

OFFICIAL RECORD OF PROCEEDINGS

Friday, 8 June 2007

The Council continued to meet at Nine o'clock

MEMBERS PRESENT:

THE PRESIDENT

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

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

THE HONOURABLE ALBERT HO CHUN-YAN

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

THE HONOURABLE LEE CHEUK-YAN

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

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

THE HONOURABLE MARGARET NG

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

THE HONOURABLE JAMES TO KUN-SUN

THE HONOURABLE CHEUNG MAN-KWONG

THE HONOURABLE CHAN YUEN-HAN, J.P.

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

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

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

THE HONOURABLE LEUNG YIU-CHUNG

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

THE HONOURABLE WONG YUNG-KAN, J.P.

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

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

DR THE HONOURABLE YEUNG SUM

THE HONOURABLE LAU KONG-WAH, J.P.

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

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

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

THE HONOURABLE CHOY SO-YUK, J.P.

THE HONOURABLE ANDREW CHENG KAR-FOO

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

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

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

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

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

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

THE HONOURABLE VINCENT FANG KANG, J.P.

THE HONOURABLE WONG KWOK-HING, M.H.

THE HONOURABLE LEE WING-TAT

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

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

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

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

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

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

THE HONOURABLE LEUNG KWOK-HUNG

DR THE HONOURABLE KWOK KA-KI

DR THE HONOURABLE FERNANDO CHEUNG CHIU-HUNG

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

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

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

THE HONOURABLE CHIM PUI-CHUNG

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

THE HONOURABLE KWONG CHI-KIN

THE HONOURABLE TAM HEUNG-MAN

MEMBERS ABSENT:

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

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

THE HONOURABLE SIN CHUNG-KAI, J.P.

THE HONOURABLE LAU CHIN-SHEK, J.P.

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

THE HONOURABLE ALBERT CHAN WAI-YIP

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

THE HONOURABLE ALBERT JINGHAN CHENG

PUBLIC OFFICERS ATTENDING:

THE HONOURABLE STEPHEN IP SHU-KWAN, G.B.S., J.P.
SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR

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

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

THE HONOURABLE DENISE YUE CHUNG-YEE, G.B.S., J.P.
SECRETARY FOR THE CIVIL SERVICE

CLERKS IN ATTENDANCE:

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

MS PAULINE NG MAN-WAH, ASSISTANT SECRETARY GENERAL

MRS VIVIAN KAM NG LAI-MAN, ASSISTANT SECRETARY GENERAL

BILLS**Committee Stage**

CHAIRMAN (in Cantonese): Clerk, please ring the bell to notify Members to enter the Chamber.

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

CHAIRMAN (in Cantonese): A quorum is now present. We will continue the joint debate on new clauses 20A and 21D proposed by Mr LEUNG Kwok-hung and Mr Andrew CHENG respectively. Does any Member wish to speak?

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

CHAIRMAN (in Cantonese): Mr Andrew CHENG, speaking for the fourth time.

MR ANDREW CHENG (in Cantonese): Chairman, I would like make a point related to the Buildings Ordinance which I omitted yesterday, that is, the amendment proposed by Mr LEUNG Kwok-hung on behalf of Mr Albert CHAN. Since I focused on elucidating my amendment, I did not talk about the amendment proposed by Mr LEUNG Kwok-hung on behalf of Mr Albert CHAN.

Chairman, the Democratic Party will support this amendment. However, the rationale behind our support is based on..... Mr Albert CHAN had raised a very serious question in a very straightforward manner on a number of occasions during the meetings of the Bills Committee, which is: Why should the MTR Corporation Limited (MTRCL) continue enjoying the exemptions which are not granted to other listed companies after it has been listed, or even after its merger with the Kowloon-Canton Railway Corporation (KCRC)?

I have listened carefully to the opinions of Members who oppose this amendment. For example, Ms Miriam LAU raised a number of technical

issues related to the Buildings Ordinance yesterday, including the provisions governing advertisements, restriction on unauthorized posting of signs and posters, the responsibility for maintaining the cleanliness and tidiness of signs and posters, the power of posting and removing signs and posters, and so on. Frankly speaking, these are issues that would relatively..... affect how we perceive a listed company, having regard to its corporate responsibility and autonomous operation. As far as the Buildings Ordinance is concerned, did the Administration grant the exemptions out of consideration of building constraints or project necessity, or did they grant the exemptions reluctantly? In this regard, I hope the Secretary can try her best to convince us that such circumstances did occur.

After the rail merger, it appears to mark the onset of a process leading to a greater degree of privatization. We worry that this will provide a precedent — there were precedents in the past, which we did not make a point of discussing them then. But in discussing the Rail Merger Bill, it appears that there is no way for us to avoid discussing this issue, because it is fairness that is at stake. Why is it that the railway corporations, the listed MTRCL in particular, should continue to enjoy exemptions that are not granted to other listed companies? I believe there may be complicated circumstances in connection with the Buildings Ordinance, so the Secretary will have to convince us that we should oppose the amendment proposed by Mr LEUNG Kwok-hung on behalf of Mr Albert CHAN. To us, this is by and large similar to the issue of toilets. If exemptions should not be granted in respect of other building-related provisions, and if that is technically feasible, we believe there is no reason that the corporation should be granted too many exemptions. Thank you, Chairman.

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

(Mr James TO raised his hand to indicate a wish to speak)

CHAIRMAN (in Cantonese): Mr James TO, speaking for the third time.

MR JAMES TO (in Cantonese): Chairman, maybe I should explain the issue in greater detail, so that Members will find it easier to understand how it works

specifically as well as the situation that will arise after exemptions are granted in compliance with the legislation.

If exemptions are not granted, the relevant organizations of the Government will be responsible for vetting and approving the projects. As long as the MTRCL can fully comply with the requirements and spirit of the law, this actually means that its works are vetted and approved by an independent body, which is fairly impartial and is conducive to ensuring checks and balances. Of course, we may even have worries that our proven system of separation of powers will be open to question, but it is not the political system that we are talking about now. Still, it has actually been a long-standing practice in society to have another organization or department to vet and approve the work of a private company, which has, however, been made an exception these days.

Let me explain it in detail. As Ms Miriam LAU said, the exemptions are granted by a committee from a certain department having regard to certain specific circumstances. What we have to consider clearly is that whether the vetting and approval is conducted by the committee having regard to certain specific circumstances in general in certain cases, instead of following the normal practice for such applications for which plans and data would be required. If it involves vetting and approval of this nature, this could be carried out by the Buildings Department, the Building Authority or a third party body, and there is simply no need for granting exemptions for compliance with the relevant procedures. Since it is about specific circumstances in general, it allows a wider scope of items or projects of certain nature to be vetted and approved without the need for submission of plans to the Buildings Department. As such, we have to ask the MTRCL of the standards it adopts, for this is equivalent to self-vetting and self-approving, the same way the Housing Department was allowed to carry out self-vetting in the past. As far as I understand it, the vetting and approving criteria are by and large consistent with the requirements prescribed by the Government, which are similar to those of the Housing Department. However, although they have a self-adopted standard of their own, this set of self-adopted standard has never been made public.

Second, as far as I understand it, even if certain parts of the works are not fully compliant with the standard, such information has never been made public, so that the people can learn that some 5% or 10% of the safety standard has been compromised in certain circumstances. Such information has never been made public.

MS MIRIAM LAU (in Cantonese): May I request an elucidation by Mr James TO? Just now he mentioned that the MTRCL had engaged in some self-vetting and self-approving, can he explain such self-vetting and self-approving mechanism according to his understanding?

CHAIRMAN (in Cantonese): Mr James TO, would you like to answer this question?

MR JAMES TO (in Cantonese): Chairman, I am most willing to answer the question as this is precisely what I am talking about. May I ask Honourable colleagues to be more patient in listening to this as this is a rather technical issue? For myself, Ms Miriam LAU and government officials, we may find it easier to understand, and even the Professor will be able to understand it too as it is a technical issue. Regardless of whether the Housing Department or the MTRCL is involved, when exemptions are granted to them in respect of certain legislation, they are not required to submit plans to government departments for vetting and approval, which is precisely the criterion for granting the exemptions. If exemptions have not been granted, that would mean that applications for vetting and approval would be required for all works or any alteration made. Government officials may wish to discuss this point, because this is the spirit of granting exemptions, otherwise there would be no need for granting exemptions. Once exemptions have been granted for compliance with the legislation, it would no longer be necessary to apply for vetting and approval, and eventually the situation will end up in self-vetting and self-approval and the adoption of self-acknowledged standards. However, if these standards are never made public, and in some circumstances they are adhered to only as far as possible; even failures in complying with the standards are not required to be declared publicly.

There is another scenario in which things are totally different. In this scenario, the committee will vet and approve each and every application on the merits of the individual plans, but this was not the case at all in reality. If this was the case, it would not be necessary to grant exemptions at all, right? This is the reason why whenever exemptions are granted for compliance with certain legislation, it will evolve into a practice of self-vetting and self-approval. This is what is needed, and precisely because this is what is needed, the corporation will say that it is railway-related or operation-related and argue that it would be more appropriate for it to conduct self-vetting and give self-approvals. I do not

know what justifications government officials have, and historically there are some departments which, as far as I know, due to the fact that they were wholly owned by the Government, used to have sets of higher standards. But things have changed now, and we do have worries in this aspect. As a matter of fact, it would be more desirable if checks and balances are in place and if vetting and approval conducted by another department.

CHAIRMAN (in Cantonese): Does any.....

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

CHAIRMAN (in Cantonese): Mr LEUNG Kwok-hung, speaking for the second time.

MR LEUNG KWOK-HUNG (in Cantonese): Chairman, I have originally intended to speak after listening to the speeches of Members. Why did Mr Albert CHAN and I have to move this amendment? The simplest reason is because the Mass Transit Railway Ordinance (MTRO) has prevented one thing from happening. Since the MTR Corporation Limited (MTRCL) was previously wholly owned by the Government, so the Government will not institute prosecution against itself as "the palm is flesh, and the back of the hand is also flesh". Furthermore, it was because of the need to adhere to the objective of relying heavily on railway to solve the prevailing transportation problem that it had acted so swiftly by granting exemption. Nonetheless, following the listing of the MTRCL, the importance of this exemption has diminished.

The existing MTRCL looks very much like those state-owned enterprises in the Mainland, which are partly privatized. In the stock market, the most critical move is the Government selling some of its shares. At the general meeting of the MTRCL yesterday, I heard people say that the amount of dividend will definitely reduce in future given that the MTRCL has even lost its fare setting autonomy. Therefore, the minority shareholders were asked not to endorse the proposed merger. The shareholders present at the general meeting may not necessarily be "royalists", who might oppose and vote down the proposed merger at any time. So, what can we do then? Should I have known it earlier, I would have bought some shares of the MTRCL and asked someone to

let me give a speech at the general meeting, because it would be much better than making a speech here.

Let me tell Honourable Members, this is a matter of principle. I really want to ask the Secretary or the Government: What are their views on this point? What we are discussing now may not necessarily relate to the community at large as it is the Buildings Ordinance that is being discussed. Ms Miriam LAU has left the Chamber after putting a question to Mr James TO just now, but I do wish to ask her what she thinks about it. Does she know about the relevant process? And, what does she support? I really want to hear what she has to say. Being the Chairman of the Bills Committee, she is not required to speak. She is still the Chairman, and yet, she is speaking outside the Chamber.

Chairman, I am not competent at all, neither do the pan-democratic Members. We are simply doing our best to expose problems that we see. However, people from the Government or government supporters are only required to conduct vigorous promotion without giving any explanation. Honestly, they would fail to get even a passing mark for what they did at university standard. Can a student remain silent during a tutorial class? Can a student get any mark during a lecture with his mouth shut? No, this is impossible. The standard here is nonetheless much lower than that of a university.

Honourable Members, let us first talk about the Buildings Ordinance. In order to achieve self-regulation, all the powers are conferred on the MTRCL which will thereafter exercise self-regulation. This is tantamount to no supervision. An absence of supervision means that supervision only comes into play after an incident has taken place. In other words, the self-regulation exercised by the MTRCL will prove to be a failure only after the occurrence of incidents causing injuries if lucky, and even deaths if unlucky. Section 54(2) of the MTRO (Cap. 556) stipulates that the Building Authority may, having regard to the exceptional nature of building or other works connected with the operation or construction of the railway; and on such conditions as he may specify, either generally or in any particular case, exempt any of those works from any provision of the Buildings Ordinance (Cap. 123). I have no idea what this is all about, so I hope that the Secretary can explain it to me.

Yet, I know that railway operation has a very extensive coverage, because the phrase "or other works connected with the operation or construction of the

railway" actually covers all works. There are a lot of lawyers here, and I wonder what that phrase means. I really do not know what it means. I have only received primary education. However, just at a mere glance, I think it actually covers all kinds of works in a logical sense, right? May I ask the Secretary or supporting Members: If we still do not take this opportunity to reflect on the matter, what shall we do in case something happens in future? We do not intend to prohibit it from doing anything, but simply to place it under supervision and require it to make application. They are two different concepts. It is now given all the powers at one go, but what if we raise any opposition in future, it will simply say, "Sorry, 'Long Hair', Albert CHAN or anyone else, we are vested with this power under the law". We opine that the relevant power should be removed in the first place, which can be conferred upon application when necessary. This is not impossible, right? This is the critical point.

The provision of toilets under discussion is exempted under the Public Health and Municipal Services Ordinance. Yet, the exemption is not confined to toilets, but also includes such matters as ventilation and cleaning. I cannot tell if avian flu or SARS will recur in future, but this is the last thing I would wish to see. What should be done if the exemption granted to the MTRCL in respect of ventilation or cleaning result in the spreading of diseases? I was speechless when the exemption was granted at that time. It was the era of the colonial government, and I wonder if this building was the then Supreme Court. However, we now have the SAR Government, and this building has become the Legislative Council. I just wonder — the Chairman is shaking her head. I must thank her first because she reminded me that this is not the building, thank you. Anyways, ordinances enacted during the era of the colonial government should not warrant much debate as this Council was merely a consultative body under the colonial government. It is still the same today despite that we now have Members returned by direct elections, who will definitely ask questions when such a need arises. Section 22 of the Public Health and Municipal Services Ordinance is concerned with penalties against the obstructions to scavenging or conservancy operations. If the MTRCL is not required to comply with this provision, there will be no need to provide toilets. Even if there are toilets, they are not subject to supervision, right? It is as simple as this.

All in all, if we do not hear any explanation from the Government or government supporters on the protection offered to the public interest by this

kind of exemption, it should be removed and give way to new ideas. Because once this precedent is set, many other listed companies may follow suit by claiming that they are also acting in the interest of Hong Kong. I do not have much knowledge of law, and all Members are aware that I know nothing about the law. I have no idea if similar exemption is granted to other companies like the CLP Power Hong Kong Limited or the Hongkong Electric Company Limited, or whether this approach is feasible.

Nonetheless, when an organization is free from the supervision of the Government for being granted an exemption by the latter from the relevant legislation, it is not subject to any legislation either. Who is responsible for exercising supervision over it then? Who knows. In fact, we had better make use of the drafting of this Bill — I wonder why it was not dealt with when the MTRCL was listed. I had only protested upstairs at that time, instead of speaking in this Chamber — I have no idea why it was not dealt with at that time, until today. Why was the issue not dealt with when the MTRCL was listed? What lesson can we learn from this? If we still do not look at the exemption from a new angle and allow public monitoring..... For instance, why is it not possible to appoint a committee to exercise supervision? That is, the power should be recalled in the first place, and a committee will then be formed to exercise supervision. Why is this not possible? I do not see why this is not possible.

Will placing the MTRCL under supervision bring a lot of inconveniences to it? We discussed the issue of toilets yesterday, but so far the MTRCL has not mentioned the difficulties that it will encounter in the provision of toilets. I learnt that it is a problem of the sewers, which may, for instance, emit stench. But has it ever raised this point formally? It is simply because there is no need for it to give us any account. If this is required under the law, it will have to explain its case before the Court and give the Judge a reasonable excuse. During the trial, we will notice that the MTRCL..... Why is it necessary for Mr Abraham SHEK to defend it with jokes? It can simply testify in Court and state that it is not feasible to do so. This is the critical point.

My query about the whole thing is: Can the power be recalled? The person who gave the reply said that the existing practice is proven, the recall of power will therefore cause a lot of inconveniences. Members should understand that in respect of the ventilation system — there was no avian flu or SARS epidemic in the past, and their existence was not known — if there is no

supervision on the ventilation system, what will happen? Can we do without toilets after entering the MTR stations given that the MTR lines have become so extensive? I recalled that the journeys were all very short when we travelled on the MTR in the early days.

Furthermore, there is the problem of buildings. If the buildings are substandard as a result of the exemptions for the MTRCL, how can we regulate this? Many people have ridiculed me by saying that, "'Long Hair', there is no need to be afraid. Mr Andrew CHENG's amendment suggested that the MTRCL should give an account of all incidents, but who would agree with this? While it is exempted from giving the public an account of the matters even though it is required of it, is it still necessary for it to comply with the Buildings Ordinance?"

In this connection, it is indeed very dangerous to continuously exempt it from the Buildings Ordinance. I wonder if the building works undertaken by it or the paving relating to these works are included. I really have no idea. But if they are, it will be very dangerous. I know that many Members may think that I am seeking to stir up troubles for no reason. Am I doing this merely to obstruct the merger? I can tell Members that I am not. Yesterday, a reporter asked me if I had deliberately made a disappearance. No, I am actually awaiting a concrete reply from the Secretary to tell us whether or not the power will be recalled. Thank you, Chairman.

MS MIRIAM LAU (in Cantonese): Chairman, I consider it important for us to understand some fundamental facts during the debate. It does not matter if our views are different.

I am so sorry that I had to interrupt Mr James TO when he was making his speech earlier on. I wish to ask Mr James TO to explain why he had the idea that the MTRCL would vet and approve plans by itself.

The speech given by Mr LEUNG Kwok-hung just now also reminds me that he might not be present when I spoke yesterday. Maybe he was present, but he failed to hear my viewpoints very clearly. Perhaps I should repeat them very briefly, and I hope that after hearing my viewpoints, Mr James TO will make further responses by explaining why he came to the conclusion that the MTRCL could vet and approve plans by itself.

My viewpoints are as follows: At present, it is section 54(2) of the Mass Transit Railway Ordinance (MTRO) that is to be repealed. Of course, Mr LEUNG Kwok-hung may wish to have subsection (1) repealed too. Section 54(2) reads, "The Building Authority (the approving authority under normal procedure) may, having regard to the exceptional nature of building or other works connected with the operation or construction of the railway; and on such conditions as he may specify, either generally or in any particular case", exempt any works. What will be exempted? It will "exempt any of those works from any provision of the Buildings Ordinance (Cap. 123)." Then, section 54(3) stipulates that, "Except as provided in subsection (2), the Buildings Ordinance (Cap. 123) applies to..... or other works....."

It is therefore specified here that the Building Authority may grant exemptions in the light of the exceptional nature of railway works. And, by adding certain conditions, exemptions will only be granted upon satisfaction of those conditions.

Now, what is actually being exempted? In fact, exemption is granted to railway design and construction. However, the MTRCL is currently required to submit its railway designs or plans to a committee for examination, which is formed by the government departments concerned. The terms of reference of this committee are actually much wider than that of the Buildings Department (BD). In other words, vetting and approval is not done by the BD alone, but by departments having much wider terms of reference than the BD. What departments does the committee consist of?

It is composed of representatives from the Hong Kong Rail Inspectorate and the BD which definitely cannot wash its hands off the matter as it may be involved in some cases. Besides, there is also the Fire Services Department, because given the importance of the railway, it is necessary to prevent the risk of fire within the railway precincts. Should a fire breaks out, there must be adequate facilities. Therefore, consideration should be given to building the railway in a way that is best to prevent fire. Furthermore, there is the Hong Kong Police Force as possible security problems may arise within the railway precincts, and the Highways Department (HyD) as interfaces between railways and roads will be required to some extent, which may warrant the help of such departments as the HyD. It can be seen that the plans are actually vetted and approved by a large committee.

For this reason, in my opinion, if this arrangement is really put in place, it would be impossible to draw the conclusion that the MTRCL would vet and approve any plans by itself.

Certainly, I very much welcome Mr James TO to express his viewpoints when he speaks later on. The main point that I wish to reiterate is that the situation suggested by Mr LEUNG Kwok-hung just now actually does not exist, that is, residential buildings above railway stations do not require the approval of the authorities concerned. This is not the case, and the authority rests with the Building Authority. So far, exemptions have been granted to the building, design and construction of new railways only. It is therefore incorrect to say that the MTRCL can build in its own way, or it is not required to submit plans to any department.

In fact, the plans for vetting and approval must be submitted to the large committee mentioned by me earlier because a number of departments will be involved. So, all plans must be vetted and approved. This is the point that I wish to elucidate, and I would like to ask Members who have different views to speak and share their views with us. Thank you, Chairman.

MR JAMES TO (in Cantonese): Chairman, what Ms Miriam LAU said was precisely the points that I made in response to her speech earlier on. Can you imagine why general exemptions will be granted after the Building Authority had considered the exceptional nature of the works concerned pursuant to section 54(2)(a)? If the inter-departmental committee mentioned by you does vet and approve the plans carefully, and grant exemptions after considering each and every plan and even minor project, it would not be necessary to draft the provision in its present form.

The question now is the provision, as currently drafted, implies that having regard to the exceptional nature of works that are of a comparatively larger scale, or are more general or procedural in nature, the vetting and approval procedure under the Buildings Ordinance (which I mentioned earlier) that should have applied will be waived. For instance, a private company must submit the relevant plans before a project can be implemented. Yet, approval may not necessarily be granted upon submission of the plans. This is not the case. Details of the type of works in relation to the general plan concerned and its uniqueness should also be provided, together with the relevant factors.

Subsequently, the inter-departmental committee may say that, "Go your own way for an exemption is granted".

Certainly, the Building Authority may set out some general or specific conditions, or grant exemption on the ground of its specific nature. If we go deeper into the issue, amendment to the Building Ordinance may also be required to provide that the general condition should apply; otherwise the Building Authority will examine the relevant plans in consideration of the exceptional circumstances according to the Buildings Ordinance. The provision as drafted will then create another category and result in a blanket exemption, which is not appropriate. This is where the minute difference is.

MR LEUNG KWOK-HUNG (in Cantonese): I have no knowledge of those laws, but I only know how to interpret the phrases therein. Section 54(2) of the Mass Transit Railway Ordinance (Cap. 556) provides that, "The Building Authority may, having regard to the exceptional nature of building or other works connected with the operation" — we certainly know what is meant by railway operation — "or construction of the railway" — which is all-inclusive — "and on such conditions as he may specify, either generally or in any particular case, exempt any of those works", that is, the abovementioned three types of works, "from any provision of the Buildings Ordinance (Cap. 123)". This is indeed a very extensive exemption.

I have no idea of the operation concerned either. The Building Authority may, having regard to the "building or other works connected with the operation", that is, railway operation, "or construction of the railway", which refers to the building or other works relating to the operation or construction of the railway and has a very extensive coverage; in addition, he may, "on such conditions as he may specify, either generally or in any particular case", which refers to the general case, "exempt any of those works", that is, the abovementioned three types, "from any provision of the Buildings Ordinance (Cap. 123)". Since I am only a stand-in, I have no idea at all of what Cap. 123 is about. What actually is Cap. 123 all about? I have a good habit of asking questions about things that I do not understand. Perhaps I should ask the Secretary because she is here to sell the merger. What are the provisions of Cap. 123 about? Or, maybe I should seek the advice of Ms Miriam LAU as I am humble enough to consult anyone. What actually are the provisions of Cap. 123 about?

I think that neither Mr Albert CHAN nor I was making groundless allegations as the coverage of the exemption is very extensive. In view of its extensive coverage, what we request is nothing but its recall and denying the MTRCL such an exemption. Once the exemption is recalled, the Government will effect supervision pursuant to the provisions of the Buildings Ordinance (Cap. 123). If the MTRCL considers it inappropriate for the Government to exercise regulation, it may apply for an exemption, right? It may also resort to the Court for a ruling, which I have said repeatedly; or if the Government wants to save it, a committee may be set up for this purpose. The logic is very simple indeed.

I think that there is no need to say more as our stance has been clear enough. There should not be such an exemption because the MTRCL is a listed company, and it is given the exemption not for the sake of public interest. In my opinion, neither is it a good idea for the public sector to be granted an exemption. It was our previous belief that there was no point for the Government to institute prosecution against itself, and I think it is now time that this belief should be brought up for discussion again. I hope that the Secretary will explain the provisions of Cap. 123.

CHAIRMAN (in Cantonese): Ms Miriam LAU, speaking for the third time.

MS MIRIAM LAU (in Cantonese): It is indeed very simple, Madam Chairman, for Mr LEUNG Kwok-hung has asked me to explain what Cap. 123 is about. I would be very happy to explain to him that Cap. 123 is the issue he is now discussing. The Buildings Ordinance is Cap. 123. *(Laughter)* Madam Chairman, I have no intention of repeating what I have previously.....

MR LEUNG KWOK-HUNG (in Cantonese): What does Cap. 123 refer to?

MS MIRIAM LAU (in Cantonese): The Buildings Ordinance is Cap. 123 of the Laws of Hong Kong.

MR LEUNG KWOK-HUNG (in Cantonese): The Laws of Hong Kong?

MS MIRIAM LAU (in Cantonese): Yes, Cap. 123 is a chapter of the Laws of Hong Kong.

MR LEUNG KWOK-HUNG (in Cantonese): How about "any provision"?

MS MIRIAM LAU (in Cantonese): The term "any provision" can be interpreted literally. Well, I think I had better address you, Madam Chairman.

I have no intention of lengthening the debate on this issue, and our stance is pretty clear. However, insofar as my personal view is concerned, after looking at the provisions and the actual situation, Madam Chairman, I have not come to any conclusion — under these provisions and the arrangements currently in place, the design and construction of railways by the MTRCL are actually subject to the approval of an expanded committee. It would be impossible to draw the conclusion that the MTRCL vets and approves plans by itself. I have definitely not come to such a conclusion.

There is another point that I wish to add. Now, I have in hand the actual membership list of this particular committee, which consists of the Transport Department (TD), Buildings Department, Hong Kong Police Force, Fire Services Department, and of course, the Hong Kong Rail Inspectorate under the TD. This committee has many experienced technicians to deal with railway safety issues and railway design, and its members also have a wide range of experience. Given that the committee has been expanded and its members have such a wide range of experience, it can therefore better grasp the special needs of railway design and operation. We consider that such a vetting and approval approach can better protect public safety.

Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): MR LEUNG Kwok-hung, speaking for the fourth time.

MR LEUNG KWOK-HUNG (in Cantonese): Chairman, I wish to ask a very simple question, just to crack a joke on the Secretary and Ms Miriam LAU:

Would you please try to read out all the provisions of the Buildings Ordinance (BO)? I was referring to "any provision", that is, any provision of the BO will be waived. Simply reading them out takes a long time, right? To put it simply, why is there such an extensive exemption? It is the Building Authority who can do so, and this is precisely what we oppose. We oppose because there is no reason that, "having regard to the exceptional nature of building or other works" — which is indeed very extensive — "connected with the operation or construction of the railway" — a lot of works is in question, and whichever is considered by him to be of an exceptional nature, he — that is, the Building Authority — may "on such conditions as he may specify, either generally or in any particular case, exempt any of those works from any provision of the Buildings Ordinance". If this is not the case, why would I bother to ask you to read it out? It is so tiring to read it out, right? Is that what is provided for in relation to any provision of the BO? I really do not get it. The provision of such an extensive exemption is, in my opinion, most unfair.

