arms). In this way, the employees of the local film/TV industry, which is renowned for its action scenes, are also brought under the ambit of the Bill. The Bill seeks to change the time-tested mechanism under which only production companies and dummy gun rental companies are required to apply for exemption permits, and to put in place the administrative measure introduced by the police unilaterally without consulting the industry some two years ago, under which every actor involved in the use of dummy guns is required to apply for an exemption permit beforehand. The police also emphasizes the potential danger arising from the use of dummy guns, the possibility of reverting them to genuine firearms and their possible abuses by criminals.

Madam President, the scenes of shoot-outs and explosion the audience see in films and on television are generally the results of visual effects and editing. All action scenes are made up of many different takes, and each take is preceded by elaborate planning and design beforehand. For action scenes involving the use of dummy guns, meticulous and repeated rehearsals are required. Dummy guns are given to actors only when actual filming takes place. At all other times, dummy guns are kept by the professional, licensed arms instructors of dummy gun rental companies. Under the existing ordinance, the modification of genuine firearms into dummy guns and the importation, transportation and storage of ammunition are all subject to rigid supervision and police control.



Besides, the modification of genuine firearms is conducted in such manner prescribed by the police and these arms are subject to bi-annual inspections. It can thus be seen that the existing mechanism is already very sound.

Madam President, I wish to emphasize that the existing mechanism has proven to be effective, and it has led to no major incidents. Well, the records are so good, but, it is still alright for the Government to propose stronger control if only that is for the purpose of preventing possible problems in the future. However, in doing so, it must not focus only on administrative convenience and impose a blanket requirement that all actors (including extras) must be deemed to be fit and proper persons and duly licensed by the Commissioner of Police before they can use dummy guns in any scenes. Such a mechanism is unprecedented and one of its own kind.

In the course of deliberations by the Bills Committee, I once proposed that the use of dummy guns could be regulated in a way similar to the arrangement stipulated in the Entertainment Special Effects Bill tabled before the Legislative Council for First Reading today. Under the Entertainment Special Effects Bill, the use of explosives for producing pyrotechnic effects are put under the central regulation of the Film Services Office which can best understand the operation of the film/TV industry. Specifically, the Office is given the responsibility to liaise with the relevant government departments, so as to co-ordinate their requirements and act as a central licensing authority that can respond to the actual circumstances of the industry. For dummy guns, they can also be put under the regulation of the Film Services Office, with assistance from the Forensic Firearms Examination Bureau of the police. Such an arrangement is more appropriate and more acceptable to the industry. Unfortunately, my proposal failed to find favour with the Government during the deliberations of the Bills Committee.

Under the Firearms and Ammunition (Amendment) Bill 1999 submitted by the Government, any person under the instruction of arms instructors can practise shooting with genuine firearms in the shooting ranges of shooting clubs without having to apply for exemption and undergo any tests. When actors act in response to the demands of their directors or employers, they also follow the instruction of arms instructors. Why then should it be necessary for them to obtain licences before they can use dummy guns on location, when all these harmless dummy guns are so safe to use and have been duly registered and modified under strict control? The proposed mechanism makes no mention of any extra skills and knowledge to be possessed by the applicant, and the only licensing condition is the approval from the Commissioner of Police, who will

just consider whether he is a fit and proper person on the basis of his past records and background. This is nothing but discrimination against show business employees, and this is also unfair to them. Besides, show business employees are also held liable for all the legal problems that may arise. But how can an ordinary employee who simply performs his duties as instructed by a third party or his employer shoulder all such liability? And, when problems occur, will he really be able to know clearly what liability he has to shoulder? Actually, both film production companies (employers) and arms rental companies (arms suppliers) have made it very clear that they themselves, not actors, should be held liable. This shows precisely that such an arrangement is very unreasonable. So, I must say with much regret that despite its repeated discussions with the industry, the Government has still decided to cling to such a discriminatory mechanism which may lead to confusion.

Actually, many different views were voiced in the Bills Committee when it was scrutinizing the Bill, but in the end, with just the participation of a very small number of Members, the Committee voted on the resumption of Second Reading debate on the Bill. It turned out that there were two positive votes and two negative votes, and the resumption was endorsed only with the casting vote from the Bills Committee Chairman.

Madam President, when the Government moves the amendment relating to the regulation of application for exemption permits, I will follow the advice of the show business and cast a negative vote. This will serve to demonstrate that the show business is opposed to the principle underlying the relevant proposal.

Lastly, I wish to express the hope that when the Government considers applications for licences relating to the possession of various types of arms and ammunition, it will adhere strictly to the provisions of the Bill and the undertakings it made during the deliberations on the Bill, and this applies especially to the police, which is responsible for enforcement. Attempts must be made to eliminate the past practices of introducing unpredictable policy changes, misleading the public and drawing up arbitrary criteria — practices which made the industry highly distrustful of the enforcement authorities. I hope that while the Government seeks to enhance regulation, it will also seek to ensure the smooth operation of the industry concerned.

I so submit.

**MISS CHOY SO-YUK** (in Cantonese): Madam President, it is already half past two in the morning, and I am sure that Honourable colleagues should all be very tired by now. I simply wish to say that on behalf of the Hong Kong Progressive Alliance (HKPA), I will oppose the amendments moved by the Government to clauses 3A, 9A and 24A.

I also wish to point out that the HKPA basically supports the arguments advanced by Mr MA Fung-kwok a moment ago. Actually, during the course of scrutiny, the industry did put forward many viewpoints, and indeed many strong demands as well. It also proposed many alternatives which are even more stringent than the original proposal of the Government. But the Government has so far refused to take the advice of the industry. That is why we will oppose the amendments moved by the Government.

Thank you, Madam President.

**PRESIDENT** (in Cantonese): Does any Member wish to speak.

**MR GARY CHENG** (in Cantonese): Madam President, we share the same sentiments of Miss CHOY So-yuk, so we will just hurry up. Legislative Council Members belonging to the Democratic Alliance for the Betterment of Hong Kong will oppose the amendments proposed by the Government to clauses 3A, 9A and 24A.

Thank you, Madam President.

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

**MR JAMES TO** (in Cantonese): Madam President, thank you for allowing me to speak on behalf of the Democratic Party, because I was earlier speaking only in my capacity as the Chairman of the Bills Committee.

Let me comment very briefly on the remarks of Mr MA Fung-kwok. First, I wish to touch upon the issue of whether or not dummy guns or modified arms can easily be converted back to genuine arms for shooting. On this issue, even the opinions of experts are divided, and I am sure that colleagues in this Council cannot possibly ascertain whose arguments are more convincing, because there are many different ways to modify firearms.

I can only say that what is involved is largely a difference in attitude — some people hold a more conservative attitude towards this matter, while others are more liberal. Let me just quote an example. An actor using modified arms under the instruction of a "master of explosives", that is, a props supplier, is required to apply for a licence. In contrast, a person practising shooting with genuine arms under the instruction of an arms instructor in a shooting range is not required to apply for a licence. And, if a person is an arms instructor, he may even invite his friends to practise shooting with genuine arms in a shooting range. This sounds a bit unreasonable.

During the deliberations of the Bills Committee, I heard this most cogent argument from the Government: First, the venues are different. A shooting range is located in a fixed venue, and so, it has control over things like safety measures, exit of people, size of admission and so on.

Second, the conditions and locations where "large scale war scenes" are filmed are likely to be very chaotic, with actors shooting at one another. So, even if suppliers of modified firearms are bold enough to shoulder all the responsibility, how can they possibly handle all these "large scale war scenes" with just a small number of staff? Even if they are willing to shoulder the responsibility, are they really capable of doing so? Moreover, from the legal perspective, is it too harsh to impose all the responsibility on them? And, if the responsibility is really imposed on them and they are thus prosecuted, will it be fair to them? This actually involves the question of principles which cannot be solved simply by any willingness on their part to shoulder the responsibility.

The proposal of the Government is to require individual actors to apply for one-year exemption permits. We must not forget that such permits were issued on a scene-to-scene basis in the past. I can appreciate the worry of the show business — it thinks that such an arrangement is very "troublesome". However, I think that we can actually follow the example of driving licences. That is to say that when this arrangement is proven to be practical over time without

causing any major problems, we may as well request the Government to extend the validity period to two years. Actually, once a permit is issued, it will be valid throughout the whole one-year period and can enable the holder to engage in the production of films at any time. As for the number of people involved, only those who engage in the production of action films are required to apply for such permits. And, we will also give very careful thoughts to the level of the relevant fees. We will certainly follow up the worries of the industry, including the effects of such fees on its business environment and costs of production. In brief, the industry simply should not infer that the need to apply for one-year permits will necessarily stifle all their development prospects.

Lastly, I wish to talk about the issue of discrimination. In Hong Kong, there are many different types of licences, and in all cases, the expression "fit and proper" is used to specify that only the right kinds of persons should be issued with the relevant licences. In the case of watchman, for example, a person who has a criminal record of theft is already barred from the occupation for his whole life. Well, we may well need to give further thoughts to such a criterion. But in the case under our consideration now, the Government has given a set of guidelines, which says that a person who has been "rehabilitated" under the Rehabilitation of Offenders Ordinance may also be issued a permit. In other words, even a person who committed a serious crime a long time ago may also be issued a permit provided that he has been rehabilitated. In terms of the effect of this, I reckon that some people may be affected, but I do not think that the number will be very large anyway.

We must strike a right balance. The Government has already agreed to build enormous latitude into the mechanism. But does the industry still think that the criteria are too harsh? This is a problem we must address. The only thing I can say is that the situation is not quite like what has been depicted, nor is it as bad as what the film/TV industry has depicted over the past few days — so bad that almost all radio programmes "in town" have been discussing it, commenting that this arrangement will certainly lead to many problems.

If the situation is really so very serious and the worries are really justified, I agree that we must handle the whole issue seriously. But if it is not, and if the proposal is nothing but an attempt to strike a better balance through the imposition of an appropriate degree of control, then it will be a bit of an exaggeration, a bit too much, for us to accuse the proposal of strangling the whole industry.

I have also had contacts with the show business, for I am the legal adviser of some artistes. Hence, I can fully appreciate their worries. During the process of scrutiny, we even suspended our work for as long as nearly three months, so as to allow the Government to reconsider the whole thing. As a Member who has been engaged in the scrutiny of bills for nine years, I dare say that it has been very rare for the Government to reconsider any issue, or think over the whole thing again and again, just because of a request or simple proposal from the industry concerned. I really think that the show business has indeed won a big victory this time around. I can even say that after all this, those "bureaucratic" police officers responsible for issuing permits will never again be so arrogant in handling applications. Bureaucratic red tape is something we need to follow up on an ongoing basis. If bureaucratic red tape and arrogance is really detected in the process of issuing permits, I am sure that the Legislative Council will never let the officers concerned go.

To sum up, after balancing all factors against one another carefully, we in the Democratic Party will support the amendment moved by the Government.

**PRESIDENT** (in Cantonese): Miss CHOY So-yuk, do you wish to interrupt?

**MISS CHOY SO-YUK** (in Cantonese): Madam President, I wish to say a few words more in response to the remarks made by Mr James TO just now.

**PRESIDENT** (in Cantonese): Miss CHOY So-yuk, in accordance with the Rules of Procedure, you may speak only once during the Second Reading debate, and you have already done so. Does any other Member wish to speak?

(No Member indicated a wish to speak)

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, the Firearms and Ammunition (Amendment) Bill 1999 was tabled to this Council for the First and Second Readings on 27 January 1999.

The Bill seeks to amend the Firearms and Ammunition Ordinance with a view to ensuring public safety through tightening the regulation of shooting clubs, arms licence holders, arms dealers, air guns and modified arms. I would like to specifically thank Mr James TO, Chairman of the Bills Committee and other Members here. Mr TO and members of the Bills Committee have, in the course of scrutiny, discussed the contents of the Bill in detail and proposed a number of improvements with a view to perfecting the relevant regulatory mechanism.

The movie industry has expressed serious concern with the Bill. It has also invited representatives from the industry to its meetings for detailed discussions on whether modified arms used for the purpose of TV/film shooting should be regulated. I want to clarify one point: Under the existing legislation, all actors who need to use modified arms for the purpose of TV/film shooting must apply to the police for exemption permits with respect to each TV/film production. In other words, a system of applying for exemption permits is already in place at present.

Actually, the Bill tabled today has not proposed any amendment to this system. Some of the amendments proposed by us are aimed at improving the existing system by giving it more flexibility.

I will propose a number of amendments at the Committee stage later. These amendments have been discussed in detail by the Bills Committee and have gained general support from members.

Madam President, I hope Members can support the Firearms and Ammunition (Amendment) Bill 1999 and the amendments to be moved by me at the Committee stage later. Thank you, Madam President.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the Firearms and Ammunition (Amendment) Bill 1999 be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

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

**CLERK** (in Cantonese): Firearms and Ammunition (Amendment) Bill 1999

Council went into Committee.

### **Committee Stage**

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

### **FIREARMS AND AMMUNITION (AMENDMENT) BILL 1999**

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Firearms and Ammunition (Amendment) Bill 1999.

**CLERK** (in Cantonese): Clauses 1, 2, 4, 5, 8, 9, 10, 12 to 15, 20, 21, 22, 26, 28, 29 and 30.

**CHAIRMAN** (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)



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

**SECRETARY FOR SECURITY** (in Cantonese): Madam Chairman, since the Rules of Procedure stipulate that any proposed new clause shall be considered after the clauses of a bill have been disposed of, may I seek your consent to move under Rule 91 of the Rules of Procedure that Rule 58(5) of the Rules of Procedure be suspended in order that the Committee of the whole Council may consider new clauses 3A, 9A and 24A ahead of the remaining clauses of the Bill.

**CHAIRMAN** (in Cantonese): Secretary for Security, as only the President may give consent for a motion to be moved, without notice, to suspend the Rules of Procedure, I order that Council do now resume.

Council then resumed.

**PRESIDENT** (in Cantonese): Secretary for Security, you have my consent.

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, I move that Rule 58(5) of the Rules of Procedure be suspended to enable the Committee of the whole Council to consider my proposed new clauses 3A, 9A and 24A ahead of the remaining clauses of the Bill.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That Rule 58(5) of the Rules of Procedure be suspended to enable the Committee of the whole Council to consider the Secretary for Security's proposed new clauses 3A, 9A and 24A ahead of the remaining clauses of the Bill.

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

(Members raised their hands)

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

(No hands raised)

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

Council went into Committee.

### **Committee Stage**

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

<b>CLERK</b> (in Cantonese):	New clause 3A	Possession by exempted person
	New clause 9A	Failure to comply with terms and conditions of licence, etc
	New clause 24A	Interference with serial numbers or licences.

**SECRETARY FOR SECURITY** (in Cantonese): Madam Chairman, I move that new clauses 3A, 9A and 24A, as set out in the paper circularized to Members, be read the Second time.

New clause 3A seeks mainly to implement a new exemption permit system for the use of modified arms for TV/film shooting, whereas new clauses 9A and 24A are consequential amendments.

In the course of deliberation, some members reflected the strong views of the movie industry that the existing system had caused them great inconvenience as each actor who needed to use modified arms for TV/film shooting was required to apply for an exemption permit with the police in relation to each TV/film production. In this respect, we have exchanged views with representatives from the industry. According to the view of forensic firearms examiners of the Forensic Firearms Examination Bureau of the police, it is technically feasible and not difficult for modified arms used for TV/film shooting to be converted back into arms capable of firing live ammunition. Furthermore, arms used for TV/film shooting purpose are, to a certain extent, dangerous. The places for using these arms and the manner in which they are used are also different from arms used in ordinary shooting ranges. It is fundamentally impossible for actors to be closely monitored and guided in the course of using modified arms during TV/film shooting. The potential danger involved is therefore even greater than that in the use of arms in shooting ranges. To protect public safety, we need to exercise proper supervision of the possession and use of these arms.

We have conducted an in-depth study into several proposals put forward by the industry and some members of the Bills Committee, including the suggestion that arms dealers should assume all responsibilities. However, we find these proposals not feasible against the prerequisite of protecting public safety. Through the exemption permit system, the police can effectively regulate the possession and use of modified arms as, under this system, the police can vet applicants in advance to ascertain whether they are fit for possessing and using those arms. Should there is a loss of arms in the course of TV/film shooting, the police will be able to trace the lost arms relatively easier with reference to the records of users kept by arms dealers. What is equally important is that permit holders will be legally and morally obliged to use the relevant arms carefully.

In order to facilitate the operation of the industry, we consider it possible for the existing exemption permit system to be improved so that the police may issue a one-year exemption permit to relevant actors, who will not be required to make separate applications with respect to each TV/film production. They can choose to lodge applications upon being cast into a TV/film production in which they will be required to use modified arms. Under the new system, TV/film producers will no longer need to compile in advance a list of actors who need to use modified arms to enable the relevant actors to apply to the Hong Kong Police

Force for exemption permits. The new system will strike a balance between public safety and the interests of the film industry. It will be able to offer more convenience and flexibility than the existing one. In order to enhance the transparency of the new system and allay the worries of the industry, the police will explain to applicants its criteria for consideration, particularly consideration with respect to criminal records.

These new clauses have been drafted after careful consideration by the Government and study of the suggestions made by the Bills Committee. I hope Members can support the passage of the Bill. Thank you, Madam Chairman.

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That new clauses 3A, 9A and 24A be read the Second time.

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

**MR MA FUNG-KWOK** (in Cantonese): Madam Chairman, I must specifically emphasize that new clause 3A proposed by the Secretary for Security just now does introduce some degree of latitude into the existing regulatory mechanism, in the sense that exemption permits issued on a film-to-film basis will be replaced by exemption permits with a specified validity period, that is, the one-year period now being proposed. However, the show business is of the view that the existing mechanism itself is basically very unreasonable. This mechanism was put in place unilaterally some two years ago by the police in the absence of any consultation with the industry. Under this mechanism, every actor is required to apply for an exemption permit, and this represents a complete departure from the arrangement adopted over the past decade or so, under which applications for exemption were to be filed by film production companies or arms rental companies only. That is why the industry opposes such a mechanism in principle.

Besides, I also wish to comment on the remarks made by Mr James TO. According to him, the arguments put forward by the police are not unjustified, and he also says that on the question of forensic proof, it is all a matter of divided views among different experts. I must point out that during the scrutiny process, the industry once brought forward several real complaint cases in the Bills

Committee. The police representative before the Bills Committee replied that past practices were already corrected and no similar problem would occur in the future. However, this was soon proved to be wrong by what actually happened subsequently. What actually happened subsequently was that all those unreasonable practices simply persisted. For example, the authorities concerned continued to require that in the production of each film, each actor could hold at most two guns at any one time, and that no more than five to six guns should be used in one single film. Examples of this kind are all unreasonable regulatory measures. On the one hand, the police claim that all these unreasonable requirements no longer exist and they have considered the needs of the industry, but on the other hand, unreasonable things simply continue to happen. What is more, the professional competence of the forensic firearms examination experts of the police is also very much questionable. One leading member of the Forensic Firearms Examination Bureau has even been criticized by the Court quite recently for giving unreliable evidence, but he is still working in the Forensic Firearms Examination Bureau.

Of course, what we should be discussing today is the enactment of a piece of legislation, not law enforcement. But I must still point out that the industry was faced with many problems in the past, and it felt very much aggrieved, as it had no channel of complaints at all. The industry has no confidence whatsoever in the existing mechanism. And, the enactment of this new law is certainly going to increase their liability, which is why people in the industry are so very worried. I hope that Honourable colleagues can appreciate their anxieties.

On the question of forensic proof, the experts of the Government wanted very much to convince our colleagues that modified arms can easily be converted back to genuine arms with firing capability. They gave two demonstrations, but much to our regret, we subsequently learnt that in an attempt to illustrate the ease of re-conversion and the unlikely event of any serious dangers, they actually reduced the gunpowder of the ammunition used in the demonstrations by as much as half. By doing so, they hoped to ensure that no accident would happen when they performed the demonstrations before Members, and they also hoped to prove that modified arms would still have firing capability after re-conversion. But as pointed out by some other experts, modified arms thus re-converted can be very dangerous to use, and will pose great danger even to their users. They also said that the work of re-conversion cannot possibly be completed within an hour as maintained by the forensic firearms examination experts of the police.

The way in which the police have been handling this matter has aroused even greater worries among the industry instead. The police have tried repeatedly to mislead members of the Bills Committee and others, trying to convince us that the Bill is reasonable, and that their worries are justified. I have very great reservation about this. The industry is of the view that this Council is the only place where members of the public can have more opportunities to get to know where the actual problems lie. But if this amendment of the Government is really passed as advocated by Mr James TO, will everything be conducted with openness and fairness in the future?

Actually, during the scrutiny process, several incidents happened, and they made me very worried. I am not the only one who has such worries, for they are also shared by other members of the Bills Committee. The fact is that the situation is not as simple as what Mr James TO has described. Over the past few years, in trying to comply with the requirements on arms rentals and use of arms and so on, the industry has become very discontented and distrustful of the authorities. This explains their reactions now.

I really want to ask some questions. Can the proposed mechanism really help the industry? Or, will it just slightly reduce the discontent of the industry? Is the proposed arrangement at all reasonable? The police have made repeated reference to public interest, but is the actual situation really that serious? Can lawless elements really make use of dummy guns to commit crimes? How big is such a possibility? How are we going to strike a proper balance between public interest and the operation of the industry? I believe that these are all problems we need to tackle.

Therefore, I must point out that although the amendment moved by the Secretary for Security may be of some help to the industry, and although it does introduce slightly more latitude into the existing mechanism, the industry is not at all happy about it. Instead, it is of the view that the amendment may well mislead people into thinking that the mechanism has been improved, that it can provide immense help to the industry, and that it should thus be satisfied. So, the industry thinks that instead of accepting such a "favour", it should really sustain its struggles. It hopes that the Government can eventually pay heed to its voices and make serious efforts to study the relevant ordinance and introduce corresponding amendments to it.

Thank you, Madam Chairman.

**MR HOWARD YOUNG** (in Cantonese): Madam Chairman, this Bill involves two main points of discussions. The first point relates to how shooting clubs handle arms, and the other point involves how the show business handles modified arms. In regard to the latter, there is a need for us to spend more time on discussions, which was precisely why the Bills Committee had to suspend its scrutiny for quite a long time during the last stages of its work, so as to consider the views presented by the show business.

We of course understand that in order to satisfy the demands of the show business and facilitate the smooth development of the film industry, we do need to make things easier for them, though we are also of the view that we must seek to protect public safety through the enactment of legislation. However, when we consider this matter, we must look at several other factors. First, as we can all notice from the experience of other countries, some unfortunate accidents arising from the use of arms did occur during the production of a film. Second, we also hope that Hong Kong can become a centre of film production, that there can be more co-operation between the local film industry and other countries and cities, and that it will become much easier to arrange film shooting in many different places, even including locations close to members of the public. We note that film production nowadays may involve many scenes of explosion and shoot-outs. That is why we have spent a long time on considering how to strike a proper balance between the development of the film industry and public safety.

Having listened to the views of the industry, we also hope that the Government can introduce more latitude into the existing mechanism. The original proposal of the Government is that every actor should be required to apply for an exemption permit in relation to each film production in which he plays a part. However, we cannot rule out the possibility that some individual actors may each be acting in several films over the same period of time. In that case, is he going to apply for several exemption permits? The Government has subsequently agreed to relax this requirement a little bit by issuing one-year exemption permits. The rationale behind the issue of one-year exemption permits is just the same as that behind the issue of driving licences. In the latter case, once a person has been issued a driving licence, his licence will be valid no matter where he goes. And, in the case of an exemption permit, an actor can act in the films of any company within the one-year validity period. We are of the view that this is better than requiring an actor to submit an application each time when exemption is required. As a result, we accept this amendment. Of course, as mentioned by Mr James TO, once this mechanism is proven to be

operationally feasible and acceptable to all those concerned, we may consider the example of driving licences (the validity period of which has been lengthened from three years to 10 years as a maximum) and extend the validity period of exemption permits. I hope that the Government can consider this idea when the time comes.

Besides, the industry still has one more worry. Exemption permits are to be issued with government approval, and one of the approval criteria is whether or not the applicant is considered fit and proper. Does this mean that the Government is going to consider whether or not the applicant has any criminal records before making a decision? As far as I am aware, there are many types of criminal records. But what we are discussing now is restricted to the issuing of a particular type of licence allowing a certain person to use modified arms. So, I really hope that when processing an application, the authorities will refrain from regarding all criminal records as a kind of stains regardless of their nature, and I further hope that it will not thus mechanically turn down an applicant once he is found to have a criminal record. It should not do something like this. The authorities should exercise caution only when the criminal record of an applicant is directly related to the improper handling of firearms. But if the applicant's criminal record is not related to any danger associated with the improper handling of firearms, latitude should be applied and the application granted.

For the reasons I have explained, we will accept the amendment of the Government.

**MISS CHOY SO-YUK** (in Cantonese): Madam Chairman, I just wish to add two simple points. First, the discrimination and unfairness mentioned by Mr James TO actually relates to the following: At present, we do not need to apply for any exemption permit for using real firearms in a shooting range; we also do not need to undergo any inspection, and we can even invite our friends to join us. But then, an actor intending to use a modified, totally harmless toy gun in film production is required to apply for an exemption permit. This is where the unfairness actually lies. Second, the focus of our concern is that the responsibility which should be shouldered by film companies is now shifted onto individual artistes. An artiste is supposed to shoot under the instruction of the director, and he simply has no say at all. That being the case, it will be most unfair to force him to shoulder all the responsibility. These are my remarks.



**MR JAMES TO** (in Cantonese): Madam Chairman, I wish to raise two simple points. First, as a member of the Bills Committee, I must give Members a reminder. What will be the consequence if clause 3A is negatived? Let me just give them an objective explanation. The consequence will be that the old practice will remain unchanged, which means that there will be no exemption permit and no prescribed validity period. Some Members prefer an all-or-nothing approach, and they thus want to reject this clause altogether, in the hope of forcing the Government to introduce a comprehensive reform. They can no doubt maintain such a position, but I hope they can note that the Government has already said that if this clause is rejected, it will simply keep the old practice. In other words, exemption permits will continue to be issued on a case-to-case basis.

Second, a point about some Members' view that the work of implementation will not be very that simple. To be honest, I know fully well what they are talking about. I started to be a Legislative Council Member in 1991, and I dare say that I am the first Legislative Council Member to get involved in this matter, because since as early as 1994 or 1995, I have responded to the request of the industry and repeatedly brought up this matter in the Security Affairs Panel for discussions. Through all these discussions, we have succeeded in urging the Government to make changes in many respects, and it has also become less bureaucratic than before. I know that there are still many problems, but the discussions on these problems in the Security Affairs Panel have made the Government realize that they are the concern of many Members. So, even though the Government has done nothing more than introducing a partial change, and even though we are still a bit unsatisfied, we must still admit that the Government has at least conducted a comprehensive review this time around. Of course, one may say that though the comprehensive review has led to more latitude, such latitude is still not enough. But I am of the view that before we take any further steps, we should first try out the system of one-year exemption permits for a certain period of time, so as to see whether its implementation is really so very cumbersome as feared. The rejection of this clause will result in the retention of the old practice. This is of course a possible strategy to get what we want, and I will certainly respect it as a decision of the Members concerned. But I hope that other Members can think carefully whether they should accept this strategy. Or, if even the industry itself gives its endorsement, Members may well agree to pursue this strategy. But do all people think that this is a good strategy? I doubt it.

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

(No Member responded)

**CHAIRMAN** (in Cantonese): Secretary for Security, do you wish to reply?

**SECRETARY FOR SECURITY** (in Cantonese): Madam Chairman, I would like to give a brief speech. First of all, I wholly agree with the arguments put forward by Mr James TO and Mr Howard YOUNG. I only want to point out that new clauses 3A, 9A and 24A aim at relaxing the existing system. As far as the Government is concerned, it will not lose anything substantial even if the new clauses are not passed. But it will be a loss to the film industry. As pointed out by Mr James TO earlier, we have exchanged views with the film industry very seriously. Having listened to their views, the Bills Committee ceased its work for a few months to enable us to examine how the existing system could be relaxed. It will be most unfortunate if the proposal we make today for relaxing the system is negated for the Government will not consider other relaxation measures in the near future. Thank you, Madam Chairman.

**MR JAMES TO** (in Cantonese): Madam Chairman, I have omitted one point, a point relating to clause 9A. I wish to remind Members that we are required to vote on clauses 3A, 9A and 24 as a whole package. Clause 9A is a relaxation measure supported by all of us, and it is also of very great importance too. If Members vote against this whole group of amendments, clause 9A will also be negated. This is of course most unfortunate, and it is a pity that these clauses are not divided into different groups, so that Members can vote on them as individual clauses. However, I must still tell Members beforehand that there will be such a consequence. This is also where the problem lies. I have also omitted another point. Since 1991 when I started to take part in the scrutiny of bills, I have dealt with many matters relating to the issuing of various types of licences. But I have never seen something quite like what has happened this time around. I mean, this time around, when it comes to criminal records, when it comes to what persons should be defined as fit and proper to apply for licences, the Government has so unexpectedly provided a set of guidelines on the types of criminal records which it will disregard when deciding whether or not to issue a licence. This is indeed something very rare. On matters relating to the

issue of licences, the Government will usually give itself the greatest degree of flexibility. So, I must say that what has happened this time around is really unprecedented, because the Government never used to disclose any criminal records requirements for the issue of any licences. I hope that Members can see what is so special about this.

**MISS CHOY SO-YUK** (in Cantonese): I am very surprised that Mr James TO is now asking fellow Members to support the Government just because it has done something slightly unprecedented. This is actually a harassing law, and we thus insist that the Government must introduce some alternative amendments.

**MR MA FUNG-KWOK** (in Cantonese): The undertaking now made by the Government is not incorporated into the Bill. The Government has merely told the industry that it will implement the policy with more latitude in the future. I am sure that whatever the outcome of voting will be (even if the new proposal advanced by the Government is rejected) ..... Well, if the Government is at all sincere in its attempts to assist the industry ..... I mean, even under the existing ordinance, the Commissioner of Police already possesses enough powers to do things like relaxing the requirements stipulated in the ordinance, increasing the transparency of the whole process and so on. The reason is that in the original ordinance requiring artistes to apply for exemption permits, the exact powers of the Commissioner of Police are actually not spelt out. The Commissioner of Police simply exercised the powers by virtue of his office and introduced administrative measures to change the time-tested arrangements at that time. So, provided that the Government is really sincere, I think that it can still do something even if this Bill is negated. The Government simply should not say that it can do nothing more since Members have turned down its offer of more latitude. I do not think that this is a justified comment. If the Government is really sincere, even under the original ordinance, and even with the original powers of the Commissioner of Police, it can already do a lot to assist the industry. This is the point I wish to add. Thank you, Madam Chairman.

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

(No Member responded)

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

(Members raised their hands)

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

(Members raised their hands)

Mr MA Fung-kwok rose to claim a division.

**CHAIRMAN** (in Cantonese): Mr MA Fung-kwok has claimed a division. The division bell will ring for three minutes.

**CHAIRMAN** (in Cantonese): Some Members have arrived after the division has started ringing. I wish to remind Members that the question put is: That new clauses 3A, 9A and 24A be read the Second time.

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

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

Mr HO Sai-chu, Mr Albert HO, Mr Martin LEE, Mr LEE Kai-ming, Mr Fred LI, Mr Ronald ARCULLI, Mr James TO, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Mr Howard YOUNG, Dr YEUNG Sum, Mr Andrew CHENG, Mr SZETO Wah, Mr LAW Chi-kwong and Mr TAM Yiu-chung voted for the motion.

Mr David CHU, Dr Raymond HO, Mr LEE Cheuk-yan, Mr Erci LI, Dr LUI Ming-wah, Prof NG Ching-fai, Mr MA Fung-kwok, Mr HUI Cheung-ching, Mr CHAN Kwok-keung, Miss CHAN Yuen-han, Mr Bernard CHAN, Mr CHAN Wing-chan, Mr CHAN Kam-lam, Dr LEONG Che-hung, Mr Gary CHENG, Mr WONG Yung-kan, Mr Jasper TSANG, Mr Ambrose LAU, Miss CHOY So-yuk, Mr Timothy FOK and Mr FUNG Chi-kin voted against the motion.

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

THE CHAIRMAN announced that there were 37 Members present, 15 were in favour of the motion and 21 against it. Since the question was not agreed by a majority of the Members present, she therefore declared that the motion was negatived.

**CLERK** (in Cantonese): Clauses 24 and 25.

**CHAIRMAN** (in Cantonese): As the Secretary for Security's motion has been negatived, she cannot move amendments to clauses 24 and 25, and I have given consent for her to revise the wordings of her amendments to clauses 18 and 19 and that of new clause 31.

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That clauses 24 and 25 stand part of the Bill.

**CHAIRMAN** (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Clauses 3, 18, 19 and 27.

**SECRETARY FOR SECURITY** (in Cantonese): Madam Chairman, I move the amendments to clauses 3 and 27 as well as the revised amendments to clauses 18 and 19, as set out in the paper circularized to Members.

The amendment to clause 3 is a technical amendment consequential upon the enactment of the Provision of Municipal Services (Reorganization) Ordinance. The amendment to clause 27 seeks to provide that all application forms shall be specified by the Commissioner of Police by publication in the Gazette to make the whole regime more transparent. As to the amendments to clauses 18 and 19, as new clause 3A is not passed, the amendments to clauses 18 and 19(a) should be revised. The reference to the addition of para. (aa) in clause 18(a) should be revised as "refuse to grant an exemption under section 4(3), or change or revoke an exemption;". As to the amendment to clause 19(a), the words "or (4)" should be deleted in order to retain the original proposal, that is, to require the Commissioner to notify the applicant in writing, stating the reasons for his refusal to grant an exemption from the requirement to hold a licence under the existing ordinance as well as incorporate the relevant application under the appeal mechanism specified under the ordinance. The purpose of the amendments to clauses 18(c) and 19(b) is to specify clearly that the time limit for a licensee to surrender his licence to the Commissioner of Police after his licence has been revoked shall be retained. Madam Chairman, I move the above amendments. Thank you.

*Proposed amendments*

**Clause 3 (see Annex III)**

**Clause 18 (see Annex III)**

**Clause 19 (see Annex III)**

**Clause 27 (see Annex III)**

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Clauses 3, 18, 19 and 27 as amended.

**CHAIRMAN** (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Clauses 6, 7, 11, 16, 17 and 23.

**SECRETARY FOR SECURITY** (in Cantonese): Madam Chairman, I move the amendments to clause 6, the proposed section 12A in clause 7, clauses 11, 16, 17 and 23, as set out in the paper circularized to Members. The proposed amendments mainly seek to specify clearly in the Bill that when the Commissioner of Police handles an application for or a renewal of a licence for possession of arms and a dealer's licence, or determines whether a licence should be revoked, he must consider if the applicant is suitable and reasonably needs to hold the relevant licence. He should also consider whether he should reject an application on the grounds of public safety and security. An applicant interested in shooting activities such as a member of a shooting club will be deemed as a person who needs to hold a licence for possession. Moreover, when the Commissioner of Police vets an application by an arms instructor, a responsible person of a shooting range or an agent, he should consider if the applicant is suitable for the post as well as whether he should reject the application on the grounds of public safety and security. The amendment to clause 23 of the Bill is made upon the requests of some members of the Bills Committee to clearly specify in the Bill the main duties of the responsible person of a shooting range to ensure the safe use of the shooting range. The Government and the Bills Committee have discussed the above amendments in detail and reached a consensus, and I hope Members will support them. Thank you, Madam Chairman.

*Proposed amendments*

**Clause 6 (see Annex III)**

**Clause 7 (see Annex III)**

**Clause 11 (see Annex III)**

**Clause 16 (see Annex III)**

**Clause 17 (see Annex III)**

**Clause 23 (see Annex III)**



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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Clauses 6, 11, 16, 17 and 23 as amended.

**CHAIRMAN** (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

**SECRETARY FOR SECURITY** (in Cantonese): Madam Chairman, I move that the proposed section 12B in clause 7 be amended as set out in the paper circularized to Members. Under the proposed amendment, the need to apply for a licence relating to the possession of arms and ammunition can be waived under the following circumstances: The possession of arms and ammunition for being tested on application for licence and the possession by a licensee or his approved agent of arms and ammunition to which the licence relates, in the course of transporting the arms and ammunition, for the purpose of testing or inspection by the Commissioner of Police, to and from the place at which the testing or inspection is to take place.

*Proposed amendment*

**Clause 7 (see Annex III)**

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Clause 7 as amended.

**CHAIRMAN** (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

<b>CLERK</b> (in Cantonese):	New clause 4A	Possession of arms and ammunition in transit
	New clause 4B	Section added
	Heading before new clause 31	Administrative Appeals Board Ordinance
	New clause 31	Schedule amended.

**SECRETARY FOR SECURITY** (in Cantonese): Madam Chairman, I move that new clauses 4A, 4B, heading before new clause 31 and new clause 31 as set out in the paper circularized to Members, be read the Second time. New clause 4A further expands the scope of licensing exemption for arms and ammunition in transit to take account of the need to change means of transportation for arms and ammunition in transit. New clause 4B allows a carrier or an agent or employee of a carrier appointed by a licensee or his approved agent to carry arms and ammunitions in the ordinary course of business without having to apply for a licence relating to the possession of arms and ammunition. These two measures will provide greater convenience to people in the industry without affecting public safety. The proposed new clause 31 contains consequential amendments necessitated by the proposals of the Bill; such consequential amendments increase the right to appeal under the Firearms and Ammunition Ordinance, covering aspects such as licence applications, exemption permits and the appointment of arms instructors and range officers or their agents. I hope that

Members will render their support. As new clause 3A has not been passed, the relevant amendment has to be revised to delete "or (4)" from paragraph (e). Thank you, Madam Chairman.

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That new clauses 4A, 4B, heading before new clause 31 and new clause 31 be read the Second time.

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): New clauses 4A, 4B, heading before new clause 31 and new clause 31.

**SECRETARY FOR SECURITY** (in Cantonese): Madam Chairman, I move that new clauses 4A, 4B, heading before new clause 31 and new clause 31 be added to the Bill.

*Proposed additions*

**New clause 4A (see Annex III)**

**New clause 4B (see Annex III)**

**Heading before new clause 31 (see Annex III)**

**New clause 31 (see Annex III)**

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That new clauses 4A, 4B, heading before new clause 31 and new clause 31 be added to the Bill.

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

(Members raised their hands)

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

(No hands raised)

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

**CHAIRMAN** (in Cantonese): Council now resumes.

Council then resumed.

**Third Reading of Bill**

**PRESIDENT** (in Cantonese): Bill: Third Reading.

**FIREARMS AND AMMUNITION (AMENDMENT) BILL 1999**

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, the

Firearms and Ammunition (Amendment) Bill 1999

has passed through Committee with amendments. I move that the Bill be read the Third time and do pass.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Firearms and Ammunition (Amendment) Bill 1999 be read the Third time.

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Firearms and Ammunition (Amendment) Bill 1999.

**MEMBERS' MOTIONS**

**PRESIDENT** (in Cantonese): Members' motion. Proposed resolution under the Interpretation and General Clauses Ordinance.

**PROPOSED RESOLUTION UNDER THE INTERPRETATION AND GENERAL CLAUSES ORDINANCE**

**MR RONALD ARCULLI:** Madam President, in my capacity as Chairman of the Subcommittee set up to study the subsidiary legislation relating to the 2000 Legislative Council Election, I move the motion standing in my name on the Agenda. The purpose of the motion is to extend the scrutiny period of four items of subsidiary legislation tabled in the Council on 26 January this year.

The first item is the Legislative Council (Formation of Election Committee) (Appeals) (Amendment) Regulation 2000. The Amendment Regulation amends the principal Regulation for revising the appeal procedures in relation to the registration of ex-officio membership of the Election Committee, and the nomination of members from the religious subsector, to take into account the revised arrangement under the Legislative Council (Amendment) Ordinance 1999.

The second item is the Legislative Council (Subscribers and Election Deposit for Nomination) (Amendment) Regulation 2000. This Amendment Regulation seeks to revise the requirements for return of election deposit and for the number of nomination papers that any subscriber can subscribe, to take into account the revised arrangements under the Legislative Council (Amendment) Ordinance 1999.

The third item is the Distribution of Number of Members Among Designated Bodies (Election Committee) (Legislative Council) Order 2000. The religious subsector of the Election Committee is composed of six designated bodies representing Buddhists, Catholics, Confucians, Muslims, Christians and Taoists. The Order specifies the number of Election Committee seats distributed to each of the designated bodies. It also repeals the previous Order made for the purpose of the 1998 Legislative Council Election.

The last one is the Maximum Scale of Election Expenses (Legislative Council) Order 1997 (Amendment) Order 2000. As the Administration proposes that the same election expense limits prescribed in the existing Order be adopted in the 2000 Legislative Council Election, the Amendment Order seeks to introduce a number of technical amendments.

The Subcommittee has concluded deliberations on these items of subsidiary legislation. Whilst the majority of members of the Subcommittee has agreed to support the subsidiary legislation, the Honourable Miss Emily LAU opposes the maximum scale of election expenses for geographical constituency elections because she considers the limit to be excessive. She also opposes the first and third items of subsidiary legislation that I mentioned earlier, because she does not support, in her words "small circle-type election" in principle.

In order to allow adequate time for Members to consider these four items of subsidiary legislation and any amendment to be proposed by individual Members, the Subcommittee has agreed that I should move a motion to extend the scrutiny period to the Council meeting on 1 March 2000.

With these remarks, Madam President, I urge Members to support the motion.

**Mr Ronald ARCULLI moved the following motion: (Translation)**

"That in relation to the:

- (a) Legislative Council (Formation of Election Committee) (Appeals) (Amendment) Regulation 2000, published as Legal Notice No. 13 of 2000;
- (b) Legislative Council (Subscribers and Election Deposit for Nomination) (Amendment) Regulation 2000, published as Legal Notice No. 14 of 2000;
- (c) Distribution of Number of Members Among Designated Bodies (Election Committee) (Legislative Council) Order 2000, published as Legal Notice No. 15 of 2000; and
- (d) Maximum Scale of Election Expenses (Legislative Council) Order 1997 (Amendment) Order 2000, published as Legal Notice No. 16 of 2000,

and laid on the table of the Legislative Council on 26 January 2000, the period referred to in section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) for amending subsidiary legislation be extended under section 34(4) of that Ordinance to the meeting of 1 March 2000."



**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the motion moved by Mr Ronald ARCULLI, as set out on the Agenda, be passed.

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

(No Member indicated a wish to speak)

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the motion moved by Mr Ronald ARCULLI, as set out on the Agenda, be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

**PRESIDENT** (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members who are present. I declare the motion passed.

**PRESIDENT** (in Cantonese): Two motions with no legislative effect. I have accepted the recommendations of the House Committee as to the time limits on speeches for the motion debates. If any Member speaks in excessive of the time limits agreed, I shall be obligated to order him or her to stop.

**PRESIDENT** (in Cantonese): First motion: Developing the semiconductor industry.

## **DEVELOPING THE SEMICONDUCTOR INDUSTRY**

**DR LUI MING-WAH** (in Cantonese): Thank you, Madam President. I move the motion "Developing the semiconductor industry" to urge the Government to actively promote the development of an advanced semiconductor industry in Hong Kong.

Hong Kong's industry has a very unbalanced structure. The service industry accounts for 84.7% of the Gross Domestic Product (GDP), while the manufacturing industry accounts for only 6.2% (in the developed Western countries, the manufacturing industry accounts for 19% to 35% of the GDP). Due to the excessive reliance on the financial and property sectors, Hong Kong economy suffered a severe blow in the Asian financial turmoil. Although the Government strives to build the Cyberport and the Disneyland theme park, these two projects are basically part of the service industry. The Government also vigorously advocates the development of innovations and technologies in Hong Kong, it is however a strategy that will not bear any fruit until many years later. As for the establishment of the Science Park, although it can help Hong Kong to change the outlook of technology industry, it will probably not help much to change the economic structure. To fundamentally change the unbalanced structure of Hong Kong's industry, promoting a local advanced semiconductor industry is the only way out. It can help Hong Kong to become a technological city with a sound foundation and revive the manufacturing industry, which will then pull Hong Kong as a whole into economic prosperity and create a large number of new jobs. Thus, it is a strategic industry that will bring many benefits to the community and the economy.

The semiconductor industry in Hong Kong has developed for several decades and is still advancing. The world market and global production have been dominated by European, American and Japanese firms. I have proposed to develop an advanced semiconductor industry in Hong Kong out of a genuine need here. Since the mid-1990s, the international semiconductor production system has seen a power adjustment due to the entry of Taiwan, Singapore and South Korea. The redistribution of semiconductor production and the inability of production to meet demand offers Hong Kong an opportunity to join the ranks, and this is an opportunity we cannot afford to miss. I will briefly analyse some favourable conditions for the development of a semiconductor industry as follows:

First, I wish to talk about the demand for products. With the advancement of technology and the development of the electronics industry, integrated circuits and semiconductors have found wide application in different kinds of products, such as consumer electronic products, toys, entertainment products, electrical domestic appliances, computers and peripherals, communication facilities, instruments, transport facilities, mechanical equipment, military installations, marine and aerospace facilities and so on. All these require large quantities of semiconductor components. The recent development of digital and broadband technology has resulted in new challenges to and taller demands on semiconductors, thus driving semiconductors to move towards high technology. Semiconductors can therefore be regarded as the foundation of technology-based industries and the mainstay of various industries. Without an advanced semiconductor industry, there cannot be an advanced manufacturing industry.

Second, I wish to talk about the market. With the rapid development of the economy of mainland China, its manufacturing industry will require large quantities of semiconductor products. Figures show that China is producing approximately 1.4 billion integrated circuits, falling far short of the production demand of electronic products. Therefore, it has to rely heavily on import. In 1997, the Mainland imported 9.6 billion integrated circuits and 39.5 billion semiconductor components, valued approximately at US\$3.7 billion and US\$1.5 billion respectively. Therefore, if we set up an industrial base for semiconductors in Hong Kong, we can supply components to the Mainland. Due to Hong Kong's proximity to the market, the transport distance and delivery time are the shortest and the cost will be the lowest.

Third, I wish to talk about the high cost-effectiveness. High technology industry relies on the driving force accorded by intelligence and capital, and it has brilliant prospects and high cost-effectiveness. Experts have pointed out that the development and wide application of microelectronics in the United States have been the principal impetus propelling its continuous economic growth over the past decade or so. The output value of its technology industries accounts for 25% of its GDP growth. Every US\$1 output of integrated circuits will bring US\$10 output in terms of the electronics industry and US\$100 in terms of its GDP. Therefore, the multiplication effect of the semiconductor industry on the economy can promote rapid economic development and create many employment opportunities.