At that time, I thought it was merely an expedient approach. Now, we have proposed an amendment to recall this power to the effect that the Building Authority will not be entrusted to do this and in such an extensive manner. There must be some clear restrictions, and it is as simple as this. I am no expert on law, but I can feel that there is something wrong with it and the power must be recalled. In fact, the point that I have said repeatedly is, should a private listed company be granted these exemptions? The logic is actually the same, including whether or not there should be toilets.....

CHAIRMAN (in Cantonese): The two points that you raised just now were already heard yesterday, and this is the second time you mentioned them today. According to our rules, you may speak more than once at the Committee stage, but you should not repeat any previous arguments. Even though I have a poor memory, I can still remember that you have mentioned those two points many times. So, please express your views in another way. If you cannot think of an alternative, please do not speak for the time being.

MR LEUNG KWOK-HUNG (in Cantonese): Chairman, this is actually an exchange, whereby I was informed by Ms Miriam LAU that the BO is Cap. 123. It is as simple as that, and I just want to tell her that I know.....

CHAIRMAN (in Cantonese): I am not talking about the first part of your speech, but the two points that you mentioned just now. You have already mentioned them this morning and yesterday, so you should not keep on repeating. That is it. It has nothing to do with the arguments between you and Ms Miriam LAU. According to the Rules of Procedure, you may speak more than once at the Committee stage, but you should not repeat any previous remarks. That is why I pointed out that you were repeating yourself. Please do not repeat yourself.

MR LEUNG KWOK-HUNG (in Cantonese): What was repeated? Have I repeated the point that being a private enterprise, the MTRCL should not accept the Government's exemption?

CHAIRMAN (in Cantonese): Besides this, there is another point.

MR LEUNG KWOK-HUNG (in Cantonese): I wish to emphasize this point.

CHAIRMAN (in Cantonese): The two points that I referred to are not the remarks you made earlier on, but those you mentioned just now. One of them relates to the toilet issue, which we had debated for quite some time yesterday. I have already given you allowance when you spoke on it again this morning, but here you come again. Therefore, I have to remind you that you are not allowed to repeat yourself.

MR LEUNG KWOK-HUNG (in Cantonese): Chairman, to be fair, I had only spoken for six minutes yesterday. I understand that my speech was rather redundant, so I have given way to other Members and did not speak until today. Although this is the second time I speak today and I have spoken for 15 minutes plus three minutes, they add up to 18 minutes only. I did not start on the topic of toilets, but have only spoken on it for a short while. I just mentioned it in passing, but did not.....

CHAIRMAN (in Cantonese): No, Mr LEUNG Kwok-hung, you do not understand what I am talking about.

MR LEUNG KWOK-HUNG (in Cantonese): Chairman, I am not going to protest against your ruling anymore because there is justice in people's hearts. Actually, I am very outspoken, but I purposely refrained from speaking yesterday. That is why Mr Andrew CHENG had to return without finishing his meal. Anyway, if you, Madam Chairman, ruled that I was repeating myself, I shall stop here and let other Members repeat themselves.

CHAIRMAN (in Cantonese): Mr LEUNG Kwok-hung, you may continue to speak on other issues. Only the two points that you mentioned just now are repeated. Furthermore, how long you speak has nothing to do with whether or not you have repeated yourself. It is the rule of this Council that if the same issue is expressed in different ways in your speech, being the Chairman, I can simply sit and listen. However, if you repeat any previous remarks which I am able to recall, I will have to remind you. Fine, no matter you wish to speak or not, you should not repeat yourself nor digress from the question.

MR LEUNG KWOK-HUNG (in Cantonese): I did not digress from the question. I have simply spoken on the toilet issue and the BO. When I talked about the BO, I have only touched on the exemption provided under the Public Health and Municipal Services Ordinance, which obviates the need for the MTRCL to provide toilets. Even if toilets are provided, supervision is not effected, which thus enables the MTRCL to have every reason to refuse the provision of toilets. This is the case. There is nothing I can do if the Chairman really thinks that I was repeating. In fact, this is the first time I talked about the toilets, and it is as simple as this. In view of this, perhaps I should listen to other Members speak instead. My question is very simple: Why does a private organization enjoy such an extensive exemption under the BO? This is the point. As regards the Public Health and Municipal Services Ordinance, I am not going to say any more about it because many people had talked about it yesterday. I will rise to make a response only when someone speaks on it again.

MS MARGARET NG (in Cantonese): Chairman, I cannot help but raise and say a few words on the side of Mr LEUNG Kwok-hung.

Just now he asked why the scope of exemption in Cap. 123 of the Laws of Hong Kong was so wide and what in fact the contents of Cap. 123 were. I could see a look of disdain on the face of the officials and it seemed to be saying, "How come you know nothing about such things?" I even heard some Members say such things. Chairman, Members are not lawyers and even for those of us who have undergone training in law, our capacity here is not that of a lawyer and we are not here to give any professional advice. Officials who have the benefit of professional legal advice should be obliged to explain to Members so that their misgivings can be dispelled. I am standing here and despite the fact that I am not in charge of this Bill, Chairman, I have been listening very carefully and I can see that Members are trying their best and exhausting every means possible to understand this piece of legislation and help the people protect their own rights.

Now in this Council the prevailing practice is to finish all businesses as soon as possible and it would set the best record if a meeting can be adjourned in five minutes. We would hope that four and a half minutes will be used in the next meeting and in this way we are pursuing excellence. And from four minutes, we would want the next meeting to be three and a half minutes, then two minutes, and it would be great if only one minute is used. It would be wonderful. Chairman, I wish to point out that when a Member does not understand something which some people may think is obvious and simple enough, the fault does not lie in the Member but it shows on the other hand that the officials and the Government have not done a good job in explaining things to Members so that they can understand and have their misapprehensions allayed. It is only natural for Members to think that something is wrong when the exemption can be so extensive in scope and they may wonder why the Government will want to grant such an extensive exemption.

Chairman, I recall you said on one or two previous occasions that there were reasons why certain remarks should be made at a Council meeting and why certain remarks should be made when a clause-by-clause examination was being undertaken. That was what happened yesterday and it is only that the Chairman has not made any mention of this in particular today. However, in order to be fair to Mr LEUNG Kwok-hung on record, I think I must make these comments. I come from the legal profession and I would not find it a chore to read through the law. Though there are many things that I may not know, at least I would see

where the problem lies and I know where advice can be sought. However, we cannot assume that every Member is like this and when they do not understand, the fault is on the Government.

Thank you, Chairman.

CHAIRMAN (in Cantonese): Does any.....

(Mr Andrew CHENG indicated that he wished to speak)

CHAIRMAN (in Cantonese): Mr Andrew CHENG, I do not want to stop you from speaking. However, both you and Mr LEUNG Kwok-hung will have a chance to speak again. Now this is the fifth time you are speaking.

MR ANDREW CHENG (in Cantonese): I think this is the last time I speak. Chairman, I hope you would understand this.

CHAIRMAN (in Cantonese): No, I was just trying to remind you.

MR ANDREW CHENG (in Cantonese): I will be very brief. Because the main point of my speech is to respond to the issue of safety and committee which Ms Miriam LAU has raised earlier. I would also like to sum up, because we have debated for two to three hours on the subject of toilets alone. This is why I would like to sum up what we have debated in the hope that the Secretary can respond. Therefore, I will be very brief.

CHAIRMAN (in Cantonese): We are discussing the issue of exemption, not toilets in the MTR.

MR ANDREW CHENG (in Cantonese): I will speak on these two aspects since this is a joint debate.

CHAIRMAN (in Cantonese): I reminded Mr LEUNG Kwok-hung earlier that since we had discussed the issue of toilets in the MTR yesterday, I hope no repetition will be made. So I am saying the same thing to you and please do not repeat.

MR ANDREW CHENG (in Cantonese): All right. All right. This is because I have heard some new arguments and so I hope the Secretary would respond.

Madam Chairman, I think we must understand that what we are discussing is Mr LEUNG Kwok-hung's proposal to eradicate the exemption found in the existing law which dates back to the colonial times and which gives an exemption to the MTRCL. I think the reason is that we are not worried about that under the Buildings Ordinance. The former colonial government might think that the MTRCL was wholly-owned before its listing and the officials in it might be transferred to elsewhere, for example, they might be seconded from the Buildings Department to the MTRCL to help in the construction of the MTR, therefore, they might think that there would be no need for too many applications and the most important thing was that the MTR could be built and completed speedily. This would benefit the construction of infrastructure in Hong Kong. As the scale of the project was so immense, it would not be desirable to make so many changes in law and so this is how the exemption came about.

I understand that even after the listing, engineering staff from the MTRCL will not be negligent of railway safety because of this exemption. I do not believe that they would do this. But it is not because of this exemption that problems arise in the construction of the railways. Earlier on Ms Miriam LAU read out from the list concerned and I see her point. This is because, Chairman, when we were examining the law, the most important discussion is on a key issue. The MTRCL has now become a listed company already and after the merger it will certainly develop towards privatization, then why should we still want to give it the exemption?

We often say that justice must be done and seen to be done. Now when things are done this way, I am worried that a precedent will be set. If the West Kowloon Cultural District project is considered as a mega project, it must be completed soon. The listed companies which are awarded the construction projects may ask, "Why is the MTRCL given an exemption but not us?" This is the key problem and I hope the Secretary can respond to this.

Madam Chairman, my conclusion is, I hope the Secretary can respond to two points associated with my amendment. It seems that the Secretary has yet to respond to the question why there are no toilets in the MTR. It is very likely that this problem may bring the tourism industry of Hong Kong into disrepute. When I was listening to a radio programme this morning, a member of the public called in and said that people were used to not having toilets because this had been the case for some 20 years. He said that they would go to the toilet first before riding on the MTR. He thought that the bunch of Members like us were standing in the way of things and we were making much ado about nothing and what we did was to canvass more votes and put up a show. I respect this view but I really cannot agree with it. The people of Hong Kong are forced to form this habit. Our society is ageing and there is a growing need to build more toilets for public convenience. The reason is that aged persons will need to go to the toilet more frequently. Actually, discussions have already begun on the question of there should be more toilets for women than toilets for men. Madam Chairman, this is a new point of view and I hope the Secretary can respond to it.

Society is changing all the time and it is making progress. As a financial hub and a tourist destination, how are we to respond to the question that tourists from the Mainland and all over the world cannot find any toilets in the MTR? I hope Mrs CHOW will respond to this as well. She has been in the tourist industry and yesterday I asked them to respond to the motion that we have passed.....

CHAIRMAN (in Cantonese): Mr Andrew CHENG, I have to interrupt your speech and I have to do it frequently.

MR ANDREW CHENG (in Cantonese): All right, I will not read those points out. Madam Chairman, can I say one more sentence?

CHAIRMAN (in Cantonese): No repetition, please?

MR ANDREW CHENG (in Cantonese): I will just speak one more sentence.

CHAIRMAN (in Cantonese): No repetition.

MR ANDREW CHENG (in Cantonese): I would not speak anymore. I hope that apart from this point, the Secretary can respond to the fact that as a director of the MTRCL and government representative on the Board of the MTRCL, what would she say in relation to this drastic increase of commercial premises in the stations and this singular concern for commercial interest and this unwillingness to spare some space to build one or two toilets for public convenience? I hope the Secretary can really say something in response to these few points. All right?

Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): Members, I would like to tell you that I do not want to stand in the way when you speak or I want to cut your speeches short. The point is we have such a rule that I am obliged to remind you if you repeat or digress. I hope Members can understand that I am discharging my duties and acting according to the Rules of Procedure which you have made. Therefore, please do not say that I ask you to cut your speeches short. I have no intention as such. I just want you to observe the Rules of Procedure. Does any other Member wish to speak?

(No Member indicated a wish to speak)

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

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): Chairman, the Members proposed that the existing provisions applicable to the operation of the MTRCL should be repealed. Such provisions include section 54 of and Schedule 2 to the Mass Transit Railway Ordinance and section 37 of the Noise Control Ordinance. We consider these amendments would affect the effective operation of the railways, so we do not agree to them.

As for the issue of toilets, now all the designs of the underground railway do not envisage the installation of public toilets at the stations. When such an

exemption is repealed, that would mean all the underground stations will have to be retrofitted with public toilets. Findings of studies made by the MTRCL show that there are practical technical and engineering difficulties, including the addition of large-scale formal sewage and ventilation systems which are not found at present in the existing underground conduits. In addition, considerations have been given to the potential dangers of the possibility of the related facilities of the added sewage system being too close to high-voltage power supply in use. Therefore, there is a practical necessity to retain the exemption provisions for MTR stations.

I know that many Members have expressed a strong concern about this matter. The MTRCL has said at a meeting of the Bills Committee that it would review the possibilities of installing public toilets at at-grade stations or in the proximity of the stations. Such a review would be completed by the end of this year. The MTRCL has also agreed to report on the progress of the public toilets issue to the Legislative Council Subcommittee on Matters Relating to Railways on 16 July.

As for those railway lines to be built in future, the MTRCL has agreed to specify in the design criteria for newly planned railways that while consideration is made of the views of nearby residents on the location of the necessary ventilation shafts, it will provide toilets within or close to the stations. Actually, the exemption in Schedule 2 mentioned by Mr Andrew CHENG also includes exemption from nuisance caused by the air from ventilation systems. I would like to explain a little bit on that here, for Mr LEUNG Kwok-hung has mentioned it a number of times. However, this ventilation system is entirely different from the ventilation system for toilets. The system here refers to the ventilation system which should be installed for the purpose of the underground operation of the station itself and it is used to draw in fresh air and to emit exhaust. Such outlets would usually be built in other buildings close to the station and so there must be an exemption to a certain extent.

However, this exemption is only applicable to the nuisance caused by air from the ventilation system. Under the Air Pollution Control Ordinance (APCO), there is an item on nuisance which is very difficult to define. A charge can be laid if anyone is feeling unwell or thinks that he or she is being subjected to nuisance. In the case of ventilation systems in the railways, they must follow the standards prescribed by law, that is, those set by the Environmental Protection Department (EPD) under the APCO, to ensure that

minimum impact is caused on the nearby environment. Sorry, it should be the EIA, that is, the Environmental Impact Assessment. The design must only be employed after passing the EIA. The relevant criteria carry some quantified requirements for assessment purposes. After an assessment is complete, an EP, that is, Environmental Permit will be issued by the EPD under this law. Hence, this is not a blanket exemption as such and this is only an exemption from the part on nuisance.

Another exemption found in Schedule 2 is about section 22 of the Public Health and Municipal Services Ordinance. A number of Members have spoken on that earlier. However, as I am not an expert in law, like Members I do not understand why there is such an exemption. In fact, this exemption is only about exemption from the prohibition on obstructing the work of removing refuse or that in conservancy operation. This is because when undertaking construction works, the railway corporations would usually erect wooden boards to encircle a certain area and owing to works requirements, no entry is permitted in many cases and that including persons who carry out refuse removal or conservancy operations. This item is now obsolete and it no longer applies. However, the MTRCL will be responsible for such cleaning work to keep the environment clean. Such an exemption comes into existence because of the actual needs of the works undertaken by the MTRCL because no entry is permitted into the construction sites.

As for another exemption in Schedule 2, it is pointed out only by Mr LEUNG Kwok-hung and that is on the signs and articles of publicity. The exemption under the relevant provisions is based on the fact that railway operations are unique because there is only one underground railway in Hong Kong and the signs and articles of publicity are especially designed for it. Hence the authorities need to form a specific committee comprising people from the Railway Inspectorate, the Fire Services Department, the police and the Buildings Department to handle matters relating to signs of the stations. Hence, the signs of the MTRCL are not covered by the general provisions and so there is a need for exemption.

Lastly, I wish to talk a little bit about the Buildings Ordinance. About those things Mr LEUNG Kwok-hung has said earlier that he does not understand, I do not understand them too. There is a Chinese translation of the word "any" in a reference to any Ordinance in the Buildings Ordinance (Cap. 123). This word may be easier to understand in English. I do not think

it refers to "all" here. In other words, it does not mean all provisions but any one provision. In such circumstances, the restrictions of the Buildings Ordinance are actually all applicable to the railway corporations, except the few provisions which are exempted. As to what are exempted by the Building Authority, these are certain procedures and vetting process and an exemption will be given in railway operation and during the related construction works.

Having said that, exemption does not mean leaving everything blank for the MTRCL and it can have a free hand to vet and approve its own matters. This exemption is conditional and that is, a committee formed of the related government departments will effect supervision. Ms Miriam LAU has made it very clear earlier about the reason for setting up a supervisory committee formed by some special people. This is because the design, operation, and so on, of the railways in Hong Kong are unique and there must be experts in charge of vetting and approval. This cannot be covered by the general provisions of the Buildings Ordinance because special attention must be paid to the uniqueness of building railways and the related works. Hence this exemption must be retained. This is no blanket exemption which allows the corporation to do whatever it likes. It is given because there are practical needs in technical terms in the MTR that have to be considered. For such a gigantic infrastructure as it is, it would only be necessary to have this kind of exemption to take into account the special conditions of a mass transit system that is built underground.

I hope Members will refrain from endorsing the proposal to repeal the exemption. Thank you, Chairman.

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

MR ANDREW CHENG (in Cantonese): Madam Chairman, I do not think I need to speak again.

MS MARGARET NG (in Cantonese): Chairman, the reason cited by the Secretary for not accepting the proposal of building toilets is that the MTRCL says that there are practical difficulties. Chairman, this is putting the cart before the horse. I have been listening very carefully and I find that the Secretary is only saying that there are practical difficulties. It is likely that the

corporation is unable to make it if it is required to complete everything all of a sudden. Actually, the problem can be solved rather easily. If it is considered that policy-wise, the people of Hong Kong have such a need now and even if such provisions are passed, their effective date can be postponed. If things cannot be completed at the deadline, and even if it is known that this cannot be done in one or two stations no matter what, or no practical solution is available, then there is still room for amending these provisions. Hence, these cannot be put up as any justifiable grounds. Moreover, Chairman, we must be fair in enacting laws and we must treat everything and everyone equal. I recall in this Chamber, there are many laws passed that may cause inconvenience to many people, the small and medium enterprises and taxi drivers. An example is that the Secretary said that demerit points would be registered for driving through the red light. Many taxi drivers and others who earn a living by driving said that there were great difficulties and video cameras had to be installed. At that time, the Government responded by saying that a time limit was set for adaptation and a grace period was set as well.

Another example which is even more obvious is the recent smoking ban. There is also a grace period for that. If the problem is only that practical difficulties exist and a lot of things are involved if this should be carried out at once, as long as it is considered that this is a policy that should be put into force, then all these technical problems can be overcome. So I do not think that we can accept an explanation like that. Thank you, Chairman.

MRS SELINA CHOW (in Cantonese): Mr Andrew CHENG mentioned just now that I had raised very strong views on this issue in the Bills Committee. He also talked about the needs of visitors. Actually, there is no question that members of the public should be given more consideration than visitors. However, as far as my understanding goes, Ms Miriam LAU already stated the position of the Liberal Party yesterday — we hope that toilets can be built as soon as possible.

Ms Margaret NG also mentioned this point just now, but perhaps she was not a member of the Bills Committee, so she is not quite clear about the circumstances surrounding the Bills Committee's discussions on this issue. Dr Raymond HO can be described as an expert on this, for he possesses very great engineering expertise. During our discussions, we agreed that the building of toilets does not simply involve ordinary and simple difficulties. There are truly

many serious technical problems. As a matter of fact, the building of toilets must require solutions to a number of engineering problems. I of course agree that where there is a will, there is a way, so once there is a policy change, solutions must be worked out somehow. But Members must realize that such a policy was not in existence at the inception of the MTR. As a result, many stations are not designed to accommodate any toilets. If there is to be a policy change now..... I agree that there must be a policy change because times have changed and we now have a greater demand for such facilities. I do not think that such a demand is at all unreasonable. However, firstly, owing to technical, engineering, contract and other problems, we simply cannot know whether the MTRCL is able to do so in all of its existing stations. This is the first point.

Secondly, there is of course the point that while we may ask for a policy change, we at the same time do not know when the change can be fully effected. We therefore ask it to adopt a pragmatic approach. In other words, we want the MTRCL to tell us its work arrangements and procedures. If Members say to the MTRCL that the policy must be amended, the Government must of course consider whether there is a need for amending the legislation accordingly. The MTRCL must also consider what changes it must make in respect of the legislation concerned, practical arrangements, engineering requirements, technical specifications and contract terms and conditions. Time is indeed required. But will we permit it to use this as an excuse for delay? I believe we are obligated to ensure that it will not behave in this way.

Having said that, I must add that in some cases, the desired objective may not be achieved simply by enacting legislation. Quite the contrary, everybody must be prepared to negotiate. Yesterday, Mr Andrew CHENG referred to the discussions on the retrofitting of platform screen doors. Members were very happy that everybody could agree to require the MTRCL to complete all the works before the deadline of 2012. I do not know whether Mr Andrew CHENG can still remember that at that time, I asked the MTRCL representative at the meeting whether they could manage to do so. And, I even asked the MTRCL to say when it could complete all the works. It replied that it could complete the works in 2012. It was for this reason that we wrote the year 2012 into the legislation, just to make sure that the MTRCL could manage.

I think as legislators, we have such a power, do have such a power. However, I also think that we cannot completely ignore..... That is easier said than done, but it is correct to share the people's aspirations. We have the duty

to ensure that the works concerned can be completed, and that the approach adopted is proper. The proposed approach is the repeal of the existing exemption under the law. In other words, once the exemption is repealed, the corporation will bear the risk of violating the law tomorrow. Ms Margaret remarked just now that there would be no problem because a certain effective date could be set. But even so, we cannot ensure that the MTRCL can solve the problems relating to its past projects. Members must not forget that all those past projects were undertaken by the MTRCL with the rights vested with it under the law. All this is possible in MTR stations because the MTRCL is so empowered under the existing law. But now, Members talk about a repeal, about the total repeal of any exemption.

I always bear in mind one thing I have learnt from Ms Margaret NG — although we may possess powers under the law, we must not lightly invoke the law and forcibly abolish the rights concerned tomorrow. On human rights and civil rights, she has always said so. Following her reasoning, I think that an operating corporation or organization should be respected in much the same way. When it undertook the projects concerned, it enjoyed exemption. But people are saying that from today onwards, there will be no more exemption, and both past and new projects will be no exception. Is this a proper approach? That is precisely why the Liberal Party and I..... I strongly and absolutely agree to Members' request for the building of toilets, and I will do my utmost through various channels to ask the MTRCL to do so as soon as possible. But I still think that to legislate on this is entirely improper.

MR ANDREW CHENG (in Cantonese): Chairman, you must have observed that I actually do not intend to speak. However, after listening to Mrs Selina CHOW, I think I should somehow make a response and clarify the matter.

I do not know whether you will permit me to speak on the installation of platform screen doors in 2012 and 2013. But I must say that the concepts involved are very similar to those underlying the toilet issue. Only two motions were passed in the Bills Committee, one on the issue of platform screen doors discussed yesterday and the other on the issue of toilets under debate today. What I mean is that if just a non-binding motion is passed and the law..... Mrs CHOW's remarks just now, in particular, remind me that the Secretary has not given an answer..... If the motion "strongly urges the Government to instruct

MTRCL to expeditiously formulate a policy on the provision of public toilets at railway stations" She has only raised two points in response: first, the MTRCL will give consideration to the idea from the engineering perspective; and, second, the matter will be referred again to the Subcommittee for discussion on 16 July. We urge the Secretary to instruct the MTRCL, but how is she going to do so? In the absence of a basis in law, what is the Government going to do if it claims on 16 July that there is really no room because all room has been allocated to shops and cafeterias, or if it once again cites all those technical difficulties which it has been raising for more than a decade? What is the use of passing all those non-binding motions?

I hope Mrs CHOW can understand that we all share the same objective. But the greatest difference between her and us is of course that she may have great faith in the MTRCL. The Liberal Party has strong faith in the MTRCL, believing that once the MTRCL promises to build toilets, it will certainly do so, and that if the KCRC agrees to retrofit platform screen doors, it will definitely keep its promise. Honestly speaking, Chairman, I do not believe it entirely. We have made very hard efforts over the past decade or so, and, forgive me for being a bit crude in language, we must sometimes "beg like a beggar". I frankly cannot think of any other expressions to convey my feelings. I fear that it will get increasingly out of control. The KCR used to be wholly-owned by the Government and the Government is the largest single shareholder of the MTRCL. But the task is still so very difficult for us. After the merger, they will become an "independent kingdom" subject to no control at all. But you believe it entirely. You of course have the right to believe it entirely, and I do respect your full faith in it. But, honestly, we cannot believe it entirely, so we legislators have to deal with this legislation today.

And, the most important question is: Why should there be any exemption from building toilets in the very first place? I cannot think of any answer. It may well be argued that underground works used to involve technical difficulties, or that since MTR journeys are short, there is no need for any toilets. But society is ever advancing. A trip on the Disneyland Resort Line takes only 10 minutes or so, but toilets are still provided. Its arguments are simply not at all valid. Since there is no justification for exemption, since the reputation of our tourism industry and the physiological needs of hundreds and thousands of passengers are affected, why don't we simply repeal the exemption and require it to build toilets? This is the point I have been driving at.

Chairman, I do not want to make any repetition here. I just want to say a few words in response to Mrs Selina CHOW's remarks. I must tell her that the basis of their viewpoints and beliefs is different from ours. Their confidence in the MTRCL and the KCRC is not the same as ours. The reason is that very obviously, when it comes to striking a balance between commercial interests and the public interest, the beliefs of the Liberal Party, I suppose, are markedly different from those of pan-democratic Members. As a result, we have to spend so much time on debating the issue over and over again today.

Thank you, Chairman.

DR RAYMOND HO (in Cantonese): Let me talk briefly about my experience of participating in the railway construction projects in the 1970s and 1980s, in response to the remarks of several Members and the Secretary just now. Since the bulk of the MTR works were carried out underground and there was a need to minimize construction costs and time — underground water seepage created many difficulties — all space must be fully utilized. In other words, if no room was then reserved, it will be very difficult to add any toilets or other facilities. The reason is that in many cases, cables, signalling systems or ventilation systems already occupy most of the space. The installation of additional facilities now may well necessitate the connection of some pipes to the main municipal sewerage systems. But this may pose even greater difficulties, even when the works concerned are carried out at-grade.

Personally, I certainly hope that toilets can be provided in every MTR station (if possible). We can also observe that the MTRCL's corporate reputation is very good. I used to think and even point out that it would not be easy to retrofit platform screen doors or platform gates (in case the former is not feasible), not least because the fixed curvature of a platform would create great installation problems. But the MTRCL has somehow made it. It has made it in all MTR stations with the exception of elevated ones. I think the problem is just a matter of different viewpoints. We in The Alliance hold that all must depend on the railway corporation's sincerity. If it promises to do it, I will believe it. There is no need to enact legislation on each and every issue. These are the points I want to add. Thank you, Chairman.

CHAIRMAN (in Cantonese): Ms Margaret NG, speaking for the third time.

MS MARGARET NG (in Cantonese): Chairman, in the past, when we discussed the demerit point system on jumping lights, many professional drivers said sincerely that they would not jump the lights.

I would just respond briefly to Mrs Selina CHOW's earlier remarks. Right, I am not a member of the Bills Committee, but if there is anything that I should know but have not yet known, Mrs Selina CHOW had told me all when she spoke earlier. Actually, her remarks do not differ greatly from that of the Secretary. She is also of the view that if the MTRCL is required to meet the requirement immediately, there will be practical difficulties. But she is not saying that the arrangement is unacceptable in any way from the policy perspective.

The most important point put forth by Mrs Selina CHOW is that the sudden introduction of the requirement on increasing the number of toilets provided at all stations along the railway line from today onwards is unreasonable. This point is of course valid. If instant achievement is required, it is surely unreasonable and unjustified. That is why I proposed earlier the drawing up of a timetable, no matter as a transitional period or a grace period, that is something we should do. Legislation is always handled this way.