Fourth, I would like to talk about the specialization of production. Before the '90s, the semiconductor industry was an auxiliary branch in big enterprises, responsible for producing semiconductor components. With the development of semiconductor technology and the increasing precision of products, production equipment has become very expensive. At present, the cost of a factory is about US\$1.2 billion, and the upgrading of equipment is too costly for individual enterprises. That is why the semiconductor industry has seen increased specialization over the past decade or so where most companies produce semiconductor products for large electronics enterprises on a contract basis. The specialization of production has thus facilitated the continuous improvement of production technologies. The high utilization rate of equipment also ensures a certain return on the investment. Thus, the industry has gradually become a mainstream of new technology industries. This is the result of the globalization of the world's industries. It is a chance presented to Hong Kong by history.

Fifth, what kind of edge does Hong Kong enjoy? In order to develop a semiconductor industry, there must be qualified personnel and technology. Although Hong Kong does not have a sufficient supply of experienced talents, it can induce overseas experts to come to serve and work in Hong Kong with attractive terms. In Taiwan and Singapore, they also need to recruit many experts from overseas to work in their semiconductor industry. In terms of technology, one party to the investment venture must own the technology. At present, semiconductor companies in Taiwan and other countries are seeking overseas investment opportunities. Therefore, we should meet no obstacles in the supply of production technology.

To conclude, by founding an advanced semiconductor industry in Hong Kong, we can achieve high cost-effectiveness and create employment opportunities. It will also serve a very strong social function. Therefore, the Government should consider this from a strategic angle. Since other countries are also trying to attract investors to invest in the semiconductor industry with favourable terms, the SAR Government should also set up a mechanism and adopt measures to provide favourable terms for investment in hi-tech industries, without violating its established principles. In terms of profits tax, the Government can hold over the profits tax to allow an enterprise to start paying profits tax to the Government a few years after the factory has gone into operation. This measure will alleviate the initial financial burden of hi-tech industries due to the huge investment and ensure that investors make a return in

the initial phase of investment. The profits tax due will be paid to the Government afterwards and so it is not a tax exemption. This measure is feasible and consistent with the present policy.

Madam President, my motion today urges the Government to make it a policy to actively promote an advanced semiconductor industry. I call on Members to support this motion for the benefit of Hong Kong's industry and economic development.

Madam President, I move the motion as printed on the Agenda on developing the semiconductor industry. Thank you.

**Dr LUI Ming-wah moved the following motion: (Translation)**

"That, as semiconductor products are the foundation of technology-based industries and the mainstay of various industries, this Council urges the Government to actively develop the semiconductor industry in Hong Kong, so as to promote economic development and create job opportunities."

THE PRESIDENT'S DEPUTY, DR LEONG CHE-HUNG, took the Chair.

**DEPUTY PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the motion moved by Dr LUI Ming-wah, as set out on the Agenda, be passed.

**DEPUTY PRESIDENT** (in Cantonese): Mr SIN Chung-kai will move an amendment to this motion, as printed on the Agenda. In accordance with the Rules of Procedure, the motion and the amendment will now be debated together in a joint debate.

**DEPUTY PRESIDENT** (in Cantonese): I now call upon Mr SIN Chung-kai to speak and move his amendment.

**MR SIN CHUNG-KAI** (in Cantonese): Mr Deputy, I move that Dr LUI Ming-wah's motion be amended, as set out on the Agenda.

Dr LUI Ming-wah's motion is "Developing the semiconductor industry". I have sought to make this amendment mainly not because the Democratic Party disagrees with the thrust of the motion, on the contrary, the Democratic Party has always been of the view that Hong Kong should develop into a diversified economic system and build up a high value-added manufacturing industry. However, we must honestly ask ourselves whether Hong Kong possesses the requisites for the development of a semiconductor industry.

The semiconductor industry is a key industry with huge coverage which provides upstream industrial support for industries engaging in the manufacture of computer hardware, communication equipment and electronic and electrical products. This means that most components or parts required by these industries have to do with the semiconductor industry. The classification of the semiconductor industry is rather complicated. Horizontally, it can be divided into several main categories, such as memory integrated circuit (IC), micro-component, logic IC/application specific IC and analog IC. The output of the first three categories already accounts for 70% of the output of the whole semiconductor industry. Vertically, since most semiconductor products are related to IC chips, which are mainly made of cut silicon wafers, the semiconductor industry can be divided into three production processes, that is, upstream, midstream and downstream, according to the flow of production of IC chips. They are specifically IC design, IC manufacturing and IC packaging.

Mr Deputy, please forgive me for enumerating a series of rather incomprehensible terms. I meant to demonstrate to Members that the development of a semiconductor industry is not a simple business or industry. Apart from developed countries such as the United States and Japan, very few countries can develop a semiconductor industry that incorporates all the categories. Therefore, before answering the question of whether Hong Kong possesses the requisites for developing a semiconductor industry, we have to consider which type of semiconductor industry Hong Kong should develop.

In fact, the world's semiconductor industry is moving towards international division of labour. To put it in simple terms, the United States and Western Europe which hold the state-of-the-art technologies are beginning to concentrate on upstream IC design. Countries and regions like South Korea and Taiwan, which have great productivity and innovative production technology, concentrate on developing midstream production processes, such as IC manufacturing and IC foundry service, while Southeast Asian and South American countries with less advanced technology focus on developing the more labour-intensive IC packaging industry.

If Hong Kong intends to develop a semiconductor industry, it must aim at serving as a component support base for industries in China engaging in the manufacture of computer hardware and peripherals, communication products as well as electronic and electrical goods. In this, my analysis is the same as Dr LUI's. According to a study made by the Chinese Ministry of Information Industry last year before China's accession to the World Trade Organization (WTO), in 2000, the sales volume of the IC chip market in China will reach US\$6.3 billion and is forecast to double to US\$12.1 billion in 2005. Last year, the production of IC chips in China accounted for 0.8% of the world's production and could only meet 20% of domestic demand. In terms of production technology, the most advanced technology in the Mainland only achieves 0.35 micron, which still lags far behind the world's leading technology of 0.25 or 0.18 micron. These data show that the Chinese semiconductor market has considerable development potentials and also provides great scope for development for new investors. If we look at the latest development of semiconductors in the Mainland, the official, academic and private commercial organizations in the Mainland have trained many outstanding technical talents and developed an advanced technology base comparable to that of the West in some respects. However, there is a vacuum in the intermediary applied research, so that the technology cannot be applied for commercial purposes. The lack of capital and channels to introduce production technology are the main obstacles to the Chinese semiconductor manufacturing industry, while Hong Kong has the potential to fill this particular gap.

The Hong Kong Government has never done a systematic study on the development of a semiconductor industry. It was only after the Cyberport plan had been proposed that the Government commissioned a consultancy study on the feasibility of developing a semiconductor industry. However, so far, the Cyberport remains at the stage of planning and negotiation. The Government has not yet announced any concrete development plans in this respect. In my view, the Government should focus on assessing whether Hong Kong possesses

the requisites to develop a semiconductor industry and which kind of semiconductor industry it should concentrate on developing. It should also implement the relevant development plans as soon as possible to take advantage of the upturn in the semiconductor market.

Actually, in developing a semiconductor industry, Hong Kong will be constrained by many objective conditions and suffer from a limited choice in terms of the development area. In the upstream area, Hong Kong lacks a large pool of outstanding professionals to develop IC design. In the midstream area, the construction of an IC plant and purchase of machinery require an investment of US\$1 billion. More than in any other industry, manufacturers are faced with the risk of price fluctuation, the threat of regional competition, the rapid supersession of products and the lack of clarity in the intellectual property rights of production technology. In terms of downstream packaging, Hong Kong lacks competitiveness in production cost since its land price and wages are higher than those in other Southeast Asian countries.

Thus, if Hong Kong must develop a semiconductor industry, it can only choose to develop IC manufacturing. Although Hong Kong's present conditions are not particularly favourable, our proximity to the neighbouring Pearl River Delta is a natural geographical advantage unrivalled by other countries and regions. At present, foreign investments in the Chinese semiconductor industry share one common point: their factories are often located near the main consumer cities and industrial regions. For instance, Intel has established an IC packaging factory in Shanghai, NEC has built an IC silicon wafer factory in Pudong in Shanghai, while Motorola has built an IC silicon wafer factory in Tienjin. For the same reason, the Pearl River Delta as a production base for telecommunications facilities and electronic and electrical appliances needs a nearby production base for semiconductor components. Hong Kong should be an ideal choice.

Hong Kong's strength in developing a semiconductor industry lies in its strong fund-raising ability, excellent infrastructure and transport networks, outstanding management talents and the ability to attract advanced technologies from overseas, which is a primary factor for developing an IC manufacturing industry. In fact, Hong Kong businessmen like to make investments with higher returns and are good at bearing periodic risks, both being characteristics of the IC manufacturing industry. More importantly, Hong Kong enjoys the natural advantage of being located near to Southern China's huge electronics industrial centre and main consumer markets of electronic products. The main reason why Hong Kong did not develop in this area in the past may be because



the Government had always followed the free market economy principle and therefore took no initiative to attract investors.

Apart from making use of its natural advantages, Hong Kong can make various efforts to catch up with competitors in the same region that are more than 20 years ahead of us. In terms of talents, Hong Kong can follow Taiwan's example and recruit Chinese engineers from the Silicon Valley of the United States, as well as attract mainland experts to come to Hong Kong.

According to the estimation of the semiconductor industry, China's semiconductor market will become the world's second largest market in 15 years. We think that Hong Kong should actively attract talents and create favourable conditions to give investors the opportunities and space to invest in Hong Kong.

We hope that the Government will seriously consider the conditions demanded by interested investors to turn into an impetus propelling Hong Kong's industrial development.

I so submit.

**Mr SIN Chung-kai moved the following amendment: (Translation)**

"To delete "semiconductor products are the foundation of technology-based industries" and substitute with "the semiconductor industry provides up-stream industrial support for the information technology industry"; to delete "the mainstay of various industries" and substitute with "is the major source of supply of the necessary components for various manufacturing industries,"; to delete "actively" and substitute with "initiate studies on whether Hong Kong possesses the requisites to"; to delete "in Hong Kong," and substitute with "; assess the feasibility of Hong Kong serving as a component support base for China in the development of industries engaging in the manufacture of computer hardware and peripheral products, communication products as well as electronic and electrical goods; and create and develop favourable conditions to attract foreign investments in the industry,"; to add "seize the opportunities arising from the rapid growth of the markets for these products after China's accession to the World Trade Organization, and at the same time" after "so as to"; to add "the" before "economic development"; to delete "and create job opportunities" and substitute with "of Hong Kong in a diversified and high value-added direction"."

**DEPUTY PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mr SIN Chung-kai to Dr LUI Ming-wah's motion, be passed.

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

**MR CHAN KAM-LAM** (in Cantonese): Mr Deputy, after the 1997 financial turmoil, the promotion of Hong Kong's industry and the development of high technology have become an important issue in the community.

In recent months, I was somewhat disturbed by the wave of speculations on the stocks mainly of information technology enterprises. Have we equated high technology with information technology? If so, what about hi-tech industries? As a starting point for discussion, the motion on developing the semiconductor industry should enhance Members' understanding of the development of hi-tech industries.

As far as we know, the global semiconductor market in 1999 amounted to US\$160 billion, 18% up from 1998 (Gartner Group's report). This shows that the world market still has a great demand for semiconductors. Semiconductor products are not only applied in the information technology and personal computer industries. Their application has long been extended to household products, such as intelligent products. A study of the City University on the development of the production technology of silicon wafers in Hong Kong recommends that the Government should take active measures to attract international and local investors to set up silicon wafer factories in Hong Kong. The study also points out that according to the industry's estimation, every \$1 of semiconductor products will generate \$4 of microelectronics assembly business, resulting in the manufacture of electronic products worth \$16. This is certainly a high value-added industry. Therefore, the semiconductor industry can bring in huge profits. In the United States and Taiwan, it contributes to the balanced development of the local economy. An exchange of ideas might help the Government in the development of the semiconductor industry.

At present, the challenge faced by the local industries is how to change rapidly and start new enterprises to adapt to the new business environment. In our view, Hong Kong's industries must develop in the high value-added direction

and become more innovative so that our economic structure will be more balanced. Another key question is whether investors have confidence in the development of high technology in Hong Kong. If investors do not have sufficient confidence in us, it will be difficult to attract them. While the SAR Government says it will promote the development of high technology, it seems hesitant to take action and fails to build up the impression of vigorously promoting the development of high technology. Under these circumstances, how can overseas investors or big investors have confidence?

Based on the above arguments, if we want to develop hi-tech industries, we need an investment environment conducive to investments in high technology and an active government. The Democratic Alliance for the Betterment of Hong Kong (DAB) has always supported the development of industries. We suggest that the Government should regard the investment in industrial technology as a continuing investment and increase the funds on technological research to 1% of the GDP in 10 years in order to encourage the industries to invest in research and development projects. According to information available, the funds injected into research and development in Hong Kong only account for approximately 0.4% of our GDP, whereas similar investments by our competitors such as Korea, Taiwan and Singapore account for 1% to 3% of their GDP. In countries like the United States or Japan, they account for over 3% of the GDP. Therefore, the Government should encourage the whole community to increase the resources devoted to research and development.

We also urge the Government to foster the co-operation between industrial support organizations and tertiary institutions, so that they can co-operate in research and the technological upgrading. In terms of the planning of industrial land, the Government should review the utilization rate of factory buildings and replan those with low utilization rate or which are put to wrong use. The building design should also be adapted for use by hi-tech industries. The Government should also consider the role of the industrial estates in the medium and long term and consider making the industrial estates more attractive to hi-tech industries. Lastly we are of the view that quasi-government bodies and tertiary institutions should offer more courses on the management of technology enterprises and the related risks management to train the relevant professionals.

With these remarks, Mr Deputy, I support the motion.

**DR RAYMOND HO** (in Cantonese): Mr Deputy, while the Government has been stressing the development of high technology in recent years, it has not been too keen on developing a semiconductor industry. Actually, the semiconductor industry is closely related to the high technology sector and provides important components required by many information technology (IT) industries. Due to the rapid development of the computer and IT industries, there is a great demand for semiconductors in the world market. Therefore, the semiconductor industry still has much scope for development. Hong Kong should grasp this opportunity to promote the development in this area.

Undoubtedly, Taiwan has made an early start in developing a semiconductor industry. It has been quite successful and has a significant share in the world market. However, it does not mean that it is too late or impossible for Hong Kong to start developing in this area now. If Hong Kong develops a semiconductor industry, the semiconductor market will have one more supplier, so that the world market will not be overly reliant on one supplier. It will also provide an additional choice to industries that require these components. Since many industries, such as the computer and automobile industries, require semiconductors, the world market should be able to accommodate one more supplier region. We should also consider another positive factor in the market, that is, China's accession to the World Trade Organization (WTO) in the near future. When that happens, there should be a greater demand for semiconductors, which will give Hong Kong a good opportunity for developing the semiconductor industry.

If we want to develop a semiconductor industry in Hong Kong, land should not be a problem. We can use the land of our industrial estates. In terms of research and development, we can strengthen our co-operation with the Mainland. In the short term, we can consider using mainland talents to help our development in this area. In the long term, Hong Kong must train the relevant professionals. Actually, the Government has always stressed that it will endeavour to train high technology professionals. It is only a question of how the Government will implement the relevant plans. Besides, Hong Kong's good infrastructure will also be conducive to the development of the semiconductor industry.

Due to the above considerations, I am of the view that Hong Kong possesses the basic conditions for the development of a semiconductor industry and the industry will also benefit Hong Kong's long-term development and contribute to a more balanced economic structure. Therefore, the Government should actively consider attracting investors to Hong Kong through tax concessions and promoting Hong Kong's advantages in various respects, so that they will come to Hong Kong to develop the semiconductor industry.

Mr Deputy, I so submit. Thank you.

**MR HUI CHEUNG-CHING** (in Cantonese): Mr Deputy, the Asian financial turmoil has led to a rare economic recession in Hong Kong, making the Government realize that an economic system without industrial support would easily become a bubble economy and is particularly susceptible to changes in the external economic climate. It is a fact that regions that had always laid emphasis on industrial development not only could withstand the economic recession brought about by the financial turmoil, but also have recovered more quickly. Taiwan, South Korea and Singapore are obvious examples, since their economies have recovered more quickly than that of Hong Kong. Over the past two years, both the Government and the Commission on Innovation and Technology have stressed that Hong Kong should develop high value-added and innovative technology industries. This is certainly worth supporting. Unfortunately, so far, we have only seen more and more people engaging in speculation on technology concept stocks. Many financially strong local enterprises which are interested in technology have confined themselves to putting their business on the Internet, while few of them invest in technology industries.

However, if Hong Kong wants to develop high value-added and innovative technology industries successfully, it cannot just talk about concept. The key still lies in the industries. Earlier, the Financial Secretary expressed the hope that the capital in the technology concept stock market could be diverted into investment in technology industries. This is crucial for the development of technology industries in Hong Kong. I believe that the semiconductor industry is a technology industry that the Government should encourage investment by enterprises.

In fact, Hong Kong already possesses the basic conditions for the development a semiconductor industry. According to some industry studies, as developed countries and regions (including Hong Kong) have already entered a "post-computer age", the basic equipment for Internet access in these regions is no longer personal computers, but communication equipment. As a consequence, the future development of the semiconductor industry will gradually be led by communication equipment instead of personal computers, which have led its development from the '70s to date. In other words, the future growth of the world's semiconductor industry will largely come from communication facilities such as mobile phones, portable computers and the Internet. With its location at the centre of Greater China and the Asia-Pacific Region and its advanced communications infrastructure, Hong Kong is an ideal place for semiconductor producers to set up their headquarters. Hong Kong also has an efficient financing market and is not located in an area with a high earthquake risk like Taiwan. With these natural advantages and human factors, we should be able to attract overseas semiconductor producers to invest in Hong Kong to diversify their investment and reduce risk. Recently, the Science Park in Hong Kong has successfully secured two overseas semiconductor enterprises possessing state-of-the-art technology to conduct research on semiconductor packaging in Hong Kong in order to manage the world's production and sales in the Asia-Pacific Region. This shows Hong Kong's potential in the development of a semi-conductor industry.

In order to attract more semiconductor or high technology enterprises to invest in Hong Kong, the Government may well adopt a more aggressive and proactive approach and should use taxation and land policies to stimulate investment. The most obvious example is tax concessions given the Government's determination to develop innovative technology industries. Since innovative technology development requires a long period of investment, the Government should consider using measures such as granting tax holidays, tax breaks or land to attract high technology enterprises to operate in Hong Kong. While the Government may not be able to derive much tax revenue from the relevant industries, these measures could attract some enterprises which have not invested in Hong Kong before. This would increase employment opportunities and help to stimulate consumption and demand for offices and housing.

Developing a semiconductor industry will also enhance the competitiveness of Hong Kong exports. As I said earlier yesterday during the oral question time in this Council, our competitors have already caught up with us in terms of export. Hong Kong has to strengthen its exports, so developing more industries of technology content should be of help. It is estimated that due to the rapidly growing demand for communication equipment and the improvement of production management in the industry, the supply and sales of semiconductors will see steady growth over the next few years. The Government should actively consider supporting technology industries that will help to stimulate our exports.

Undoubtedly, several pitfalls still remain for the development of high technology industries such as the semiconductor industry in Hong Kong. For instance, Sino-United States relations will affect United States export of high technology products to Hong Kong. The Government has to maintain a close liaison with the import/export trades and co-operate with them in lobbying and publicity work.

Mr Deputy, I so submit.

**MR MA FUNG-KWOK** (in Cantonese): Mr Deputy, the pace of our economic recovery after the financial turmoil is slower than our neighbours. One of the reasons for it is that the development of our industries, particularly our technology-based industries, lags far behind our neighbours. Over the past decade or so, the governments of our neighbours put in a lot of efforts in developing their own industries but we did not do so since we were caught in the 1997 problem, our economy was undergoing a process of restructuring and a misconception that high technology would invite disaster prevailed among government officials and the public. Therefore, we did not make so much investment in high-tech industries. To steer the territory clear of the troubled waters, the Chief Executive advocated in last year's policy address that science and technology should be made the driving force of our economic growth. Plans are proposed to turn Hong Kong into a hub of innovation and technology, to build a Cyberport, a Chinese Medicine Port and a digitized government. With the Nasdaq index of the United States which reflects the performance of technology-based stocks reaching new heights, words like "Hong Kong I.T.", "electronics", "information", and "e-commerce" have become the hottest talk of the town. Companies all have their Internet websites, and those on-line

companies suddenly transform into technology-based stocks. There are companies which are not even on the Internet but they only put an "e" or "I" before their names and the prices of their stocks soar instantly. It makes one feel that developing technologies would only mean information technology; and information technology means the Internet and hence speculations. I do not know where is this trend going to take us. Mr Deputy, to ensure healthy growth for our economy, we still have to rely on export and industries. If we do not strive to upgrade and regenerate our industries and move in the direction of high technology and high value-added industries, our economy can only remain in the present impasse. If we are committed to developing the semiconductor industry, that will lend a great support to our technology-based industries and will certainly spur the growth of other high value-added industries. Therefore, I suggest that we should not only develop the silicon chips application industry but also the silicon wafer industry.

Looking back at the history of the development of the semiconductor industry in Japan, South Korea and Taiwan, I think we have a good opportunity to develop this particular industry because we have excellent natural, geographical and human conditions for it.

In terms of the natural conditions, we have an outstanding transport system and infrastructure, a sound system of law, an excellent financial system and an enterprising spirit in our people. The operational efficiency, flexibility and mobility of our enterprises, and a sound financing system are all our edges. The foundation of our economy is still very strong. Electronic industry is a nascent and fast-growing industry in the world. Demand is expected to continue rising. There is a huge market for semiconductors as DVD, MP3, portable computers, home appliances, mobile phones and electronic toys all require the use of semiconductor parts. The prospects are promising and electronic products and toys are precisely those well-established major items of our export.

In terms of geographical conditions, our edge in this aspect is even more apparent. Last year when an earthquake caused a power failure in the science park in Taiwan, the amount of loss per day was as much as more than \$120 million. Businessmen in Taiwan once made an analogy that the 25 semiconductor factories there were a basket of eggs. They are all vulnerable to total obliteration should the smallest accident happen there. Taiwanese businessmen are thinking of putting their eggs in different places. Hong Kong



would become an ideal choice of location for them since it is free from earthquakes. Another geographical edge we have is our close proximity with the Chinese mainland. South China has become a production base for consumer electronic products. However, there is no silicon wafer factories there. Presently over 80% of the silicon chips used in electronic products made in China are imported. A huge amount of foreign exchange in China is used in buying these chips. With the imminent accession of China to the World Trade Organization, and with this huge semiconductor market in South China in our backyard, we may serve as a springboard for foreign investments into China. Things are indeed to our advantage. The development of a semiconductor industry needs the import of a vast amount of advanced equipment and such equipment is banned from exporting into China by the United States due to various reasons such as national security. The development of state-of-the-art semiconductor chips in China may be very difficult and this also creates favourable conditions for Hong Kong. Other factors such as language and culture, political reasons and so on would place an international city like Hong Kong in a much better position than the Mainland, Taiwan or other neighbouring countries in attracting overseas talents to come here to build up high technology industries.