Dr Raymond HO said earlier that it was for the sake of saving money that every nook and cranny of the stations was fully utilized at that time and the provision of additional facilities in future thus became difficult. However, service upgrading definitely is no new initiative. With regard to professional advice, I have never heard an engineer say that nothing can be done to meet the modern standard. I have never heard of such an opinion.

Earlier on, Prof Patrick LAU suggested us to consult architects on the issue, for we would then find out that no work was impracticable, and it all hinges on how the work would be carried out. The question then boils down to two simple words, "practical difficulties". If there are practical difficulties, a time limit or a reasonable timetable should be set.

Mrs CHOW said that it was not included in the contract initially. But, Chairman, the salary cut of civil servants was made possible by enacting legislation. Had it not been said at the very beginning that it was not included in their contracts? Eventually, the salary cut was implemented. Thus, the crux of the problem is the need of the public. Mrs CHOW also pointed out that I did

mention existing power in the past, which I said the existing power enjoyed by any party should not be abolished suddenly in a hasty manner. This is definitely a concrete principle. I recall that I mentioned this during the transitional period of reunification at the discussion on the practicing qualification of medical practitioners, which involved allowing those having attained the qualification in Britain to practise in Hong Kong after receiving internship training. Owing to the change of the constitutional status of Hong Kong, amendments had to be made. At that time, Mrs CHOW said that some students were already studying medicine overseas and the scheme should also include them. For this reason, the Legislative Council at the time supported the scheme. The provision of a transitional period or a grace period is perfectly reasonable, but it definitely does not mean that if such facilities are not included in the contract originally, they will not be provided even in the face of future changes in society and strong demand from the public, and irrespective of the objective. Otherwise, we will never make any progress.

Chairman, after listening to Mrs CHOW's explanation, I think we should all know full well that practical difficulties do exist. Not all the facilities can be provided overnight, but the answer to the problem is to provide for a transitional or grace period. This is an approach we have all along been adopting and I see no reason why this is not applicable to this case. So far, I have heard no justification for this. Thank you, Chairman.

CHAIRMAN (in Cantonese): Mrs Selina CHOW, do you wish to seek clarification? If not, you have to wait for your turn.

MRS SELINA CHOW (in Cantonese): I do not intent to seek clarification.

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

CHAIRMAN (in Cantonese): Mr LEUNG Kwok-hung, speaking for the fifth time.

MR LEUNG KWOK-HUNG (in Cantonese): Chairman, on the debate over the provision of toilets, I hope Members will understand one point. Had the

Government been willing to do good for others and heed public opinions, or say, had it understood that this Council considered the provision of toilets necessary, the Government should have first repealed the exemption when the legislation was drafted to provide a legal basis and then proposed amendments of its own accord. Anyway, proposing amendments is its favourite job. It likes hijacking amendments proposed by Members as its own amendments. However, it is not doing that now. It has instead made up a reasonable defence for those who agree with the provision of toilets but oppose legislation on it. I really cannot understand it.

Members should understand that in the existing circumstances, it is nearly out of the question for a Member to introduce a private Members' Bill. Indeed, all legislative work has been monopolized by the Government. Having heard the views of the public, the Government just ignores them. It insists that the exemption should be maintained and the alteration should be made afterwards. However, it has not stipulated how the MTRCL should make the alteration. It just urges us to trust the MTRCL. Should this be the way? Members should understand that the Government has the obligation to enact legislation, and neither the MTRCL nor the KCRC will do so. Legislation should be drafted by the Government and introduced to the Legislative Council. We can at most propose Committee stage amendments (CSAs) to the legislation, but do nothing more than voting for or voting against the legislation.

If the Government knows that no Member will say the provision of toilets at MTR stations unnecessary..... Dr Raymond HO said that it was difficult and the cost was high..... If any Member disagrees with the provision of toilets, will he or she please declare so? I think no one will disagree. Is the MTRCL incapable of doing so? No, toilets are provided for MTRCL staff. So, we cannot say that there are no toilets at MTR stations.

Within the precincts of MTR stations..... Mr Abraham SHEK said that toilets were found in shopping malls..... there were many similar examples within the precincts of MTR stations..... In the past, no lifts were provided. But the retrofitting of lifts was made possible by way of digging. If only it has the determination to do so, nothing is unachievable. What a cheat! I did not intend to speak originally. I hope pro-government Members may take me on a site inspection and tell me no digging is allowed. The Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) and the Liberal Party often claim credit for successfully securing the construction of bridges. Are they telling me that the building of toilets is absolutely impossible? Even if toilets

cannot be built underground, they can be built in the vicinity of the stations, which is still within the precincts of the station and in compliance with the law. If it is not feasible also, the installation of pail latrines is also an option. Why is it not possible? It only depends on their willingness to do so. The installation of chemical toilets is also feasible..... excuse me.

Will Members please stop laughing, for I am making a point of whether or not the Legislative Council should act in accordance with public opinions? Today, we are discussing why the exemption granted in the past and being considered as inappropriate is not repealed at the time the legislation is drafted to force the authorities concerned to do something. Had the Government been a responsible government, it should have, after considering the views of the public on the necessity of the provision of toilets, set out a timetable and proposed in the legislation such a provision, even if this can only be achieved in five years, 10 years or 10 000 years. If the DAB and the Liberal Party are really so capable, so good at scrutinizing legislation and know so many engineering professionals, they should have made all sorts of enquiries. If this can be achieved 10 years later, amendments should be made. If they really want to serve the public, why have they done the opposite? I am not irresponsible. I have said repeatedly that I am the one with the lowest academic qualification in this Council. I may know nothing about it, but I must at least be convinced.

I hope Ms Miriam LAU will return to the Chamber, for I want to ask the Liberal Party what they want. Could you not draft your own CSA? My CSA may be less than desirable, but you are teasing me on what grounds? You seem to be generous in doing lip-service, but you are actually tight on actions. You think you are so capable, but yet you are incapable of drafting a CSA to reflect your own views, and I am thus forced to expose my incompetence here. Do you understand? You should put up fewer posters to claim credits for the successful achievement of certain tasks. I do not put up posters. If you do not believe me, you can check it out. What a joke! A less knowledgeable man is doing his level best to achieve something that the knowledgeable, who claim to be so, including the large number of staff employed by the Government, say Government Counsel, fail to accomplish.

How paradoxical that the opinions of the public cannot be conveyed. On the one hand, they support the arrangement, but on the other, they say that the requirement should not be stipulated owing to the uncertainty of the completion time. Honourable Members, I am a humble person. The issue may be brought up for discussion again in July. However, can all of you tell the people

of Hong Kong that this will certainly be accomplished in July? Now, I really want to ask the Government: Has it ever conducted any studies on the time required for the installation of toilets? What is the situation in each of these stations? No, it has not. If it has done so, will it give us a report? Will it provide a supplementary report and tell me: "Long Hair", the installation of toilets is impracticable and very expensive. What is modern politics? What is democratic politics? Transparency. If the Government tells the public that it is difficult to achieve, it has to state the degree of difficulties. Should the MTRCL be held responsible? Indeed, it should not. The representative from the MTRCL is now in this Chamber, but the representative from the Government is indeed speaking for the MTRCL. In the introduction of legislation, the Government does not have to listen to our views. It just maintains that this is impracticable and makes apologies for that. What kind of legislature is this? What kind of Government is this? On the provision of toilets, to give the matter its fair deal, no one has ever told this Council nor your good self, Chairman, that this can never be accomplished, neither can anyone state how much time is required to accomplish this. Most of the Members in this Council thus consider that under such circumstance, it is unnecessary to require the MTRCL to do so by legislation and it should be allowed to proceed with it slowly.

May I ask the respectable Government whether it is going to introduce a "toilet ordinance" next time? We are doing good to others. If the MTRCL thinks that it will face practical difficulties and be prosecuted without the exemption, it should do something to change the situation, to make it a limited exemption. I do not know how to work it out, and I do not have knowledge of law, but I heard that the Government has employed a pool of lawyers capable of doing so. However, they have not provided a platform for the Members of the legislature to reflect the views of the public. It is a dereliction of duty on their part, for they have made the expression of public opinions impossible. Members who support the proposal understand the whole issue, but they do not propose any CSA, they have thus failed to exercise the power of a Member to express public opinions by means of proposing CSAs. That is why a foolish and incapable man like me, who has no knowledge of law, has to speak here. And I am indeed a stand-in for that matter.

The second point is about sewage and air quality. This is a classic example of bureaucratic infringement of rights. The Secretary told me those were nuisances. If anyone considers that a nuisance to him or her, a prosecution may be initiated after a law-enforcement officer has confirmed the

truthfulness of the case. If the MTRCL does not have exemption, it will be regarded as discharging excessive exhaust gas or sewage and liable to prosecution. I hope the Chairman will pay attention to this point. I often engage in promotion activities on the 4 June incident or other issues in the streets, some people will certainly tell me that..... I think Members from the DAB probably have had the same experience. More often than not, people with different political views will complain about me making too much noise, and I did experience this during my election campaign. Everyone has experienced this. Will we request the granting of exemption to the average man for this reason to the effect that certain reasonable promotion and expression of personal views for canvassing votes in an election will be exempted and not regarded as a nuisance? No, we will not.

Why should the MTRCL enjoy this privilege? With the provision of such an exemption, the MTRCL has no obligation to make improvement in response to reasonable complaints. As it does not have any legal obligation, it is not compelled to make any change. Such an exemption is improper, as I have said repeatedly, for this is not granted to everyone. First, let me cite an example. The exemption is not enjoyed by any individual or any group but only a listed company. If a listed company can have such an exemption, it means the listed company is omnipotent and does not have to exercise all due diligence. The issue on the display of advertisements, decorations and signs is in fact of the same nature. We surely understand that signs and advertisements erected on the railway or railway premises should be subject to regulation, but the MTRCL is exempted from such regulation. In other words, to put it crudely, in the event of the epilepsy case in Britain, which was caused by an advertising animation on the Olympics, the MTRCL may say that it has the exemption.

As the MTRCL has to identify more sources of income in the course of its commercialization, similar scenarios will arise more often and the amount of advertising will increase. Indeed, as Mr LEUNG Yiu-chung mentioned before, they prefer to let fast-food shops operate at MTR stations..... Members should know that there is a fast-food shop in the Central Station under the Legislative Council Building, and sometimes I may have instant noodles there. I do not know whether the shop is subject to the regulation of hygiene-related ordinances. The MTRCL is allowing another party to display signs indicating food is available for sale. If the sale of food gives rise to hygiene problems, should the MTRCL be held responsible? From my point of view, it will not be held responsible under the ordinance.

Society will move forward, but it may also move backward. Should our legislation keep up with the times? I think it is necessary. But could we act in an entirely irrational manner for the mere sake of keeping up with the times? I do not think so. The CSAs proposed by me and Mr Albert CHAN seek to repeal the exemption first. It is just that simple. For we know that we cannot afford to spend so much time on this. Members all know that this Bill on the MTRCL has come about really fast, so how can we handle this?

Therefore, as I have said a number of times, Members of the Legislative Council do not need a pay rise. The Legislative Council does not have to look beautiful, but the number of staff working for the library of the Legislative Council and providing relevant services must be large. That is to say, we can rely on the staff of the Legislative Council to fulfil the function of a legislator. We know, as the Chairman has pointed out repeatedly, that her subordinates, including the Legal Adviser and other officers, are worn out and exhausted because of this motion. The Chairman has mentioned this point. Why are we informed of what is feasible or not so late? This speaks volumes about the problem. In fact, we have no specific obligation to draft a beautiful piece of legislation, for we are incompetent to do so.

I come to the crux of the problem. Today, if both the Government and Members supporting the provision of toilets consider that this is the aspiration of the public, may I ask them a simple question: Why do they not draft a CSA stating a requirement they consider beneficial to the public? They must answer this question.

Thank you, Chairman.

DR FERNANDO CHEUNG (in Cantonese): Chairman, I just want to state a few simple and factual figures. I would like to point out that at present, there are 53 MTR stations and 508 shops, and the average area of the concourse of a station is around 3 500 sq m, while the average number of toilets in each station is seven. As such, regarding the many remarks made earlier about the technical difficulties, shortage of space and impracticability of installation, I can hardly understand. There are seven toilets in each station on average, but they are designated for staff and shop attendants in the station.

I would like to point out another fact. Chairman, Mr LEUNG Kwok-hung is one of the few educated Members of this Council who are forthright in giving their views. Thank you, Chairman.

CHAIRMAN (in Cantonese): Mr LEE Cheuk-yan, speaking for the third time.

MR LEE CHEUK-YAN (in Cantonese): Chairman, the Secretary said in her reply just now that there were practical difficulties in providing toilets, I am afraid that will become another laughing stock in the international community. Yesterday, we had mentioned that the news on the non-availability of toilets in the MTR was already circulating in the international community via the Internet, but the Secretary mentioned one more time today that there are practical difficulties in building toilets in the MTR. Too bad that Dr Raymond HO is not in the Chamber, but Prof Patrick LAU is here with us. Will the Secretary's statement put the engineering profession to shame, when she said that the technological know-how of Hong Kong was at such a low level that even toilets could not be built underground? The Secretary said there were lots of cables. Is it true that the entire underground area of the MTR system is loaded with cables, so many so that there is no place at all for laying ducts? It is really shameful that words of this kind would have been said. Why does the Secretary describe Hong Kong as so incapable, to an extent that it should have practical difficulties in building some toilets?

Secondly, in my opinion, the Secretary has failed to respond to a question. Clearly, a motion has been passed which demands the Government to instruct the MTRCL to formulate a policy under which toilets have to be provided for the railways expeditiously. In this regard, the Secretary has not responded if any such policy is in place. No such policy is in place, pending the discussion to be held in the meeting scheduled for 16 July. We have passed the motion, but the policy is still absent. Yet, surprisingly, Mrs Selina CHOW appears to find this acceptable. She said that was all right, and in addition, they had not given us a reply yet, so in fact we could not force it to do it by way of enacting legislation, and she believed that it would do it.

In my opinion, Mrs Selina CHOW is really a living testimony to the common saying: "You are invincible in the entire world when you are talking about theories, but you are totally powerless when you are asked to put your

words into action." I believe you are not powerless, but you are just unwilling to put your power to good use. Instead, it is more like "You are invincible in the entire world when you talk about theories, but you are unwilling to put your power to good use." In short, she thinks that, since the MTRCL has said that it is impossible, then let us forget it, and let it go.

In fact, now the situation is crystal clear. While we should have succeeded in making the MTRCL to build toilets, her vote, or the vote of DAB, will be cast to oppose Mr Andrew CHENG's amendment. They will succeed in vetoing the request to enact legislation to require that toilets be provided in the MTR. They will be very successful in this regard today. They had once argued so emotionally and rhetorically for the provision of toilets, and they had spoken so well for the cause. But why do they abandon the cause completely when they have to put that into action?

Of course, they are doing this to make sure that the matter can be resolved and can be done in the right way, as explained by Mrs CHOW. But I fail to understand how she could make sure that the matter can be resolved by voting against the amendment. We could have succeeded in making the MTRCL build the toilets, but she has made sure that we could not. She said she had to make sure that the matter would be resolved in the right way, but the validity of this point is open to debate as well. If she said she wanted to do it right, I think we can bear that in mind for our own reference. Many Members have also suggested that more time should be given to resolve the issue. If that should be the case, what she should have said should be like this: That we should allow for more ample time so that we could discuss the matter among ourselves and deliberate it with Mr Andrew CHENG. Could the amendment provide for more ample time, say one year? It is highly likely that a toilet can be built in one year's time. In doing so, we can make things happen, and in the right way too. However, she is now making sure that we cannot make things happen, and they are all casting their votes to make sure this is the case. How can they face their own conscience? How can they face what they have once said? They really have to think it all over. It is a shameful act not to exercise the power one possesses.

I strongly hope that the Secretary can respond to this point, that is: Has she instructed the MTRCL to implement the policy that toilets must be provided in the MTR? But, as of today, the MTRCL still does not have such a policy, so the Government cannot criticize it for this. If the Government cannot instruct it

to provide toilets, and if we today also do not enact legislation to instruct it to do so, the date of providing toilets will become very remote. Thank you, Chairman.

CHAIRMAN (in Cantonese): Mrs Selina CHOW, speaking for the second time.

MRS SELINA CHOW (in Cantonese): Chairman, Ms Margaret NG said earlier that we had even succeeded in the past in requiring a civil service pay cut, why could we not succeed in bringing forward our present request? I know she is a most convincing speaker. If people outside this Council do not understand how this Council operates in the deliberation of issues, they might easily believe her. Therefore, I must respond to her remarks.

We are discussing how to construct some building facilities at the underground level of MTR stations: Toilets. Nowadays, society is advancing all the time, so are our buildings; the standards of our present Buildings Ordinance are constantly changing, so are the requirements for new buildings. However, we would not request all the buildings in Hong Kong to comply with the standards set today in a sweeping manner because it is a major change if we require all constructed buildings to comply with today's standards. If we make it compulsory, of course we can achieve it. Nothing is impossible in this world, but as a matter of fact, can it really be done? Under certain circumstances, it may not be possible to achieve it because we may not be able to identify even the original builders of certain buildings. Therefore, I think if we wish to make a comparison now, we must ensure that the comparison is appropriate. In our discussion, we mentioned that such a requirement did not exist at the time of the construction of the MTR. It had never violated any provisions in law. Now, if we want to make amendments, we must conduct negotiations with it in a reasonable manner. First, we must find out whether it is possible for it to do so. Secondly, if it is possible to make amendments, we have to see what kinds of steps must be completed. Of course, we hope that the works can be completed as soon as possible. I absolutely agree with the point made by many Honourable colleagues, that is, some shop spaces can be vacated for the purpose. But it is not as simple as that. Some complexity is really involved in the works.

However, I have just heard several Honourable colleagues say: Since we agree with their opinions, why do we not agree with the immediate enactment of

legislation? I am going to clarify this now. We absolutely agree that it is necessary to make improvement, but we do not agree that colleagues should adopt the approach of bringing up the issue by moving an amendment as I find such an approach inappropriate. I have said this many times, and I have explained this repeatedly. However, Miss TAM Heung-man said that we had kept repeating our words and we had kept evading the issue. And then she kept asking questions — asking us why we did this and why we did that. We have explained our case, but some colleagues do not like to take this as an answer because what they want to listen is how they have challenged us. They often ask us why we do not agree to their opinions. Only the method put forward by them is the correct method. They have no breadth of mind, no tolerance and do not allow anyone to hold any opinions that are different from theirs. Only their own opinions are all correct. If you do not agree with them, you are an enemy of the people and you are ignoring public interests. I find this most disgusting.

If we all aspire to democracy and if Hong Kong pursues democracy, then we must uphold the spirit of democracy. We must have the breadth of mind and tolerance to accommodate divergent views. Ultimately, Members have a responsibility to monitor and ensure that what the MTRCL does is beneficial to the people. In the meantime, the people are also monitoring us and the MTRCL to see whether we are doing things beneficial to the people, and we are not the ones who should make the judgement and conclusion here and now. According to these colleagues, it seems that we must follow their approach; otherwise we are not striving for public interest. I think I absolutely cannot agree with such a rationale. I also hope that, Chairman, since there must be a lot of divergent views among Members on many issues, our views expressed must be regarded as such. Please do not ignore our expressed views as if we have said nothing.

Thank you, Chairman.

MISS TAM HEUNG-MAN (in Cantonese): Chairman, I have no intention of wasting the time of anyone, nor do I wish to filibuster, as alleged by some newspapers. However, Mrs CHOW has mentioned my name just now, so I have to make some responses.

I believe you all know that Ms Margaret NG speaks with insight and logic and she often speaks in a most convincing manner. Mr Andrew CHENG, I am not boot-licking a certain member of my own party. Please do not exploit that

image. I very much respect Ms Margaret NG for such great insight. However, I am very disappointed. Mrs CHOW said that Members had repeatedly asked the questions and that the Government had already responded to them. But she said some Members thought that she had no tolerance and would not give any room, so she found it disgusting. She also used words such as "enemy of the people". I would like to say that I also find her words very disgusting.

During the deliberation process in the meetings, we had repeatedly requested the Government to provide us with sufficient information, data and justifications, and explain why things had to be done in that way. However, Chairman, very often, the Government did not provide adequate information, which could not enable us to make any decision or gain a clear understanding of the issues involved. Let us take the toilet issue as an example. The Government said that it was very difficult. Our professor is now in the Chamber. Can we verify the difficulties with him? For any projects, as long as someone is ready to foot the bill, they can all be done. What is so complicated about them? Everything is possible as long as one is willing. The case before us is mainly attributable to the Government's reluctance to do it. And since the Government is reluctant, so certain Members extend the helping hand to side with the Government, and also accuse other Members as the opposition camp and say that they are unwilling to listen to the Government's words and have refused to give the Government some room. Our duty is to monitor the Government. Instead of doing the job properly, she resorted to criticizing other Members as not giving room and having no tolerance. I believe that the one who has not provided room and tolerance is none other than the speaker herself.

Having said so much, I just wish to discuss one issue now, that is, someone had supported that toilets must be provided in the course of scrutiny, but today when the issue is to be put to the vote, she has switched to support the Government's stance of not providing any toilets in the MTR. What kind of rationale is it? And then she even condemned other colleagues, saying that she found them disgusting. I also find her remark very disgusting.

Chairman, I do not want to waste any more time. I hope Members can, in response to the people's aspiration, act according to their conscience. We in the Civic Party have conducted a public opinion survey which indicates that 80% of the people consider it necessary to have toilets in the MTR. I hope Members can respond to the aspiration of the people. Thank you, Chairman.

DR RAYMOND HO (in Cantonese): Chairman, after I had spoken, several Honourable colleagues quoted certain parts of my earlier speech. I would like to add a few brief points here.

As I have said just now, we are talking about the MTRCL that I have known for over three decades. I had also mentioned that considerable difficulties would be encountered in retrofitting screen doors on the underground platforms. In the past, in order to provide greater convenience to people with disabilities, I often demanded the MTRCL to increase the number of elevators in the existing MTR stations, and in fact it has done a lot of work in this regard. I know there are certain places where such work could not be implemented, but the MTRCL has done all that it can as far as possible. In other words, if we have confidence in an enterprise, then it is similar to how we teach the small children. If the children are good, they would know when they should do their schoolwork, and when they should engage themselves in some sports games, and when they should enjoy some entertainment and learn some music. If you dictate everything on him, make him follow a timetable which specifies when he should wake up, when he should have breakfast, when he should work and when he should do his revision and when he should take part in some sports activities. This is not necessary, and it will hurt his dignity. Regarding an enterprise, in fact, when we think that it will comply, it would not be necessary for us to impose certain laws on it and explicitly specify that it has to do certain work. In my opinion, with reference to its track record as well as the undertaking it has made this time, I believe it will do it. I also hope that it can expeditiously build toilets in all the stations.

I had mentioned that it might involve engineering difficulties in several aspects such as technical problems in the ventilation system, cables, signalling system and the connection of drains and pipelines. I have listened to the speeches of several colleagues, and I have also heard Prof Patrick LAU say that nothing is impossible and architects can do whatever jobs that are put before them. However, engineers cannot do whatever jobs that are put before them because technical issues are different from building designs.

Let us take the Kowloon Tong railway station as an example. In the past, I had frequently told the Government — because I was then in charge of the modernization and electrification projects of the KCRC — that some parking areas should be reserved for park-and-ride at the station. But the Government

did not accept this. However, when the construction of the Kowloon Tong Station had progressed halfway and reached the ground level, the Government asked us whether we could amend the project in order to incorporate a car park. I replied in the negative because the works of the station had already progressed to the ground level. The Government then agreed to expeditiously identify sites for building a car park in the vicinity of the Kowloon Tong Station. But as of today, this is still not yet done.

In other words, it is impossible to implement certain engineering projects. Under certain circumstances, it may not be technically possible to implement certain engineering projects. It may be possible on the drawing board or at the design stage, but from a technical and engineering perspective, I can tell everyone here: Not everything is possible, even if you have the capital and the time for it. For example, if you want me to design and construct a building as tall as 2 000 m, this is not possible at the moment. Perhaps it may be possible in the future. For the time being, we can only construct one as tall as 800 m.

Different professions may have different technical constraints. All I can tell Members is: This is my viewpoint. If it is possible, I think the MTRCL will definitely do it because it is its corporate spirit and reputation that are at stake. It would make the people have confidence in it. Chairman, I so submit. Thank you.

MR CHIM PUI-CHUNG (in Cantonese): Chairman, many colleagues have spoken enthusiastically on this topic, and I would also like to express my opinion on it. In my opinion, the MTRCL, being a commercial enterprise based in Hong Kong, certainly has the responsibility to take care of the welfare of the people and passengers. While I had joined the committee deliberating the Bill, as colleagues might understand, I very often was subject to a lot of constraints. *(Laughter)* As such, after missing a meeting or two, sometimes I could hardly catch up with the progress afterwards. Yet, I am fairly concerned about the matter. I encourage Members of the pan-democratic camp to do their best in fighting for the cause. At the political level, you are unable to achieve anything, as a deadline is already in place. But on matters relating to people's livelihood, you should put up your best efforts. At the end of the day, if you still could not achieve anything, then there is nothing else you can do about it. Maybe all you can do is to hope that you can get more votes in future elections.

Let us take the MTRCL as an example. What are the things that they are incapable of doing actually? They are making money out of the pocket of the people through providing service to them. So no matter how difficult it is, they must do it anyway. It is all about sincerity. Sincerity is of the utmost importance. Dear Secretaries of Departments, dear Directors of Bureaux, do you think that you are superior? I have told the Chief Executive, apart from extending privileges to the Secretaries of Departments and Directors of Bureaux, the Government must formulate policies to make them have the heart of serving the public. Only by doing so can they really enjoy their jobs among civil servants. Otherwise, if these top officials do not have the heart of serving the people, when they are questioned by Members of this Council as well as by the media and the public, they will become very unhappy in doing their job. In spite of these, since they have decided to join the Civil Service and serve the public, they need to display their sincerity. In dealing with many government organizations, I feel that many Directors of Bureaux are actually playing the "circumventing" game. Of course, this is a problem with our political system and political structure; it is also true that many Members are relatively fault-finding and arrogant. Anyway, we do hope that matters could be resolved through consultation and negotiation in ways that aim at serving the best interests of the public. After all, what sorts of natural resources have we got in Hong Kong? At the end of the day, it is all about our "brains". Falling short of utilizing our "brains", falling short of being sincere, we have absolutely nothing, and how can we compete with other places?

Therefore, I firmly believe that..... They have not lobbied me, because my vote is unimportant. I have just one vote, and since they have already secured enough votes, so they do not have to worry about me. Nevertheless, I will still express my opinions. After expressing my opinions, I may not necessarily be casting a supporting vote, because they are not going to need that anyway. And it does not matter. The sector I represent has not given me any pressure either. This is the most important point. Since people of my sector have elected me to represent them, I always do my work according to my own conscience and what I believe to be right. Therefore, even if the legislation tabled by the Government cannot be passed, the Government, nevertheless, still has to undertake when that can be done. Of course, with regard to the toilet issue which Members are discussing now, my personal view is that toilets should be provided in future, and a fee of \$50 or \$100 could be levied per visit, which will then be accounted to charity funds or donated to charitable organizations. This will be advantageous to all parties concerned. Certainly, passengers who

do not have the need will not use the toilets, because of the levy of \$50 or \$100. They are not that stupid after all, are they? Still, it is better to have it than not to have it. As we can see, we can work this out through consultation rather than confrontation. If we always adopt a confrontational stance, that will be fine as long as one has secured enough votes. But if one fails to secure enough votes in future, one would be at his wits' end. In fact, it does not resolve the issue at all. In this connection, I read from the newspapers that two or three top managers of the MTRCL had said that the legislation would certainly be passed by the Legislative Council. That is actually exerting some kind of a pressure on legislators. Are we working for the corporation? Do we necessarily have to support its passage? This kind of behaviour is most undesirable indeed and it is not showing any respect to Members of this Council. I must have offended the Chairman of the MTRCL in making this point. But what am I afraid of? With regard to some reasonable issues, why should pressure be exerted on Members of this Council? Certainly, they have their own way of conducting their business, but I do not believe that they can always stay in the positions of being the Chairman of either the KCRC or the MTRCL.