The key factor to the development of high technology is a matching drive for it in society. The Government should formulate strategies and plans to encourage and promote high technology industries. We often hear that the Hong Kong Government practises an active non-intervention policy. However, what we see is usually non-intervention, while active measures are rarely taken by the Government. High technology industries imply higher risks. A silicon wafer factory entails an investment of billions of US dollars and the life cycle of semiconductors is very short. People in the trade talk about a so-called Mohr's law which in effect means that the microprocessors available in the market will double their speed once every 18 months. It follows that the investment made in research and development for silicon wafers will grow at a geometric scale. If we rely on private sector investment alone without assistance from the Government, it would be very hard for us to compete with places like Singapore and Taiwan.

Mr Deputy, I have reservations about Mr SIN Chung-kai's amendment. Mr SIN's amendment belittles the contribution of the semiconductor industry to technology-based industries in general. The latter should not be confined to information technology industries alone. Semiconductors were invented in

1947 and have since been applied in all sorts of industries, including transport, computer, communication equipment, home appliances and audio-video products, machines, watches and toys. Take the example of toys. Since the appearance of "tamaguchi" electronic chickens, electronic toys have become the latest fad. There are new interactive toys like Furby and the robot dog poo-chi. Recently, a famous toy manufacturer in the United States, Mattel, puts some silicon chips into conventional dolls and imbues them with the power to speak. A tiny silicon chip can thus add great value to conventional toys. If our toy manufacturing industry should wish to maintain its competitive edge, it has to catch up with this trend.

The debate which centres around the semiconductor industry has been going on in the territory for well over a decade. The Commission on Innovation and Technology chaired by Professor TIEN Chang-lin has submitted a final report where it can be seen that a consensus is gradually taking shape. The Hong Kong University of Science and Technology and the Hong Kong Productivity Council have either completed or in the process of completing research reports on the development of a semiconductor industry in Hong Kong. The findings of these reports are quite similar. Now that Mr SIN is making a call to "initiate studies" in this regard, but would that be too slow a response to make after all? If we do not strive to get a quick start, cities like Shenzhen, Shanghai and Beijing will catch up and take over us. And Singapore and Taiwan will leave us trailing miserably far behind.

I therefore strongly support the motion moved by Dr LUI Ming-wah to actively develop the semiconductor industry in Hong Kong as a foundation of technology-based industries.

Mr Deputy, I so submit.

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

**PROF NG CHING-FAI** (in Cantonese): Mr Deputy, in the face of trade liberalization and the fast growth of information technology, plus the challenges brought about by globalization of the world economy, there is no choice left for our economy but to move in the direction of restructuring. Not only do we have to overcome the difficulties encountered in recent years on international finance,

trade and transport, real estate and the tourist industry, but we also need to explore and enhance our competitive edges. Besides, we should strive to become a hub of innovation and technology and to provide assistance to technology-based industries. For in this time and age of knowledge, innovation and technology have become the major engines of economic growth. It is a conclusion so reached in the report by the Commission on Innovation and Technology chaired by Prof TIEN Chang-lin. It seems to be also a social consensus reached in the wake of the devastations of the Asian financial turmoil. The motion moved by Dr LUI Ming-wah to urge the Government to actively develop the semiconductor industry in Hong Kong can be said to be a concrete step taken with this consensus in mind.

Semiconductor technology is a kind of micro-electronic technology. It can truly be called high technology. In 1947, three scientists of the Bell Laboratory in the United States invented the first semiconducting triode. It is one of the most important inventions of the century. The world-famous Silicon Valley in the United States started off as a centre of semiconductor technologies. It has since become the greatest centre of micro-electronic industries in the world and the ninth manufacturing centre in the United States. From the 1970s to the 1980s, there were considerable developments in the semiconductor and micro-electronic industries in Hong Kong, and this resulted in our export volume of radios, electronic watches, toys and calculators ranking among the first in the world. Our watch industry is among the largest exporters in the world since 1978. The fact that our watch industry has been able to maintain a world-class ranking is largely attributable to our semiconductor industry which has been providing our watch manufacturers with technologically simple watch movements at very cheap prices. That shows the semiconductor industry can create a great complementary effect. It is unfortunate that the pre-reunification Administration did not attach any importance to industries and there was no encouragement given to upgrading our industries and to promoting research and development. It is true to say that we have a semiconductor industry, but it has stayed at a very primitive state. Just now many Honourable Members have mentioned the earthquake in Taiwan and the rapid economic growth in the Mainland, all these have produced great demands for silicon chips. That has given us an opening and much room to develop our semiconductor industry. We must seize this opportunity and develop our semiconductor industry.

Mr Deputy, now that we are in the 21st century, we must inject new vitality into our semiconductor industry, and one of the requisites to achieve this

is to attract talents into the industry. The dazzling achievements of the Silicon Valley are a result of the pooling of all talents from all over the States and the world. Looking around in Asia, we are the most ideal place to pool talents from all parts of the world. First of all, we have our own talents. Many of our universities have departments in micro-electronics and they serve as a training ground for our talents in micro-electronics. At the Hong Kong University of Science and Technology, there are excellent facilities like a wafer production laboratory. The great amount of talents produced by our universities annually can be said to have no chance to serve their native place. They have in turn become targets of headhunters from our neighbours.

For those overseas experts in semiconductor industry, Hong Kong is more attractive than Taiwan because it has the language and culture of the Chinese, and it is a city with advanced information and is a meeting place of the East and West. Some people told me that since the Hsinchu Science Park in Taiwan was located in the rural area and there were other international political reasons, many foreign businessmen preferred to come to Hong Kong. Some people in Taiwan also liked to come to Hong Kong to further develop their career in a place like Hong Kong which is situated in a place between the Straits. As for mainland talents who have studied overseas, some of them also wish to come to Hong Kong to work. For in this Chinese society of ours, it can provide them with opportunities to further their career. All these show that Hong Kong is a place endowed with qualities which can attract talents in science and technology. I think the proposal to develop the semiconductor industry is a practical attempt to attract talents. Not only can it provide employment and career opportunities for our graduates in micro-electronics, but it can also attract talents from overseas.

From its first appearance in 1947, micro-electronics technology has a history of some 50 years only. But it is growing at an astonishing speed. In 1958, it was developed into the integrated circuit technology. Now a chip can integrate as much as one million electronic components or more. There are three "micros" in micro-electronics technology. They are: micrometres in terms of its dimensions, microwatts in energy consumption and microseconds in its speed of signal transmission. It has four outstanding qualities: ideal in design, clean and environmentally friendly, lowest in cost, and finest in workmanship. It is because of these qualities of innovation and technology that a silicon wafer that worths only about US\$10 to a factory can fetch a price of a few thousand US dollars when it leaves the factory. It is even more expensive

than gold. It can be said that semiconductor and micro-electronics technology are really technologies which will turn stone into gold. Do not forget silicon comes from the soil. This shows the tremendous power of knowledge. It shows also that the development of semiconductor industry is one of the best ways to pool talents and develop a knowledge-based economy for Hong Kong.

Mr Deputy, given the extraordinarily rapid development of semiconductor technology, it is a common belief among scientists that micro-electronics will soon develop into semiconductor nanometre electronics and semiconductor photon electronics. Now people are talking about the so-called quantum computer. The first photon computer was developed in Europe a few years ago. All these sound very attractive to young talents in science and technology. If we can seize this golden opportunity and actively develop the semiconductor industry, in the medium range we can expect to see a boost in our economy, a rise in employment and an increase in our competitiveness in the globalization drive, and we can also be assured of a place on this rising and breathtaking stage of semiconductor developments.

Lastly, I would like to add a few remarks. Today some Honourable colleagues have pointed out that Hong Kong possesses the conditions to develop the semiconductor industry. Actually, Mr SIN Chung-kai is quite positive in his views on this issue, but his amendment only points out that the words "actively develop" in Dr LUI Ming-wah's motion should be replaced by "initiate studies". In other words, I think Mr SIN's amendment is not consistent with the content which he is trying to say. From the wording of his amendment, it can be seen that it is behind the times, so I will not support his amendment.

With these remarks, I support the original motion moved by Dr LUI Ming-wah.

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

(No Member responded)

**DEPUTY PRESIDENT** (in Cantonese): Dr LUI Ming-wah, you may now speak on Mr SIN Chung-kai's amendment. The time limit is five minutes.

**DR LUI MING-WAH** (in Cantonese): Mr Deputy, I wish to thank Honourable colleagues and the Secretary for Trade and Industry for their clarity of mind in analysing this issue of the semiconductor industry and the support they have given to the motion. I would like to express my heart-felt thanks for them. As for the amendment proposed by Mr SIN Chung-kai, I would like to add a few words. First, the semiconductor industry is the foundation of technology-based industries and the mainstay of various industries. The information technology industry is only a small part of technology-based industries. It would be against the original intent of the motion if the influence of semiconductors on high technology industries is thus restricted to information technology industry. Therefore, I hope Mr SIN Chung-kai will take the trouble to look into the history of the development of industries, high technology industries in particular. Second, the Government has been holding talks with H & Q Asia Pacific (Hong Kong) Limited for over a year concerning the latter's plan of investing in the semiconductor industry here. I hope the results of the talks will come out very soon. Why does Mr SIN Chung-kai call for the Government to initiate studies on whether Hong Kong possesses the conditions to develop the semiconductor industry and the feasibility of doing so now? Does that imply that the Government has not done enough preparation work before starting with the talks? Or does it mean that the H & Q Asia Pacific (Hong Kong) Limited which has made massive investments in the Taiwan semiconductor industry is wasting everybody's time? Maybe Mr SIN Chung-kai's antenna is too insensitive to receiving such information. Honourable colleagues, I am astonished by Mr SIN's amendment. He is reducing the original motion, which is perched on a policy level, to an operational level of a feasibility study. That is baffling. I therefore call on Honourable Members to veto Mr SIN's amendment and support the original motion instead. Thank you.

**SECRETARY FOR TRADE AND INDUSTRY** (in Cantonese): Mr Deputy, I am very grateful to the Honourable Members who have just spoken now. They have given a lot of valuable advice on how to develop the semiconductor industry in Hong Kong.

Doubtless the semiconductor industry and its affiliated industries are an important foundation in the host of advanced products and services in this information age. The semiconductor is the most important component in almost any electronic and telecommunications product.

The astonishing growth of information technology in recent years and especially the developments in the Internet, networking and communication systems and consumer electronic products have made the role played by the semiconductor in modern industries more outstanding.

The semiconductor industry comprises many production procedures, each of which has the capacity to develop into a full-scale industry of its own, for example, the design of ICs, the manufacturing of moulded cases and single crystal silicon chips, the sealing and testing of components, and product applications. Therefore, many semiconductor companies would usually associate with some technology companies so as to achieve a collective and complementary effect.

According to information available, the global total production value of semiconductors in 1999 was US\$160 billion. There are forecasts that the figure will grow to US\$586 billion by 2009. In other words, the annual increase can be as much as 15% to 17%. The room for development is very great indeed.

The growth of technology in the semiconductor industry is advancing with giant strides. It is estimated that advances in semiconductor technology will be able to double the density of the circuits in a chip in every 18 months. This enables a greater number of more up-to-date and faster functions in every chip. New consumer electronic products will hence be introduced into the market in place of old ones, creating and meeting the ever-increasing market demands. Therefore, intellectual property rights in chips become a component with the greatest added value in electronic products.

Mr Deputy, there are many companies in Hong Kong which are engaged in the semiconductor business. They produce ICs used in watches, calculators, voice synthesizing and audio products. Although local IC design companies usually rely on foreign manufacturers for their chips, there are some local companies which are doing high-end design work. Some companies provide high-density electronic sealing services.

The semiconductor manufacturing industry has very stringent demands on capital and technology. Therefore, many of the major semiconductor companies are multinational corporations. At present, there are about 20 of such multinational corporations and they occupy a market share of almost 80% in the global semiconductor business. When business decisions are to be made on

investing in semiconductor and affiliated industries, the risk involved and other commercial considerations will certainly be taken into consideration. At the same time, these companies will also consider the many favourable conditions and advantages which Hong Kong possesses. These will provide some technology and knowledge-intensive industries such as the semiconductor industry with excellent chances of development.

First, we have world-class infrastructure. For example, we provide high quality and reliable water and power supplies which are very important to hi-tech production procedures such as the production of silicon chips. Our excellent transport and communication facilities give the best support to businessmen faced with rapid market developments. These can help them meet the changing needs of the market and access the latest market and technical information.

Industries which rely on technology have great demands on capital. We are a widely-recognized world-class financial centre and we possess a mature capital market. We are the greatest Asian market for venture capital. The venture capital we manage values at more than \$90 billion. These favourable conditions are conducive to the financing of a capital-intensive industry like the semiconductor industry.

In addition, we maintain an excellent tradition of the rule of law and we have world-class laws and regulations on intellectual property rights. All these factors provide an important foundation for the promotion of innovation in and the development of knowledge-intensive industries.

Apart from the above-mentioned fundamentals, the SAR Government has adopted a series of measures and policies in recent years which are aimed at promoting innovation and technology. All these will provide excellent room for the development of technology-based industries such as the semiconductor industry.

For example, we injected \$5 billion last year to set up the Innovation and Technology Fund and this will give a great impetus to the promotion of innovation and the upgrading of our technological levels. The Fund has a number of subsidy schemes to foster collaboration between the industries and the academic circle. The schemes will encourage the academic circle to transform the results of scientific research into new products and services through collaboration with the industries. In the end, the technology content of our



industries as well as their competitiveness in the international market can be enhanced. The semiconductor industry will certainly be one of the beneficiary industries.

The Applied Science and Research Institute which is currently being planned will pool resources for mid-stream R&D projects so as to develop and introduce general technologies which have not yet entered the stage suitable for commercial purposes. The Institute will become an important research support centre for the technology-based industries.

The Hong Kong Science Park which is currently under construction will provide an excellent R&D base for technology-based industries. Phase One of the Science Park is attracting a good tenancy rate. A multinational corporation engaged in the semiconductor business has become the first tenant of the Science Park. We are also planning to merge the Hong Kong Science Park, the Hong Kong Industrial Estates Corporation and the Hong Kong Industrial Technology Centre Corporation to streamline the existing structure and raise service quality.

To promote the development of technology-based industries, the training of talents is an indispensable task. The Government has been putting in a lot of resources to train talents in this respect. Our spending in education has always taken the first position in our recurrent expenditure. The high quality technological and management talents we have produced over the years are a key to the development of technology-based industries.

We are well aware of the need to open our eyes on the world and to take in all useful ideas. Therefore, apart from training talents locally, the Government launched an Admission of Talents Scheme at the end of last year. This Scheme enables more overseas talents with professional knowledge and expertise to come here to work and to create a more favourable environment for our development into a centre of innovation and technology.

At the policy level, we will reorganize the organization framework for the formulation of policies on innovation and technology. We will form a high-level advisory body answerable to the Chief Executive to give advice on policies on the development of innovation and technology in Hong Kong. We will also set up a committee headed by the Financial Secretary to co-ordinate policies on innovation and technology. All these measures will create more favourable conditions for the development of knowledge-intensive industries.

I have just mentioned that multinational corporations play a vital role in the semiconductor industry. Therefore, it will be of great advantage to us if we can attract these corporations to invest in the territory. Over the past few months, the Industry Department has helped two large American semiconductor companies to finalize their investment plans for Hong Kong. These plans include the setting up of a regional headquarters and a R&D centre in Hong Kong. The Department is presently following up the plans of two other overseas semiconductor companies to set up research centres here.

Facts have shown that quite a number of foreign corporations have recognized our conditions and advantages conducive to the development of the semiconductor industry here. It is very encouraging to see foreign investors have voted in confidence in our aspirations to develop technology-based industries.

Just now Mr SIN Chung-kai mentioned the opportunity brought to the development of our semiconductor industry by China's accession to the World Trade Organization (WTO). China is the seventh largest economic entity in the world. Its accession to the WTO will further consolidate economic reforms in the Mainland and speed up the liberalization of the market. The subsequent trade with the rest of the world and investment activities are bound to surge. Such developments will bring in great opportunities to our various industries and trades, including our technology-based industries.

For example, the telecommunication industry has a very low market penetration rate in the Mainland and hence it has vast potentials for development. The opening up of the telecommunications market to foreign companies can bring in foreign capital, expertise and talents. These will facilitate the growth of the telecommunications industry in the Mainland. For our enterprises, it will mean lots of business opportunities. As the semiconductor industry is the backbone of products and services in information and communications, it will certainly play an important role in such a process. When coupled with the above-mentioned conditions and measures conducive to the development of the semiconductor industry, we believe there is indeed great room for the local semiconductor industry to develop.

Just now Dr LUI Ming-wah and Mr SIN Chung-kai mentioned the proposal to develop a Silicon Harbour. The relevant company approached us last year and expressed their interest in launching a plan for a Silicon Harbour in the territory. The plan encompasses chip production plants and it is also hoped that other companies related to the industry will also be attracted to come here so that the up-stream semiconductor research efforts can be incorporated with the down-stream production of electronic and computer peripherals. We are presently discussing with the company on the details of the plan and we are making an assessment of its viability and economic benefits. We are, however, unable to disclose the details of the plan at this stage, but we will certainly report the results of the talks to the Legislative Council once we have made a decision on that matter.

Mr Deputy, the Government has always upheld the principle of free market economy. We are always working hard to create the most business-friendly environment for all sectors, be they the manufacturing or services sectors. In the face of the challenges brought about by a knowledge-based economy in the 21st century, we will work extra hard to provide more favourable conditions for the development of various innovative and knowledge-based industries.

It remains, of course, that business decisions are best left to the sectors concerned. For an industry like the semiconductor industry which is growing and changing so fast and is so knowledge and capital-intensive, it is all the more important for industry participants to take the lead to seize the opportunity, meet the challenges and explore new horizons.

We will continue to provide the best business environment and support to the industry and to promote the development of innovation and technology. We believe with the full co-operation of the industry we can certainly create better conditions conducive to the growth of the semiconductor industry and other technology-based industries, hence providing a greater driving force for our economic development. This will in turn create more employment opportunities in our labour market.

Thank you.

THE PRESIDENT resumed the Chair.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the amendment moved by Mr SIN Chung-kai to Dr LUI Ming-wah's motion be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mr SIN Chung-kai rose to claim a division.

**PRESIDENT** (in Cantonese): Mr SIN Chung-kai has claimed a division. The division bell will ring for three minutes.

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

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

Functional Constituencies:

Dr Raymond HO, Miss Margaret NG, Mr Ronald ARCULLI, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Mr Howard YOUNG and Mr LAW Chi-kwong voted for the amendment.

Mr LEE Kai-ming, Dr LUI Ming-wah, Mr HUI Cheung-ching, Mr CHAN Kwok-keung, Mr CHAN Wing-chan, Dr LEONG Che-hung, Mr WONG Yung-kan and Mr FUNG Chi-kin voted against the amendment.

Geographical Constituencies and Election Committee:

Mr Albert HO, Mr Martin LEE, Mr Fred LI, Dr YEUNG Sum, Mr Andrew CHENG, Mr SZETO Wah and Mr HO Sai-chu voted for the amendment.

Miss CHAN Yuen-han, Mr Gary CHENG, Mr Jasper TSANG, Mr TAM Yiu-chung, Mr NG Leung-sing, Prof NG Ching-fai, Mr MA Fung-kwok, Mr CHAN Kam-lam, Mr Ambrose LAU and Miss CHOY So-yuk voted against the amendment.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 15 were present, seven were in favour of the amendment and eight against it; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 18 were present, seven were in favour of the amendment and 10 against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negatived.

**PRESIDENT** (in Cantonese): Dr LUI Ming-wah, you may now speak in reply. You still have seven minutes and 12 seconds.

**DR LUI MING-WAH** (in Cantonese): Madam President, I think I have said what I want to say. However, I would like to say that I am very moved to see that Honourable Members are so patient in discussing this issue up to this moment of half past four in the morning. Besides, it can be seen that Honourable Members have shown their concern for high technology industries in Hong Kong and our economy. Therefore, I would like to express my heart-felt gratitude once again to them. Thank you.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That Dr LUI Ming-wah's motion, as set out on the agenda, be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

**PRESIDENT** (in Cantonese): I think the question is agreed by a majority of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections and by the Election Committee, who are present. I declare the motion passed.

**PRESIDENT** (in Cantonese): The second motion: The system of long-term employment for construction workers.

## **THE SYSTEM OF LONG-TERM EMPLOYMENT FOR CONSTRUCTION WORKERS**

**MR ANDREW CHENG** (in Cantonese): Madam President, I move the motion as set out on the Agenda.

Madam President, the construction industry in Hong Kong has been operating under a sub-contracting system. After a contractor has been commissioned a works project, he will contract out the works to other sub-contractors. With this system of sub-contracting in tiers, when the work is finally contracted out to the last sub-contractor, the workers hired are usually temporary workers. As work has to be done by so many sub-contractors, and since daily wages are paid in most cases, there is an extremely high mobility among workers. Although there is great flexibility under this system, the workers do not have a fixed employer and any job security. Working in construction sites has always been regarded as hard and dangerous work, it is

difficult to attract newcomers to the construction industry. On the other hand, due to the temporary nature of casual workers in construction sites, a project may be carried out by many different workers.

Last February, the Government and some chambers of commerce, trade unions, members of the Executive Council and many members of the Legislative Council signed a pledge to promote a system of long-term employment for construction workers in a bid to improve safety in construction sites and project quality. However, a year has passed and there has not been much progress. The employer subsidy scheme of the Construction Industry Training Authority (CITA) has only approved of some 200 apprenticeship contracts for monthly-paid workers.

The Democratic Party is of the view that job security and good prospects are important factors to attract newcomers and retain the incumbent. This can also make workers more committed to their work and raise the quality of the works. The reason why I have proposed this motion debate is to urge the authorities concerned to adopt positive measures to promote the system of long-term employment for construction workers so as to provide workers with a greater sense of belonging and better job security.

In an opinion survey carried out by the Democratic Party last week in Central, Mong Kok, Ma On Shan and Tseung Kwan O, a total of 310 construction workers were interviewed. As much as almost 70% of the interviewees agreed to the idea of long-term employment and 74% of the interviewees thought that the long-term employment system would give greater protection to their income and would serve to improve industrial safety.

The implementation of any new policy would badly need promotion from the Government. When we carried out the survey last week, many construction workers said that they were for the long-term employment system, but they were not optimistic that it could be realized. The Democratic Party thinks that the Government and the Housing Authority (HA) should take the lead to restrict the number of tiers of sub-contracting by stipulating it in their construction contracts. The contractors should be required to employ a certain proportion of long-term workers so as to make the sub-contractors know clearly the manpower requirements. In this way, they can plan the number of long-term workers to be hired and gradually change the former sub-contracting system for casual workers to an organized specialist sub-contracting system. The system of long-term

employment can be implemented first in certain sites which have long-term needs. Trades like levellers, plasterers and unskilled workers may adopt the system in the outset and gradually the system can be applied to other trades.

In the opinion of the Democratic Party, there should not be some kind of across-the-board restrictions to limit the number of tiers involved in the sub-contracting system. The authorities concerned may study into the suggestion that some standards can be set according to the value or the scale of the project in question. The authorities may also consider the possibility of splitting up certain large projects so as to increase the chances of small and medium contractors in their bid to secure the projects. These contractors can thus take part in the tender directly and hence the number of tiers involved in the sub-contracting system can be reduced.