Therefore, if there is mutual respect, Members should be able to make a rational decision. That way, everyone will have an easier life. If they keep exerting pressure to indicate that the legislation must be passed, and if my vote can have some impact, I can tell the Secretary that I will vote against it. However, since my vote does not matter at all, so I am just hoping that the Government and the political parties will..... Recently the rules of the game may have raised some questions about the set-up of the Legislative Council; nevertheless, in my opinion, we still have separation of powers, and under the system of separation of powers, excessive confrontation is not going to do anybody good. Thus, we should have more consultation and collaboration. Naturally, the ultimate aim of any political player is to win more votes. If they do not fight for the votes when the opportunities present themselves, how are they going to be elected in 2008, particularly when competition is so keen now? Therefore, I very much hope that as a responsible Member..... Of course, our term of office is coming to an end soon, but I hope some of them can be re-elected, and I hope they can keep fighting for the interests of the people and Hong Kong.

Meanwhile, we must also understand that it is possible that, instead of working hard, some political players are opportunistic in canvassing votes. It is easier to canvass votes than taking to the streets because it is tough work doing

the latter. Therefore, they should work hard for it, regardless of whether they can succeed eventually. Anyway, I stress once again that government departments should display sincerity in how they go about their business in future, because ultimately it is the interest of the people that we care about. However, if we fail to represent the interest of the people..... Although it is true that many Members returned through functional constituencies (including myself) do not necessarily have to please all the voters, I still believe that as long as we work according to our own conscience and do what we should do, we can always win the support of the people.

Anyway, for the benefit of society of Hong Kong as a whole, the Government should really communicate with Members. To facilitate better communication between the executive authorities and the legislature, we need to have sincere and face-to-face communication. If there are problems that have remained unresolved, let us put them on the agenda and hold discussions on them. If we cannot resolve the problems this time, when can that be done? What we should do in order to do our best? If something is truly beneficial, why can we not work it out? We have just passed the first decade after the reunification. In the past, maybe it was due to the colonial mentality, some people felt that they were superior. In fact, they must understand that there are many civil servants or many organizations in Hong Kong who cannot distinguish the difference between the public and private sectors. Fine. While certain organizations are serving the public, the decisions involved are commercial. But these people still think that they are government officials. At times, they act or behave as if they are government official themselves, and while their action or behaviour affects the public, many people simply do not have the chance to lodge a complaint direct. Of course, Hong Kong is a place with a lot of freedom and democracy, and there are mechanisms for complaints. But we all know that the officials always respond to complaints by playing the "circumventing" game.

Therefore, as Members of the Legislative Council, we must give a timely reminder to the Government, the Secretaries of Departments and Directors of Bureaux that this is our duty. Hence, Chairman, I hope the Government can understand the relevant issue properly.

CHAIRMAN (in Cantonese): Mr Howard YOUNG, speaking for the first time.

MR HOWARD YOUNG (in Cantonese): Madam Chairman, I did not take part in the work of the Bills Committee either. But since yesterday, I have been listening carefully to the arguments presented by all sides.

First, I wish to point out that probably no Member in this Chamber will oppose the building of toilets in every railway station or its vicinity after the merger of the MTRCL and the KCRC. The only problem is how this objective can be achieved. I also notice that representatives of the MTRCL have been sitting in this Chamber to listen to Members' remarks in the debate. I believe they should know very well that this is the aspiration not only of Members but also of the general public. Corporate social responsibility is frequently talked about in society these days. The MTRCL should really consider how it can answer this aspiration.

I can remember that some 30 years ago, when the MTR came into operation, I was an Urban Council Member, and another Urban Council Member, Elsie Elliott, already questioned why there were no lifts and toilets in MTR stations. The then MTRC replied that there were difficulties in underground excavations. Maybe, at that time, this could easily be given as an answer. But given the technological advances and rapid development of the engineering field nowadays, the level of difficulties may no longer be as high as that in the past. I also note that while Prof Patrick LAU sees no problems on the drawing board, Dr Raymond HO nonetheless thinks that there are engineering difficulties. I believe there will be some sort of engineering difficulties, but does this mean that it can never be done? Maybe, everything can be done, and the only problem is how much time and money is required. Members must not forget that if the costs are high, the stakeholders of the MTRCL must also be considered. Shareholders aside, there are also users, and are they willing to bear the costs concerned? Therefore, it all boils down to striking a balance.

I also heard Mr Andrew CHENG mention visitors three times in his remarks just now. Dr Fernando CHEUNG also talked about this. I have been thinking about this these two days, yesterday and today, that long-haul passengers will face immense inconvenience if no toilets are provided. As a matter of fact, the bus journey on Route E11 from the airport to Tung Chung and the bus trip on Route 70 from Sheung Shui to Kowloon both take a longer time than any MTR trips. But no one has ever asked for the provision of toilets on buses or at bus termini. Is it really impossible to do so? Not necessarily.

When I was once travelling in Europe, the long-haul bus I took was equipped with a toilet. It is just a question of how much passengers are prepared to pay. Therefore, we should consider how to solve this very practical problem. From the Bills Committee's minutes of meetings, I learn that one characteristic of the Hong Kong MTR is the presence of superstructure shopping arcades, so passengers may in fact use the toilets in these shopping centres. This reminds me of two points. The first point is about visitors to Hong Kong. What I mean is that although there are no specific statistics on visitors' allocation of time, we are at least able to know the statistics on their spending. Fifty percent of visitors' expenditure is on shopping, and I suppose in most cases, they will do their shopping in shopping centres. Besides, some 20% of their expenditure is on hotel accommodation. Their expenditure on transportation should be less than 1%. Of course, I am not saying that visitors also allocate their time in this way. But I do think that even if the provision of toilets in all railway stations or platforms is not made mandatory, it does not necessarily follow that there will be no toilets for passengers in need. From the perspective of tourism, I would think that visitors will prefer lingering in shopping centres than staying in railway stations. The reason is that in the former case, they can do some shopping. I therefore think that we may actually make improvements in some areas. For example, it was pointed out just now that passengers may ask for permission to use the staff toilets in MTR stations. Even I myself did not know this until I read the Bills Committee's minutes of meeting. Many members of the public do not know this either. I think we can make improvement in this direction.

And, will the situation really be so bad even if toilets are not provided in railway stations and can only be found in shopping centres? I do not think that the situation will be so bad. As I pointed out just now, the tourism sector may actually welcome this. The only problem is how passengers in railway stations can find their way to toilets in shopping arcades. I do not think that there are any clear directions. Many Members frequently travel overseas, and I believe that they also have the experience of travelling on underground trains in foreign countries. When I travel abroad, I will usually use the toilets in shopping centres or those provided by the municipal authorities. I seldom use the toilets in railway stations. Therefore, it cannot be said that there is no solution. But I think we are all talking a common aspiration today. Passengers, members of the public and Members all have such a strong demand for the provision of toilets because circumstances have changed since the very beginning. According to management theories, things may be "nice to have", "essential" or "highly

essential". By now, toilets are no longer simply "nice to have". I hope the MTRCL can hear this message clearly.

When it comes to the means to achieve the desired end, I maintain that it is most inappropriate to forcibly bundle everything up because the railway corporation has all along been enjoying exemption. To take away the exemption all of a sudden is tantamount to altering the rules of the game. I do not think that this is fair to the railway corporation. I believe that the presence or otherwise of such legislation should have no bearing on whether toilets are to be provided in railway stations or their vicinity. I hope that on 16 July, when the railway corporation gives its reply to Members, it can present a comprehensive plan, describing the feasibility or otherwise of building toilets in all railway stations. Not only this, it should also tell us how to make the improvements I proposed a moment ago, that is, the ways of enabling passengers to know that they can approach railway staff in case of need and the provision of direction signs to facilitate passengers' search for toilets in nearby shopping arcades. All these are possible improvements. But I do not think that it is appropriate to bundle everything up and repeal the exemption totally at this stage.

CHAIRMAN (in Cantonese): Mr Martin LEE, speaking for the first time.

MR MARTIN LEE (in Cantonese): Chairman, at the early stage of MTR construction, I honestly thought that it was acceptable not to build any toilets in MTR stations. Of course, it does not mean that I will agree to this forever. At that time, many reasons were advanced, and I can still remember that.....

CHAIRMAN (in Cantonese): I must remind you that rather than talking about the building of toilets, we are now discussing the exemption provisions, and such provisions also cover ventilation.

MR MARTIN LEE (in Cantonese): This is precisely why toilets are included. Later on, I became a Legislative Council Member, and I started to find everything very convenient. There is a car park outside the Legislative Council

Building. Before taking the MTR, I can park my car there and go to the toilet inside the Legislative Council. Afterwards, I can take the MTR. It is all very convenient. However, how about the countless many other people who are not a Legislative Council Member? This is precisely where the problem lies.

And, what annoys me more and more is their claim that the job cannot be done. We always tell the world that the essence of the Hong Kong spirit is that every job can be done. Every job can be done, except those that are against the law. How come there is now a job that cannot be done? This will make the Hong Kong engineering sector lose face before others. Why can't it be done? Members all know of one idiom, "Where there is a will, there is a way." Even a child knows that where there is a will, there is a way. Is the Government lacking in a will? I only want to remind our Chief Executive of his famous slogan, "I'll get the job done." Let us see whether he has any will to get this particular job done.

Thank you, Chairman.

CHAIRMAN (in Cantonese): Mr Ronny TONG, speaking for the first time.

MR RONNY TONG (in Cantonese): Chairman, I at first did not intend to speak. But I was really puzzled by Mr CHIM Pui-chung's remarks just now. What actually is the relationship between toilets and the separation of powers? (*Laughter*) We may need both of them badly, though. Am I correct?

Chairman, I have been sitting here all morning, and I have been wondering why we should ever argue over such an issue for so long a time. The Government seems to agree, and the MTRCL itself also agrees, that passengers should be provided with such facilities, that the requirements of the law should be complied with, and that there should thus be no exemption. But the problem seems to be that some simply think that since they have already undertaken to do the best they can, we should stop right here and believe them.

However, Chairman, I do not think that this should be the attitude of the Legislative Council. The question is not so much about our faith or otherwise in the Government or the MTRCL. The question is that if there is such a requirement, a public utility corporation must respect the demand of Hong Kong

people, respect the law and accept the requirement, instead of putting up various excuses, saying that it is impossible or difficult to build any toilets, or that very great costs will be incurred. Chairman, all these are simply no excuses. We are saying that there should be a satisfactory system. How can we monitor or supervise an important public utility operator? Frankly speaking, even if the MTRCL..... I do not believe that what it said during our meetings will certainly be non-binding. I do not know whether the existing Members can still be elected in 2008. If it cannot make it in the future, how can Members follow up the matter? Are we going to start from scratch, or reconsider the whole legislation? Are we supposed to amend the legislation once again? No, we need not do so. By adopting the legislative approach now, we have an opportunity to perfect the system during the legislative process. Why don't we perfect the system now? Chairman, I totally fail to understand what is going on. Why is the Government so unreasonable? Why is it impossible for it make use of the legislative process to perfect the system, to respond adequately to the demand of Hong Kong people?

CHAIRMAN (in Cantonese): Mr LEUNG Kwok-hung, speaking for the sixth time.

MR LEUNG KWOK-HUNG (in Cantonese): Chairman, I do not want to repeat my own remarks either. I also want to have a voting outcome as quickly as possible. However, I wish to remind the Secretary of one thing. We have been talking for such a long time, and our only purpose is to recall the exemption currently enjoyed by the MTRCL. We want to do so because it no longer needs to have such exemption now. If the Government really thinks that there is indeed a need to retain the exemption, it has the duty to offer an explanation to Members. If she, or the Government she represents, really hopes to be monitored by the public, it must realize that monitoring should mainly be carried out in this Legislative Council by Members elected by the people, and it is not supposed to make any responses without this Council. Putting aside all talks about the separation of powers, constitutionally, the Government must still hold itself accountable to the Legislative Council under the Basic Law.

We are discussing the exemption under the Public Health and Municipal Services Ordinance. Owing to the exemption, unlike other public transport operators or public-sector organizations, the MTRCL does not need to provide

toilets to its passengers. This is where the problem lies. We insist that we must "take away the firewood from under the cauldron" — to stop water from boiling, we should take away the firewood from under the cauldron rather than skimming it off and pouring it back repeatedly. This means that in order to stop water from boiling, we must remove the firewood instead of simply fanning the water. This is precisely what we are trying to do. Since the debate has dragged on for such a long time and during the Bills Committee's scrutiny process, the Government already made its decision after securing enough votes rather than holding itself accountable to the public, we do not have any alternative but "to besiege Wei to rescue Zhao"¹. This means that if the MTRCL does not agree to the proposal, we will simply take away its exemption once and for all and let it deal with the ensuing problems itself. If the Government has any sense of responsibility, it should discuss with us, with all the 60 Members, the reason being that none of the 60 Members has said that no toilets should be provided. Why is it impossible to do so? What is the reason? The reason is that the Government does not need to hold itself accountable to the Council. With a calculator in hand, it will first count the number of votes it can get. Then, it will assign officials to follow and lobby Members every where in this building, with the sole purpose of mustering enough votes. This is the key point.

Even if we are prepared to be lenient and propose an amendment to allow for a grace period and reasonable defence, can the amendment be passed? I can say without any doubts that such an amendment will not be passed all the same. Because the whole merger is meant to enable the MTRCL to become a super-enterprise which is not subject to the existing Hong Kong laws. This is the core problem. Therefore, the situation will always be the same, whether we are talking about the minor issue of toilets or the major issue of fares.

I do not wish to waste any time on the long title, which we will have time to discuss later. I understand that many Members may be dissatisfied with the President's ruling, and they may query why the President does not permit Members to discuss certain issues. The President has just been acting in

¹ Wei and Zhao were two of the seven states in China during the Warring States Period. One year, Wei attacked Zhao and besieged its capital city. Zhao appealed to Qi, another state in China at that time, for help. Sun Bin, a famous military strategist working for Qi, eventually decided to besiege the capital city of Wei as a means of rescuing Zhao. Learning of the siege of its capital city, the army of Wei immediately headed back, thus lifting the siege of Zhao. "To besiege Wei to rescue Zhao" has since been taken to mean relieving the besieged by besieging the base of the besiegers.

accordance with the Rules of Procedure, but the whole thing is of course still debatable. You already have all the advantages. The long title is your first line of defence. And, besides the long title, there is still a second line of defence. When it comes to the provisions of the Rules of Procedure on the moving of amendments, I must repeat that the Government is the only institution in the establishment which possesses real legislative powers. They enjoy such a prerogative, but they do not use it properly. This reminds me of how Mrs Selina CHOW described us just now: those who submit will prosper, and those who resist shall perish. She said that we criticized others for making themselves the people's enemies. Members should really read the newspapers and find out who are being criticized for turning themselves into the people's enemies. Those who are so criticized are all those dutiful and dedicated Members. I dare not count myself as one of these Members. I am just referring to other Members. They are criticized for making themselves the enemies of the people. Actually, by doing so, we only hope that the Secretary can accommodate and appreciate the people's aspiration and accept the amendments concerned. In this Chamber yesterday, I expressed the hope that the Secretary could change her mind. I even suggested that she might just spend 15 or 30 minutes discussing the matter with the Chief Executive. I really meant what I said. It is not too late for her to change her mind now. But the debate today has continued for several hours already, so I suppose this will not happen anyway.

The exemption enjoyed by the MTRCL is really much too extensive. Already, I have not talked about the exemption for its signs and publicity materials. I have not talked about all this already. With such exemption, all the signs and publicity materials put up by the MTRCL on its railways or railway premises are not subject to any government regulation. This means that it can put up whatever it likes. Suppose it puts up something that contravenes the international human rights covenants of the United Nations, such as a sign suspected of encouraging racial or religious hatred, will we be able to impose any control? After granting a blanket exemption to the MTRCL, we can only hope that it will exercise its power and exemption properly. Similarly, after vesting the Government with all the powers, we also hope that it can exercise them properly. The debate today can prove one thing: the granting of any powers may give rise to abuses by those vested with the powers. Whether the granting of powers is in the form of exemption, we must always be very cautious.

Actually, even if I disregard toilets and confine my discussion to the exemption concerning "the emission of air either above or below the temperature of the external air, or the discharge of water, whether waste or otherwise, from the ventilating system in any premises in such a manner as to be a nuisance", I can still say that I have come across many complaints. Precisely because of the exemption, when I arrived at the scene, the MTRCL employee there..... I mean, when I competed with Miss CHOY So-yuk in the election last time, both of us hastened to handle the matter..... The MTRCL employee there could simply ignore us. I said, "I might as well call in the police?" He replied, "It's no use doing so, Mr LEUNG. We aren't subject to any supervision." Can people imagine what will happen if water is found dripping from my air-conditioner, or if public housing tenants dry their quilts under the sun? Well, even drying one's quilt under the sun is not allowed, Buddy. Such unequal treatment should be reviewed.

My opinion is very simple. We must revoke the power, recapitulate the Government's long years of experience in granting such exemption and then reconsider the scope and degree of exemption. This is only reasonable, isn't it? According to Mrs Selina CHOW, the agreement signed in the past provides for exemption, so she wonders whether it is possible to remove it from the agreement once and for all. I wish to ask her a question in return. In the initial days of the MTR, there was this slogan, "MTR — A Railway For You". We had to borrow money from the Asian Development Bank. On land resumption..... I do not know how many protests against the MTRC's land resumption I actually took part in. Sai Lau Kok was one of the places covered by the MTRC's development projects. We can notice that most of the MTRC's development projects involved land resumption under the Mass Transit Railway Ordinance, which caused much suffering to small property owners. This is how the present MTR has emerged. We have created a monster like the "Alien", a monster with such immense powers. Honourable Members, how can any responsible government tell us that there is no need for any changes when we propose to revoke the power concerned and conduct a review? Why? Why does it dismiss us as Members belonging to the opposition camp and ask us not to approach it unless we can muster enough votes? This is the crux of the whole problem. I can hence say that in this legislature of ours, there is indeed a ruling coalition but no such thing as an alliance for the betterment of people's livelihood. Something may be good to people's livelihood, but if the Government does not like the idea, it will take this or that away, so as to make sure that nothing can be achieved. This explains precisely why this Council is so often dismissed as being powerless.

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

Honourable Members, you must first respect yourselves if you want others to respect you. We have the opportunity to serve the people, so we must make use of this opportunity to make them realize that even though the various political parties and groupings all hold different political ideas, there are still occasions on which they can form a temporary alliance to achieve something for the public. But we have let slip this opportunity so very lightly. We simply let the Government brush aside its legislative prerogative and retain something that could have been changed. Honourable Members, even Pontius PILATE washed his hands before crucifying Jesus of Nazareth. We now have the opportunity to wash our hands, but we do not bother to do so. Our hands are stained with black ink. And, after wiping our own faces, we all say that others' faces are also very dirty.

Honourable Members, I think the only main problem is that the Government is just too powerful to be reasonable. Its apologists must obey it despite their reluctance. I have nothing more to add. I hope we can proceed to vote immediately.

MR CHIM PUI-CHUNG (in Cantonese): Deputy Chairman, during the debate on the exemption clause a moment ago, Mr Ronny TONG queried why I had mentioned the separation of powers and wondered if there was any relevance. The main point is that while the Government is the executive authority, all Bills must be passed by the Legislative Council. He is a Senior Counsel, so he should of course know that any contraventions of the law must be dealt with by the Judiciary. Therefore, my response to him is that it is totally relevant to the debate topic. He is a barrister, but I also represent my constituents. He does not have any right to query my opinions.

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

MR JAMES TO (in Cantonese): Deputy Chairman, I do not know whether Members have ever given any thoughts to a major principle. What I mean is

that the Rail Merger Bill actually leads us to realize that there should be some basic service standards. Several decades ago, due to historical and other reasons, the provision of certain facilities, such as toilets, was waived under the ordinance.

But the point is that we are now talking about the enactment of a new piece of legislation. This is a major turning point and milestone because the two railway systems are going to be merged into one single system. This is a milestone, but if we do not make any changes, we will be reaffirming that the minimum service standards for the MTR should not require the provision of toilets, right? If we do not think so, then at this milestone, especially when we are talking about a modern society, we should affirm that the non-provision of toilets should not be allowed. This means that when enacting legislation, we must affirm the provision of toilets as a norm. In other words, there has been a fundamental change in our value judgement — several decades ago, exemption was granted because the provision of toilets was not considered essential as a minimum service standard, but now, we all think that toilets should be provided.

However, if it is really necessary for us to proceed step by step due to technical reasons, the Government should first give an explanation and then incorporate something like a "sunset provision" into the exemption, specifying at what future time (say, three or four years later) the exemption will be spent. By doing so, we can affirm our recognition that times have indeed changed, that there is now a new value which sees the need for providing toilets under the minimum service standards, and that due to historical reasons, it is necessary to phase in the abolition of exemption, so that they can have enough time to get things done. It is the responsibility of the Government to do so.

If, however, we decide to maintain the *status quo* after the debate today, we will convey the message that there is another turning point in our enactment of legislation — this legislature reaffirms that even in a modern society like ours, there is no need to provide any toilets as a minimum service standard demanded of the MTR under the law (The Government and the MTRCL may also interpret the whole thing in this way). Such is the message to be conveyed.

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

(No Member indicated a wish to speak)

DEPUTY CHAIRMAN (in Cantonese): Before I put to you the question that Mr LEUNG Kwok-hung's new clauses 20A and 21D be read the Second time, I wish to remind Members that if his motion is agreed, Mr Andrew CHENG may not move the Second Reading of his new clauses 20A and 21D.

If Mr LEUNG Kwok-hung's motion is negatived, I shall call upon Mr Andrew CHENG to move the Second Reading of his new clauses 20A and 21D.

DEPUTY CHAIRMAN (in Cantonese): I now put the question to you and that is: That new clauses 20A and 21D moved by Mr LEUNG Kwok-hung be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mr James TO rose to claim a division.

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

(While the division bell was ringing, the Chairman resumed the Chair)

(When the division began, a number of Members hurried into the Chamber)

CHAIRMAN (in Cantonese): Please take your time. I will wait for you.

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

Functional Constituencies:

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

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

Mr CHIM Pui-chung and Prof Patrick LAU abstained.

Geographical Constituencies:

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

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

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

THE CHAIRMAN announced that among the Members returned by functional constituencies, 23 were present, four were in favour of the motion, 17 against it and two abstained; while among the Members returned by geographical constituencies through direct elections, 23 were present, 15 were in favour of the motion and seven against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the motion was negated.

MR ANDREW CHENG (in Cantonese): Chairman, I move that my new clauses 20A and 21D be read the Second time.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That Mr Andrew CHENG's new clauses 20A and 21D 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 Andrew CHENG rose to claim a division.

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

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

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

Functional Constituencies:

Ms Margaret NG, Mr CHEUNG Man-kwong, Mr WONG Kwok-hing, Dr Fernando CHEUNG, Prof Patrick LAU, Mr KWONG Chi-kin and Miss TAM Heung-man voted for the motion.

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

Mr CHIM Pui-chung abstained.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Miss CHAN Yuen-han, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Ms Emily LAU, Mr Andrew CHENG, Mr Frederick FUNG, Ms Audrey EU, Mr LEE Wing-tat, Mr Alan LEONG, Mr LEUNG Kwok-hung and Mr Ronny TONG voted for the motion.

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

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

THE CHAIRMAN announced that among the Members returned by functional constituencies, 23 were present, seven were in favour of the motion, 15 against it and one abstained; while among the Members returned by geographical constituencies through direct elections, 24 were present, 16 were in favour of the motion and seven against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the motion was negatived.

CHAIRMAN (in Cantonese): Committee now deals with the amendments to clauses 21 and 30 to be moved by the Secretary for the Environment, Transport and Works.

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): Chairman, I move the amendments to clauses 21 and 30 as set out in the paper circularized to Members. The amendments have been examined and agreed by the Bills Committee. I hope Members can pass the amendments moved by me.

Thank you, Chairman.

Proposed amendments

Clause 21 (see Annex I)

Clause 30 (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 the Environment, Transport and Works be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Ms Emily LAU rose to claim a division.

CHAIRMAN (in Cantonese): Ms Emily LAU has claimed a division. The division bell will ring for one minute, after which the division will begin.

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

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

Dr Raymond HO, Mrs Selina CHOW, Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Mr Howard YOUNG, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Miss CHOY So-yuk, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Frederick FUNG, Mr Vincent FANG, Mr WONG Kwok-hing, Mr LEE Wing-tat, Mr LI Kwok-ying, Dr Joseph LEE, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong, Prof Patrick LAU and Mr KWONG Chi-kin voted for the amendments.

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

Mr CHIM Pui-chung abstained.

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

THE CHAIRMAN announced that there were 47 Members present, 28 were in favour of the amendments, 17 against them and one abstained. Since the question was agreed by a majority of the Members present, she therefore declared that the amendments were carried.

CLERK (in Cantonese): Clause 21 as amended.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clause 21 as amended stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): New heading before new clause 29C	Part 3A Amendment to Noise Control Ordinance
New clause 29C	Application of section 13 to MTR Corporation Limited and Kowloon-Canton Railway Corporation.

CHAIRMAN (in Cantonese): Mr LEUNG Kwok-hung has given notice to move the addition of new heading before new clause 29C and new clause 29C as well as an amendment to clause 30.

CHAIRMAN (in Cantonese): Committee now proceeds to a joint debate. I shall call upon Mr LEUNG Kwok-hung to speak and move the Second Reading of new heading before new clause 29C and new clause 29C.

MR LEUNG KWOK-HUNG (in Cantonese): Chairman, I move that new heading before new clause 29C and new clause 29C be read the Second time.

The debate has quite mature by now, and the logic presented is very consistent. As an enterprise nurtured by public money which is now partially privatized, should the MTRCL enjoy such unnecessary exemption? I understand that we must keep abreast of the times. It is actually the responsibility of the Government to find out how we can minimize the social effects of environmental pollution by adopting measures relating to environmental protection, environmental hygiene or other areas.

I can remember that the first thing I did after becoming a Legislative Council Member was to meet with Secretary Dr Sarah LIAO. The topic of discussion was the noises and vibration caused by the test runs of the new rail sections of the KCR. If the MTRCL continues to enjoy all these rights after annexing the KCRC..... What I mean is that when any person wants to instigate civil proceedings (Let us not talk about criminal proceedings for the time being), or when any person wants to file a private criminal prosecution against the KCR, the case will be handled by the prosecution authorities. It will be all up to the prosecution authorities to decide whether or not to take any actions. If they decide not to take any actions, the case will be brushed aside. This is where the problem lies. What is the problem with the exemption? With the exemption, it will be very difficult for anyone to seek justice under the law, even if the MTR breaches all the standards set by the Environmental Protection Department. This is a very peculiar problem. The exemption is indeed much too extensive. There is no need to seek any court ruling, nor is it necessary to prove to the Court that there is any reasonable defence. This is just like saying, "All this is for the good of Hong Kong people, and I will do it for only three months. Please issue an order enabling me to breach the law within the three-month period." But what we are talking about is a concrete exemption, and it should be necessary to give an explanation. What is our present situation? All is just like a pear as hard as a piece of brick, one which no one can possibly eat however hard he bites. I think it is now absolutely necessary for us to discuss whether the exemption should be retained or not. Before Dr Sarah LIAO became a Bureau Director, she had a keen interest in environmental protection and hygiene. I do not know what she would think if she was not a government official today. Can something so unreasonable be tolerated? Should noises be tolerated?

Some argue that the MTR and the KCR should be given an opportunity to make improvement slowly. But, Honourable Members, if there is exemption, will they still feel the need to make improvements? Who is LEUNG Kwok-hung to carry out any investigation? The point is that one will not feel sorry until one's doomsday, and jade is nothing before any carving. Honourable Members, as long as there is exemption, inertia will emerge, and they will continue to do things in their own way despite all ridicule and criticisms. Honourable Members, if one side in a duel is invulnerable, what is the point of having the duel? Is the other side supposed to charge forward and punch his opponent like crazy? If fouls such as striking the opponents or handling the ball are permitted in a soccer match, what is the point of having the match?

I am not saying that there must not be any exemption. Rather, I only mean that unconditional exemption must no longer be granted as in the past. There must be sufficient justifications for granting exemption to any individuals or groups. I cannot see any justifications for granting exemption to the MTRCL. The MTRCL tells us..... I have experienced all this..... that all this will be inevitable during the construction and test runs of any underground railways. Honourable Members, if only you can impose penalty on it, if only you can make life difficult for it, it will surely purchase the required equipment from all over the world. Members must not forget, as I have repeatedly mentioned, that any publicly-funded organization should never aim to make any profits, because it must plough back all its added value to service improvement or lowering the prices of its service.

But once an organization is listed, any CEO or whoever working for the organization will want to improve its business performance, that is, to make more profits. Is there any cat that does not like to eat fish? There is indeed such a cat, a "bear cat"². But it is an exception. Are we supposed to conduct an experiment with a "bear cat"? Therefore, when it comes to such exemption..... In particular, why do Mr Albert CHAN and I oppose the retention of such exemption for a corporation which has been privatized, and which always flaunts the interests of small shareholders as an excuse? It can of course come up with ten thousand excuses for deferring actions as much as possible, for even refusing to reduce the noise level by just 2 dBs or 3 dBs, so as to satisfy the Secretary and the residents who are adversely affected. If I were the General Manager (Operations), the Project Director or the CEO, and if I were given a "Medallion of No Death Penalty", why should I not kill people in the bustle of the city? With such a medallion, one can kill in the bustle of the city. This is the key point.

Internationally, the standards on noise levels are becoming increasingly stringent. Regrettably, we have chosen to yield when it comes to the supervision of a utility operator that may cause noise nuisance day in, day out. Our Government tells us that we should refrain from imposing any supervision, penalty or regulation, and says that investments should be made to bring about improvements. This is the key point. If we do not adopt such a perspective, we will be criticized for being too harsh. People will say, "Long Hair, you

² This is the literal translation of the giant panda (熊貓) in Chinese. "Bear cat" in this context does not mean "bearcat", a raccoon-like mammal once classified as a relative of the giant panda.

should know only too well that this is simply impossible, right?" Is it really true that this is impossible? But why, I must ask, are foreign countries able to make it, to reduce noise levels? All is because there are strict supervision and penalties. Suppose the railway corporation is told that there will be a fine of \$1 million for every decibel in excess, suppose it is told that for every single day Similarly, when it comes to the Legislative Council (Powers and Privileges) Ordinance, if we impose a fine of \$10,000 per day on anyone who refuses to testify in a hearing or anyone who stirs up any hubbub as I did in the past..... Naturally, no one will ever do so. Chairman, the rationale is that fines must be heavy enough to make it feel the need for reducing costs. I do not think that men are necessarily good or bad by nature. But in some cases, from the behavioural point of view, when one knows that one will achieve the opposite result, one may be forced to choose to do good deeds. In the case of a profit-oriented public utility corporation, the only option is to make it feel the need to choose the lesser of the two evils, to make it realize that if it does not look for noise abatement equipment far and wide, it will be penalized.

Honourable Members, if the MTRCL is not a listed company but just a public corporation wholly-owned by the Government, we will just be talking about money in its different pockets. Even in the case of the KCRC, we must still look at its performance, but that again is just a question of auditing. But now, the Government is simply trying to allow its wholly-owned corporation to continue to break the environmental laws by paying fines continuously. Can this work? No.

Therefore, it is now increasingly clear. At the beginning of this debate, things were not quite so clear. It is now increasingly apparent that our Government still holds a colonial attitude when it looks at this modern metropolis of ours, this basically open society which is marked by a certain degree of freedom of expression and association despite the lack of full democracy. It therefore cannot accept something like this. Once it hears any criticisms, once it hears someone talk about the need for discussions after the passage of so many years, it immediately dismisses such a proposal, thinking that these people are trying to stir up trouble once again.

Honourable Members, every legislative process and every discussion on any topic in the Chamber (with the exception of voting outcomes) are actually a manifestation of our accountability to the public. People often talk about the three virtues of "expounding one's ideas in writing", "living and demonstrating

morality" and "rendering meritorious service". But when we fail even to expound our own ideas, how can we enact any legislation, render any meritorious service and live and demonstrate any morality? Is it really true that — as Secretary Dr Sarah LIAO once told me — even she cannot make it introduce any improvements? Are we supposed to search endlessly for information about noise abatement materials on the Internet and then forward it to her, begging her to take actions? Actually, we have already contacted some relevant organizations. Even if there is such information, what can we do if she still refuses to take any actions as implored?

Both Mr Albert CHAN and I are indeed courting trouble by coming forward on this issue. But we simply cannot stand the situation, so we think it will be better to revoke the exemption first. I think those Members who support the Government's motion really owe the public an explanation. Have they come up with any means through which they can ensure that the MTRCL will pay due attention to environmental protection and noise abatement after annexing the KCRC? They have not.

The Government often says that while Members in the opposition camp have visions, they cannot offer any means of implementation. We have already put forward a means of implementation — to penalize those without any sense of responsibility. But it argues that we should spare the rod because it is unnecessary. It claims that the child is very well-behaved and it can persuade him. But the child will continue to urinate on others' head all the same, I must say.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new heading before new clause 29C and new clause 29C be read the Second time.

CHAIRMAN (in Cantonese): Members may now debate Mr LEUNG Kwok-hung's new heading before new clause 29C and new clause 29C as well as the amendment to clause 30 jointly.

MR LEE WING-TAT (in Cantonese): Chairman, I rise to speak in support of the amendment.

Actually, during the deliberation of the Bills Committee, this was one of the amendments which attracted discussions by many Members. It is not so true to say that all matters relating to noises are not dealt with in this amendment. Only that its focus is on repairs and maintenance. However, when discussing this issue, the Bills Committee also touched upon a wide range of other issues.

The first issue was about railway construction. Noise control for railway construction should be the same as that for ordinary construction sites. There should not be much difference. I believe members of the public also understand that, like the construction of buildings, railway construction will also generate noises. People can certainly put up with the situation if it is not too serious, especially because Hong Kong people are very easy-going. However, when there is a need to expedite works, it will be necessary to carry out works at night. The Environmental Protection Department, as the enforcement authority of environmental legislation, will require the contractors concerned to obtain a special permit for night works. It is of course absolutely necessary to apply for such a permit. I have received some complaints about loud construction noises at night, especially during the construction of Tuen Mun Station of the West Rail. But the progress of handling such complaints has remained very slow all the time. Another problem which people cannot tolerate, I believe, is that very sharp noises are sometimes generated by railways. It is very difficult for them to put up with this.

Railways are new facilities. In some cases, there are enclosed sound barriers. Such sound barriers are installed along certain new railways. But I have come across some cases, such as Tsing Yi Station which was handled by me. The reply given to me by the railway corporation is very ridiculous. It says, to this effect, "You now lodge a complaint. It cannot be said that there is no noise nuisance. But the noises at Tsing Yi North Bridge are even louder. That being the case, the noises of railway construction will not be very loud in comparison. The level of noises at Tsing Yi North Bridge may be as high as 80 dB, and the noises of railway construction may just be 78 dB or 79 dB. Therefore, the situation is alright."

Such a reply is very saddening. The Government now plans to install sound barriers at Tsing Yi North Bridge, and it should have applied for funding. We then asked the railway corporation again whether it would also reduce the level of noises, now that the noise level at Tsing Yi North Bridge would be reduced. It once said that it will do so. What would be done at Tsing Yi

Station? It explained that since train wheels run on tracks, noises can be reduced by mounting noise guards on train wheels. But I pointed out that noises might still escape due to their rebound on impact. I asked the railway corporation whether noise barriers would be installed at Tsing Yi Station — noise barriers are already installed in some sections of Tsing Yi Station, but there are not any in the section before the tunnel. Will more sound barriers be installed? It has not given me any reply.

We sometimes feel very frustrated because the Government is the major shareholder holding 75% of the shares of this railway corporation. In Tsing Yi North, the Government..... Let me use this as an example to illustrate my point. The Government has spent huge amounts of money on installing sound barriers along the highway in Tsing Yi North. The residents there are very grateful to and supportive of the Government though they have actually endured all the noises for nearly 19 years since 1989. But, at the same time, the Government has not tried to deal with the other source of noises. Why? Is it because there is exemption? Or, is it because it has no money?

At the request of the public and Members, the Government now plans to improve all old highways step by step, especially those generating loud noises. This is of course a benevolent policy. Though this is a belated policy, the Government is still willing to make improvements step by step — Cheung Pei Shan, Tsing Yi North Bridge, and so on. I have heard that works will also be carried out in Sha Tin, but due to local residents' opposition, the project has been delayed. But basically, there will be improvements. The Government has drawn up a programme specifying how much will be done a year. Some Environmental Protection Department officials have even told me that if the scales of such community construction projects are not too large, the progress can even be faster. Are there any complaints about noises along the MTR? Of course, there are, both in Tsing Yi North mentioned just now and also Discovery Park.

The problem in Discovery Park is about the reversal and repairs of trains. As Members know, there is a siding at the end of each station for trains to turn around, turn back or switch to another track. Tsuen Wan Station is actually an open-air terminus, where repairs and maintenance are sometimes carried out. For instance, tracks and wheels may be inspected and repaired, and very often, such works are carried out in the open-air area. The case of Kowloon Bay is

different because all the works there are carried out in the covered areas underneath the superstructure buildings. That was why Tsuen Wan District Council member, Mr WONG Yiu-tak, once told me that some residents of Discovery Park had complained that all those repairs and maintenance works and track-switching activities generated very loud noises, especially when they were carried out in the small hours. The MTRCL will certainly explain that it is impossible to carry out such works during daytime, during the operation hours from 6 am to midnight, and that service must first be suspended before trains can be parked for maintenance.

But the residents of Discovery Park and Tsuen Wan are disturbed in their sleep and unable to go to work the next day. Who are going to speak up for these residents? As can be expected, the MTRCL will reply that it will look into the situation. But afterwards, some other problems may emerge. And, after something has been done, the same problems may emerge again. If such incidents recur too frequently and the MTRCL does not do its utmost to ameliorate the problems, the residents will certainly continue to feel the nuisance.

This problem is not unique to Tsuen Wan and Kwai Tsing. There was a very well-known example in the past, one which concerned a certain KCR station in the North District. The open-air rail section of this station was similarly a source of noise nuisance. And, as mentioned by Mr Andrew CHENG, there were also test runs of the Ma On Shan Rail. There were test runs both during daytime and at night, and loud noises were generated, even in the small hours. I think this amendment will make the new railway corporation more cautious. Actually, the Government has so far failed to explain to us why the exemption must be retained despite the establishment of the new system.

I was a member of the Housing Authority (HA) for eight years. The HA used to enjoy exemption from many ordinances, especially the Fire Services Ordinance and the Buildings Ordinance. Of course, I did not talk about all those things mentioned just now. Even the HA also noticed that if self-monitoring was relied upon to check whether such exemption was enough, omissions would be inevitable. As a result, the HA has eventually introduced a change, whereby it seeks to curtail its exemption as much as possible. At the same time, an internal but independent auditing team has been established to check whether the HA's policies can fully comply with the relevant ordinances.

I do not know whether the MTRCL has drawn up any similar measures. Besides, I also do not know how the Government looks at all these reports and so-called internal monitoring. I have always felt very deeply that both the Environmental Protection Department and the Railway Inspectorate of the Government are rather tolerant and lenient in dealing with problems relating to railway corporations. But, frankly speaking, I must point out that many common people will be warned and even fined by the police for their dripping air-conditioners, for causing noise nuisance, and for watching soccer matches on television or making loud noises late at night. Therefore, I think that at this new stage, the Government should really reconsider whether it is appropriate to grant all such exemption to the railway corporation.

Furthermore, has it done a good job in handling all those complaints lodged by property owners along the railway lines about the noises generated by the MTR over the years? I can remember that in the Bills Committee at least, its performance so far could not win the appreciation of Members. The various political parties such as the DAB and the Democratic Party, other Members belonging to the democratic camp and independent Members all complained about its performance. Complaints were widespread. However, when it came to the scrutiny of the Bill, some Members did not want to exercise their power. I sometimes find the whole thing very regrettable. In the Bills Committee, some Members, especially those who claim to represent workers and the grassroots, were much more emphatic than me in criticizing the Government and pointing out the problems. But in this debate on the Bill, they have chosen to remain silent. Is that because though they understand the Bill, they just do not want to do anything? Do they know..... I believe they do..... whether the Government can hear all the complaints, all the criticisms they repeated so loudly in the Bills Committee or the panel? I think the Government could hear the noises they made, but it just will not listen to their advice. If we Legislative Council Members do not exercise the very limited legislative power left with us, the very limited power of passing or not passing a Bill, it will be very difficult to make the Government do anything. Over the past few weeks, for example, we have been criticizing the Light Rail for not reducing fares, and we have been requesting it to introduce monthly tickets if it does not reduce fares. If we have not voice any opposition, will they do anything? The Government may not do anything at all. Therefore, the concerted efforts of Members can sometimes yield results.

Many people criticize us for stirring up a row here. On the radio today, the debate today is dismissed as a "talk shop". I cannot agree to such an

analysis. If more Members can adopt a firmer position on the enactment of legislation instead of simply yelling and speaking in the Bills Committee or the panel..... I mean, if several more Members (the majority votes, therefore) can say to the Government that they will consider the idea of not supporting the exemption if the noise problem is not ameliorated, then the Secretary will certainly be scared. She may even go back and discuss whether it is necessary to take any action, because if she does not do so, there will be problems.

The case of the Light Rail I mentioned just now underwent precisely such a process. Just several weeks ago, in early May, the Secretary said in the Bills Committee that Second Reading would be resumed on 6 June, adding that there would be no changes for the Light Rail and the Northwestern New Territories. People immediately staged protests and demonstrations. Even the DAB put up banners, claiming that it must also join the campaign. I do not know whether the DAB exerted any pressure on the Secretary. Maybe, even the DAB felt that it must also criticize her. In the end, the concessionary measure of monthly tickets was extended. But even so, the announcement was made by the Secretary on the very same day, not in the Bills Committee. As for whether the Secretary was forced to do so, I really do not know. I cannot give any answer on her behalf. However, this is at least something good to the residents of the Northwestern New Territories. This can at least show that when Members can join hands to exert pressure, when more Members say that they will not support the motion if this is not done, the Secretary will be scared. If she is not scared, why has she said so much? At the very beginning, she said that it must be 10% and there would be no change. But now, the rate has been changed to 5%, because some Members say "no". She also remarked that the Light Rail would not do anything, even for the Northwestern New Territories. Now, however, there is the concessionary measure of monthly tickets, and bus fare concessions will also continue.

Therefore, the Secretary cannot say arrogantly that she will not do anything. In case the DAB says today that it will not support the Bill if this is not done, Sarah LIAO will immediately introduce amendments. When it comes to a case like this, the Secretary simply cannot be arrogant. But the problem is that while certain Members yelled during other meetings, they have remained silent during this debate. And, they are even prepared to vote for the Government. Such being the case, the Secretary will of course be reluctant to do anything. Therefore, if Members want to achieve anything, they must voice

their criticisms now, or convey to the Secretary the message that noise nuisance may pose a serious problem and must not be dismissed lightly. She may then be willing to introduce some amendments in that case. Thank you, Chairman.

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

MR LEUNG YIU-CHUNG (in Cantonese): Chairman, today is not the first time that the problem of noise nuisance is raised for discussions. If Members know any residents living along the railway lines, they must have heard many of these residents complain about the nuisance caused to them by all the noises. The situation is especially serious at several stations in Kwai Tsing area, including Kwai Fong Station, Kwai Hing Station and Tsuen Wan Station. I think that apart from these several stations which I am more familiar with, other stations also face the same problem. A moment ago, Mr LEE Wing-tat already cited other stations as examples.

One cannot say that we have not brought the problem to the attention of the MTRCL. There are several causes of noises. First, due to the lack of covers and high train speeds, very loud noises will be heard when a train enters a tunnel. Second, service trains and the conduct of engineering works will also generate loud noises. Third, train speeds are themselves a cause of noises.

There have been many complaints from residents. Other inconveniences aside, even when one makes a telephone call at home with the windows open, one will still fail to hear the person on the other end of the telephone line. This situation is rather serious. Besides, we need not say much on the problem with watching television; people must turn up the volume before they can hear anything. All this is not important, Chairman. The most important thing, the most miserable thing, is that in case there are any night works, people will be woken by all the noises in the middle of the night, unable to sleep again. This is far more miserable.

Regarding all these problems, we are not saying that we must always resort to the enactment of legislation. In other words, we are not saying that we must impose legislative control on everything. This is not our intention. But the question is: What are we supposed to do after our frequent reminders have failed to bring about any changes? Other Members have been saying that we must appreciate the railway corporation's difficulties and give it time.

However, Chairman, as you know, the MTRCL is no new organization already. It has existed for many years. But its performance has remained the same. For how many more years should we observe it? Today, we think that it must not be granted so much exemption, and regulation is necessary. Speaking of regulation, I can say that we are virtually forced by past experience to do so. If we had not had such experience in the past, we would not have taken this action. And, as an old saying goes, "when, if not now?" The reason is that we have been holding discussions with them, but all our advice seems to have fallen on deaf ears, failing to achieve any results. They usually reply that actions have been taken and they will do as much as possible. But afterwards, the situation simply remains unchanged. Therefore, if there is no legislative control, what can we possibly do?

Mr CHIM Pui-chung remarked just now that as Legislative Council Members, we must serve the public, make their voices heard and air their views on their behalf as much as possible. But what has happened after we have done so? There has been no result all the same. We are just like a "toothless tiger". Our opinions will not bear any results or achieve any purposes. Others simply do not listen to us, so what can we do?

As we all know, Chairman, noise nuisance will produce great impacts on people's life. They may develop emotional and mood problems, and these problems may in turn affect their work, studies and other aspects of life. We cannot ignore all these problems. As I pointed out yesterday, all this concerns the "people-oriented" principle. Railways are constructed for us. However, besides addressing our daily transport needs, railway construction must also take account of the other aspects of our life. Railway construction is not just about the provision of transport to the public. I do not think that this is the underlying spirit of public transport provision. The underlying spirit should be holistic, in the sense that apart from serving the main purpose of transport convenience, railway construction must also take account of the surrounding environment and people's quality of life. However, after so many years, the whole situation has remained unchanged. If we do not impose legislative control, what else can we do?

Can the Secretary tell us what we should do, suppose we really believe her and agree not to impose any legislative control? How are we going to solve the problem? After so many years, so much time, after we have raised the issue so many times, it has still replied that such is the situation, or that it will make improvements as much as possible. But what will happen after it has done as

much as possible? There is a complaint today, and the situation may slightly improve tomorrow. How about the day after tomorrow? The day after tomorrow, the same problems will emerge again, and the situation will revert to its former state. What can be done? Are we supposed to keep on doing the same thing, telephoning the Secretary and writing her a letter every day? It is no use doing so.

Legislation is no panacea, no solution to all problems, and follow-up monitoring is still necessary. But a piece of legislation will facilitate our work of monitoring, making it an easier job. As a matter of fact, in many cases, even legislative control cannot be of any use. Only that it is still better than nothing.

As Members all know, legislation can only play a supplementary role. The most important thing is the willingness of the organizations concerned. I do agree to this viewpoint. But the point is that they have never shown any willingness. As a result, we have no alternative but to step up our efforts. We therefore hope that legislative control can be imposed.

Chairman, I so submit.

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

MS EMILY LAU (in Cantonese): Chairman, I rise to speak in support of Mr LEUNG Kwok-hung's amendment. During the resumed Second Reading debate, I mentioned that for environmental reasons, I supported the establishment of a transport system based on railways. But I must add that railway noises have posed an acute environmental problem. As mentioned by some Members just now, in both New Territories West and New Territories East, the KCR and the MTR have created a serious noise problem in certain areas. The people there are tortured by the nuisance; more seriously, many people simply cannot get to sleep.

The authorities' approach is just to look at the level of the noises created and then set a maximum noise level on that basis. This is simply no control at all. Chairman, there are some noises in our Chamber now. I hope the authorities can appreciate that several hundred thousand people are being tortured by the noise nuisance. But the authorities have always replied that

nothing can be done. As pointed out by Mr LEE Wing-tat just now, it will all become so noisy sooner or later. We once asked..... We once said that it was so noisy and for noises, the effect was not just one plus one equals two..... Chairman, why do you look so strange?

CHAIRMAN (in Cantonese): Because I am afraid that he may interrupt your speech. This should not be allowed. The persons in the public gallery, are the noises caused by you? Please remove the equipment which produces the noises. Do you hear me? Please remove the equipment immediately.

(The persons in the public gallery ignored the Security Assistants' request for switching off the machine)

CHAIRMAN (in Cantonese): Please leave the public gallery now. Please exit before re-entering.

(The Security Assistants escorted the persons out of the public gallery)

CHAIRMAN (in Cantonese): Ms Emily LAU, you may continue.

MS EMILY LAU (in Cantonese): Thank you, Chairman. Chairman, when those persons made the noises just now, you immediately requested them to leave. This is a very good approach. Chairman, you demonstrated to us what we should do when there are noises. Therefore, you deserve our applause. It is simply ridiculous. The noises just now were not very loud, but the Chairman was already so very much annoyed. Oh, I have almost forgotten what I want to say.

The level of the noises is higher than 80 dB. They are heard every night, and do not last just a few seconds as in the case just now. This is totally intolerable. The Environmental Protection Department's approach of setting a maximum noise level with reference to the level of noises already generated is unacceptable. As pointed out by Mr LEE Wing-tat just now, since it is already so noisy everywhere, everybody may as well make noises together. The Secretary will also understand that although 70 dB plus 80 dB will not amount to

some 1 000 dB or some 100 dB, the noise level will nonetheless rise. Therefore, the authorities must take actions.

We held some discussions on this issue in the Bills Committee. We said that although the authorities had made some efforts, such efforts were still not adequate, so it was necessary to enact legislation. In her reply, the Secretary, as can be expected, said that actions would be taken. We have been discussing so many issues today, and many members of the public do not understand why the discussions should last so many days. But if they listen to Members' speeches, if they are not misled into believing that some Members are trying to delay intentionally, they will realize that all the issues discussed by Members are in fact the matters which the Bills Committee or the panel has been following up for many years. I agree that it is not true to say that the authorities have made no efforts at all. But they have not made enough efforts. Therefore, at this very important juncture, Members have to raise the issue once again. "Long Hair" may probably lose — not probably, but surely — because many Members are sitting outside and once the bell rings, they will come back to vote. However, even if they win in the voting, they will lose the support of the people.

Those people often come to the Legislative Council. Actually, the Secretary is also aware of other means of dealing with noises, means such as closure of roads to vehicles. For instance, there are loud vehicle noises from the Hung Hom Bypass and the Tai Kok Tsui Flyover. Vehicles were once banned from Texaco Road, but all ended up in a mess and the measure could not be continued. If a road is closed to vehicles, drivers will grumble. But if vehicles are not barred from entry, residents will not be able to get to sleep. I understand that it is very difficult to solve the problem. But still, the authorities must tackle it. Although a law is in place, the Secretary nonetheless says that since people may still break the law after amendment, she does not support the passage of the legislation. Can the Secretary give a helping hand, give some tranquility, to the several hundred thousand or even 1 million people who are tortured by noise nuisance?

With these remarks, I support the amendment.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): If not, I now ask the Secretary for the Environment, Transport and Works whether she wants to speak.

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): Chairman, I know many Members are very concerned about the noise problem. Noise produced by roads and railways are undoubtedly a nuisance to the people. In the course of urban development, as the more such facilities there are, the more serious the noise problem will get, unless it is addressed by breakthroughs in technology. Over the many years past, we have tried hard to make improvements, but owing to environmental constraints, our efforts remain short of perfection. People who are close to the railways will inevitably find the noise a nuisance.

On the issue of exemption under section 37 of the Noise Control Ordinance (Cap. 400) which is raised by Mr LEUNG Kwok-hung, I wish to offer an explanation here. The exemption does not mean to make the MTRCL free from the regulation of the Noise Control Ordinance. It is only that when the Noise Control Regulations were enacted, the MTR had been completed a long time ago. Hence the MTR is not able to meet all the requirements of the law which only came into effect after the completion of the MTR. It is due to such special circumstances that it is expressly provided in section 37 that it shall apply to the railway corporations as far as is practicable and compatible with the discharge of any functions conferred or imposed upon them according to law, that is, they must take noise abatement actions. In other words, when the railway was being built, the Ordinance was not yet enacted and so there were no provisions on noise abatement. Then can any change be made now? The railway corporations must undertake such work as far as is practicable, unless an exemption in respect of that is granted. Of course, Members may say that the railway corporations are not doing such work even though they have got so much room to manoeuvre. As a matter of fact, over the past 20 years, the railway corporations have spent \$1 billion on capital investment to carry out noise abatement works. They have installed noise enclosures and noise barriers along all sections of the railways. It has updated train ancillaries. This is because older trains may cause greater friction and so they have to be replaced by new train ancillaries. Efforts are also made to reduce the noise caused by trains in motion.

Members know very well that at times it is hard for us to strike the right balance. Say, if trains run faster, the noise they produce would also be greater.

If we want to have more frequent train service and shorter travelling time, then the noise problem will have to be greater. On the other hand, as we have received many complaints from the residents, we have to require trains to slow down during the night. However, this would also lead to complaints that the speed of the trains is too slow. From this it can be seen that public interest involves many aspects and what we can do is to try to strike a balance.

When the railway corporations plan new railways and during their actual construction, noise abatement requirements have already been considered. For example, they have used highly sensitive and automatic state of the art rail polishing machines to minimize the noise produced. The railway corporations will undertake these environmental protection measures during their annual maintenance, replacement and upgrading of the rails.

I wish to talk about repairs and maintenance as this was also mentioned. A few Members have referred to the noise produced by such activities. Under the Noise Control Ordinance, this is completely different from the kind of noise produced by trains in motion and during operation. So this exemption does not cover repairs and maintenance works and only noise produced by trains in motion can be given an exemption under section 37. The authorities will regard such activities as construction activities like the other kinds of construction activities in general. Hence, the noise produced by these works is subject to regulation of section 6 of the Noise Control Ordinance on the construction noise permit system, not the provisions in the amendment proposed by Mr LEUNG Kwok-hung. The repairs and maintenance works undertaken by the railway corporations should be fully regulated by this Ordinance.