In addition, the Government should invest more resources into strengthening the skills and occupational safety training for construction workers and facilitating them to acquire multi-faceted skills, so as to upgrade their skills and enhance their awareness of industrial safety. If a worker can acquire one or two additional skills, then they can do other kinds of work if the trades they are engaged in are no longer required in the site. That will attract employers to hire these workers as long-term workers. The CITA should make a review of the contents of the current trade tests and gradually expand the number and scope of these tests to meet the needs of the industry. More construction workers can hence be attracted to take these tests.

The authorities concerned should also promote a registration system for construction workers and establish a database of human resources in different trades of the industry. These will help the authorities to predict the manpower demand and supply in the construction industry and devise training plans for the industry. With the provision of greater job security for workers and the employment of long-term workers by the contractors, it is hoped that the professional level of the industry can be raised and the works quality and safety of the industry can be improved.

Madam President, there are two amendments to the motion proposed by me today. The amendment proposed by Mr CHAN Wing-chan is basically not much different from the proposals found in the Supporting Pledge for Long-term Employment for Construction Workers. But the Democratic Party has reservations about the premise of the amendment. It is because the premise



seems to place the blame of the quality problem in buildings entirely on the construction workers. I will discuss this point in greater details when I speak in response to the amendment later.

As for the amendment proposed by Mr HO Sai-chu, the Democratic Party cannot agree to it because we think that it is taking us nowhere. The time now is not whether we should think about to implement the system of long-term-employment for construction workers or not. The Supporting Pledge has been signed for one year and why is Mr HO so conservative in this matter and only willing to use words like "study actively" and "on a trial basis"?

Last year when the Government and other related organizations signed the Supporting Pledge, the aim was to achieve within five years the target of having one third of the workers in the industry employed by specialist sub-contractors on a long-term basis. In the longer run, it is hoped that two thirds of the workers in the industry will be employed on a long-term basis. Now that a year has passed, but the progress of implementing the Supporting Pledge has been far from satisfactory. The Democratic Party understands the complexity and wide scope of construction projects, and hence part of the work must be contracted out. The amount of work in construction projects tends to fluctuate and that is why the industry prefers to hire casual workers. However, all these should not be used as excuses to defer the implementation of the system of long-term employment for construction workers. The Democratic Party has made many suggestions in this regard and we hope that public officers can comment on these later.

With these remarks, Madam President, I beg to move.

**Mr Andrew CHENG moved the following motion: (Translation)**

"That this Council urges the authorities concerned to adopt positive measures to promote the system of long-term employment for construction workers, which include:

- (a) conducting a comprehensive review on the progress of implementing the 'Supporting Pledge for Long-term Employment of Construction Workers' and expediting the implementation of the proposals contained therein;

- (b) taking the lead to restrict the number of tiers involved in the sub-contracting system and require the contractors to employ a certain proportion of long-term workers when awarding government and Housing Authority construction contracts, as well as encouraging private contractors to employ workers on a long-term basis;
- (c) promoting a registration system for construction workers and establishing a database of human resources in different trades of the industry;
- (d) strengthening the training in skills and job safety for construction workers and facilitating them to acquire multi-faceted skills, so as to upgrade their skills and enhance their awareness in industrial safety; and
- (e) reviewing the contents of trade tests for the construction industry in order to meet the needs of the industry;

so as to provide construction workers with better job security, to ensure stable human resources for the construction industry and thus to upgrade the project quality and safety of the construction industry."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the motion moved by Mr Andrew CHENG, as set out on the Agenda, be passed.

**PRESIDENT** (in Cantonese): Mr CHAN Wing-chan and Mr HO Sai-chu will move amendments to this motion. Their amendments have been printed on the Agenda. In accordance with the Rules of Procedure, the motion and the two amendments will now be debated together in a joint debate.

I will call upon Mr CHAN Wing-chan to speak first, to be followed by Mr HO Sai-chu; but no amendments are to be moved by these two Honourable Members at this stage.

**MR CHAN WING-CHAN** (in Cantonese): Madam President, recently there has been much public concern about the quality and safety problems which surfaced in the Home Ownership Scheme blocks built by the HA. Some members of the HA and government officials put the blame on the low quality of the workers and that their lack of professionalism has reduced the quality of the flats. As a matter of fact, problems like substandard piling and site settlement are matters beyond the control of workers. They all work according to instructions. All these allegations are very unfair to workers. The fact that there are numerous quality problems in construction, especially projects undertaken by the Government and the HA, can be traced back to the award of contracts to the bidder with the lowest price in a tender and that there is no regulation on the number of tiers in sub-contracting. Casual workers are found on most construction sites. It is hard to control the quality of the works.

The sub-contracting system has been in use in the local construction industry for a long time. There are indeed merits with this system. It is highly flexible. After the contractor has made a successful bid for a large project, he can contract out some of the works processes. Since there are many processes in a construction project, there is an elaborate division of labour. The contractor will contract out the processes and the specialist sub-contractors can each engage in the work of their specialty.

However, since the projects of the Government and the HA are awarded to the lowest bid, the contractor has to contract out at even lower prices to the sub-contractor in order to make profits. The sub-contractor will then contract out the works at even lower prices. In some cases, the number of tiers involved in sub-contracting may be seven or eight, and the sub-contractor may be just a construction worker. In other words, he is both a worker and a sub-contractor. In this multi-tier sub-contracting system, the sub-contracted works become something unattractive and will not bring in much profit. These sub-contractors-cum-workers have to do much more work to make a living. For example, a bricklayer has to lay a certain area of bricks a day to make a living, now he has to lay five times as much every day to make his ends meet. Moreover, when workers work to meet deadlines, they may neglect safety considerations and so industrial accidents are prone to happen.

Therefore, restricting the number of tiers in sub-contracting, implementing the system of long-term employment and enabling workers to have a steady source of income are of vital importance to raising building quality. At present, when the developers in the private sector hand over a certain project to the contractors, they will limit the number of tiers in sub-contracting. The number of tiers cannot be more than three or four. The smaller the number of tiers, the easier can the contractor or sub-contractor control the quality and hence quality can be assured.

In addition, we suggest imposing regulation on the sub-contractors. At present, the Government and the HA maintain registers of contractors. Only those contractors which have a satisfactory performance in works projects and with a substantial financial capacity can be listed in the register. We suggest that the authorities concerned can set up a similar register for sub-contractors in the construction industry. Rules can be laid down to require contractors to contract out works only to those sub-contractors in the register. I believe sub-contractors will complete works with a better quality for fear that they will be struck off from the register.

The consultation paper published by the HA last month, entitled Quality Housing Partnering for Change, has made it clear that the HA supports an organized sub-contracting system and the compilation of a list of qualified sub-contractors. I hope the HA can put this into practice as soon as possible, and the Works Bureau can do the same thing expeditiously.

The construction industry is well aware of the defects of excessive sub-contracting and the system of casual employment. For example, the Hong Kong Construction Industry Employees General Union has all along been in active support for the implementation of the system of long-term employment for construction workers. Much work has been done in this respect. In February 1999, the Union together with the Real Estate Developers Association of Hong Kong, the Hong Kong Construction Association and the CITA signed the Supporting Pledge for Long-term Employment of Construction Workers. The advantage of such a system is that it can give workers steady employment. They do not have to work only when they are hired and that they do not have to worry about their day-to-day living. Under the system of long-term employment, workers do not need to sub-contract works and they do not need to work for a sub-contractor who in turn is also working for another sub-contractor. Their income will be protected and the quality of the works will not suffer.

It is necessary that contractors will have to implement the system of long-term employment for construction workers, and the sub-contractors will need to do the same and to employ a certain proportion of workers on a long-term basis. Of course, we know that the prerequisite is that there is a sufficient number of works contracts in order that it is possible to employ workers on a long-term basis. If the Government can set up such a register of sub-contractors, it would serve to encourage those sub-contractors with a good quality and are financially sound to employ workers on a long-term basis. As a matter of fact, some sub-contractors, such as those in the lift business, can employ more workers on a long-term basis since they have a sufficient amount of work. Under such a system, workers do not have to worry about their work and the employers can arrange workers to receive training to upgrade their skills or in industrial safety. These will serve to upgrade their skills and give them a greater sense of belonging. In the end, the project quality can be raised.

Mr HO Sai-chu's amendment to the motion deletes the words "restrict the number of tiers involved in the sub-contracting system". We cannot agree to that, for the regulation on the sub-contracting system has a direct impact on the implementation of the system of long-term employment. The greater the number of tiers in the sub-contracting system, the greater will be the number of casual workers. This will affect the implementation of the system of long-term employment. Only when the quality of sub-contractors and the number of tiers in the sub-contracting system are under control and regulation can the sub-contractors employ a certain number of workers on a long-term basis when these sub-contractors have a certain amount of work at hand.

We understand that the construction industry is an old industry and that the sub-contracting system has been in use for a long time. To implement employment on a long-term basis, we need to have the consent of both the employers and the workers. As far as I know, some people in the industry still find it hard to use long-term employment as a condition of employment. The employers may worry about giving protection to workers under the Employment Ordinance. Workers may not be able to adapt to the restraints of employment on a long-term basis. To make this system work, the Government must enhance its publicity efforts. It remains, of course, that publicity alone will not make the system work. The Government should take the lead to stipulate in the terms of the contracts that contractors must employ a certain proportion of workers on a long-term basis and also the number of tiers in sub-contracting permitted. It is unfortunate that the Government is saying that it is still in the

process of discussing the matter with the industry and there are no concrete moves yet. I think the Government should work harder to implement the system of long-term employment and impose restrictions on the number of tiers in sub-contracting as soon as possible.

I urge all Honourable Members to support my amendment. Madam President, I so submit.

**MR HO SAI-CHU** (in Cantonese): Madam President, the Liberal Party believes that no one will oppose to raising the quality of our construction, making our buildings safer or improving industrial safety for the workers. Our only concern is that we must accurately identify the causes of the problems, suit the remedies to the case and offer effective solutions.

The original motion proposed by the Democratic Party and the amendment proposed by the Democratic Alliance for the Betterment of Hong Kong (DAB) have both attributed the problem of defective buildings to the current employment system for construction workers. They think that the expeditious implementation of the system of long-term employment for construction workers would solve the problems related to the quality and safety of buildings. The Liberal Party thinks that this approach of tackling the problem would be too ill-considered and it serves only to over-simplify the issue. If this system is to be put into practice rashly, it would only cause undesirable outcomes which may be contrary to the expectations.

First of all, we must recognize that the quality of our construction is no worse off than the other advanced countries. We should not deny categorically the quality of our construction simply by looking at the substandard buildings which are discovered in recent times. They are just isolated incidents. More importantly, the quality problem associated with public housing which has aroused so much public concern recently is in fact due to a number of reasons. We should not direct our criticisms against the construction industry alone or to put the blame on the system of employment for construction workers. The loopholes of the tender system and the defective supervisory procedures of the government departments are all possible causes of the problem. Before a thorough investigation is made, we should not jump to any conclusion and place the blame on the construction industry or the system of employment for construction workers.

Second, the system of long-term employment is not a panacea for all our problems. It is not an effective cure for every defect that we may encounter. The system has its pros and cons. The most obvious one is when the contractors employ a number of workers on a long-term basis, the number of workers readily available in the market will be reduced. When there is a boom in our economy, and when lots of construction projects are to be undertaken, there may be a shortage in the supply of construction workers. In addition, when the contractors employ workers on a long-term basis, the construction costs may go up and in the end the costs will have to be borne by those who purchase the flats, that is, members of the public. Therefore, we should not harbour any unrealistic hopes for this system.

Third, it will be no easy task for the construction industry to abandon its well-established system of employing workers on casual basis and convert to the system of long-term employment. It is because such a conversion will mean changes in the system upon which the entire construction industry operates and it will also involve changes in the skills of the workers. In the absence of any matching systems and measures, it will be impossible to implement the system of long-term employment. Let me try to explain this.

Insofar as the operation of the construction industry is concerned, we know that the construction projects in both the public and private sectors have been using the tender system. When a contractor is awarded a project, he will hire workers who will suit the needs of the project in terms of its scale and other particular requirements. Then the project will be contracted out in parts. If we are to mandatorily require contractors to hire workers on a long-term basis, then we need to devise a new mechanism whereby the contractors will be guaranteed a sufficient and steady amount of work so that they can be able to maintain a team of construction workers on a long-term basis.

Under a system of long-term employment, if some contractors dismiss some workers, representatives of the labour sector will hurl attacks at these contractors and accuse them of being unscrupulous. When contractors are unable to maintain a large team and cannot pay workers their salary, these representatives of the labour sector will demand to know why salary is not paid to the workers. From a business perspective, this is no easy task at all.

As to the question of the skills of the workers, if contractors are to hire workers on a long-term basis, they would naturally hope that the workers hired by them are capable of doing many types of work and that they will perform satisfactorily in every skill. However, we do not have any mechanism to date which can accurately determine the number of workers for different trades required in the construction industry, or assess the skills of the workers for upgrading purposes. Since the industry signed at its initiative a Supporting Pledge for Long-term Employment for Construction Workers last year, work on setting up a registration system for construction workers is still underway. So long as this registration system is still not in place, it will remain hard to raise the quality of the skills of the workers effectively. In fact, the Hong Kong Construction Association has been proposing the establishment of this registration system for many years, but it has met opposition from the labour sector. A few years ago, the labour sector was still unwilling to set up this registration system, not until the Supporting Pledge was signed one year ago did it agree to the setting up of this registration system. However, it is unfortunate that up to the present moment, the system has still not yet been implemented. This precludes us from effectively raising the quality of the skills of the workers and to ascertain their number in any unequivocal manner.

Madam President, the setting up of a system of long-term employment is an important issue, one which will affect the entire industry. We must approach this issue with a prudent and responsible attitude. Unless and until there is sufficient preparation for it and repeated attempts to affirm its positive effect and the absence of any negative impact, then it can be put into practice. Otherwise, it must not be introduced rashly. I wish to point out in particular that the objective of the Supporting Pledge is to improve site safety and project quality and the system of long-term employment is only one of the many ways to achieve this objective. The Supporting Pledge only encourages contractors to use the system for some of their workers and it does not intend to impose any mandatory requirements. However, the spirit of the Supporting Pledge has been misinterpreted by the Democratic Party and the DAB.

In view of this, the Liberal Party is unable to support the original motion proposed by Mr Andrew CHENG and the amendment proposed by Mr CHAN Wing-chan. They propose that the Government and the Housing Authority (HA) should be required to hire a certain proportion of workers on a long-term basis. We are of the view that a more appropriate way is to implement the system on some of the projects of the Government and the HA on a trial basis. With



regard to this, Mr Andrew CHENG was right when he said that certain workers of certain trades in some of the projects lasting for a longer period of time can then be employed on a long-term basis. Since they have work every day, a trial on the effectiveness of the system can be conducted. The experience so gathered can then be used for future reference. In addition, we are opposed to the idea of pushing through the system of long-term employment when the number of workers in the industry has not been ascertained and when preparation is not sufficient. What we should do now is to promote actively a registration system for construction workers and establish a database for human resources in different trades of the industry as a basis for future introduction of the system of long-term employment for construction workers.

I have incorporated the above views into the amendment I am proposing. However, due to the requirements of the Rules of Procedure of this Council, a vote will be taken on Mr CHAN Wing-chan's amendment first. If it is carried, all other subsequent amendments cannot be inconsistent with the contents of the amendment previously decided. In such circumstances, I can only state reluctantly that if Mr CHAN Wing-chan's amendment is passed, I can only withdraw the amendment which I intend to propose. Having said that, I would still implore Honourable colleagues to consider the impact on the construction industry which will be caused by a rash introduction of the system of long-term employment at this point in time, and I urge Honourable Members to vote against the amendment proposed by Mr CHAN Wing-chan and the original motion proposed by Mr Andrew CHENG.

I so submit.

**MR CHAN KWOK-KEUNG** (in Cantonese): Madam President, the construction quality of many buildings has aroused much public concern and that leads to problems in the operation of the construction industry. At present, the construction industry in Hong Kong usually contracts out projects in tiers and casual workers are engaged. Different parts of the projects are contracted out to different sub-contractors. It is a common practice for one project to have five, six or seven tiers of sub-contractors. Since the sub-contractors and the workers have only a temporary employment relationship, hence no long-term commitment to their work, so there is no guarantee for quality in the construction industry and the job security of the workers. The sub-contracting system of casual workers has the advantage of being flexible and it is efficient in deploying

manpower to meet the needs arising from seasonal changes of the industry. However, due to the organization and operation of the sub-contracting system of casual workers, it is likely to lead to variations in construction quality.

It is because of this that there must be reform in the construction industry. An organized specialist sub-contractors system can make remedies for the sub-contracting system for casual workers and can effectively prevent excessive sub-contracting. For the construction workers, they will need to further upgrade their skills to improve the image of their industry. Therefore, we need to implement a registration system for construction workers and establish a database of human resources in different trades of the industry. The system will enable workers who have acquired the trade skill certificates to be registered and will help contractors or specialist sub-contractors to employ suitable craftsmen. In other words, workers must pass trade tests before they can take part in any construction project.

The importance of trade tests will certainly increase and this is especially so when the demand for the skills of the workers by the HA is increasing all the time. Recently, in its consultation paper entitled "Quality Housing Partnership for Change" the HA states that in three years' time the required proportion of workers who have passed trade tests as stipulated in all works contracts will be increased from 35% to 60%. Requirements on the qualifications of supervisory staff in construction sites are also to be raised.

As a matter of fact, the purpose of trade tests is to ensure that workers will attain certain skills levels to meet the needs of construction. That will ensure that the quality and safety of buildings will meet the standards. As such, there is no doubt about the functions of trade tests. However, an issue which warrants greater concern is how we are to enhance the skills training for construction workers.

Now the Construction Industry Training Authority (CITA) holds trade tests for workers of 16 trades in the industry. The results have been satisfactory. As at October 1999, a total of 9 127 craftsmen have passed the trade tests, representing 25% of the workforce in the industry. Apart from that, 6 404 semi-skilled workers have passed the intermediate trade tests, and that represents 18% of the workforce in the industry. Notwithstanding that, we still need more workers with recognized skills levels to join the construction industry, and if we look at the number of people who have passed the tests, the number seems to be

not enough. We must therefore organize more training for the workers. For example, we can organize more courses on basic skills and some preparatory courses for trade tests, increase the number of places for refresher courses to encourage workers to re-sit the tests, and to update the contents of the tests so as to keep the workers abreast with the technical developments of the construction industry.

On the other hand, since many experienced craftsmen are not yet used to the trade tests and therefore they are unable to pass the trade tests for construction craftsmen and get a certificate. However, we cannot deny the fact that they do have the experience and so we should give them a grace period and give them a temporary recognition of their qualifications and allow them to sit for the tests and get a certificate during the grace period. That will enable their smooth integration into the new registration system for workers and the organized specialist sub-contractors system. That will also prevent a disruption in the supply of experienced craftsmen in the industry. Moreover, the Government should encourage workers to take the trade tests through the promotional efforts of the Hong Kong Construction Industry Employees General Union.

The theory part of the trade tests may cause some resistance among construction workers. As they learn from practical experience, they may be unable to understand the theories and even if they do, that does not mean that they are able to express them in words. Some workers have said to me that parts of the tests require the candidates to answer multiple choice questions. That poses a great obstacle to those workers with poorer education qualifications and are more advanced in years. I hope that the CITA can recognize the difficulties and limitations of these workers and provide them with the necessary assistance. That includes for example, enhancing the training on a theoretical level and even to the extent of making the tests simpler and lowering the linguistic requirements.

Many employers in the construction industry claim that it is necessary for them to hire some foreign workers who are certified so as to solve the problem of the shortage of qualified craftsmen in certain trades. When the trade tests are now available and there are enough qualified local workers in many trades, there will be no need for these employers to hire foreign workers. The scope of the trade tests offered by the CITA is in fact very comprehensive and there is only a need to update these tests from time to time. I believe if only the number of

certified workers will keep on increasing, our construction industry will be able to complete all the construction projects without the need to resort to foreign workers.

Madam President, I so submit.

**DR RAYMOND HO** (in Cantonese): Madam President, the sub-contracting system in the construction industry of Hong Kong has been in use for a very long time. Its advantage lies in giving a certain degree of flexibility to the operation of the construction industry. With the rapid development of the construction industry, the system can help us meet the needs of the industry. Under this arrangement, the employment of workers on a long-term basis is not the mainstream practice. There can be no denying that the employment of workers on a long-term basis would increase the sense of belonging among workers and give some of them greater security. But if we are to implement this system in Hong Kong, we have to give serious thoughts to it.

Free market economy is practised in Hong Kong. Any terms of employment should be determined by both the employer and the employee. It is undesirable that there should be any form of restriction or intervention from the Government on the industry. From the perspective of the construction industry, employment on a long-term basis would have some impact on the costs and manpower needs. For workers with a higher level of skills, the long-term employment system would not necessarily be most advantageous to them. As there may be other factors that we may need to consider, the implementation of the long-term employment system may not necessarily improve the safety and quality of the construction industry. If the Government is set to implement such a system in the construction industry, it should encourage the industry to adopt the system at its own initiative, rather than making it mandatory. The authorities concerned can consider making joint efforts with the industry to create a more favourable environment and better conditions so as to make the system work more smoothly in the industry.

Looking at the present situation of the local construction industry, we do not think that it is a suitable time to implement the system of employment on a long-term basis across the industry. It is because the industry does not have a full grasp of the number of workers of different trades of the industry and the level of their skills. As a matter of fact, the construction industry is actively

working to set up a registration system for construction workers. To implement such a system, it is necessary to set up trade tests and a system of registration for workers. Only by setting up these systems can the number of workers, their level of skills and the mobility of workers in different trades of the industry be accurately ascertained. On the other hand, the Government should promote the training of skilled personnel in the construction industry so that more suitable workers can be employed on a long-term basis. For the contractors, they may consider hiring workers for some basic trades on a long-term basis as a start. Or the contractors may consider signing employment contracts with workers of certain trades commensurate with the contractual period of the projects.

In addition, the Government should set aside sufficient resources to promote research and development in the local construction industry and to enhance research and development in those building materials and methods which are more environmentally friendly and efficient. These include prefabricated parts and comprehensive structural designs which can reduce construction wastes and raise project quality. Workers can then also work in a safer and cleaner environment. It follows that there should be enough skilled workers as a support. So there must be training organized by the Government in this respect. This move will help raise the levels of skills and professionalism in the construction industry and enable it to catch up with those of the advanced countries. That will certainly help to attract more young people to join the industry.

Madam President, I so submit. Thank you.

**MR NG LEUNG-SING** (in Cantonese): Madam President, the formation and growth of the private sector labour market in Hong Kong has always been free and led by the market mechanism. If a private firm wishes to maintain a steady operation and a satisfactory service quality, it must have a steady staff, but if it is to maintain competitive prices for its goods, there must be a certain degree of flexibility in its employment system. For example, a number of its staff can be employed on a temporary basis. The two approaches may differ in terms of focus, but their objective is identical, that is, to gain the greatest edge in market competitions. The two approaches can complement each other in different business environment and bring in the greatest benefit to the corporation concerned.

The situation in the construction industry is somewhat unusual. The main reason is that there is a seasonal factor in the industry. Under such circumstances, the employer will think from a cost perspective and will naturally be inclined to hire workers on a temporary or daily basis. Given the high mobility of workers and the lack of stringent control and supervision, there is a certain degree of difficulty in quality control. The sub-contracting system and the daily rate system are well-established in Hong Kong and commonplace overseas. The problems of building safety and quality have only deteriorated in recent years. Therefore, though the implementation of the system of long-term employment is one of the ways to help enhance safety in construction and quality control, it is not the only way to solve the problems which the construction industry is currently facing. I believe there is still a need to tackle the problems in the areas of the mode of sub-contracting, training of personnel and supervision system.