I hope Members can understand that as the surroundings are quiet during the small hours, the noise produced by any repairs and maintenance works undertaken then would be especially poignant. However, if repairs and maintenance of trains is not undertaken at night-time, when should it be undertaken? If it is in the daytime, then the train service will have to be suspended. As a matter of fact, cities all over the world face the same problem. We are working hard to address the problem. We requested the railway corporations to pledge that they will keep a close watch on the latest international practices in noise abatement, the latest developments in repairs and maintenance and they should engage in exchanges with experts in designing rails and trains. They should continue to work hard in noise reduction. We all understand that it would be the best if noise can be reduced to zero, but that is an impossibility.

So work in this aspect will never end. Unless there is no train in motion, it is not possible that no noise whatsoever is made.

Besides, the amendment also mentions section 20(2) of the Tung Chung Cable Car Ordinance (Cap. 577). The Tung Chung Cable Car Ordinance is not a piece of legislation regulating the operation of the two railway corporations and it is unrelated to the rail merger. In view of all these reasons, I implore Members to vote against this amendment.

CHAIRMAN (in Cantonese): Mr LEUNG Kwok-hung, do you wish to speak again?

MR LEUNG KWOK-HUNG (in Cantonese): Chairman, I of course understand the Secretary's explanation. But all forms of exemption are in fact tantamount to lifting the flood gate.

There are many different phenomena in my constituency. For instance, for reasons of flat sales, not on the basis of any objective criteria, there is invariably an especially large number of sound barriers along the sides of the housing developments of the KCRC and property developers. Another point is that under the existing practice of the KCRC, after the conduct of tests, if it is discovered that the noise level at location A is 80 dB and that at location B is 82 dB, the latter will be dealt with first and the latter will have to wait until sometime later. But in many cases now, noise abatement facilities are simply installed according to the dictates of flat sales.

To prevent noise nuisance, we may adopt the noise insulation approach in addition to reducing noise levels at source. Of course, the insulation approach is somewhat like putting the cart before the horse, for it is very difficult to insulate noises. For instance, when I negotiated with Secretary Dr Sarah LIAO, I already told her that the noises were just too loud and people had lodged many complaints. I told her that the residents' demand was actually very simple: The KCRC, which creates all the noises, should pay to them the costs of installing double-glazed windows, so as to minimize the nuisance caused to them. But the KCRC refused because it simply does not have to bear any responsibility.

Owing to the exemption, the Government has been trimming the toes to fit the shoes. For example, if the KCRC or the MTRCL tells the Government that no matter what efforts are made to abate noises, the noise level will still be as high as 88 dB, the Government will make 88 dB a licensing condition. This is actually related to the exemption. Since the Secretary has so painstakingly explained to us in this Chamber that the scope of exemption is very small, not as large as imagined by Members, why does she not take this opportunity of enacting a new law on regulating the railways to solve the problem once and for all? The implication of the rail merger is that the legislation will not be amended in the near future. Are there going to be other merger plans anyway? After the rail merger, the two railway corporations will become the MTRCL (港鐵). It is now virtually the last opportunity to amend the legislation. It is for this reason that so many Members have grasped this opportunity to exert pressure on the two railway corporations (that is, the future MTRCL) and the Government, which is the main driving force behind the merger.

There are many forms of pressure, and the exertion of pressure is also related to "vote counting". If Members of this Council cannot form a grand alliance to fight for the people's legitimate interests in the rail merger and reorganization process, there will never be any improvements. I have repeatedly pointed out that this Council of ours is just like a profit-oriented school emphasizing spoon-feeding, one which lays sole emphasis on products and results, not on any underlying rationale and justifications. I think Members have once again witnessed all the undesirable effects of functional constituency elections, or coterie elections. Since a functional constituency Member represents only the interests of a very limited number of people and his scope of responsibility is also very small — for instance, a Member representing the engineering sector needs only to be accountable to this particular sector — he will fail to reflect the relevant public opinions comprehensively and properly. The reason is that public opinions are not reflected by any corresponding number of votes. Nor is there any corresponding number of votes to represent public opinions and even to penalize those who break their promises or choose to act against public opinions after their election to office. This is a very bad system. He who acts against public opinions can get a seat that gives him disproportionate powers, or powers disproportionate to the mandate he has.

Our debate now is no different from any other debates on the matters put before this Council by the Government. We cannot even conduct a meaningful debate, so that the people of Hong Kong can monitor what is going on. We

often say that results are not important and the process should matter more. We also say frequently that victory and defeat are not important, and that most importantly, there must be competition under fair, impartial and open conditions. Although the business of this Council is transacted openly, there is in fact no fairness and impartiality. Under the voting system of this Council, Members with massive public support are always slapped by those Members returned by "coterie elections". Such a system can once again show that without universal suffrage, things already turned upside down cannot be restored to their proper positions. And, those hitherto not turned upside down will be turned that way.

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

I know that my amendment will surely be negated in the voting later on. I also know of one fashionable idea these days. A certain Mr WU has asked, "Do you think that you really have any power? You can only have that much power which the Central Authorities allow you to have." This is also the case with the Legislative Council. Honourable Members, do you think that you really have power? You can only have that much power which is given to you by the Government with the support of the Central Authorities.

On the noise problem, public opinions are against noise nuisance. The public hope that the Government can change with the times and enact a more satisfactory piece of legislation to regulate noises. But the task involved is a long and difficult one. This reminds me of a person who is well-versed in all kinds of combat, but who is chained up by others. This person is just like PROMETHEUS, who wanted to bring light to mankind and teach them how to use fire. PROMETHEUS thus angered ZEUS, who then ordered that PROMETHEUS be shackled to a crag, where a vulture would devour his heart and devour it again as soon as it healed, in endless cycles. This is also the case with our legislature and this very system of ours. For 10 years, Members belonging to the opposition camp or what is commonly called the pan-democratic camp have all been shackled in each and every debate, with a vulture devouring their hearts in endless cycles. This has been the case for 10 years.

Maybe, I should cite another example, the Sisyphean task. Although I know that the rock will roll down as soon as it is rolled up the steep hill, I will continue to roll it up. I know that everybody want to eat now, and I also have business to attend to. I shall not go on, because it is meaningless to do so.

I hope those Members who support the Government can ask themselves honestly whether they have exerted their utmost. I have done my best. I have actually spoken as if I know everything. But there is nothing else I can do. I hope that journalists can be merciful and refrain from saying that I have been trying to put up delay intentionally. If they do not write such things, their editors may not be able to publish anything on this. But if they do, their editors may exaggerate the whole thing. Thank you, Deputy Chairman.

MR LEE WING-TAT (in Cantonese): Deputy Chairman, is Secretary Stephen LAM standing in for the Secretary for the Environment, Transport and Works?

DEPUTY CHAIRMAN (in Cantonese): Yes. The Chairman has given her approval.

MR LEE WING-TAT (in Cantonese): Deputy Chairman, I shall continue with my remarks. Since my question is intended for the Secretary for the Environment, Transport and Works, I hope that Stephen LAM, as the stand-in of the Secretary for the Environment, Transport and Works, at least knows how to give an answer, not least because Secretary Dr Sarah LIAO remarked just now that the exemption was not entirely without limitations.

Actually, it is also stated in the exemption provisions that as far as practicable, environmental protection works must still be carried out. Members are aware that in the past 20 years, a sum of \$1 billion, that is, roughly \$50 million a year, was spent on abating wheel noises and track grinding. The exemption provisions provide that as far as practicable, some works must be carried out. I want to ask the Secretary one question because some information was provided just now. Secretary Dr Sarah LIAO disclosed just now that besides the installation of new equipment on train carriages to reduce wheel noises, they had also introduced improved track polishing technologies to reduce grinding noises. Can the Secretary tell this Council the number of MTR stations that were involved in the complaints over the past 20 years? Honestly, I think there were complaints about all MTR stations. In the past 20 years, how many MTR and KCR stations were involved in complaints? Regarding the MTR, apart from those new trains with less noise and the improved track repairs technologies mentioned by Secretary Dr Sarah LIAO just now, are there any more noise abatement measures which the MTRCL is required by the law to

introduce under practicable circumstances? I want to obtain the relevant information before speaking in any further debate. Thank you, Deputy Chairman.

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Deputy Chairman, we can respond to the point raised by Mr LEE Wing-tat.

The kinds of works completed over the past 20 years and in which a total of \$1 billion was spent not only included upgrading the trains or reducing the noise caused by trains in motion but also works on installing noise barriers and noise enclosures in certain sections of the railways as when necessary and practicable. I think what the MTRCL has done is to act according to the views of residents in the districts concerned and it would act only after consideration made and based on its statutory functions. I believe this is also what the MTRCL will do in future.

Thank you, Deputy Chairman.

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

MR LEE WING-TAT (IN Cantonese): Deputy Chairman, the Secretary's reply to the first part is quite satisfactory and to the point. But the Secretary also said that in some stations, noise enclosures had been installed. I wish to obtain the relevant information. Can the Secretary read out the names of the stations concerned?

DEPUTY CHAIRMAN (in Cantonese): Mr LEE Wing-tat, I wish to remind you that this is not Question Time.

MR LEE WING-TAT (in Cantonese): I know that, Deputy Chairman. If you want me to make a speech, I can do so. I may of course start a debate here, but I do not wish to deny the Secretary an opportunity to speak. My experience is that there are not many stations with covers and noise insulation facilities. I will of course let the Secretary make a clarification. As far as I know, in the

case of many stations, there is still no progress long after the lodging of a complaint. The stand-in of the Secretary for the Environment, Transport and Works, that is, Secretary Stephen LAM, said that the MTRCL had carried out such works. I am very curious. Will the stand-in of the Secretary for the Environment, Transport and Works, that is, Secretary Stephen LAM, name the stations where such works have been carried out? Can he share the relevant information with us? Thank you, Deputy Chairman.

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

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Deputy Chairman, I can only reiterate that the response given to Members by the Bureau today is an overall response. We would like to stress that over the past 20 years, a sum of \$1 billion was indeed spent on these works projects. As the Deputy Chairman has said, today is not Question Time and so we have not prepared any information on the kinds of works undertaken at each station and the number of noise abatement works carried out in each section. The overall response from the Bureau is that all through these many years the MTRCL has been doing what it should do according to the relevant laws. I believe this is also what the MTRCL will do in future.

MS EMILY LAU (in Cantonese): Deputy Chairman, in her reply just now, Secretary Dr Sarah LIAO mentioned repairs and grinding, remarking that the new machines will be of help. Deputy Chairman, you will also remember that we also raised this issue in the Bills Committee.

The KCRC has replaced some machines, and this will of course reduce noises. But some other machines have not yet been replaced. According to the KCRC, these machines will not be replaced until sometime around 2012. They say that this is their established practice because they think that it is a waste of resources not to use these machines. We already pointed out at that time that if new machines could indeed reduce noises, they should not focus solely on whether the old machines were already worn-out. They think that if these machines can still work, they should be used for a few more years. But I must say that in that case, residents will have to suffer for a few more years.

I hope the authorities and the railway corporations can understand this point and replace these machines as early as possible. The reason is that new machines can really help reduce noises. Secretary Dr Sarah LIAO did not mention this point just now. I therefore have to raise it, in the hope that the authorities and the railway corporations can pay attention to it. This will of course oblige them to incur expenditure at an earlier time. But such money should be spent, and it is worth the while to do so because they can thus help members of the public.

Thank you, Deputy Chairman.

MR LEE WING-TAT (in Cantonese): Deputy Chairman, the Secretary did not give any new information in his reply. The only thing I can say about this debate is that the Secretary's remarks offer little to write home about. Actually, my point is very specific, focusing on whether the MTRCL and the KCRC have adopted the required measures as far as practicable.

The Secretary's remarks actually boil down to two points. First, the wheels of new trains will generate softer noises. The second point is about the new track grinding equipment. I think that the most effective way..... As can be expected, the Secretary will reply that it is impossible to completely eliminate track noises. I must therefore advise that if nothing much can be done to tackle the problem at source, we must work out some other solutions. The Bureau under Secretary Dr Sarah LIAO has already mentioned that all old highways will be retrofitted noise barriers batch by batch. Why is it impossible for the MTRCL to adopt a similar approach. Actually, my only question is this: Why is it impossible for the MTRCL to adopt a similar strategy and plan? In the case of those stations attracting more complaints, if track improvements fail to reduce noises, why do they not just let the Government install noise barriers?

The Secretary said just now that his reply was an overall response. I do not know whether the Government also adopts the same approach in dealing with practical issues. I do not know whether this explains why it has not given any concrete reply and told the public anything. After so many years and despite all the complaints, the MTRCL has not yet drawn up any specific plans and follow the Government's example of carrying out works in old highways in batches.

The Secretary must not dismiss this request as unreasonable. The reason is that even the Government can carry out such works on all old and busy highways, so it is only reasonable for the public and Members to request the MTRCL to carry out such works at stations attracting more complaints. It is only reasonable for them to request the two railway corporations, which will be merged to form MergeCo, to draw up feasible improvement plans as far as practicable and submit them to the public and the Government. I do not think that the two railway corporations have done so up to this moment.

I must thank Secretary Stephen LAM for sitting here for more than 10 minutes, so that Secretary Dr Sarah LIAO can give her reply later. My request is very simple. Although the exemption clauses state that measures should be adopted as far as practicable, can the Government inform this Council whether the current practice can meet the requirement of "as far as practicable"? I only wish to raise one point. If the Bureau under Secretary Dr Sarah LIAO has already drawn up plans for highways, why can we not also request the MTRCL to submit to the public feasible plans for stations attracting more complaints in the past?

The two railway corporations may need time to propose plans, but the public may discuss all these plans in the meantime, querying why Plans A, B and C are not feasible for example. However, as far as I know, up to the present moment, at least, the two railway corporations have not drawn up any such plans. That being the case, how can it be argued that the exemption itself is reasonable? Talks about the exemption being reasonable can only be meaningful when there are at least some plans of action. However, the situation now is that the two railway corporations will just disclose a little bit of information about certain stations or new stations in a year. They have failed completely to do well as far as practicable as required by the law. I hope the Secretary can give a reply, telling us whether the MTRCL or MergeCo to be set up will, as far as practicable, replace its trains, conduct track grinding works and install noise barriers in a systematic manner at places attracting the greatest number of noise complaints. Thank you, Deputy Chairman.

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

(No Member indicated a wish to speak)

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

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

DEPUTY CHAIRMAN (in Cantonese): If no other Members wish to speak, then before I put to you the question on Mr LEUNG Kwok-hung's motion, I wish to remind Members that if his motion is agreed, he may move his amendment to clause 30. If his motion is negatived, he may not move his amendment to clause 30.

DEPUTY CHAIRMAN (in Cantonese): I now put the question to you and that is: That new heading before new clause 29C and new clause 29C moved by Mr LEUNG Kwok-hung be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

MR WONG TING-KWONG (in Cantonese): Deputy Chairman, it seems that a quorum is not present.

DEPUTY CHAIRMAN (in Cantonese): It is clear that a quorum is not present. Would the Clerk please ring the bell to summon Members back to the Chamber?

(THE CHAIRMAN resumed the Chair)

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

CHAIRMAN (in Cantonese): A quorum is now present. Since we were about to vote on Mr LEUNG Kwok-hung's motion, I now order that we shall continue with the voting. 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 LEE Wing-tat rose to claim a division.

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

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

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

Functional Constituencies:

Ms Margaret NG, Mr CHEUNG Man-kwong, Mr WONG Kwok-hing, Dr Fernando CHEUNG and Mr KWONG Chi-kin voted for the motion.

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

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr Fred LI, Mr James TO, Miss CHAN Yuen-han, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Ms Emily LAU, Mr Andrew CHENG, Mr Frederick FUNG, Mr LEE Wing-tat, Mr Alan LEONG and Mr LEUNG Kwok-hung voted for the motion.

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

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

THE CHAIRMAN announced that among the Members returned by functional constituencies, 20 were present, five were in favour of the motion and 15 against it; while among the Members returned by geographical constituencies through direct elections, 21 were present, 13 were in favour of the motion and seven against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the motion was negatived.

CHAIRMAN (in Cantonese): As the motion on Second Reading of new heading before new clause 29C and new clause 29C moved by Mr LEUNG Kwok-hung has been negatived, Mr LEUNG Kwok-hung may not move his amendment to clause 30, which is inconsistent with the decision already taken.

CLERK (in Cantonese): Clause 30 as amended.

CHAIRMAN (in Cantonese): Since the Committee has earlier on passed the amendments to clause 30 moved by the Secretary for the Environment, Transport and Works, I now put the question to you and that is: Clause 30 as amended 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): New clause 6A Section added.

CHAIRMAN (in Cantonese): Members, I wish to remind you that this Chamber is equipped with excellent audio equipment. I can hear you when you talk among yourselves in your seats. Therefore, when you talk among yourselves, please do so more softly. When Ms Emily LAU spoke earlier on, I requested the persons in the public gallery to remain quiet mainly because the sound effects here are really excellent. Would you please be more careful?

MR LEE WING-TAT (in Cantonese): Chairman, I move that new clause 6A be read the Second time.

New clause 6A mainly has a number of parts. The first is about section 4 of the Mass Transit Railway Ordinance (Cap. 556) on development projects above new stations. This includes three parts. The first is that the franchise granted to the MTRCL does not include the right to develop properties above any new station. This is new section 4A(1). The second is that the right to develop any projects above any new station shall be granted through open tender. This is new section 4A(2). The third is that the MTRCL shall co-operate with and provide reasonable assistance to the successful bidder in the open tender. This is new section 4A(3).

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

Deputy Chairman, this amendment and the provisions added are an important policy that merits debate and consideration. This is because as Members know, the approach to railway development is basically one of using the profits gained from property development to finance all the capital outlay of railway development. Actually, the Democratic Party does not object to this approach. This means that discussions will be held first to decide on the land lots along the railways for sale or development in order to finance the capital outlay for the construction of railways. This we do not object, for as we all know, financially speaking, the railway corporations cannot expect to get an immense amount of capital from the general revenue from fares to undertake large-scale railway development projects.

What is our purpose in adding the new provisions? Because we question why land is granted to the railway corporations without going through open tender. We have justifications and data to back up this view. It can be said that this approach is to adopt a negotiated market premium. That is to say, the Government, after discussing and choosing a certain lot along a railway and after negotiations are held, has arrived at a premium. This premium is not the market premium and, at most, it is only a negotiated premium which is vastly different from what we call the market premium.

Put it simply, we also know that presently the practice of the MTRCL is such that whenever a railway development is to be undertaken, it would discuss with the Government the subject of whether or not it has any right to undertake development above the station concerned. This kind of approach to property development applies to each one of the railways. In many cases, though the MTRCL itself is a developer, it cannot construct the buildings by itself and as a general rule, it would invite developers to co-operate with it through open tender. This is nothing new and we know that such kind of property development is found along the railways and many citizens are now living in buildings constructed there.

Now the situation is that the MTRCL enters into joint ventures with these companies which are private sector developers. We know that these developers are not charitable organizations and they are there to make profits. In other

words, the MTRCL will discuss the premium with the Lands Department and then collaborate with the developer. In this way, the MTRCL will earn its share of the profits and the developer will also earn its share.

What is wrong with this? In our opinion, the Government does not necessarily have to adopt this approach. If it does, it should consider the fact that since railways are huge investment items, they must be financed by some property development, then can the properties selected after negotiations be offered up for open tender? We are certain that the premium gained through open tender will be higher than the negotiated premium worked out by the MTRCL and the Lands Department. In other words, this would mean that the developer will not be financed indirectly. Or perhaps we can put it this way, the indirect result is that the developer will be able to bypass a completely open tender process when negotiations are held with the MTRCL.

An example is that many developers like to hoard farmlands and then they will negotiate the premium with the Lands Department for a regrant premium which will enable it to turn farmland into land for residential or commercial purposes. I know that an overwhelming majority of developers like to use this approach. This is the reason why the few major developers, that is, the top four or five of them, go about so often acquiring farmlands in the New Territories. In some cases, these farmlands may be as large as having an area of tens of million sq ft. Why do they like to adopt this approach? The reason is simple enough. Because the negotiation of a premium is done by only one developer with the government department concerned. If the premium fixed after negotiations is not good enough, the developer may stop the negotiations and refuse to accept the regrant premium. We can see that in the last couple of years or so when the Application List has been revived, we can hear many developers complain about the Lands Department. They say that the so-called triggering premium on the Application List is too high. This point was raised by the developers a number of times last year. Of course, I do not agree with this and I have said on many public occasions that I do not agree with this view.

It does not matter at all if I agree or disagree with this view. What matters most is whether the market shares the same view of the developers and whether it is the market's view that the premiums on the Application List set by the Lands Development are too high. The answer is no. The market tells us that actually the Lands Department has set the premiums at a low level which is very conservative. As evident in the so-called land lots for medium-priced or

luxury flats over the past year in places like Kowloon West, and even Shan Kwong Road and places like Ho Man Tin, the final market premiums after open auction, that is, the bidding premium, are about 60% to 100% at variance with the premiums set by the Lands Department on the Application List. We can see that in this process of negotiation, the Lands Department is actually taking a very conservative stand.

Of course, we know that they have been following professional standards throughout, but we can see who would suffer if the approach to negotiate a market premium is adopted. The taxpayers. We can consider the issue from another perspective. If the land lots on the Application List are not put up for open tender after triggering, instead the developer who applies for a particular lot will negotiate with the Government on the premium, then would you think that this piece of land will fetch a premium 60% or 100% higher than the upset premium? Certainly not.

Therefore, this is why the Democratic Party wants to change this practice of the Government deciding to grant a piece of land along the railway to developers into one that will not only grant the lot to the MTRCL and the developer for development but through an open tender. Such a practice would mean more money for the taxpayers. If taxpayers can get more money from this, that is, land which is earmarked, then in the end they will have nothing to lose. Of course, such money can be given to the MTRCL or MergeCo as a source of capital for railway development. On the other hand, if the money so gained is more than the amount obtained through collaboration with the developer, then it would help the finance of the MTRCL and other areas enormously. If this is the case, it would mean even greater benefits for the taxpayers.

Now after a railway corporation has got a piece of land, I know that it will not negotiate with any particular developer on the land premium, instead a tendering process is adopted. This is not an open auction, but a tendering process. We in the Democratic Party do not understand why this should be so because since the MTRCL has got some land lots, why can it not put them up for open auction? This can be done. So why can all these lots not be disposed of through open auction? This practice may bring better returns in premium than just going through the tendering process. Therefore, Deputy Chairman, we consider that the present state of affairs not the best option to take. We will not say that the MTRCL should pick a certain developer and co-operate with it.

The lots should be handled by open tender. We think that this suggestion from the Democratic Party is more desirable. It will dispel doubts in the public about the Government or the railway corporations not following the closest market practice. Often when the Government talks about these issues, it will say things like "big market, small government". But it is not doing this on the issue of granting land to the MTRCL.

Some members of the Democratic Party have had meals with certain members of the Real Estate Developers' Association of Hong Kong. Actually, the meeting was with not just one or two members of that Association but a significant number of the members of that Association. We would have about one such meeting each year. Some developers actually expressed this view to us on these occasions. They do not think that land should be granted to the MTRCL in this way. This is because in so doing the scope of business of the MTRCL would expand and it will become a real estate company. Also, the MTRCL may get some land that the developers are also interested in and these developers may be willing to pay a higher premium, that is, more than the maximum premium which the Lands Department has worked out with the MTRCL. I would like to ask, "If they are willing to pay a higher premium, why should the MTRCL be given a priority?" After the bidding, the money received will be accounted to the Treasury and the Treasury may in turn give the money to the MTRCL. In this way, the MTRCL will not enjoy any preferential treatment over the other developers. Would this not be fairer?

I hope in the debate Members will not say that the Democratic Party wants to terminate the major source of income for the MTRCL. We have not done so. We still agree that whenever a new railway is to be developed, some land next to it should be earmarked for development. This will ensure that a project with such immense capital input would be financed. What we are debating is the approach to be taken, that is, whether or not the approach which is closest to market practice is for the Government to state that the land should be developed by the MTRCL. Or rather, why should the land be granted to the MTRCL? Why should the land not be put up for open auction? The MTRCL may join in the bidding and if it succeeds, then it should be awarded the right to development. If not, then the relevant developer will undertake the job. The sum of the premiums for the lands put up for auction can become a source of capital to finance the development of new railway lines as they would mean huge capital outlay.

Deputy Chairman, I think this is a way for the Government to reposition the MTRCL as a railway corporation with a hybrid business profile and this would enable the open tender that we talk about to be applied not only to lots on the Application List but also those along the MTR lines. Thank you, Deputy Chairman.

DEPUTY CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clause 6A be read the Second time.

MR ABRAHAM SHEK (in Cantonese): Deputy Chairman, on the new clause 6A proposed by LEE Wing-tat, the Real Estate Developers' Association of Hong Kong (REDA) accepts the clause in spirit because it thinks that irrespective of whether the Government sells land or offers land in the market, there should be an open and fair system. That applies both to the Application List and sale by auction. This is a very important point.

The policy adopted previously was to use land to finance infrastructure development, especially railways. Developers had no objection to this, for at that time the two corporations were wholly owned by the Government. In this regard, it was just like putting money from the left pocket into the right. Therefore, they thought that it was acceptable. Ever since the listing of the MTRCL, insofar as this concept is concerned, they would think that since it is similar to any other listed company, it should not be given any special treatment. Why is there such a strong reaction from the community and also from the developers? In the case of the Cyberport, the situation is to go digital for the purpose of land grant. That is to say, land is granted to a certain company to build the Cyberport and the expenses are offset by proceeds from the land sale. That is why many real estate companies and developers voiced their objection.

LEE Wing-tat has just talked about the history of the policy, land use and the sale and purchase of land in Hong Kong, and so on. All these are correct. I do not want to go on talking about them, for he has said a lot already. I agree with his views.

In addition, on behalf of the REDA, I hope that when in future new railways are built, the expenses should not be covered by land anymore. If it is thought that land should be used to finance such projects, then the land should be

sold and the proceeds should go to that company. This should be done in order to reflect market needs and it is also fair and open. Deputy Chairman, the REDA has submitted many papers in support of this view.

As I represent the real estate sector, I am here to convey the view of the REDA. As for my personal views, I see why this policy has come about. I have been in the real estate sector for so long and I have had some very trying times on account of this policy. When I was working in the KCRC, I began to get involved in real estate projects. It was done that way at that time. If there were no such projects, there would be no Light Rail and West Rail. A lot of problems would arise and fares would not be stable. Therefore, it can be seen that this practice has both merits and demerits.

We can see so many developments at the MTR stations and if these are not undertaken by the MTRCL, it would be hard to imagine that such developments would ever have appeared. Even if land is offered on the market, it is not certain that there would be people who would undertake the development. We must factor in social development, real estate development and the overall interest of the public. This is especially the case because it is vital to develop railway networks. How then should we strike a balance?

From the real estate perspective, however, we would of course hope that every lot can be put up for bidding or placed on the Application List. This would be fair and open. But would this system affect the development of new railway networks? Yes, it would. Because it is the market forces that make people apply for land on the Application List or bid in an auction. If the market sentiments are bad, just like what we had a few years ago, even if a lot of lands are available, no one will apply for triggering. In this way, developments will come to a standstill. This is the case of the West Rail. The railway is complete but the space above the stations remains to be developed. Hence, the passenger volume as predicted cannot be achieved. It is not just the railway that will incur losses, society as a whole will have to subsidize the losses. This is how land development is as seen from the real estate perspective.

I support in spirit the amendment moved by Mr LEE Wing-tat on clause 6A. Deputy Chairman, I support him in spirit. In practice, however, I will not vote against him. I will abstain.

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

MR LEE WING-TAT (in Cantonese): Deputy Chairman, as this is a very complicated issue, I may not have expressed my view fully when I spoke earlier.

At the initial stage of deliberations in the Bills Committee, we discussed whether or not new methods should be used to handle land. The MTRCL talked about its difficulties, one of which was that railways and the developments above its stations were linked. Therefore, if the same company was not in charge of the works, it would not be possible for the works to be carried out at all. Such a view had practically been torn into pieces by Honourable colleagues in the Bills Committee. This is because, as we all know, even if the design of railways and their development are very complicated, they are nothing when compared with building an airport. I recall when the airport was being built, there were many contractors. If property development is to be carried out above a certain station, there are actually many well-known and stereotyped ways at our disposal. These include requirements on how flyovers are to be built, how accesses are to be provided with the shopping mall and how the podium is to be laid, and so on. I do not think these are problems which engineers and architects would find unable to overcome.

That there is such a large extent of involvement of the MTRCL in real estate development would actually cause some problems. First, as Mr Abraham SHEK has said, and I am grateful to him for conveying the views of the REDA, the REDA thought that our view was sensible. This is because in the bidding process, if it is designated that the MTRCL should be given the right to develop certain lands along the railway, this would in fact run counter to market operations. Because lands along the railway lines are premium land. I cannot say that property developments by the MTRCL are bad. It has always been trying to find other developers to undertake the relevant projects through collaboration. This is the kind of things that it would do, rather than engaging in property development all by itself. We have no way to know what sort of expertise or practices it would use in such a process to achieve good results. However, we know that those developers collaborating with it are mostly the well-known ones.

As a matter of fact, property developments undertaken by the MTRCL along its railways are very good. Things like accesses in the properties, links to the shopping malls and design may not come from the MTRCL itself. As a corporation which is responsible for operating railways, there are actually some disadvantages for it to take part in real estate development. As the developers

had their own commercial considerations and 75% of the shares of the MTRCL are owned by the Government, so during the deliberations in the Bills Committee, the public had very different views on the properties of the MTRCL. Very often the public would have strong opinions regarding the interface areas between these properties and the stations. As the MTRCL is a government agent, it should know how things ought to be done and if it fails to do it, the Government should be held liable. At times the role played by the estate department of the MTRCL is very confusing, for we do not know if it is purely a private real estate firm, or a private firm which also has regard for public interest. This is not clear. When it does not want to take up any responsibility, it will say that it is a private firm, a listed company engaging in the real estate business.

However, when it wants to get some special exemptions, just like the debate today and the amendment I proposed earlier, which are all about the issue of exemptions, then it will not consider that it is a private firm but a company with government involvement. Hence, the role it plays is very confusing. At times, the public would think that when there are benefits, the MTRCL would get all of them. Also, as the MTRCL works in partnership with developers, so when some of these developers do something that the public or Members consider in conflict with market practices or what we would generally call flat sale practices, the Government should make itself answerable to the criticisms made.

I recall last year in the case of the property development The Arch which is a joint venture between the MTRCL and the Sun Hung Kai Properties Limited, they made an announcement saying that there had been a transaction at a sky-high price. But it was later exposed by newspapers that this transaction was actually a kind of bundle sale. Of course, the MTRCL denied on the radio that it was a bundle sale but it was two clients who bought two different flats. However, the difference in prices was very great indeed. Say, Albert HO and I go there and buy two flats. The flat Albert HO buys carries a price tag of \$20,000 per sq ft and the flat I buy costs me \$10,000 a sq ft. They know very well that we come from the same company but they say that these are two different transactions. We know that this is what we call bundle sale. Even estate agents also said the same thing to me afterwards. SHIH Wing-ching also said on the radio (that was what he said at first as well) that it was like a bundle sale. However, I think after he had said that on the radio, he must have been questioned by the MTRCL and so he remained silent afterwards.

Many estate agents know that there are problems in that. Why should the MTRCL be involved in such unscrupulous sales practices used by developers and hence invite criticisms? So I wrote a letter to the board of directors of the MTRCL and demanded a thorough investigation into the matter. It did not think it had any responsibility in that and so it just gave me a short and perfunctory reply. But now if the Government or the MTRCL, especially the Government, does not change this kind of sales practice, I think these are bound to happen. First, there will be lots of criticism from the public that there is collusion between the MTRCL and the developers. Such criticisms are inevitable and this kind of unscrupulous sales practices would only invite complaints. Second, even some members of the REDA who are market players too do not agree with such a practice. Then should the Government insist that the MTRCL should be given the right to property development along the railways? As I have said before, I do not oppose the Government giving the auction proceeds from land along the railways to the MTRCL to finance its railway construction projects, but the present approach would cause a lot of criticisms.

I therefore hope that the Government will consider changing this practice. The simplest solution is to support my amendment. Thank you, Deputy Chairman.

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

MR ALBERT HO (in Cantonese): Deputy Chairman, I would just like to add a few points. This practice of giving the MTRCL the right to undertake development projects above new stations without having to go through a tendering process is precisely the practice which will turn the MTRCL and MergeCo into a real estate firm rather than a corporation in service of the public. It would be considered also as a real estate firm in the eyes of many investors. I have great doubts about whether or not such an approach should be adopted.

In 1998, Deputy Chairman, I think you may still remember we debated the Mass Transit Railway Bill. That was the time when the MTRC was about to be privatized and listed. The Democratic Party proposed an amendment and its effect was quite similar to the amendment today. We hold that the right to undertake development projects above the stations should have been put up for

competitive bidding a long time ago and it should not be given to the MTRCL as a kind of financing arrangement. We have also said that railway development is necessarily capital-intensive and there must be sufficient funds before anything can be carried out. But this does not mean that we should adopt an approach which is unclear and ambiguous and the amount of subsidy to be made is grossly uncertain. If more capital is needed, then this should be put up for auction and all the proceeds should be injected into the railway corporation. This is workable. If an uncertain approach is taken, that is, the so-called public-private partnership, then this would make people think that there is some sort of transfer of benefits.

I think the Government should not argue that the valuation made is the market premium. This is ridiculous. It has been said many times already. They say that if this approach is not used, then they cannot make it. In other words, giving them the right to development is to pay the entrance fee. That is to say, a price is paid to buy this right to development. But this is absolutely not the market premium. A market premium can only be considered as one after going through open auction or competitive bidding.

The most crucial point is that ever since the MTRC became a private and listed corporation in 1998, so we strongly oppose such a subsidization arrangement. We do not care about things that happened in the past. Mr SHEK said earlier that this is a kind of taking money out of the left pocket and putting it into the right pocket. This is possible because it was wholly owned by the Government. Likewise, with the bus companies, if they tell us that that paying a regrant premium for the bus depots can enable them to carry out development projects there, we would definitely object to this idea. In the past, that was done and we thought that it was terribly wrong. And in future, if they are still doing it, I think we will surely voice our strong opposition. This is simply unfair. When the land was leased, if it was stated that the land was for use as depots, then it should be so used. If there is no longer any need for it, the land should be surrendered for public auction. Do not say that talks can be made with the Government to revise the terms and conditions of lease and pay a regrant premium and say that this is the right thing to do and this is the market premium. We will definitely not accept such things.

In sum, we think that we should never permit each of the stations to be run in the same mode as the Cyberport and hence they are turned into mini Cyberports. We pointed this out in 1998. What the Democratic Party insists

most is that a fair, open and just approach be taken to run our market competition, or rather, to maintain market competition. This applies especially to the handling of public properties — and this includes the right to undertake development projects above the MTR stations.

Hence, the amendment today is consistent with the amendment we proposed in 1998. Once again, I hope the Government will know that this is crucial to keeping our image, that is, whether or not we can hold fast onto the rules of the game in a level playing field. Thank you, Deputy Chairman.

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

MR ABRAHAM SHEK (in Cantonese): Deputy Chairman, when I spoke earlier I said that I supported the spirit and concept of clause 6A proposed by Mr LEE Wing-tat. But I disagree strongly with him when he said that Sun Hung Kai used unscrupulous practice to sell flats. There is no evidence to substantiate this argument. In addition, this company is a very good company and it is very well-known in Hong Kong. The reason for its being so well-known is that it has commitment for Hong Kong and it is very nice to flat buyers.

Deputy Chairman, I oppose the remark made just now by LEE Wing-tat.

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

(No Member indicated a wish to speak)

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

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): Deputy Chairman, the Government grants the right to undertake development projects to a railway corporation is meant as a way to make up for the shortfall in funds when the corporation launches a new railway project. It is

also an existing arrangement which applies to the MTRCL and the KCRC so that they can build the railways to serve the public. This is the existing arrangement and it is not a new arrangement proposed for the rail merger.

This method of financing through property development right will not only enable the railway corporation concerned to cope with the huge expenses in railway infrastructure but also allow fares to be kept at a level affordable to the public. If there is no property development, the fares will have to go far beyond the existing level before railway operation can be maintained long term. There are many advanced cities in the world where railways are not regarded as a profitable investment and they would also like to learn from our experience and try to introduce this pattern of an integrated development of railway and property which is proven in Hong Kong.

This kind of arrangement can also provide better links between the station and its neighbouring community, hence bringing a steady source of ridership to the railway project. As the railway corporation is responsible for the development of the site at the station, it can use the method as most appropriate to design the railway and undertake development projects above the station. It can make good use of the space to undertake an integrated development of the property and the railway, hence ensuring better operation of the railway and its safety.

Therefore, when the same organization is in charge of the construction and operation of the railway as well as the property development, there would be a very clear delineation of responsibilities and this is never ambiguous. Should anything happen in property development which may affect the railway, the organization concerned can cope with the problem in no time. Such kind of integrated development will result in better co-ordination and can ensure that every development project can complete smoothly. As the railway operator is in charge of the management of properties above the station or connecting with the station, this is also a major reason why we think that integrated development will also result in greater efficiency. If management of the properties above the station or those connecting with the station is poor, this would cause an adverse effect on the station. As the station and the properties connecting with it share the building facilities of and accesses to the other side, there is a need for integrated management before the arrangement and operation can go smoothly.

(THE CHAIRMAN resumed the Chair)

All in all, this mode of integrated development in the railways and properties is proven and it has certainly brought benefits to society. It is also a very good way to make up for the shortfall in funds when the corporation is to launch a new railway project. If an attempt is made in law to forbid the use of property development to make up for the shortfall in funds when a new railway project is to be undertaken, it will certainly affect the introduction of new railway projects, especially those which can serve actual public needs but are not financially viable. I therefore implore Members to vote against this amendment.

Thank you, Madam Chairman.

MR LEE WING-TAT (in Cantonese): Chairman, I think the response made by the Secretary is not at all reasonable, especially when she talked about the two main points. I therefore want to respond to that.

The first point is about the railway station and its construction and whether or not there would be any problems if different companies — that is, suppose not the railway corporation but another company — undertake development above the station. I think that in Hong Kong, there is quite a number of this kind of so-called integrated development projects, that is, there are roads on a construction site and that different companies construct different buildings at different locations on the same site. There are many such examples. In Hong Kong, we have several decades of experience of this kind in constructing buildings or other structures. I do not see any reason why some preliminary work cannot be done in co-ordination and iron out differences in construction and when construction is complete, also clearly define the form of management and responsibilities.

I would be puzzled if it is said that this kind of construction will not work. This is because I recall that during the deliberations of a subcommittee on the airport, I came to learn that there were dozens and even hundreds of main contractors and subcontractors. What they did when carrying out their projects was to propose their own construction plans and voice their opinion on how work should be divided. Nothing had gone wrong. Why then does the Secretary say that for the same site and on the same location, there has got to be one company in charge of everything? This view is totally not logical. Does it mean that it will not work if the MTRCL builds the station and another company builds the superstructure above the station? As a matter of fact, when the

MTRCL gets a piece of land, it will not undertake the works itself but a developer will be sought by way of open tender. As far as I know, there is no building department inside the MTRCL responsible for building construction. All it does is to find the building department of some private sector developer to undertake the works. In such a process, both parties will iron out the differences between them and agree on everything so that nothing will go wrong. After the buildings and the accesses are completed, they will talk about the common accesses, common areas, and so on, between these properties and the station and then delineate responsibilities and agree on maintenance matters. I think this cannot be put up as an excuse to oppose my amendment at all.

Second, the Secretary says that there are some railways which are not so profit-making, that is, they are financially not viable. So what can be done if land is not granted? Actually, examples of this kind can be found in the Government itself. In the Disneyland Resort Line, the Government does not lease any land for development. Then what can the Government do? It only gave it a certain sum of money. I think it was about \$700 million. Then if there is any new railway to be built in future, such as the western extension of the Island Line which is about to be built..... I learn from the newspaper that the Government is now talking with the MTRCL over a lot near Kennedy Town. If this lot is not just granted to the MTRCL but will be put up for public auction and the proceeds be used to finance the construction of the western extension of the Island Line, then there is actually no difference at all. The money is still the same money. Only that it is not stated that the MTRCL will earn this sum in the co-operation project but it will get the sum after going through a tendering process and public auction. So the second reason cited by the Secretary is also a non-reason. We have never asked the Government not to grant that piece of land to the MTRCL.

Well, if the railway concerned does not have any land for development, then it will have nothing to do with this amendment. If in future a railway is built but no land is granted to the corporation, then nothing can be done and the Government will have to inject capital. I do not think such a situation will arise in future, especially when the new corporation is formed after the merger, that when an investment of billions or even tens of billions of dollars is required to build a new railway but there is no land for development, the Government will ask the new MTRCL to bear all the costs entirely on its own. I do not think this is what the Government will do. MergeCo will definitely talk with the Government and it will say that constructing the railway is not out of the question, but the Government must make a capital injection. The Disneyland

Resort Line only requires \$700 million and another sum will be required for other railway lines. Therefore, after hearing the reasons cited by the Secretary, I do not think these can explain why our amendment is not agreed. I must repeat my argument and, that is, the Government always says that we should go for a big market and a small government, and a free economy and things like that, but why on the question of land auction, it is still using such a practice which is unclear, and inconsistent with the market practice of open tender? And why instead does it state clearly that land will be granted to the MTRCL and the matter will not be handled by way of open tender?

Thank you, Chairman.

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

MR ALBERT HO (in Cantonese): Chairman, I wish to add two more points and they are about the issue of fare subsidy.

The Secretary says that if this is not done this way, fares will be very expensive. But if another method is used, that is, the practice that we adopt for disposing of government properties, not only can the proceeds obtained be injected to finance the capital works but also be used to set up a fund to subsidize the fares. Then why should this not be done?

So the difference lies in the existing practice of handing all the profits, the amount of which cannot be predicted and which are obtained from the development, to the MTRCL which is to set the fare level and decide whether or not there should be any subsidy of fares. In actual practice, there is no subsidy at all. How can there be any subsidies? We can just see that it is making profits every year and that even though there has been deflation all through the past 10 years, it has never reduced its fares.

So it is evident that we cannot rely on the MTRCL and say that since it has real estate developments and can reap substantial profits, then it would do something about the fares. I do not think we can look at the issue from this angle. The MTRCL is a private corporation and it is listed. Any dealings with it should be serious and clear. Any financial dealings with it must be unambiguous and there should not be any question of subsidies, for no subsidies should ever be paid out to a private firm.

Likewise, in the case of the Urban Renewal Authority (URA), would we agree that we should inject capital into it so that it can continue with its operation and then become a listed company? I do not think we would agree to that. This is still the case even if the URA makes money. Our consideration in the present case is the same. When these organizations exercise certain powers, especially when they engage in development programmes, if they are private firms, the dealings we have with them must never be in the form of some ambiguous subsidization. What can only be used is capital injection.

Therefore, we do not think that the Government should have handled the Disneyland Resort Line that way at that time, that is, foregoing hundreds of million dollars of dividends. On the other hand, the Government did not follow established procedures in the Legislative Council and seek approval from the Finance Committee. Something was very wrong. Also, the form of an official injection of capital should be used, instead of resorting to forgoing the dividends as a form of subsidization. That is a wrong approach by itself.

I therefore stress that the future MTRCL after the merger should focus its future development on the provision of rail service. And for its existing properties, it should keep them as they are. Should the form of financing be changed, it could be that the title of lands of the new railway corporation will lie in the hands of some other party and there would be a need for fresh assessments. If the Government wants to carry out development by way of these properties, this would of course be considered as capital investment and the Government should definitely bear the costs.

As for the question of management, it has been said very clearly already. If there are any areas that should be connected or actions taken to ensure the smooth operation of the station concerned, we can agree to the MTRCL playing the role of one of the supervisory parties or as an agent in charge of the development project. It may not necessarily have to gain any benefits from it and all it should do is to be an agent in charge of the development project. This is to ensure, firstly, fairness in the tendering process and secondly, the formulation of specifications such as the number of accesses and facilities essential to station operation. All these can certainly be done. I see no reason why the right to development should first be obtained before the tendering process is carried out so that huge profits are reaped. Moreover, we have no way to predict the size of these profits and whether or not some talks are carried

out to arrive at an amount which actually conceals an amount of subsidy which we can never work out in the absence of any auctions or tenders. In this way, a listed company is subsidized.

In sum, I just want to stress one point and that is, this approach must not be allowed to continue. We made our stand clear enough in 1998 and we want to reiterate now that we cannot accept this form of support for a listed company.

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

(No Member or public officer indicated a wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That new clause 6A be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mr LEE Wing-tat rose to claim a division.

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

CHAIRMAN (in Cantonese): I have to count the number of Members present to see if a quorum is present.

(The Clerk did a head count)

CHAIRMAN (in Cantonese): I think a quorum is present. Voting will proceed after Members are seated. We are now voting on the motion that new clause 6A moved by Mr LEE Wing-tat 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.

Functional Constituencies:

Ms Margaret NG and Dr Fernando CHEUNG voted for the motion.

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

Mr WONG Kwok-hing and Mr KWONG Chi-kin abstained.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Ms Emily LAU, Mr Andrew CHENG, Mr Frederick FUNG and Mr LEE Wing-tat voted for the motion.

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

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

THE CHAIRMAN announced that among the Members returned by functional constituencies, 19 were present, two were in favour of the motion, 15 against it and two abstained; while among the Members returned by geographical constituencies through direct elections, 18 were present, 10 were in favour of the motion and seven against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the motion was negated.

CLERK (in Cantonese): New heading before new clause 18A	Division 5A — Amendments to Part IX (Vesting provisions and Transitional arrangements)
New clause 18A	Interpretation
New clause 21A	Securities of Corporation as authorized investment
New clause 21B	Requirement for Secretary to consult Corporation
New clause 21C	Section added
New clause 29A	Second Schedule amended
New clause 29B	Fifth Schedule amended.

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): Madam Chairman, I move that the new heading and new clauses read out just now be read the Second time as set out in the paper circularized to Members.

The amendments are mainly technical in nature and they have all been examined by the Bills Committee. I hope that Members can pass the amendments moved by me. Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the new heading and the new clauses 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 heading before new clause 18A, new clauses 18A, 21A, 21B, 21C, 29A and 29B.

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): Chairman, I move that the new heading and new clauses read out just now be added to the Bill.

Proposed additions

New heading before new clause 18A (see Annex I)

New Clause 18A (see Annex I)

New Clause 21A (see Annex I)

New Clause 21B (see Annex I)

New Clause 21C (see Annex I)

New Clause 29A (see Annex I)

New Clause 29B (see Annex I)

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the new heading and new clauses read out just now 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 and 2.

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): Madam Chairman, I move that Schedules 1 and 2 be amended as set out in the paper circularized to Members. The amendments are technical in nature and they have all been examined and endorsed by the Bills Committee. I hope Members can pass the amendments moved by me.

Thank you, Madam Chairman.

Proposed amendments

Schedule 1 (see Annex I)

Schedule 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 amendments moved by the Secretary for the Environment, Transport and Works be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Schedules 1 and 2 as amended.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That Schedules 1 and 2 as amended 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.

CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bills

PRESIDENT (Cantonese): Bill: Third Reading.

RAIL MERGER BILL**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS**

(in Cantonese): President, the

Rail 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 Rail Merger Bill be read the Third time and do pass.

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

PRESIDENT (in Cantonese): Dr Fernando CHEUNG, do you wish to debate at the Third Reading of this Bill?

DR FERNANDO CHEUNG (in Cantonese): President, some time ago we intended to express our views on the long title. As today's motion is limited by the long title, a number of Members have been unable to submit their amendments to this Council. I have been unable to submit two amendments to this Council as a result of the ruling made by the President in accordance with the Rules of Procedure and the long title too. Other amendments proposed by me are related to people with disabilities, including fare concessions, corporate social responsibility, indicators with regard to the employment of people with disabilities, and so on.

President, I think that the Legislative Council should have a significant constitutional role to play. There are checks and balances between the legislative power we as lawmakers possess and the executive power. This is

aply provided for in the Basic Law to safeguard the so-called executive-led government referred to by the SAR Government or the Central Authorities. Such safeguard includes, among others, the voting method whereby Members' motions are subject to separate voting, while motions proposed by the Government are not. Furthermore, the introduction of private Bills by Members is restricted by Article 74 of the Basic Law, since Members are not allowed to propose Bills in many areas. However, the Legislative Council should fully enjoy independent self-determination with respect to the content of legislation if we wish to propose amendments to a Bill proposed by the Government. In enacting legislation, the Legislative Council should enjoy supreme legislative power. However, a piece of legislation is confined to a certain scope by its long title, though the long title is not part of the Bill. Hence, Members of this Council are not allowed to amend the long title. As a result, so long as any Bills proposed by the executive authorities are confined to a certain scope by the long title, we as Members of this Council will not be able to propose any amendments to the Bill outside the scope. This has seriously undermined our legislative function.

President, I really cannot see any legislative organs of other societies being limited in this manner. Every piece of legislation has a long title. However, long titles cannot be amended by lawmakers. Instead, they are proposed and effectively constrained by the Administration. I find this matter very serious. President, in the course of discussing this matter, the Legal Adviser and other people once pointed out that this might have something to do with our Rules of Procedure or the tradition of the colonial government before the reunification. It is not at all worthwhile to retain this tradition.

Hence, President, I have already written to the House Committee and the Committee on Rules of Procedure calling for fresh discussions on this provision. If this provision is not abolished expeditiously, it would be difficult for this Council to perform our legislative role to impose checks and balances on the executive authorities in the course of lawmaking. Given that the executive-led spirit has already been fully manifested under the existing mechanism, I am afraid what we can do will be very limited if even the scope of legislation is heavily constrained by the Government. In this motion debate, for instance, although there are some areas in which efforts are warranted, we can still not propose essential amendments to the content of the Bill because of the provision relating to the long title. Therefore, President, I am only expressing my views here. Thank you for giving me this opportunity.

MR LEE CHEUK-YAN (in Cantonese): President, I want to put it on record that I have also been victimized by the long title because obviously, the long title has been designed in a water-tight manner to limit, as far as possible, Members' right to amend the Bill.

President, I wonder if you have taken note of this. You might actually have noticed that, over the years, long titles have become increasingly long and detailed. Members can see that this long title is so long that nothing more can be added. A pair of brackets has even been inserted in the long title, albeit in a most inapt manner, to make it clear that except fares, all matters concerning the merger can be discussed. The insertion of the brackets is deliberate. President, this long title is designed to pre-empt, by all means, amendments by this Council. This practice of exhausting all means to pre-empt amendments by this Council is not an isolated incident. The executive authorities are simply exhausting all means in the hope of undermining the power of this Council to amend Bills.

This is why we rise to speak today on the issue of long titles. This issue actually has more far-reaching implications for it concerns whether or not the power of the Legislative Council will be castrated due to this approach adopted by the Government or the executive and, as a result, we will be unable to debate many of the matters proposed by us, not to mention voting. President, does this reflect that "executive-led" has changed in substance and become "executive hegemony", which is even more formidable than the "executive-led" mentioned by WU Bangguo? I request to put it on record that, despite WU Bangguo's remark that Hong Kong is executive-led, the expression "executive-led" is not found in the Basic Law. Even if Hong Kong is executive-led, this is already an act of "executive hegemony" that the Legislative Council is prohibited by the long title from playing its monitoring role.

I also find the way in which the long title is used unacceptable. This is similar to the remark made by WU Bangguo that all powers of the SAR Government are given by the Central Authorities, and now the amendment power of the Legislative Council is also given by the SAR Government. All the powers enjoyed by the Legislative Council are determined entirely by the SAR Government, and there is no way for the Legislative Council to object. If this is really the case, how can we play the role of lawmakers and oversee the Government? How can we amend the Government's policies or legislation on behalf of our voters? There is absolutely nothing we can do because our power has been completely castrated.

Lastly, President, I have to reiterate our objection to the Rail Merger Bill at this Third Reading stage. Despite the protracted debate we have conducted, I have to express my disappointment. The DAB has failed entirely in the past couple of days to explain why they oppose the proposals concerning toilets or other facilities. To express my disappointment with the DAB, I have to put it on record that they have chosen to remain completely silent.

Thank you, President.

MR ANDREW CHENG (in Cantonese): First of all, Madam President, I hope you could bear with me for 15 more minutes. I am actually very thankful to you, President, for your hard work over the past couple of days, and even the week before that. I would also like to thank the Legal Service Division, the Secretariat and the President once again for making the resumption of the Second Reading of this Blue Bill possible. Given the Government's wish to resume the Second Reading, the proceedings of the Legislative Council must be rushed in order to catch up. We are actually caught in a dilemma.

During these last 15 minutes, I earnestly want to raise a few points on the practice of the Government in relation to the Bill and the consequences brought about by the Bill. As pointed out by Mr LEE Cheuk-yan earlier, other Members might choose to remain silent. However, this is worrying for we feel that Members are blindly supporting the Government, and such blind support for the Government will directly undermine the dignity of this Council.

Residents keeping an interest in the motion or transport issues might probably find it very strange that problems concerning people's livelihood were raised during previous non-binding motion debates by various parties and groupings, such as Mr CHIM Pui-chung. I would also like to respond to his speech later.

Actually, everyone is talking about sincerity. In the Committee of the whole Council, consequential to some non-binding motions proposed previously, such as those relating to platform screen doors and toilets, we spent eight to 10 hours discussing these two amendments only. Why would Members have kept changing their minds? Very often, we cannot explain why this is so strange. The reasons offered by the Government are indeed inconceivable. They are meant to be face-savers for the ruling coalition or royalists. However, I do not think that these face-savers make sense.

This is extremely worrying because in the past couple of days when this debate was underway, a very clear message regarding the 10th anniversary of the Basic Law was delivered in a meeting held in Beijing. While the issue of separation of powers is still being discussed, a new name has emerged, with separation of powers being called division of responsibilities cum powers instead. As there must be reasons for the change in name, one of the underlying reasons must be to raise the awareness of Hong Kong people. In other words, starting from the Government led by Donald TSANG, he was re-elected merely to get his job done. Hence, Members of this Council should get their job done as well. Unfortunately, our job is being constrained by the Government. In order to get its job done, the ruling coalition must blindly support the Government in dealing with everything from the long title to the amendments.

This is saddening to a political entity. Madam President, should the situation remain unchanged, society will actually retrogress rather than progress. The Rail Merger Bill under discussion, dealing with a 50-year franchise for railway development and policies, should be a serious subject. We have spent a lot of time in the hope that the Government will heed our amendments. Though meetings were held in this Council for more than 80 hours, it will still not be enough, according to my experience, even if further meetings are held for another 50 hours to discuss a Bill like this one. Furthermore, it is not a matter of the length of time; instead, it is a matter of quality. For instance, Ms Miriam LAU has criticized me for proposing the Railway Development Fund within such a short notice without adequate consultation. If Ms LAU was really sincere, there was no need for her to pay regard to Secretary Dr Sarah LIAO's request for tabling the Bill to this Council on 6 June. Instead, she should continue to invite various trades and industries and even the public to make representations to this Council. However, she has not acted in that way. Instead, she has kept saying that I seek to bundle up my proposals, such as the penalty point system, the SCL, the fare stabilization fund and toilets, with the rail merger. However, not a word about the Government's attempt to bundle up fare reduction with the rail merger has been mentioned by her. Not only is this bundle the largest one, it can also be likened to a rock pressurizing this Council to get its job done. So this is how division of responsibilities cum powers should be interpreted.