For the construction industry, the introduction of the system of long-term employment will create some pronounced effect. The employer will need to bear fixed expenditures in staff costs. The flexibility of the seasonal deployment of human resources will also be affected. Therefore, salaries will have to be set with great prudence, and factors like construction costs will need to be taken into account since any rise will affect the company's competitiveness. For the workers, though they will enjoy a greater degree of job stability and security, the higher wages they used to earn under the daily rate system may be reduced. The flexible working hours and choice of work that they used to enjoy may also be affected.

Owing to the above considerations, I think that the approach of adopting a long-term employment system in the construction industry is in the right direction and merits our support. But we should not see the system as the only solution available. Under the present circumstances, it should be carried out on a trial basis. For example, some Honourable colleagues have mentioned earlier that some of the contracts of the projects of the Government and the Housing Authority can be used for trial purposes, whereby the contractors can be required to employ a certain proportion of workers on a long-term basis. Standards regarding the quality of the projects and the prices should be kept under constant review and the results published from time to time. If the contractors who hire workers on a long-term basis can prove that they are competitive in terms of quality and prices, it is certain that market forces will compel more contractors to adopt the system of long-term employment, without the Government taking any

promotional efforts. On the other hand, if those contractors who employ casual workers can make improvements in quality control, and if they can make their prices stay competitive, any mandatory requirement imposed on them from the Government can only serve to distort the competition mechanism in the market which is one often called the survival of the fittest. This is not conducive to the healthy growth of the construction industry.

All in all, the free market principle is also applicable to the manpower market. To address the problems of safety and quality which the construction industry is presently facing, there is a need for the Government to undertake a number of major tasks. These are to impose stricter control on safety and quality in the construction industry, devise a sound supervision system in public works, delineate liabilities and responsibilities so that contractors can feel that it is their responsibility to attach greater importance to quality, and that they should not go after quantity instead of quality. Through a stringent control of quality, a mechanism can then be formed in the market which places equal emphasis on price and quality. By that time the contractors can weigh the pros and cons themselves and make a decision on whether or not to adopt the system of long-term employment.

Madam President, I so submit.

**MR LEUNG YIU-CHUNG** (in Cantonese): No doubt the system of sub-contracting has certainly been in place for a long time and it is also because it has been in place for so long that the construction industry is facing two problems even to this time and which are very serious ones. The first is industrial safety. We can all see that industrial safety in Hong Kong is very disappointing and it makes people feel very upset. The incidence of industrial accidents is alarming. Each year an average of one in every three workers has an industrial accident. When this figure is compared with figures in other parts of the world on industrial accidents, that is very high indeed. Why is that so? One of the reasons for that is the sub-contracting system which makes industrial safety more difficult to control. For the workers, it will be difficult to provide any direct training and continued training to them in this aspect, making them more prone to neglecting industrial safety. As a result, industrial safety has become a grave problem today.

The second problem is one which happens very often. The Labour Department has also received many complaints of this kind. That is the problem of sub-contractors disappearing at a certain stage of the project. Workers will find it hard to get any compensation, and it is a frequent problem. If we do not do anything to perfect the sub-contracting system, the labour sector, especially that in the construction industry, will continue to be plagued by this problem. Therefore, I think that the system of long-term employment is one of the ways to solve these problems.

However, I would like to make one thing clear. We cannot put the blame on the workers or hold them responsible for the problems found in the projects. Take the problem of substandard piling as an example, it is definitely not caused by workers at the front line. The problem is mainly caused by engineers. Workers only follow the instructions of the engineers. They will definitely not make the decision themselves to make the piling a few inches shorter. So we cannot shirk the responsibility onto the workers. Moreover, if we want the plasterers to paint something, they will know that they need to plaster the surface first before painting it in order that the paint will be more durable. But if the sub-contractor requires them not to do the plastering and put on the paint at once, can the workers not follow the instructions of the sub-contractor? No, they cannot. That is how sub-standard work arises. So, I think we should not blame the workers for the poor quality found in construction projects, that may well be the result of the sub-contracting system.

To improve this state of affairs, the first thing we need to do is to improve the sub-contracting system. The system of long-term employment can solve some of the problems in the construction industry. As a matter of fact, when the Supporting Pledge for Long-term Employment of Construction Workers was signed, the system was commonly accepted by the three parties of employees, employers and the Government. There were only a few trade unions which did not like the idea since they felt that the system of long-term employment did not offer workers sufficient liberty and choice. However, having experienced the recent economic downturn, the workers have discovered the reality that a steady job is more desirable than the choice and liberty in finding jobs. Lately, we can notice that many construction workers are out of work. The measure to import workers frequently used by the Government is also making workers lose their jobs. The system of long-term employment may bring workers a steady income and offer some kind of assistance to them.



Another point that must be noted is that workers do not have any confidence in the present long-term employment system. Why? It is because they think that the existing system of long-term employment is merely a disguised form of contract employment. If a worker is employed in a project for 20 days, the company will claim that the worker is employed on a long-term basis. In fact, that is only a contract. And the protection which a worker receives under such a contract, such as in respect of dismissal or compensation for injuries and so on, may not be adequate. So they have no confidence in this system of long-term employment. If we are really to implement a system of long-term employment, we should not just make it a system of empty talks but to make it truly a system of long-term employment, that is, a long-term employment system in the normal sense rather than a disguised form of contractual employment.

I would also like to talk about the expectations which workers have on the system of long-term employment. If such a system is in force, their skills may hopefully be upgraded. It is because the employer may consider the fact that workers are employed on a long-term basis and so they will be made to stay in a certain department and be responsible for a certain job type. If workers are placed in another department, they will be asked to engage in another job type. In this way, the skill of the workers may improve continuously and that will be a good thing for their career development. Workers will not refuse such work for that means their skills will be upgraded and that will be of help to them when they wish to look for a job later. Therefore, I think that there is a need to put into a system of employment on a long-term basis. But it is doubtful that the Government can play the role of promoting the system of long-term employment. The Supporting Pledge may state that it is hoped that at the initial stage there will be one third of workers employed on a long-term basis and in the end there will be two thirds of workers employed in this way. Despite this, we have no idea about the timetable for it. The Government says that it hopes to achieve the above-mentioned target in five years. But whether it is possible remains a question we have to think about. I hope the Government can give us an answer.

Madam President, I so submit.

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

**MR LEE CHEUK-YAN** (in Cantonese): Madam President, on behalf of the Hong Kong Confederation of Trade Unions and the Construction Site Workers General Union, I support the adoption of the system of long-term employment in the construction industry. Just now I have listened to the speeches of many Honourable Members. I do not know what we are arguing about. It is because, first of all, we all agree to one thing, and that is, the problem of substandard housing may not have a direct correlation to the quality of the construction workers, and no one is placing all the blame on the workers. We all agree in principle that if the system of long-term employment is implemented in the construction industry, it would certainly enable workers to enjoy greater job security. It can also enable them to have a safer workplace and it will also improve project quality. We all agree on these.

After listening to all the speeches, I have an impression that the only issue under dispute is the problem raised by Mr HO Sai-chu. But that does not involve any point of principle as such, because we all agree to the system of long-term employment in principle. The Supporting Pledge for Long-term Employment of Construction Workers has been signed by all parties such as developers, construction companies and trade unions. The only point which Mr HO is disputing is whether the system should be introduced "rashly". The party which Mr HO represents insists that the system should be implemented only after the registration system for construction workers has been put in place. I think that is totally unacceptable in logic. As a matter of fact, there are not many industries in Hong Kong which have a system of registration. And those industries without any system of registration all practise the system of long-term employment. It is only the construction industry which in their opinion should adopt the system of long-term employment after a registration system is put in place for its workers. It is totally unsound in logic. I think if contractors are required to employ a proportion of workers on a long-term basis, they will naturally know how to choose workers of a good quality and employ them on a long-term basis. The argument that workers cannot be found is totally unacceptable to me, for workers can certainly be found. Contractors in the construction industry are not laymen, they will certainly know how to choose workers. They will know what workers will be able to put up a good performance and who will not. Then why is it not possible for contractors to pick workers whom they think are good enough and can be hired on a long-term basis?

Therefore, those construction companies, real estate companies or developers are only making a false representation when they signed the Supporting Pledge to implement the system of long-term employment. They are not sincere about it at all, although I hope that this is not true. And I do not want to speculate on other people's motives. However, I do wish to ask every one of us to look carefully at the motion before us today. Actually we are asking the Government to require a certain proportion of long-term workers to be employed. We are not asking for the employment of 100% of the workers as long-term workers. We are asking for the employment of a certain proportion of long-term workers when awarding government and HA construction contracts. We also hope that this system of long-term employment can be implemented expeditiously. If the Government does not impose any requirements for this, we will really have no idea of when this system of long-term employment can be implemented in the construction industry. Therefore, I hope Mr HO Sai-chu will look at the motion again, and if we are all sincere about it, then we should all support this motion and the stands of Mr Andrew CHENG and Mr CHAN Wing-chan. Thank you.

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

(No Member responded)

**PRESIDENT** (in Cantonese): Mr Andrew CHENG, you may now speak on the two amendments. Your time limit is five minutes.

**MR ANDREW CHENG** (in Cantonese): Madam President, the time now is already 5.30 in the morning, so I do not wish to read out in detail the speech which I have prepared beforehand.

Earlier in the debate I have mentioned briefly the views put forward by Mr HO Sai-chu and the views of quite a considerable number of contractors in the construction industry. I believe that after they have signed the Supporting Pledge for Long-term Employment of Construction Workers, they will at least give it their spiritual support. However, when it comes to action, they are still not making any moves. I hope very much that this Supporting Pledge will be put into practice. I do not recall if Mr HO Sai-chu has signed this Supporting

Pledge, it seems to me that he has done so. My amendment has stated the spirit of the Supporting Pledge in its entirety. I do not understand why Mr HO expressed those views in his speech earlier.

After all, since the meeting today has been so lengthy and so not many Honourable Members have taken part in the debate on this motion or cast their votes on it. However, I wish that the Government will put into practice this system of long-term employment for the construction industry expeditiously. I will pass the ball to the Secretary for works. He came here at about 4 am, so we should let him speak now.

**SECRETARY FOR WORKS** (in Cantonese): Madam President, with regard to the motion and amendments proposed by Mr Andrew CHENG, Mr CHAN Wing-chan and Mr HO Sai-chu on long-term employment for construction workers, I would like to respond to them in the public works projects context. The Secretary for Education and Manpower will present his views on other related issues later on.

First of all, on the question of long-term employment, the Government supports this advocacy of the construction industry in principle in the hope that it can improve site management and safety and also upgrade the quality of construction works. Yet, I wish to make it clear at the outset that when the Supporting Pledge for Long-term Employment of Construction Workers was signed on 1 February 1999, the industry had no consensus view on the approach to implement long-term employment and there was not a proposal agreeable to all. So, the Supporting Pledge was mainly meant to support the spirit of long-term employment.

In considering the potential benefits to the industry in the implementation of long-term employment, we should not overlook certain practical problems. Construction projects involve a great diversity of works with multifaceted procedures and a short work cycle. For this reason, if contractors must employ a certain number of long-term workers but are not awarded adequate contracts for works, it will not only be counter-productive in terms of cost-effectiveness, but may also lead to operating difficulties. Moreover, the employment of long-term workers may increase the operating cost, and this will in turn cause the construction costs to go up.

In order to gain an understanding of the progress of the implementation of long-term employment in the industry in the past year, and to map out arrangements to dovetail with its future implementation, the Works Bureau has conducted a simple survey recently. A total of 285 questionnaires were distributed among public works contractors and 118 were received. Eighty-four contractors responded that they have employed monthly-rated or daily-rated long-term workers for certain categories of works. Most of these long-term workers are specialized in works which are required in many stages of construction projects. The types of long-term workers employed vary with the types of the construction projects. The more common types of long-term workers include general labourer, leveller, construction plant mechanic, heavy vehicles driver, plant and equipment operator, concreter, plumber and electrician. While the survey showed that the employment of long-term workers will entail higher construction costs, most of the contractors consider it conducive to improving the quality of works and site safety.

The Works Bureau is considering selecting suitable public works contracts for the purpose of a pilot scheme on long-term employment in consultation with the industry. Under the pilot scheme, we will specify the proportion of long-term workers for the various types of construction works, and we hope that we can assess the practicability of long-term employment in a diversity of areas. On completion of the pilot scheme, the Works Bureau will draw conclusions from the results and experience of the pilot scheme for the reference of future implementation of long-term employment for public works projects.

On the other hand, we will select some construction works which are deemed more suitable for the employment of long-term workers, such as tunnelling and road construction works, piling works, ground investigation works, site formation works and various kinds of regular maintenance contracts, and require the contractors to take on certain categories of long-term workers. If the results are satisfactory, the Government will also encourage the private sector to employ workers on a long-term basis. We ought to know that the implementation of long-term employment in the private sector must be industry-driven and its success hinges on the support of the industry.

In respect of public housing, the Hong Kong Housing Authority (HA) is conducting studies of requiring contractors of public construction projects to employ a certain number of long-term construction workers specialized in certain categories of works for major construction procedures shortly. Moreover, consideration is also given to requiring contractors to employ all site management or supervisory staff on a long-term basis. The HA will conduct a review in future and make further adjustment in the scope of major construction procedures and the number of long-term workers where necessary.

Furthermore, the long-term workers employed by the contractors must possess skills that meet the required standard in order to ensure the quality of works. In this connection, a mandatory registration and testing mechanism must be put in place in the construction industry to this end. Both the Works Bureau and the industry hope that the proposed registration system for construction workers can be implemented at an early date. I will provide Members with more details on the registration system later on.

Now I wish to turn to the number of tiers of sub-contracting. Different types of construction projects very often involve some rather specialized items or processes which require specialist contractors or sub-contractors with the relevant expertise and experience. For this reason, it is inevitable for the principal contractor to sub-contract part of the project to other sub-contractors as appropriate. Further, in order to allow flexibility for the principal contractor in the employment of workers and utilization of resources to cater for the different needs of the various stages of the project, rigid restrictions on the number of tiers of sub-contracting are therefore not feasible. We hold that vigorous supervision is necessary to ensure the quality of works. In this connection, it is specified in the public works contracts that the principal contractor must shoulder all contractual responsibilities for the project, including adequate supervision over the work of sub-contractors and being held responsible for the works undertaken by them.

The Works Bureau has maintained a list of approved contractors for public works and a list of specialist contractors. Registered contractors can tender for the relevant types of projects and they can also tender for specialist sub-contracting projects. Application for listing is subject to stringent vetting by the Works Bureau in such aspects as the contractor's experience, performance assessment and financial conditions. The HA also has similar arrangements for sub-contracting. We must ensure adequate supervision by the principal

contractor on the work of sub-contractors. If necessary, they are required to submit detailed information such as supervisory plans, past experience of sub-contractors and so on. Engineers also have the power to prohibit the employment or order the termination of employment of any sub-contractor on reasonable grounds.

Now I wish to turn to the registration system for construction workers. The Works Bureau and the industry support the introduction of a registration system for construction workers which can provide accurate data on manpower resources, facilitate training and retraining programmes for workers, ensure the quality of works, promote site safety, establish standards of workmanship, and enable workers to enjoy better welfare and protection. In view of this, a Working Group on the Registration of Construction Workers was set up under the Construction Advisory Board in September last year to conduct an in-depth study on establishing a registration system. Under the leadership of the Works Bureau, the Working Group comprises representatives of the Education and Manpower Bureau and other relevant government departments, as well as representatives of major trade associations, trade unions, training institutions and the two railway corporations. Since its establishment, the Working Group has held a total of five meetings. Members of the Working Group consider it necessary to set up a mandatory registration system. With regard to the major components of the system, extensive and detailed discussions are being conducted by the Working Group which will submit its recommendations to the Construction Advisory Board subsequently. Subject to the Board's acceptance of the recommendations, we will expeditiously embark on the legislative and other related work so that the proposed registration system for construction workers can be finalized early and implemented formally.

Thank you, Madam President.

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, first of all, I wish to give a concise account of the Employers Subsidy Scheme implemented by the Construction Industry Training Authority (CITA) to promote the adoption of long-term employment in the industry. Following this, I will dwell on the various measures introduced by the authorities concerned to enhance construction workers' skills and promote safety training.

With a view to promoting long-term employment in the construction industry, the CITA has recently put in place a scheme called the Employers Subsidy Scheme aimed at encouraging construction industry employers to adopt long-term employment. Under this Scheme, employers who employ graduates of CITA Basic Craft Course or Short Course on a long-term monthly-wage basis and sign properly registered apprentice contracts with them will receive a monthly subsidy of \$2,000 for each graduate thus employed. So far, 77 applications have been received under the Scheme, involving the employment of 687 graduates. The employment of 662 graduates has been accepted, and 256 contracts have been signed.

We attach very great importance to the skills and safety training for construction workers, and the CITA, the Vocational Training Council (VTC) and the Occupational Safety and Health Council (OSHC) have been playing a very significant role in promoting the work in this respect.

The training courses offered by the CITA fall into three main categories, namely, one-year full-time courses, full-time short courses and part-time courses. In 1999-2000, the various courses run by the CITA offer a total of 88 000 places. Of these, 2 000 places are for full-time courses, some 5 700 for day-time short courses and some 15 000 for various types of part-time courses. The rest are for safety training courses.

To ensure that trainees can attain the required levels of skills upon their completion of the courses, the CITA requires all trainees of basic craft courses and full-time short courses to take the intermediate trade test. The CITA also offers training on "multi-skill", so as to enable trainees to grasp additional specialist skills.

The Electrical Industry Training Centre (EITC) and Machine Shop and Metal Working Industry Training Centre (METC) under the VTC offer training in various types of electrical occupations. The courses offered cover pre-employment training, skills upgrading, refresher training and tailor-made training. The EITC under the VTC now offers some 2 100 places and some 1 400 places on full-time and part-time courses respectively, and the METC offers some 1 700 places and some 1 400 places on full-time courses and part-time courses respectively. About 40% of the graduates will take up jobs in construction sites.



Regarding the enhancement of occupational safety in the construction industry, the Government amended the Factories and Industrial Undertakings (Confined Spaces) Regulation and the Factories and Industrial Undertakings Ordinance in the 1998-99 Legislative Session, requiring all workers working in confined spaces and construction sites to receive safety training, so as to increase their awareness of industrial safety. Besides, we have also submitted the Factories and Industrial Undertakings (Loadshifting Machinery) Regulation to the Legislative Council, requiring all operators of forklift trucks and loadshifting machinery commonly used on construction sites to receive training and hold relevant certificates. The Subcommittee on the Regulation has completed its scrutiny, and we will shortly put this new Regulation before the Legislative Council for voting.

With a view to meeting the requirements of the new legislation, the CITA has started to run Safety Card Courses, Silver Card Courses and Refresher Safety Training Courses in 1999-2000, offering 51 000 places, 3 000 places and 10 380 places respectively. A Safety Card Course is a one-day safety training course aiming to reduce industrial accidents and enhance the general safety awareness of workers working in construction sites. A Silver Card Course is of two-day duration, and the aim is to enhance the safety training on specific types of construction works.

Besides, the CITA also offers many safety-related courses for people working in the various segments of the construction industry, some examples being first aid courses and safety training in working in confined spaces.

The VTC has incorporated safety training into all its relevant courses. Its EITC has even joined hands with the Lift and Escalator Contractors Association to organize a three-day safety training course for about 4 000 lift mechanics.

In addition to formal training, we also focus on promotion, education and publicity as another major strategy of enhancing workers' safety awareness. In the past, the Labour Department organized many industrial safety seminars and large scale publicity functions in conjunction with the relevant trade unions and the OSHC. And, between now and March, we will be organizing many other activities such as a construction site safety banner publicity campaign, the Safety Award Scheme on Good Housekeeping for the Construction Industry and a personal protective equipment promotion scheme.

The CITA runs trade tests for 16 trades and intermediate trade tests for 14 trades. So far, there have been 10 151 successful attempts and 7 106 successful attempts for trade tests and intermediate trade tests respectively. The CITA is maintaining close contact with the various trade unions, chambers of commerce and professional institutes in the construction industry, with a view to ensuring that the contents of the tests can always meet the standards required in the industry.

The VTC also provides three trade tests and five intermediate trade tests. The VTC has been regularly reviewing and updating the contents of the tests to keep abreast of changing market demands. For example, in 1999, it split up the intermediate trade test for plumbers into three separate tests in a bid to meet the needs of the industry. As at the end of last year, the numbers of successful attempts for the trade test and intermediate trade test were respectively 2 166 and 7 197.

With a view to tying in with the registration system for construction workers in the future, the trade test and intermediate trade test will be extended to other trades in the construction industry. The CITA is now planning to phase in the trade test for some 20 other trades between late 2000 and 2002. The CITA has written to the Hong Kong Construction Association and the relevant trades to seek their opinions, and representatives from the various sectors concerned will be invited to take part in setting the contents of the test. The VTC is also holding discussions with the relevant trade bodies, such as the Hong Kong Electrical and Mechanical Contractors Association, on the ways of improving the existing trade test. Examples include the splitting up of the trade test for electricians into three separate tests and the extension of the trade test to more trades such as welders and fire services equipment workers.

We attach very great importance to the skills and safety training for construction workers, in the hope of enhancing their skills and industrial safety awareness. We will continue to work with the CITA, the VTC, the OSHC and the industry, so as to ensure that we can always provide the kind of training suited to the needs of the market. Thank you.

**PRESIDENT** (in Cantonese): I now call upon Mr CHAN Wing-chan to move his amendment to the motion.

**MR CHAN WING-CHAN** (in Cantonese): Madam President, I move that Mr Andrew CHENG's motion be amended, as set out on the Agenda.

**Mr CHAN Wing-chan moved the following motion:**

"To add ", as the recent problems in the construction industry relating to the quality and safety of buildings have aroused public concerns, with queries and criticisms levelled at the sub-contracting system," after "That"; to delete "adopt positive measures to promote" and substitute with "implement expeditiously"; to delete ", which" and substitute with "in order to address the existing safety and quality problems in the industry; the measures"; to add ", so as to upgrade the overall project quality and awareness in industrial safety of the industry" after "therein"; to delete "taking the lead to restrict the number of tiers involved in the sub-contracting system and"; to delete "require" and substitute with "requiring"; to delete "the contractors to" and substitute with "that it should be stipulated in government and Housing Authority construction contracts that there should not be excessive tiers of sub-contracting under the 'specialist sub-contractors' assigned by contractors; establishing a register of sub-contractors by the authorities concerned so that the financial resources and quality of sub-contractors are subjected to regulation; requiring contractors to engage only the sub-contractors listed in the register and at the same time"; to delete "when awarding government and Housing Authority construction contracts" and substitute with "so as to enhance monitoring and project quality"; to add "so that the workers can have their skills recognised through tests, which will in turn ensure the safety and quality of building projects" after "trades of the industry"; to delete "so as to"; to add ", thus providing them with better job security; and improving the image of the industry by ensuring the availability of a pool of construction workers with proven skills to the community" after "industrial safety"; to add "ensure that workers" after "in order to"; and to delete "meet the needs; so as to provide construction workers with better job security, to ensure stable human resources for the construction industry and thus to upgrade the project quality and safety of the construction industry" and substitute with "can keep up with the new requirements arising from the technological developments of the construction industry". "

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mr CHAN Wing-chan to Mr Andrew CHENG's motion, be passed.

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

(Members raised their hands)

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

(Members raised their hands)

Mr CHAN Wing-chan rose to claim a division.

**PRESIDENT** (in Cantonese): Mr CHAN Wing-chan has claimed a division. The division bell will ring for three minutes.

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

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

Functional Constituencies:

Mr LEE Kai-ming, Dr LUI Ming-wah, Mr HUI Cheung-ching, Mr CHAN Kwok-keung, Mr CHAN Wing-chan, Mr WONG Yung-kan and Mr FUNG Chi-kin voted for the amendment.

Dr Raymond HO, Mr Ronald ARCULLI, Dr LEONG Che-hung and Mr Howard YOUNG voted against the amendment.

Mr CHEUNG Man-kwong, Mr SIN Chung-kai and Mr LAW Chi-kwong abstained.

Geographical Constituencies and Election Committee:

Mr LEE Cheuk-yan, Miss CHAN Yuen-han, Mr Gary CHENG, Mr Jasper TSANG, Mr TAM Yiu-chung, Mr CHAN Kam-lam, Mr Ambrose LAU and Miss CHOY So-yuk voted for the amendment.

Mr HO Sai-chu, Mr NG Leung-sing and Mr MA Fung-kwok voted against the amendment.

Mr Albert HO, Mr Martin LEE, Mr Fred LI, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Mr Andrew CHENG and Mr SZETO Wah abstained.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 14 were present, seven were in favour of the amendment, four against it and three abstained; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 19 were present, eight were in favour of the amendment, three against it and seven abstained. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negatived.

**PRESIDENT** (in Cantonese): Mr HO Sai-chu, you may move your amendment.

**MR HO SAI-CHU** (in Cantonese): Madam President, I move that Mr Andrew CHENG's motion be amended, as set out on the Agenda.

**Mr HO Sai-chu moved the following amendment: (Translation)**

"To delete "adopt positive" and substitute with "study actively the conditions and"; to delete "to promote" and substitute with "necessary for promoting"; to delete "which" and substitute with "so as to upgrade the project quality and safety of the construction industry; these conditions and measures"; to delete "conducting a comprehensive review on the progress of implementing the "Supporting Pledge for Long-term Employment of Construction Workers" and expediting the implementation of the proposals contained therein" and substitute with "promoting actively a registration system for construction workers and establishing a database of human resources in different trades of the industry for reference of and as a basis for deciding the policy on the system of long-term employment for construction workers"; to delete "taking the lead to restrict the number of tiers involved in the sub-contracting system and require" and substitute with "requiring"; to add "some" after "awarding"; to delete "as well as encouraging private contractors to employ workers on a long-term basis" and substitute with "on a trial basis, and reviewing the results and experience afterwards for reference of and in preparation for the introduction of the system of long-term employment for construction workers to construction projects in both the public and the private sectors"; to delete "(c) promoting a registration system for construction workers and establishing a database of human resources in different trades of the industry"; to delete "(d)" and substitute with "(c)"; to delete "(e)" and substitute with "(d)"; and to delete ";so as to provide construction workers with better job security, to ensure stable human resources for the construction industry and thus to upgrade the project quality and safety of the construction industry". "

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mr HO Sai-chu to Mr Andrew CHENG's motion, be passed.

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

(Members raised their hands)

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

(Members raised their hands)

Mr Andrew CHENG rose to claim a division.

**PRESIDENT** (in Cantonese): Mr Andrew CHENG has claimed a division. The division bell will ring for three minutes.

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

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

Functional Constituencies:

Dr Raymond HO, Mr Ronald ARCULLI, Mr HUI Cheung-ching, Dr LEONG Che-hung, Mr Howard YOUNG and Mr FUNG Chi-kin voted for the amendment.

Mr LEE Kai-ming, Mr CHEUNG Man-kwong, Mr CHAN Kwok-keung, Mr CHAN Wing-chan, Mr SIN Chung-kai, Mr WONG Yung-kan and Mr LAW Chi-kwong voted against the amendment.

Dr LUI Ming-wah abstained.

Geographical Constituencies and Election Committee:

Mr HO Sai-chu, Mr NG Leung-sing, Mr MA Fung-kwok, Mr Ambrose LAU and Miss CHOY So-yuk voted for the amendment.

Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Miss CHAN Yuen-han, Mr LEUNG Yiu-chung, Mr Gary CHENG, Mr Jasper TSANG, Dr YEUNG Sum, Mr Andrew CHENG, Mr SZETO Wah, Mr TAM Yiu-chung and Mr CHAN Kam-lam voted against the amendment.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 14 were present, six were in favour of the amendment, seven against it and one abstained; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 19 were present, five were in favour of the amendment and 13 against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negatived.

**PRESIDENT** (in Cantonese): Mr Andrew CHENG, you may now reply and you have nine minutes seven seconds.



**MR ANDREW CHENG** (in Cantonese): Madam President, I will certainly not exhaust the nine-odd minutes because it is so early now and I wish that we may go home earlier to brush our teeth and wash our faces.

I really want to tell colleagues returned by functional constituencies that, and I hope they will understand that, after the execution of the Supporting Pledge for Long-term Employment in February last year, little progress has been made. I know that colleagues of the Hong Kong Progressive Alliance were deciding on their voting inclinations just now, and I really hope that they will support my amendment as the Government will then expedite the implementation of the Supporting Pledge for Long-term Employment and we may go home earlier.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the motion moved by Mr Andrew CHENG, as set out on the Agenda, be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mr HO Sai-chu rose to claim a division.

**PRESIDENT** (in Cantonese): Mr HO Sai-chu has claimed a division. The division bell will ring for three minutes.

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

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

Functional Constituencies:

Mr LEE Kai-ming, Mr CHEUNG Man-kwong, Mr HUI Cheung-ching, Mr CHAN Kwok-keung, Mr CHAN Wing-chan, Mr SIN Chung-kai, Mr WONG Yung-kan, Mr LAW Chi-kwong and Mr FUNG Chi-kin voted for the motion.

Dr Raymond HO, Mr Ronald ARCULLI, Dr LEONG Che-hung and Mr Howard YOUNG voted against the motion.

Dr LUI Ming-wah abstained.

Geographical Constituencies and Election Committee:

Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Miss CHAN Yuen-han, Mr LEUNG Yiu-chung, Mr Gary CHENG, Mr Jasper TSANG, Dr YEUNG Sum, Mr Andrew CHENG, Mr SZETO Wah, Mr TAM Yiu-chung, Mr CHAN Kam-lam, Mr Ambrose LAU and Miss CHOY So-yuk voted for the motion.

Mr HO Sai-chu and Mr NG Leung-sing voted against the motion.

Mr MA Fung-kwok abstained.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 14 were present, nine were in favour of the motion, four against it and one abstained; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 19 were present, 15 were in favour of the motion, two against it and one abstained. Since the question was agreed by a majority of each of the two groups of Members present, she therefore declared that the motion was carried.

**NEXT MEETING**

**PRESIDENT** (in Cantonese): It is now two minutes to 6 am. I am very grateful to Members for their forbearance. To those Members who have to attend another meeting at 8.30 am, I suggest they consider enjoying a breakfast first. (*Laughter*)

I now adjourn the Council until 2.30 pm on Wednesday, 1 March 2000.

*Adjourned accordingly at two minutes to Six o'clock in the morning.*

**Annex I****MASS TRANSIT RAILWAY BILL****COMMITTEE STAGE**Amendments to be moved by the Secretary for Transport

<u>Clause</u>	<u>Amendment Proposed</u>
Long title	In paragraph (a), by adding "to the railway" after "extension".
2(1)	(a) In the definition of "extension", by deleting "to the railway" where it secondly appears.  (b) By deleting the definition of "operating agreement" and substituting -  ""operating agreement" (營運協議) means any agreement entered into between the Corporation and the Secretary acting on behalf of the Government which is declared by its terms to be an operating agreement for the purposes of this Ordinance or to be an agreement amending or supplementing such an agreement, as having effect from time to time;".
4(1)	In paragraphs (a) and (b), by adding "to the railway" after "extension".
4(2)	By deleting everything after "in" and substituting "the operating agreement."

<u>Clause</u>	<u>Amendment Proposed</u>
13	<p>(a) In subclause (2), by deleting everything after "general" and substituting "or specific nature."</p> <p>(b) In the Chinese text, by deleting subclause (5) and substituting -</p> <p style="padding-left: 40px;">"(5) 第(4)款所提述的損失或損害，包括因地鐵公司遵從根據本條作出而違反審慎商業原則的指示而引致的損失或損害，以及可歸因於地鐵公司遵從該等指示的損失或損害。"</p>
14	<p>(a) In the heading, by deleting "財政罰則" and substituting "罰款".</p> <p>(b) In subclause (1), by deleting "財政罰則" and substituting "罰款".</p> <p>(c) In subclause (2), by deleting "罰則" and substituting "罰款".</p> <p>(d) In subclause (3), by deleting "罰則" wherever it appears and substituting "罰款".</p> <p>(e) In subclause (4), by deleting "罰則" and substituting "罰款".</p> <p>(f) In subclause (5), by deleting "罰則" wherever it appears and substituting "罰款".</p>
15(2)	By deleting the full stop and substituting "; and the Secretary shall bring to the attention of the Chief Executive in Council any representations made by the Corporation during the consultation."
15(5)(a)	By adding "which at the time of such suspension is property" after "any property".

ClauseAmendment Proposed

- 15(7) By deleting everything after "原則下，" and substituting "就根據第(5)款接管的財產在保存時所處的狀況或就該財產在歸還時所處的狀況而言，本條例或任何其他法律並無對政府施加任何義務。".
- 18(5)(b) By adding "of default" after "case".
- 19(1) By adding "which at the time of such revocation or expiry is property" after "any property".
- 19(4) (a) By deleting "to the Government" and substituting "to the Secretary".
- (b) By deleting "shall not return the property to the Corporation" and substituting "is not entitled to return the property to the Corporation under subsection (3)".
- 20(4) By deleting everything after "this section" where it secondly appears and substituting "in respect of property specified in such a notice shall be calculated as if the property had been disposed of under section 19(3) without that notice having been given.".
- 20(5) By deleting the comma.
- 21(1) (a) By deleting "to the Government" and substituting "to the Secretary".
- (b) By deleting everything after "possession of" where it secondly appears and substituting "any other property which the Government, its nominee or a third party designated by the Government was entitled to take possession of, but did not take possession of, under that subsection on that occasion.".

ClauseAmendment Proposed

- 21(2) (a) By deleting "有關接管根據第 19(1)條進行" and substituting "行使第 19(1)條所賦予的權力".
- (b) In paragraph (b), by deleting "該項接管進行" and substituting "行使第 19(1)條所賦予的權力".
- 21(3) By adding "referred to in subsection (1)" after "notice".
- 21(6) By deleting ", in respect of any property taken possession of under this section," and substituting "in respect of the taking of possession of any property under this section".
- 27(3) By adding "to the railway" after "an extension".
- 27(5) By adding ", except to the Secretary," after "disclose".
- 28(2) By deleting "delivered" and substituting "given".
- 29(1) By deleting everything after "liable" and substituting -
- "-
- (i) except as provided in paragraph (ii), to a fine at level 2; or
- (ii) if the act or omission results in serious injury to or the death of a person being on the railway or railway premises, to a fine at level 2 and to imprisonment for 6 months."

ClauseAmendment Proposed

- 30           (a)    In paragraph (b), by deleting "a" and substituting "any".
- (b)    By deleting "the person" and substituting "the first-mentioned person".
- 34(1)(d)(v) By deleting "of" and substituting "or".  
(A)
- 35(3)       By deleting "to".
- 41(2)       (a)    By deleting "for the payment of pensions, allowances or gratuities" and substituting "(including under the pay review mechanism which has been adopted by MTRC and effective immediately before the appointed day) for the payment of pensions, allowances, gratuities and benefits".
- (b)    In paragraph (b), by deleting "gratuity" and substituting "gratuities or".
- 48           By adding -
- "(3A) Nothing in subsection (1) or (2) shall be taken as prejudicing the effect under the laws of Hong Kong of the vesting in the Corporation by virtue of section 37 or this section of any foreign property, right or liability.".
- 51(2)       By deleting "section 55" and substituting "section 46".



ClauseAmendment Proposed

53 By adding -

"(4A) Any person who has made a decision to which this section applies shall, if so requested by the Corporation, and within a period that is reasonable in the circumstances, furnish the Corporation with reasons for his decision."

54(2) By deleting "as he thinks fit".

57(2) By deleting everything after "arises" and substituting "independently of a breach of any duty of the Corporation created by or pursuant to this Ordinance, regardless whether the circumstances giving rise to such civil liability would also be a breach of any duty created by or pursuant to this Ordinance."

59(2)(b) By deleting "ordinary".

62 (a) By deleting "for the purposes of section 34(1) of the Interpretation and General Clauses Ordinance (Cap. 1)".

(b) By deleting "for those or any other purposes".

New By adding -

**"62A. Service of notices**

(1) A notice to be given to the Secretary under this Ordinance may be delivered to the Secretary or sent to him by post.

ClauseAmendment Proposed

(2) The address of the Secretary for the purposes of the giving of any notice under this Ordinance is the address specified in the operating agreement as the address for the service of notices on the Secretary under that agreement.

(3) A notice to be given to the Corporation under this Ordinance shall be marked for the attention of the chairman of the Corporation and may be delivered to the Corporation or sent to it by post.

(4) The address of the Corporation for the purposes of the giving of any notice under this Ordinance is the address specified in the operating agreement as the address for the service of notices on the Corporation under that agreement.

(5) For the purposes of this section, a notice is delivered to the Secretary or the Corporation if it is delivered to the address of the Secretary or the Corporation and left with a person apparently authorized to receive communications intended for the Secretary or the Corporation."

63(1) By deleting "is" and substituting ", any subsidiary legislation made under that Ordinance and any other instrument issued under that Ordinance and published in the Gazette are".

Schedule 2 By deleting section 5.

Schedule 6 In section 4, by deleting "ordinary".

## MASS TRANSIT RAILWAY BILL

**COMMITTEE STAGE**Amendments to be moved by the Honourable LAU Chin-shek

<u>Clause</u>	<u>Amendment Proposed</u>
5	<p>(a) In subclause (4), by adding "by order" after "The Chief Executive in Council may".</p> <p>(b) By deleting subclause (5) and substituting -</p> <p style="padding-left: 40px;">"(5) An order approving an extension of the franchise made under this section shall be subject to the approval of the Legislative Council.".</p>
6	By adding "of the Legislative Council by way of resolution on the recommendation" after "approval".
8	<p>By deleting subclause (1) and substituting -</p> <p style="padding-left: 40px;">"(1) The Chief Executive may by notice in the Gazette appoint, for a period he directs, not more than 4 persons to be additional directors of the Corporation (in this section referred to as "additional director").</p> <p style="padding-left: 40px;">(1A) The 4 persons referred to in subsection (1) shall include a person nominated by employees of the Corporation through elections.".</p>
29	By deleting the clause.

ClauseAmendment Proposed

34(1) By adding -

"(aa) prescribing the fares payable by persons travelling on the railway;" .

41 By adding -

"(2A) Persons with contract of employment with MTRC in force immediately before the appointed day may all remain in employment and their seniority shall be retained with pay, allowances, benefits and conditions of service no less favourable than before." .

## MASS TRANSIT RAILWAY BILL

**COMMITTEE STAGE**Amendments to be moved by the Honourable CHAN Yuen-han

<u>Clause</u>	<u>Amendment Proposed</u>
7	(a) By renumbering it as clause 7(1).
	(b) By adding -  "(2) One of the directors of the Corporation shall be a staff representative directly elected by the employees of the Corporation."

## MASS TRANSIT RAILWAY BILL

**COMMITTEE STAGE**

Amendments to be moved by the Honourable Albert HO Chun-yan

ClauseAmendment Proposed

13

By adding -

"(1A) Without affecting the generality of the scope of public interest under subsection (1), the Chief Executive in Council, when exercising the power under subsection (1), shall consider the public interest in preserving and promoting competition in the market for public transport and the availability of competing modes of transport at affordable prices.".

## MASS TRANSIT RAILWAY BILL

**COMMITTEE STAGE**

Amendments to be moved by the Honourable Andrew CHENG Kar-foo

<u>Clause</u>	<u>Amendment Proposed</u>
14(3)	<p>(a) In paragraph (a) -</p> <p>(i) in subparagraph (i), by deleting "level 3" and substituting "level 4";</p> <p>(ii) in subparagraph (ii), by deleting "level 4" and substituting "level 5";</p> <p>(iii) in subparagraph (iii), by deleting "level 5" and substituting "level 6".</p> <p>(b) In paragraph (b), by deleting "\$10,000" and substituting "\$25,000".</p>

**Annex II****EXCHANGES AND CLEARING HOUSES (MERGER) BILL****COMMITTEE STAGE**Amendments to be moved by the Secretary for Financial Services

<u>Clause</u>	<u>Amendment Proposed</u>
1	<p>(a) In subclause (2), by deleting "This" and substituting "Subject to subsection (3), this".</p> <p>(b) By adding -</p> <p style="padding-left: 40px;">"(3) Section 22(1) and (2) shall come into operation on the day this Ordinance is published in the Gazette."</p>
2	<p>(a) In subclause (1) -</p> <p style="padding-left: 40px;">(i) in the definition of "associate" -</p> <p style="padding-left: 80px;">(A) in paragraph (a) -</p> <p style="padding-left: 120px;">(I) by adding "subject to paragraph (c)," before "means";</p> <p style="padding-left: 120px;">(II) by deleting "and" at the end;</p> <p style="padding-left: 80px;">(B) by deleting paragraph (b) and substituting -</p> <p style="padding-left: 120px;">"(b) subject to paragraph (c), includes, in relation to such provisions of this Ordinance</p>



ClauseAmendment Proposed

as are specified in Part 1 of Schedule 1, a person, or a person belonging to a class of persons, specified in that Part to be an associate;

- (c) excludes, in relation to such provisions of this Ordinance as are specified in Part 2 of Schedule 1, a person, or a person belonging to a class of persons, specified in that Part, not to be an associate;"

- (ii) by deleting the definition of "indirect controller" and substituting -

"indirect controller" (間接控制人), in relation to a company -

- (a) subject to paragraph (b), means any person in accordance with whose directions or instructions the directors of the company or of another company of which it is a subsidiary are accustomed to act;
- (b) excludes, in relation to such provisions of this Ordinance as are specified in Part 3 of

ClauseAmendment Proposed

Schedule 1, a person, or a person belonging to a class of persons, specified in that Part, not to be an indirect controller;"

(iii) by deleting the definition of "working day";

(iv) in the definition of "結算所", by adding "認可" after "的".

(b) By deleting subclause (2).

(c) In subclause (6), by deleting "(2) or".

3 (a) In subclause (5)(b), by deleting "all due" and substituting "reasonable".

(b) By adding -

"(6A) Without prejudice to the generality of steps referred to in subsection (6) which may be specified in a notice under that subsection to be served on a person referred to in that subsection, such steps may consist in whole or in part of steps proposed in writing to the Commission by that person.".

(c) In subclause (11), by deleting "all due" and substituting "reasonable".

(d) In subclause (12), by deleting "Schedule 1" and substituting "Schedule 2".

ClauseAmendment Proposed

4

(a) By adding -

"(2A) Without prejudice to the generality of steps referred to in subsection (1)(ii) which may be specified in a notice under that subsection to be served on a company referred to in that subsection, such steps may consist in whole or in part of steps proposed in writing to the Commission by that company."

(b) By deleting subclause (7) and substituting -

"(7) It shall be a defence for a person charged with an offence under subsection (6) to prove that the person exercised reasonable diligence to comply with the notice under subsection (1) to which the offence relates."

(c) In subclause (8), by deleting "Schedule 1" and substituting "Schedule 2".

6

(a) By deleting subclauses (1) and (2) and substituting -

"(1) In this section, "minority controller" (次要控制人), in relation to a recognized exchange controller, Exchange Company or clearing house -

(a) subject to paragraph (b), means any person who, either alone or with any associate or associates, is entitled to exercise, or control the exercise of, 5% or more of the voting power at any general meeting of the recognized exchange controller, Exchange Company or clearing house, as the case may be,

ClauseAmendment Proposed

or of a company of which the recognized exchange controller, Exchange Company or clearing house, as the case may be, is a subsidiary;

(b) does not include -

(i) a recognized exchange controller; or

(ii) a person, or a person belonging to a class of persons, specified in Part 1 of Schedule 3 not to be a minority controller for the purposes of this Ordinance.

(2) Subject to subsections (2A) and (12), on and after the commencement of this section, a person shall not -

(a) be or become a minority controller of a recognized exchange controller, Exchange Company or clearing house except with the approval in writing of the Commission after consultation with the Financial Secretary; and

(b) if such approval is given, and subject to any condition specified in the approval disapplying this paragraph in whole or in part, increase the interest the person has as such minority controller except with the further approval in writing

ClauseAmendment Proposed

of the Commission after consultation with the Financial Secretary.

(2A) The Commission shall not give an approval under subsection (2)(a) or (b) unless it is satisfied that it is appropriate to do so in the interest of the investing public or in the public interest.

(2B) Where the Commission refuses to give an approval under subsection (2)(a) or (b), it shall give notice in writing of its reasons for the refusal to the person concerned."

(b) In subclause (4) -

(i) by deleting paragraph (a) and substituting -

"(a) in the case of subsection (3)(a), that the person -

(i) did not know that the acts or circumstances by virtue of which the person became a minority controller, or increased the interest the person has as a minority controller, as the case may be, of the recognized exchange controller, Exchange Company or clearing house concerned were such as to have that effect; or

(ii) exercised reasonable

ClauseAmendment Proposed

diligence to avoid  
contravening  
subsection (2);";

(ii) in paragraph (b), by deleting "all due" and substituting "reasonable".

(c) By adding -

"(5A) Without prejudice to the generality of steps referred to in subsection (5) which may be specified in a notice under that subsection to be served on a person referred to in that subsection, such steps may consist in whole or in part of steps proposed in writing to the Commission by that person.".

(d) In subclause (10), by deleting "all due" and substituting "reasonable".

(e) In subclause (11), by deleting "Schedule 1" and substituting "Schedule 2".

7

(a) In subclause (4), by deleting "all due" and substituting "reasonable".

(b) By adding -

"(4A) Without prejudice to the generality of the Financial Secretary's power under subsection (1), a person is exempt from section 3(1) in the cases specified in Part 2 of Schedule 3.".

8

By deleting the clause and substituting -

ClauseAmendment Proposed

**"8. Duty to ensure orderly  
and fair market, etc.**

(1) It shall be the duty of -

- (a) a recognized exchange controller which is the controller of an Exchange Company or clearing house, and an Exchange Company, to each ensure, so far as is reasonably practicable, an orderly and fair market in securities or futures contracts traded on or through each Exchange Company;
- (b) a recognized exchange controller which is the controller of an Exchange Company or clearing house, an Exchange Company, and a clearing house, to each ensure, so far as is reasonably practicable, that risks are managed prudently; and
- (c) a recognized exchange controller which is the controller of an Exchange Company or clearing house to ensure, so far as is reasonably practicable, that the Exchange Company or clearing house, as the case may be, complies with any lawful requirement placed on it under any enactment or rule of law and with any other legal requirement placed on it.

(2) In discharging its obligation under subsection (1)(a) or (b), a recognized exchange controller, Exchange Company and clearing house shall each -

- (a) act in the interests of the public, having particular regard to the interests of the

ClauseAmendment Proposed

investing public; and

- (b) ensure that where the interests referred to in paragraph (a) conflict with any other interests that it is required to serve under any other law, the former shall prevail.

(3) Without prejudice to the generality of section 56(1) of the Securities and Futures Commission Ordinance (Cap. 24), no liability shall be incurred by -

- (a) a recognized exchange controller, Exchange Company or clearing house; or

- (b) any person acting on behalf of a recognized exchange controller, Exchange Company or clearing house, including -

- (i) any member of the board of directors of the recognized exchange controller, Exchange Company or clearing house; or

- (ii) any member of any committee established by the recognized exchange controller, Exchange Company or clearing house,

in respect of anything done or omitted to be done in good faith in the discharge or purported discharge of the obligation under subsection (1), including that subsection as read with subsection (2).



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(4) Where a recognized exchange controller is the controller of an Exchange Company or clearing house ("relevant body"), the relevant body's obligation under subsection (1) is not applicable to the relevant body in respect of anything done or omitted to be done in good faith by the relevant body in consequence of the discharge or purported discharge by the recognized exchange controller of the recognized exchange controller's obligation under that subsection."

9 (a) In subclause (1), by adding "and to submit such policies to the recognized exchange controller for its consideration" after "the controller".

(b) By deleting subclauses (4) and (5) and substituting -

"(4) The recognized exchange controller shall appoint not more than 2 of the members referred to in subsection (2)(b) of whom not less than one shall be a member of the board of directors of the recognized exchange controller who -

(a) is such a member otherwise than by virtue of an appointment under section 20(1); and

(b) is not the chief executive of the recognized exchange controller."

10 (a) In subclause (3), by adding "(together with its reasons for the refusal)" after "refuse to give its approval".

(b) In subclause (5), by deleting "on the advice of the Commission and generally or in a particular case" and

ClauseAmendment Proposed

substituting "after consultation with the Commission and the recognized exchange controller concerned".

15(2)(a) By adding ", if any," after "competition".

16 (a) In the heading, by adding ", 2 or 3" after "**Schedule 1**".

(b) By adding ", 2 or 3" after "Schedule 1".

18 By deleting the definitions of "HKFE", "HKFECC", "SEHK" and "SEOCH".

20 By deleting the clause and substituting -

**"20. Financial Secretary may appoint  
not more than 8 persons to  
board of directors of HKEC**

(1) Notwithstanding any enactment or rule of law but subject to subsection (2), the Financial Secretary may appoint not more than 8 persons to be members of the board of directors of the HKEC where the Financial Secretary is satisfied that it is appropriate to do so in the interest of the investing public or in the public interest.

(2) The Financial Secretary shall exercise his power under subsection (1) in such a way that, immediately following the annual general meeting of the HKEC held in 2003 and thereafter, the number of members of the board of directors of the HKEC who are such members by virtue of an appointment under that subsection is not more than the maximum number of members of that board who may be such members otherwise than by virtue of such an appointment (but excluding the chief executive of the HKEC).

ClauseAmendment Proposed

(3) Subject to subsection (4), a member of the board of directors of the HKEC who is such a member by virtue of an appointment under subsection (1) shall have the same rights, privileges, obligations and liabilities under any enactment or rule of law as a member of that board who is such a member otherwise than by virtue of such an appointment.

(4) Notwithstanding any enactment or rule of law, no person appointed under subsection (1) as a member of the board of directors of the HKEC may be removed from that office by a resolution of the other directors of the board or a special resolution of the HKEC."

21 By deleting the clause.

22 (a) In subclause (3) -

(i) in paragraph (d)(ii), by deleting "in a" and substituting "substantially in conformity with the guarantee referred to in subparagraph (i) to the satisfaction of the Commission or in another";

(ii) in paragraph (e), by deleting "5 working" and substituting "7".

(b) In subclause (4), by adding -

"(ca) section 57B of the Companies Ordinance (Cap. 32) shall not apply to an issue of shares made

ClauseAmendment Proposed

pursuant to subsection (3)(b);".

(c) By adding -

"(5) The Commission may, at the request of the HKSCC, extend the period specified in subsection (3)(e) and whether or not the period has expired.".

24 By deleting "Schedule 2" and substituting "Schedule 4".

New By adding immediately after clause 24 -

"SCHEDULE 1 [ss. 2(1) & 16]

SPECIFICATION OF PERSONS WHO ARE ASSOCIATES,  
SPECIFICATION OF PERSONS WHO ARE NOT  
ASSOCIATES, AND SPECIFICATION OF  
PERSONS WHO ARE NOT INDIRECT  
CONTROLLERS, FOR SPECIFIED  
PROVISIONS OF THIS  
ORDINANCE

PART 1

SPECIFICATION OF PERSONS WHO ARE ASSOCIATES

PART 2

SPECIFICATION OF PERSONS WHO ARE NOT ASSOCIATES

1. A person ("first person") is not an associate of another person ("second person") for all the provisions of this

ClauseAmendment Proposed

Ordinance insofar as -

- (a) the first person or the second person is a clearing house (or its nominee) acting in its capacity as such;
- (b) the first person is the chairman of a general meeting of a company entitled to exercise voting rights in the company due to his appointment as a proxy by the second person where the appointment -
  - (i) is for that meeting only; and
  - (ii) does not involve any valuable consideration; or
- (c) the first person and the second person are persons who have appointed the chairman of the general meeting of a company as a proxy to exercise voting rights in the company where each appointment -
  - (i) is for that meeting only; and
  - (ii) does not involve any valuable consideration.

2. A person is not an associate of another person for the purposes of section 6 of this Ordinance by reason only of each person having appointed the same person as a proxy to exercise voting rights in a company at a general meeting of the company where each appointment -

- (a) is for that meeting only; and

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- (b) does not involve any valuable consideration.

## PART 3

SPECIFICATION OF PERSONS WHO ARE NOT  
INDIRECT CONTROLLERS

A person is not an indirect controller for all the provisions of this Ordinance insofar as the person is a person in accordance with whose directions or instructions the directors of a company or of another company of which it is a subsidiary are accustomed to act by reason only that they act on advice given by the person in the person's professional capacity."

Schedule 1 (a) By renumbering Schedule 1 as Schedule 2.

(b) In Schedule 2 -

(i) in the heading, by adding "OF THIS ORDINANCE" after "6(5)";

(ii) in section 1 -

(A) in subsection (2) -

(I) in paragraph (d), by deleting "otherwise." and substituting "otherwise;";

(II) by adding -

"(e) that the holder of the shares shall cause the shares to be transferred to a nominee of the Commission specified

ClauseAmendment Proposed

in the notice and within the period specified in the notice.";

(B) in subsection (8), by adding ", unless otherwise specified by the Court of First Instance," after "shall";

(C) by adding -

"(12) It is hereby declared that the operation of subsection (2)(b) or (e) shall not of itself cause any person to contravene section 3(1) or 6(2) of this Ordinance.";

(iii) in section 2(1) -

(A) by deleting paragraphs (a) and (b) and substituting -

"(a) exercises or purports to exercise any right to dispose of any shares, or of any right to be issued with any such shares, knowing that to do so contravenes any restrictions under section 1(2) to which the shares are subject;

(b) votes in respect of any such shares as holder or proxy knowing that to do so contravenes any such restrictions;

(ba) appoints a proxy in respect of any such shares knowing that

ClauseAmendment Proposed

to vote in respect of any such shares would contravene any such restrictions;"

(B) in paragraph (c), by deleting "proxy; or" and substituting "proxy;"

(C) in paragraph (d), by deleting "or (4)," and substituting "or (4); or";

(D) by adding -

"(e) without reasonable excuse, fails to comply with a restriction under section 1(2)(e) to which any such shares are subject,"

(iv) in section 3, by adding -

"(1A) Where a person is or may become a prohibited person in respect of a company, the Commission shall serve on the company a copy of the notice concerned under section 3(6) or 4(1) of this Ordinance."

New By adding immediately after Schedule 2 -

"SCHEDULE 3 [ss. 6(1), 7(4A) & 16]

PERSONS WHO ARE NOT MINORITY CONTROLLERS  
AND EXEMPTION FROM SECTION 3(1)  
OF THIS ORDINANCE



ClauseAmendment Proposed

## PART 1

SPECIFICATION OF PERSONS WHO ARE NOT  
MINORITY CONTROLLERS FOR THE  
PURPOSES OF THIS ORDINANCE

1. A person is not a minority controller for the purposes of this Ordinance insofar as the person is -

- (a) a clearing house (or its nominee) acting in its capacity as such; or
- (b) the chairman of a general meeting of a company entitled to exercise voting rights in the company due to his appointment as a proxy where the appointment -
  - (i) is for that meeting only; and
  - (ii) does not involve any valuable consideration.

2. A person is not a minority controller for all the provisions of this Ordinance by reason only of being entitled to exercise voting rights in a company due to his appointment as a proxy where the appointment -

- (a) is for only one general meeting of the company; and
- (b) does not involve any valuable consideration.

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## PART 2

EXEMPTION FROM SECTION 3(1)  
OF THIS ORDINANCE

A person is exempt from section 3(1) of this Ordinance insofar as the person is -

- (a) a clearing house (or its nominee) acting in its capacity as such; or
- (b) the controller of a company by reason only of being the chairman of a general meeting of the company entitled to exercise voting rights in the company due to his appointment as a proxy where the appointment -
  - (i) is for that meeting only; and
  - (ii) does not involve any valuable consideration."

Schedule 2 (a) By renumbering Schedule 2 as Schedule 4.

(b) In Schedule 4 -

(i) by adding -

**"Stamp Duty Ordinance**

**13A. Interpretation**

ClauseAmendment Proposed

Section 2(1) of the Stamp Duty Ordinance (Cap. 117) is amended -

- (a) by repealing the definition of "broker";
- (b) in the definition of "jobbing business", by repealing "a broker" and substituting "an exchange participant";
- (c) by adding -

"exchange participant" (交易所參與者) means an exchange participant within the meaning of section 2(1) of the Stock Exchanges Unification Ordinance (Cap. 361);".

**13B. Contract notes, etc. in respect of sale and purchase of Hong Kong stock**

Section 19 is amended -

- (a) in subsection (1F) -
  - (i) in paragraph (a), by repealing "a

ClauseAmendment Proposed

- broker" and substituting "an exchange participant";
- (ii) by repealing "the broker" where it twice appears and substituting "the exchange participant";

- (b) in subsection (16), in the definition of "rules", in paragraph (b), by repealing "its members" and substituting "the exchange participants".

**13C. Stamp duty payable where transaction in respect of Hong Kong stock does not amount to jobbing business**

Section 20 is amended by repealing "broker" and substituting "exchange participant".

**13D. First Schedule amended**

The First Schedule is amended, in head 2(2), by repealing "broker" and substituting "exchange participant".

**13E. Exempted transaction**

ClauseAmendment Proposed**specified for the  
purposes of section 19(1D)  
of this Ordinance**

The Fourth Schedule is amended -

- (a) in section 1, by repealing "a broker" where it twice appears and substituting "an exchange participant";
  - (b) in section 3, in the definition of "rules", by adding "or the exchange participants" after "members".";
- (ii) by adding -

**"17A. Approval of amendments to  
the constitution, rules  
of the Exchange Company,  
etc.**

Section 14 is amended -

- (a) in subsection (3), by adding "together with, where paragraph (b) is applicable, its reasons for the refusal" after "thereof";
- (b) in subsection (5), by repealing "on the advice of the Commission and either generally or in a particular case" and substituting "after consultation with the Commission and the

ClauseAmendment Proposed

Exchange Company".";

- (iii) in section 44, by deleting paragraphs (b) and (c) and substituting -

"(b) by repealing subsections (2) and (3) and substituting -

"(2) The amount referred to in subsection (1) shall be deposited in respect of a trading right not later than 1 month after that subsection becomes applicable to the trading right.".";

- (iv) by deleting section 62 and substituting -

**"62. Void agreements**

Section 26 is repealed.";

- (v) by adding -

**"63A. Duty to ensure fair  
market**

Section 27A is repealed.";

- (vi) by deleting section 65 and substituting -

**"65. Rules of the Unified  
Exchange**

Section 34 is amended -

ClauseAmendment Proposed

- (a) by repealing subsection (1)(b)  
and substituting -

"(b) to ensure  
compliance by its  
exchange  
participants with  
financial  
resources rules  
and, without  
derogation from  
the generality  
hereof such rules  
may -

- (i) prescribe  
the returns  
to be made  
by exchange  
participants,  
the form of  
such  
returns, the  
information  
to be  
included  
therein and  
the manner  
in which  
such  
information

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is to be  
verified;

(ii) provide for  
the manner  
in which  
any assets  
are to be  
valued and  
for the  
payment by  
exchange  
participants  
of the costs  
of  
valuation;

(iii) prescribe  
the manner  
in which  
records are  
to be kept  
by exchange  
participants  
of any assets  
which may  
be taken  
into account  
for the  
purposes of  
financial  
resources  
rules and



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the places at  
which such  
records are  
to be  
maintained;

(iv) provide for  
the  
inspection  
of records  
by any duly  
authorized  
officer of  
the  
Exchange  
Company;

(ba) to deal with  
possible conflicts  
of interest that  
might arise  
where a relevant  
company or a  
relevant  
recognized  
exchange  
controller, within  
the meaning of  
section 13(1) of  
the Exchanges  
and Clearing

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Houses (Merger) Ordinance ( of 2000), seeks to be or is a listed company within the meaning of that section; and";

(b) by adding -

"(2A) The Secretary for Financial Services may, by notice in the Gazette, repeal subsection (1)(b).

(2B) The Commission may amend any rules made under subsection (1)(ba) by the Exchange Company (or by the Commission pursuant to this subsection) and, for that purpose, the Commission may exercise the power under that subsection instead of the Exchange Company.

(2C) Section 35 shall not apply to any rules made by the Commission under

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subsection (1)(ba) as read with subsection (2B).".

**65A. Commission to approve proposed rules and amendments to constitution, etc.**

Section 35 is amended -

- (a) in subsection (3), by adding "  
", together with the reasons for the disallowance" after "constitution";

- (b) by adding -

"(5) In this section, "rules" (規則) excludes rules referred to in section 34(2C).";

- (vii) by adding -

**"Securities and Futures (Clearing Houses) Ordinance**

**70A. Rules of recognized clearing houses, etc.**

Section 4 of the Securities and Futures (Clearing Houses) Ordinance (Cap. 420) is amended -

- (a) in subsection (7), by adding "together with, where paragraph (b) is applicable, its reasons for the refusal" after "the submission";

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- (b) in subsection (9), by repealing "on the advice of the Commission and either generally or in a particular case" and substituting "after consultation with the Commission and the recognized clearing house concerned".

**Personal Data (Privacy) Ordinance****70B. Interpretation**

Section 2(1) of the Personal Data (Privacy) Ordinance (Cap. 486) is amended, in the definition of "financial regulator", by adding -

- "(ea) a recognized exchange controller within the meaning of section 2(1) of the Exchanges and Clearing Houses (Merger) Ordinance ( of 2000);".

(viii) by adding -

**"Stamp Duty (Jobbing Business)  
(Options Market Makers)  
Regulation****83A. Interpretation**

Section 2 of the Stamp Duty (Jobbing Business) (Options Market Makers) Regulation (Cap. 117 sub. leg.) is amended -

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- (a) in the definition of "options market maker", by repealing "a broker" and substituting "an exchange participant";
- (b) in the definition of "rules", by repealing "its members" and substituting "the exchange participants".
- (ix) in section 85(b)(ii)(B), by deleting "participant" and substituting "participantship".

**Annex III****FIREARMS AND AMMUNITION (AMENDMENT) BILL 1999****COMMITTEE STAGE**Amendments to be moved by the Secretary for SecurityClauseAmendment Proposed

3 By deleting paragraph (a).

New By adding -

**"4A. Possession of arms and ammunition  
in transit**

Section 8 is amended -

- (a) by renumbering it as section 8(1);
- (b) by adding -

"(2) Sections 13 and 14 do not  
apply to the possession of or dealing in

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arms or ammunition by a person whose possession or dealing is limited to arms or ammunition -

(a) which are brought into Hong Kong on board -

(i) a vessel to be transported as cargo to some other place in another vessel or aircraft; or

(ii) an aircraft to be transported as cargo to some other place in a vessel,

if -

(A) the arms or ammunition are recorded as cargo in the manifest of the vessel or aircraft in which they are brought into Hong Kong and the manifest of the vessel or aircraft in which they are transported out of Hong Kong; and

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- (B) the arms or ammunition remain on board either the vessel or aircraft in which they are brought into Hong Kong or the vessel or aircraft in which they are to be transported out of Hong Kong, at all times, except during the transfer to that vessel or aircraft, while the arms or ammunition are in Hong Kong; and
- (C) the Commissioner is given notice before the arms or ammunition are transferred to the vessel or aircraft in which they are to be transported out of Hong Kong, of the particulars of the arms or ammunition and the date, time and place of arrival in Hong Kong of the

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vessel or aircraft in which they are brought into Hong Kong and the date, time and place of departure from Hong Kong of the vessel or aircraft in which they are to be transported out of Hong Kong; or

(b) which are brought into Hong Kong on board an aircraft ("the first aircraft") to be transported as cargo to some other place in another aircraft ("the second aircraft"), if -

(i) the arms or ammunition are recorded as cargo in the manifest of the first aircraft and the manifest of the second aircraft; and

(ii) the arms or ammunition -

(A) remain on board either



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the first aircraft or the second aircraft, at all times, except during the transfer to the second aircraft, while the arms or ammunition are in Hong Kong; or

(B) are transferred from the first aircraft to a place of storage designated for the purpose by the Commissioner of Customs and Excise in the restricted area, within the meaning of section 2 of the

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Aviation  
Security  
Ordinance  
(Cap. 494),  
and remain  
there until  
they are  
transferred  
to the second  
aircraft to be  
transported  
out of Hong  
Kong.".

**4B. Section added**

The following is added -

**"9A. Possession by carriers, their agents or employees**

Sections 13 and 14 do not apply to the possession or transport of arms or ammunition by a carrier or an agent or employee of a carrier if the possession or transport is in the presence of the licensee of the arms or ammunition concerned or the approved agent of that licensee and the arms or ammunition was received in the ordinary course of business by the carrier or the agent or employee of the carrier from that licensee or approved agent.".

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6(c) By adding -

"(5A) In exercising the powers under this section to grant or revoke an authorization, the Commissioner shall, in addition to any other relevant matter that he may reasonably take into consideration, have regard to -

- (a) whether the person concerned is or has ceased to be a fit and proper person to be an authorized arms instructor; and
- (b) whether it is objectionable, for reasons of public safety and security, for that person to be an authorized arms instructor."

7 (a) In the proposed section 12A by adding -

"(5A) In exercising the powers under this section to grant or revoke an approval, the Commissioner shall, in addition to any other relevant matter that he may reasonably take into consideration, have regard to -

- (a) whether the person concerned is or has ceased to be a fit and proper person to be an approved agent; and
- (b) whether it is objectionable, for reasons of public safety and security, for that person to be an approved agent."

(b) By deleting the proposed section 12B and substituting -

**"12B. Possession of arms or ammunition  
for being tested on application**

ClauseAmendment Proposed**for licence, or while  
transporting for  
testing or inspection**

(1) Section 13 does not apply to the possession by a person, in the course of taking a test conducted by the Commissioner on the use or handling of arms or ammunition, of the arms or ammunition with which the test is conducted.

(2) Sections 13 and 14 do not apply to the possession by a licensee or his approved agent of arms or ammunition to which the licence relates, in the course of transporting the arms or ammunition, for the purpose of testing or inspection by the Commissioner, to and from the place at which the testing or inspection is to take place."

11 By adding -

"(aa) by adding -

"(3A) In exercising the powers under subsection (2) or (3) to grant a licence, the Commissioner shall, in addition to any other relevant matter that he may reasonably take into consideration, have regard to -

- (a) whether the applicant is a fit and proper person to be granted a licence;
- (b) whether there is good reason for that applicant to hold a licence; and
- (c) whether it is objectionable,

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for reasons of public safety and security, to grant the licence to that applicant.";"

16(c) By adding -

"(3) In exercising the powers under subsection (1) to renew or refuse to renew a licence, the Commissioner shall, in addition to any other relevant matter that he may reasonably take into consideration, have regard to -

(a) whether the person concerned is or has ceased to be a fit and proper person to hold a licence;

(b) whether there is good reason for that person to hold a licence or no such good reason; and

(c) whether it is objectionable, for reasons of public safety and security, for that person to hold a licence."

17 (a) In paragraph (b) by repealing the full stop and substituting a semicolon.

(b) By adding -

"(c) by adding -

"(3) In exercising the powers under subsection (1) to cancel a licence,

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the Commissioner shall, in addition to any other relevant matter that he may reasonably take into consideration, have regard to -

- (a) whether the person concerned has ceased to be a fit and proper person to hold a licence;
- (b) whether there is no good reason for that person to hold a licence; and
- (c) whether it is objectionable, for reasons of public safety and security, for that person to hold a licence."."

- 18 (a) In paragraph (a), in the proposed section 34(1AA) by adding before paragraph (a) -

"(aa) refuses to grant an exemption or varies or revokes such an exemption under section 4(3);".

- (b) By deleting paragraph (c) and substituting -

"(c) by repealing subsection (2) and substituting -

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"(2) Subject to subsection (2A), a licensee to whom notice is given under subsection (1) shall, within 28 days after the notice is given, surrender the licence to the Commissioner or deliver it to him for amendment, as the case may require.

(2A) If a licensee referred to in subsection (1) appeals under section 35 against the decision, he shall surrender or deliver the licence, as the case may require, as soon as practicable after the appeal is disposed of (except where the decision is in his favour), withdrawn or abandoned."."

19 (a) In paragraph (a)(iv) by adding "4(3)," before "12(4)".

(b) By deleting paragraph (b) and substituting -

"(b) by repealing subsection (2).".

23 In the proposed section 46C -

(a) in subsection (1) by deleting "in writing the applicant, in relation to a particular type of shooting range," and substituting "the person as a range officer with the function of ensuring the safe use of a shooting range, and in particular,";

(b) by adding -

"(1A) An approval under subsection (1)

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must be in writing and relate to a particular type of shooting range.";

(c) by adding -

"(4A) In exercising the powers under this section to grant or revoke an approval, the Commissioner shall, in addition to any other relevant matter that he may reasonably take into consideration, have regard to -

(a) whether the person concerned is or has ceased to be a fit and proper person to be a range officer; and

(b) whether it is objectionable, for reasons of public safety and security, for that person to be a range officer.".

27

In the proposed section 58 by adding -

"(3) The Commissioner shall publish in the Gazette forms specified under this section.

(4) Forms specified under this section are not subsidiary legislation.

(5) Section 37 of the Interpretation and General Clauses Ordinance (Cap. 1) applies to forms specified under this section.".

New

By adding -



ClauseAmendment Proposed**"Administrative Appeals Board  
Ordinance****31. Schedule amended**

Item 14 of the Schedule to the Administrative Appeals Board Ordinance (Cap. 442) is amended in column 3 by adding -

- "(d) A decision of the Commissioner referred to in section 34(1AA).
- (e) The imposition of a term or condition under section 4(3), 12(4), 12A(3), 27A(1), 29 or 46C(2), which is considered to be unreasonable."."