It is saddening that from now on, actually not from now on, this Council has been facing this major problem since the reunification (separate voting is actually ridiculous for Members returned by the geographical constituencies through direct elections) — we represent public interest and the aspirations of the

masses. Some motions relating to people's livelihood have often been vetoed by Members returned by functional constituencies and with business background on the ground of commercial principles, because money is their only concern.

Therefore, Madam President, I have just tried to save time by all means. Even though Mrs CHOW was very angry, I had chosen not to respond at that stage. I would respond only in these remaining nine minutes. I heard that she accused us of being intolerant, getting very upset when others express diverse views and constantly resorting to stalling tactics and name-calling.

Madam President, you have heard me point out repeatedly that I respect but disagree with the views of the Liberal Party and Mr Abraham SHEK. So that is tolerance by me. Members can express their views by all means. While I respect the views of the DAB, I also hope to hear it explain why it opposes my amendments. However, I have not heard anything from it. Therefore, I think that Mrs CHOW has taken it a bit too seriously and overreacted. The discussion on the relevant issues should have been over one or one and a half hours early. However, colleagues have repeatedly debated with her on those issues because of her remarks.

Therefore, I hope that this Bill can deliver the strong message once again that "separate voting" practised in our establishment is ridiculous. The existence of Members returned by functional constituencies among 60 Members of the Legislative Council is already ridiculous. Someone can get one more vote and be elected as Members of the Legislative Council as a result. This is impossible elsewhere in the world. He could have been elected by 100-odd voters, and all of these voters might be employers too. Then, he can vote to veto all the motions relating to people's livelihood at separate voting. It is most ridiculous that they will support a non-binding motion but oppose it when it comes to a most critical moment.

It has been a decade since 1997. Over the past decade, Madam President, the SAR Government has often complained that the Legislative Council is not co-operative and then accused us of rocking the boat. What is more, we in the pro-democracy camp are labelled as reactionaries because we act in opposition to the Government on every occasion.

There is a need for the Government to review these backgrounds and causes. I admit that, to a certain extent, we all have different roles to play.

However, improvement is required if we want progress. Do not point the finger at us on every occasion. What is the crux of the problem? That our political system has put off universal suffrage to an indefinite future. Not only are the 30 directly-elected Members returned by geographical constituencies are constrained and suppressed, we have been prevented from doing what we want to do. Worse still, it is heartbreaking to find that some Members returned by geographical constituencies are collaborating with the Government.

Should this situation remain unchanged, how can harmony be achieved? Of course, I do not think that harmony is the best. I have to first make it clear that the Legislative Council can remain normal and healthy only when fierce debates and discussions continue to take place here. Do we have to act like a hand-raising machine? Do we have to agree with everything the Government says? There are a lot of problems with this motion proposed by the Government, and amendments are warranted. I wonder why some colleagues invariably acted in opposition to the Government and criticized it even more loudly than we did when they were dealing with non-binding motions. When dealing with binding motions, however, they would hide in a corner without uttering a word, just like what they did during the motion debate on the 4 June incident? They have even treated a motion that has a significant bearing on people's livelihood in this manner. Why has this Council developed to such a state?

Madam President, I greatly appreciate the statement made by Mr CHIM Pui-chung when he appealed to the Government to demonstrate its sincerity. I also appreciated him when he said that he did not find it necessary to consult his voters for he would only vote according to his conscience. However, I have really forgotten to canvass a vote from him because I have always thought that his vote does not really matter. I am also aware that, insofar as functional constituencies, basically The Alliance and the Liberal Party, are concerned, one additional vote from him might not have any significant impact. Furthermore, it is sometimes impossible to get hold of him.

Anyhow, the only thing I would like to tell him is that I will disagree if a Member is too critical or ostentatious. Sometimes, he can be quite ostentatious, for he could have even suggested imposing a charge of \$50 to \$100 for a visit to the toilet because it has to be built. He really lives up to his nickname — the Gold Rolex Chim — for proposing a charge of \$50 to \$100. Although he seems to have supported in an indirect manner the amendment proposed by me in relation to the provision of toilets, I feel that.....

PRESIDENT (in Cantonese): You are not required to repeat the relevant issue. Please speak on the question of Third Reading.

MR ANDREW CHENG (in Cantonese): All right, President. I have almost finished my speech.

PRESIDENT (in Cantonese): It has nothing to do with whether or not you have finished your speech. You have strayed from the question.

MR ANDREW CHENG (in Cantonese): All right. As the Bill has now come to the Third Reading stage, I would like to spend these last several minutes to appeal to colleagues to oppose the Bill. I hope Honourable Members will support me by all means. I will not waste my time. I will use these several minutes to give a brief response.

I hope colleagues will understand that a Mass Transit Railway by-law will be tabled to this Council on 11 July after this. Madam President, these regulations have been widely criticized. I hope, in the days to come, the Government can demonstrate its sincerity to deal with issues not passed today, Madam President, particularly the SCL, which is not even allowed to be discussed — this is crucial — and other issues related to people's livelihood. I hope the Government can study the SCL and the fare stabilization fund. Furthermore, in the Bills Committee meeting to be held on 16 July, I hope the Government can present us with a timetable for the toilet issue, and tell pro-government Members that the Government will have to pay for their support by pressurizing the MTR to improve its services in return.

Regarding the issue of monthly tickets, it has been reported that the Government has made concessions and agreed that one-month passes will remain unchanged till 2009. I hope the Government can understand what is laid before us. Why did the Administration say one-month passes will remain unchanged? Why does the Administration not require the MTRCL to consider studying the possibility of introducing such options as monthly passes, weekly passes and day passes to frequent commuters for their convenience? Given that such arrangements are available in most advanced cities such as Tokyo, London, Sydney and New York, why are similar arrangements unavailable in Hong Kong?

In exchange for the trivial fare reduction offer before us, we have to accept an unhealthy fare adjustment mechanism allowing an upper or lower adjustment rate of 5% and a number of safety guarantees concerning funds, toilets and platform screen doors, which are widely opposed. The Democratic Party cannot support the Bill here. I hope the Secretary can strive to do her best. If there is anything wrong with the two railway corporations in the future, Members supporting the Bill today must be held responsible.

Thank you, Madam President.

MR FREDERICK FUNG (in Cantonese): President, I would like to present some observations and suggestions about long titles. When proposing legislative amendments, the Government will certainly give some definitions or propose amendments to some issues before proposing new legislation. However, it sometimes occurs to me that the long titles are too long and written in such a detailed manner that there is simply no scope for Members to propose any amendments. Moreover, when the original or new policies are launched or when there are new developments, we will be unable to improve them. Nor can we discuss issues of greater concern to us. I find that the Government has become increasingly skillful in limiting our discussion on some amendment legislation in this way.

Of course, we cannot comment whether or not it is right for the rules to be laid down in this manner, but only respect the President's rulings. However, can the Committee on Rules of Procedure discuss this in the future? President, I would try to cite another example. For instance, I fully agree that Dr Fernando CHEUNG's amendments are relevant to MergeCo. However, no amendments can be proposed just because the Government considers that no discussion is warranted. As MergeCo is a new development and there will possibly be new policies, we should be allowed to do even better.

In fact, in the next debate on housing, I will probably become the victim of another long title, because my amendment is considered by the Government to be incompatible with the long title seeking to abolish the cap on the rent to income ratio. Since I have come up with another cap in another way, I am considered by the Government as breaching the long title, and the President might be required to make a ruling eventually. I still feel that, even though the cap is the

focus of discussion, no one is allowed to raise it for discussion again as the Government is determined to scrap the cap.

If this angle is adopted and the long title is unduly restrictive, our discussion of matters relating to the question of the motion will be limited simply because the Government has no intention to discuss. In this case, the limitation will become excessive. I hope the Committee on Rules of Procedure can discuss this issue and examine if there is room for discussion or review. I so submit. Thank you, President.

MS MARGARET NG (in Cantonese): President, a number of Members mentioned earlier the Government's recent tactic of using long titles to limit the scope for this Council to propose amendments. While I do not intend to repeat their points, I think we must find an opportunity to discuss this issue thoroughly. This is because the Basic Law is designed in such a manner that there are real checks and balances between the executive and the legislature. As elected representatives, we must have adequate and real power to amend the Government's motions.

President, I only wish to take this opportunity to, apart from questioning whether the Government is acting against the spirit of the Basic Law by employing this tactic to pre-empt this Council proposing amendments and prevent this Council from exercising the power to propose amendments — all these will be discussed in due course under a separate timetable — put on formal record my tribute to Members proposing the amendments, especially Mr Andrew CHENG, when the debate has reached this stage. He has manifested the spirit of doing something which he still chooses to do though he knows it very well that he will not succeed. This is indeed extremely unfair to them.

The question is rail merger, and this Bill is about rail merger. But most importantly, Members are not allowed to propose amendments. They may only propose amendments to such minor details as toilets, screen doors, and so on — I do not mean that they are unimportant. But even these amendments have been stifled. Hence, the scope for amendment is very limited. The system, especially the voting system, is extremely unfair too. Under such circumstances, however, they still manifest the spirit of fulfilling their responsibility as Members of this Council.

President, I merely wish to put this on record. I know history will pass its judgement. Members have been criticized by people outside this Council that they are merely seeking to strive for political capital. Actually, there has been no newspaper coverage of what these Members have done, and there is absolutely no possibility of gaining political capital as a result. Hence, I wish to formally express some of my feelings and thoughts while observing the meetings.

Thank you, President.

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

MR TAM YIU-CHUNG (in Cantonese): President, even though silence is golden, we must speak at an appropriate time. We have kept silent because we have noticed that some parties and groupings intend to employ the so-called filibustering tactics. Or they wish to make full use of the time allocated to stage their one-man shows in proposing amendments, and so they keep repeating again and again what has been discussed in the Bills Committee in the hope that we will argue with them.

We think that many issues have been fully discussed in the Bills Committee over a considerably long period of time. Of course, there is greater scope for discussion here because we were allowed to speak for only five minutes in the Bills Committee and had to wait for another turn very soon. Here, we are given more time to speak. This explains why the President understands very well why Members have kept repeating in this way and has reminded the relevant Members again and again. The media also understands this very well too. A Member has therefore commented earlier that there was not much coverage in the press. They certainly understand very well that these issues have previously been fully discussed in the Bills Committee.

The DAB agrees with the general direction of the diverse views expressed, such as enhancing improvement measures, reducing the noise nuisance caused by the two railways to nearby residents and providing more toilets wherever possible for the convenience of commuters. Furthermore, the DAB agrees that access roads and concessions be provided to people with disabilities. From now on, or upon the establishment of MergeCo, we will continue to keep this in view and lobby in a reasonable manner.

Mr Andrew CHENG has appealed to us to oppose the Rail Merger Bill. But what good will this do to the residents? They might think that there will be enough votes to enable the Bill to be passed in this Council. If they oppose, any problems arising in the future will have nothing to do with them. At the same time, they may also say that they have succeeded in their campaign because I have heard that their party members in North District and Tai Po have claimed on publicity banners that they have successfully lobbied the two railway corporations to offer fare reduction. Will this not give people an impression that they are trying to gain double benefits?

We will certainly not act in this manner. We think that we must fully evaluate and assess whether or not the rail merger will do any good to Hong Kong, improved operation and management of the railway corporations, as well as commuters and residents. These are our prime considerations. If Members agree with Mr Andrew CHENG, that we should oppose the Bill, what will happen to residents living in Tung Chung who hope that railway fares can be reduced to lessen their burdens? What problems will occur to users of monthly tickets of the Northwest Railway who hope that the concession offered by the monthly tickets will be retained? Furthermore, the railway corporations have declared their intention to stop operating certain feeder bus routes. What will happen if the legislation cannot be passed? Will the residents be benefited since these promises might not be fulfilled? We must give serious consideration to all these.

Despite Mr Andrew CHENG's repeated comment that we support non-binding motions but refuse to render support when it comes to amendments to law, we must examine, in the course of lobbying, what are our priorities and emphases, and what can be pursued later. We do not necessarily have to proceed with the relevant legislative amendment. I have also heard Mr Andrew CHENG say during a Bills Committee discussion that he would render support so long as the Government is willing to lobby the two railways to reduce fares, and extend the fare reduction period by two years to 2009. This was what he said at the very beginning. Obviously he had not thought of such problems as toilets when he made that remark. After making the remark, however, he came up with more requests probably because the two railway corporations heeded the views of the Bills Committee. If these requests are not met, he will urge Members to cast dissenting votes.

As we have now reached the Third Reading stage, we do not intend to express any views on the questions raised with respect to the amendments in the past 10-odd hours. I only wish to summarize the points and clarify the matter. We will therefore support the Third Reading of the Bill.

MR ANDREW CHENG (in Cantonese): President, I have to make a clarification. I wish to clarify my earlier remark quoted by Mr TAM Yiu-chung that if the Government is willing.....

PRESIDENT (in Cantonese): You can only clarify the part being misunderstood in your earlier speech.

MR ANDREW CHENG (in Cantonese): Yes, right. He has misunderstood what I said at that time.

PRESIDENT (in Cantonese): So you are referring to what you said at that time, instead of what you said here. You may not clarify what you said on other occasions. Actually, you should have risen immediately while he was delivering his speech to request further clarification, instead of seeking a clarification now. You may only clarify your own speech at this moment.

MR ANDREW CHENG (in Cantonese): Is this so?

PRESIDENT (in Cantonese): Yes.

MR ANDREW CHENG (in Cantonese): In that case, I will request Mr Albert HO to clarify on my behalf.

MR ALBERT HO (in Cantonese): Madam President, in many a case, it is true that silence is golden, but sometimes it can be a shame to remain silent. This is because, in the course of conducting business in this Council, Members should

argue on the basis of reason for the demands they believe in and the inspirations they insist on while refuting convictions or demands considered by them to be unreasonable or inappropriate. All Members are obliged to do so. As a Member of this Council, especially in public meetings of the Legislative Council.....

PRESIDENT (in Cantonese): You have to face me when you speak.

MR ALBERT HO (in Cantonese): Especially in public meetings of the Legislative Council, it is even more important for a Member of this Council to discharge this duty. This is because what is said today will be recorded in the Hansard, or the record of proceedings, of the Legislative Council so that people interested in studying this topic in the future will be able to know the entire story. I wonder why Mr TAM Yiu-chung and colleagues of the DAB could have uttered not a single word during the most significant debate of the Committee in which the amendments were discussed. Actually, it is simply because they know that truth is on our side. If they say anything more, they will be unable to explain why they will either go missing, abstain from voting or cast dissenting votes at voting. It is a shame that they cannot offer any explanation. Only by keeping silence can they conceal their ugly face.

Madam President, we have absolutely no intention to filibuster. However, some points must be stated clearly, particularly when some people say something which is specious or distorting the truth. Furthermore, during this lengthy debate, we hope to give colleagues of the DAB more time to consider carefully whether they should take this opportunity to express their views. Members should actually be aware that there are probably many things we have to fight for or discuss with the Government after discussions on many major issues. There are bound to be gains and losses. Not all matters will proceed exactly as we wish or succeed. Do we have to put up opposition if things do not turn out to be exactly as we wish? Not necessarily. It is important that one must be able to distinguish right from wrong and set priorities. But most importantly, when a Member of this Council casts a vote, he must know whether the vote cast is right. Furthermore, if he decides not to cast the vote or if he tells the Government that he will probably not cast the vote, he will make use of the vote to fight for what he must pursue. Only in doing so is he discharging his duty.

Major issues aside, this Bill also involves some minor issues. While some issues will take more time to resolve, some are, relatively speaking, merely technical problems. It is not the case that the Democratic Party will oppose everything it cannot have its way. The Government should have known this very well. As in the case of other pieces of legislation, such as the motion on three Secretaries of Departments and 12 Directors of Bureaux, which is to be discussed by the Finance Committee later, our discussion is focused merely on the problem of the Legal Aid Department. If the authorities act accordingly, we will give our full support. The same goes to this case. We will live up to our words in other cases, as well as in this one. Actually, the Government is aware of the crux of the problem.

The Democratic Party has once conducted a serious discussion on the offer of fare reductions by the Light Rail because this was considered by 1 million residents as a matter of dignity. I have been told by many people that they are often looked down upon by others and deprived of many things. When many of them go out seeking employment, their applications will immediately be turned down when their prospective employers find that they live in Tuen Mun, Yuen Long or Tin Shui Wai. Some of my friends who are employers have also told me the same thing. Now, they have become a target of discrimination again. Members should actually be well aware of their anger. The Democratic Party has discussed among ourselves what we should do if the Government is really willing to make concessions. As Members know, I am an elected Member representing this geographical constituency. I have led many people in staging processions. I have even unfortunately violated the by-law of the Light Rail and might face prosecution in future. However, after careful consideration, I am convinced that I still have to do this because this voice must be heard. We hold that the problem of the Light Rail is crucial. If the Government discriminates against these 1 million-odd people, we will certainly not support the Government. However, if the Government changes its mind, we might give the matter a second thought, even if other colleagues are still not satisfied with certain things, for the sake of fighting for what is considered by us significant. Because this is a very, very major issue, an issue of many people sharing the feeling that their dignity has been offended.

However, I am very disappointed that the Government has still refused to change its mind in the end, though only \$20 million to \$30 million is involved. This is only a trivial issue. The amounts of money spent by the West Rail or the

KCRC on bonuses, or on minor beautification programmes, are already greater than this sum. Why do they have to act in this way? I have to emphasize that this is exactly why I think it is shameful for Members to keep silent or not to pressurize the Government with their votes. Colleagues of the DAB and the Hong Kong Federation of Trade Unions (FTU) are sitting here. We would not have been so angry had they not repeated the same words. I will not condemn the Liberal Party because of this issue since it has never said that it will fight for the offer of fare reductions by the Light Rail, though I disagree with their observations and am greatly dissatisfied with their position.

PRESIDENT (in Cantonese): You have to face me. You were still not facing me while you were speaking. (*Laughter*)

MR ALBERT HO (in Cantonese): All right. Sometimes I will move sideways for a little exercise. (*Laughter*)

I am so angry over this issue because the FTU and the DAB have all along acted very strongly by distributing a lot of pamphlets in the districts. While they strive to fight for fare reductions for the Light Rail and urge people to join the signature campaign on one side of the pamphlet, there is a diagram on the other side of the pamphlet illustrating the merits of the rail merger and the demerits of a failed merger. In short, the entire pamphlet is meant to persuade people to support the rail merger — but without a word about the demerits of a rail merger and the merits of a failed merger. Instead, the pamphlet mentions only the merits of the rail merger and the demerits of a failed merger. Are they really sincere in soliciting people's support for their fight for fare reductions?

Madam President, Honourable Members, I believe the Government will not necessarily change its mind, insofar as many issues are concerned. I know this because of the tremendous effort made by the Government. They have acted in this manner wilfully. Insofar as the issue of the Light Rail is concerned, however, I believe alternative arrangements are still possible. The problem is that the DAB and the FTU simply do not have the will to do this. Members might expect that I have no knowledge of their mention of this matter to the Chief Executive. I know that they once mentioned this to the Chief Executive, only that they bowed their heads and left when they heard someone

shouting. When the Chief Executive turned down their request saying not even a cent would be cut, they bowed their heads and said, "I am sorry, Master. I am wrong." How could they champion for the people's cause? They could actually accomplish this trivial task. Madam President, this is why I am so angry.

Insofar as many other issues are concerned, I agree that we will continue to fight. Today, however, we are dissatisfied and extremely angry not only with the Government because it has often acted in such a barbaric manner. We know this very well. However, it is precisely due to the reluctance of many colleagues to pressurize the Government with their votes that the Government has been allowed to act in such a barbaric manner. If they are willing to act in a tougher manner and stand up like a man, we will be able to fight for something — I dare not to say that we can fight for more, but at least we should be able to fight for fare reductions for the Light Rail. This is what we can definitely achieve. This is why I said that silence is a shame. Worse still, today, they will even vote in support of the Government. I can only say that they are shameless.

I have to tell Mr Andrew CHENG, who complained earlier that he had been wronged, that I did not recall that he had made the same remark in the Bills Committee as the one cited by a colleague earlier. He has reiterated to me that he has all along made his position very clear, that he demands that the fare reduction last a certain period, say one or two years. This is the most important, though not the only, factor for him to decide whether he will support or oppose the motion. Therefore, he will definitely not, as alleged by Mr TAM Yiu-chung, support the motion unconditionally once the railway corporations are willing to extend the fare reduction.

Madam President, I hope colleagues of the DAB will seek your permission to adjourn the meeting for five minutes. I will support them should they make such a request. They can propose to the Government that they will cast an opposing vote at Third Reading if their demand is not heeded. Should they act in that manner, I believe they can at least salvage for those 1 million residents a little bit of dignity. This has nothing to do with saving a few cents or dozens of dollars a month in transport expenses. Instead, it is about a little bit of dignity. I will support them if they make this request.

Thank you, Madam President.

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

MR LAU KONG-WAH (in Cantonese): President, actually, we do not find the proposal made by Mr Albert HO just now necessary. Despite the continued attack by Mr Albert HO, Mr Andrew CHENG and colleagues of the Democratic Party on the DAB over the past couple of days, our colleagues have indeed demonstrated that they are more tolerant because we believe, insofar as the rail merger is concerned, that public interest should take priority over the struggle between political parties, and the voices of the people should be given priority audience over the noises of political parties. Therefore, we decide that it is now time to respond.

However, we think that our response should not lead to further arguments between political parties, as this is meaningless. Throughout the entire year of our deliberation or the couple of years when the rail merger was conceived, the only thing in our minds was whether or not the public would be benefited. It has taken years for the rail merger proposal to conceive, one year to deliberate, and several days to debate. Obviously, from the angle of the public, the DAB has at least fought for them over several issues. Of course, the public should be allowed to decide if the outcome is good or bad. As history will pass a judgement on everything, there is no need for other political parties to comment. Nevertheless, we are pleased to tell the public of the following.

First, fares will be reduced after the rail merger. I have no idea how colleagues opposing the proposal will explain to the public. We have seen that fares will be reduced by 10%. We can tell the public that we are going to cast supporting votes today. Of course, the decision will have to be made by shareholders of the MTRCL. Once it is passed in the shareholders' general meeting, the public will be able to enjoy concessionary fares.

Second, we hope that fares will remain unchanged for one to two years after the reduction. This is very important. If the Government agrees with this proposal, the public will be benefited. Do some Members hope that fares can be raised immediately?

As for residents living in the Northwest New Territories, we have told them that we have not forgotten about them. Mr TAM Yiu-chung, Mr CHEUNG Hok-ming and other Members have continued to hold discussions with the Government, and Members of the Liberal Party have also joined in the

lobbying. Their actions have proved to be a success, and the public are delighted that concessions such as monthly tickets will be extended for one to two years. President, we have distributed leaflets and learnt from the survey conducted by us that everyone is pleased with the concessions.

Furthermore, the two bus routes taken most seriously by Mr CHEUNG Hok-ming will not be cancelled. Instead, their services will be extended. It has originally been planned that the two bus routes will be scrapped during the coming summer holiday. Now, both routes will continue to operate.

President, although there are bound to be diverse views among political parties on these public interests, the latter must not be brushed aside. Today, some Members might cast opposing votes because of such issues as toilets, screen doors, and so on. Of course, everyone might judge the degree of importance differently. Actually, different positions on the issues concerning toilets and screen doors have been stated in the Bills Committee and panel. We have stated our position very clearly too. Therefore, there is no need for us to add anything today. We might not let go if the MTRCL had not given any response or timetable. However, legislative control might not work in certain cases. However, I think the public will find it acceptable if we continue with our effort to follow up and respond to the matter in a different manner.

On the contrary, some colleagues might say, "If you do not accede to my request, no one will come out winners." Can public interest be addressed if we act in this manner?

President, it has been a decade since I became a Member of this Council and Hong Kong's reunification with China. Actually, similar incidents have kept repeating again and again, as in the cases of the constitutional reform and the rail merger. Some of our colleagues would make a lot of requests. Even if we do not agree with one of their 10 requests, we will still be condemned by them as shameless, shameful or calling a stag a horse. All these have become their catchphrases. While it does not really matter to me, I would like to advise those colleagues to ponder over this: Did members of the public hope to see no one would come out winners or the status quo being kept in the past decade since the reunification?

We still have to move forward in the next decade. President, the debates over the last couple of days have provided the best opportunity for the public to

see that certain Members will hurl all kinds of abuses or sacrifice public interest when something go against their wishes. Is this what the public want? President, this is an extreme approach which is incompatible with the mainstream public opinion. An extreme political party will definitely be marginalized. Owing to our great willingness to co-operate and discuss with the Government, the rail merger has borne fruit. Those political parties which prefer "no one will come out winners" will gain nothing at all.

What message will the public get? They will be given the option of supporting Members who are willing to co-operate closely with the Government and gain results. As for the tasks entrusted by the public, Members will be marginalized if they merely oppose for its own sake, cause damage without contributing anything and accomplishing nothing. Therefore, President, we are very confident that during the deliberation of the Bill, these debates..... I have been asked many times why I have not spoken. Actually, I am not a talkative person (*laughter*), but I have to talk as I am a Member of this Council. Still, I have to learn from many of the colleagues. However, I really cannot master their way of repeating their speeches. People who know me should have realized that I am accustomed to putting my points succinctly, and I will not repeat them. My colleagues are also aware that I will stop after finishing my speeches in our party meetings, and I will definitely not repeat the relevant contents. Today, however, I cannot master their way of speaking and can, therefore, only talk less.

More importantly, however, I am really sincere in hoping that Members can engage in self-reflection on the one hand and work in concerted efforts on the other to deal with such an atmosphere of struggles between political parties and groupings, hurling abuses, insulting others and disrespecting this Council by taking this opportunity of the 10th anniversary of Hong Kong's reunification. Insofar as these topics relating to people's livelihood and the freezing of fares by the two railway corporations are concerned, I have all along maintained, even in press conferences publicly, that we have been working together in lobbying, and this is actually the case.

Therefore, I very much hope that Members will not launch any attacks in relation to issues of people's livelihood. I also hope that Members can continue to co-operate in addressing the problems concerning people's livelihood in the future. Lastly, I merely wish to say that the DAB has been advised by many to "talk less and do more". We hope to do more for the people. "To serve you" is indeed our aspiration. Thank you.

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

MR JAMES TO (in Cantonese): President, although I have not participated in the scrutiny of the Bill, I was originally very hopeful about the co-operation between various political parties and groupings in addressing affairs related to people's livelihood. This is because I have heard that colleagues of the FTU, the DAB, the Liberal Party and even The Alliance have joined hands to pressurize the Government over a number of issues. As I was sitting quite far away at a meeting of the Bills Committee, I thought that the Light Rail should have no justifications for refusing to reduce fares. Could concessions amounting to \$10 million to \$20 million not be offered? We are aware that some colleagues have secretly met with and told the Chief Executive the hardship suffered by the people living in the Northwest New Territories and their dissatisfaction with the DAB and the FTU should such hardship not be resolved. The crux of the problem, however, hinges on whether they have really worked in a concerted effort. In the end, some Members have been found "collaborating" with the Government. In short, leaflets would be distributed publicizing the gaining of a piece of candy. As the loss of a factory will only take place in the future, the matter will already be over by then.

It has been pointed out by some colleagues that this is a struggle between political parties. I absolutely disagree with this view because all political parties in the Bills Committee were fighting for the same thing, only that some people chose to back down eventually. As some people chose to back down, those who did not would naturally feel that they had been betrayed. They really had this feeling and questioned why some people would have chosen to act in that manner. Why was your criticism the loudest on that day? In particular, the name of Mr LAU Kong-wah was deliberately mentioned numerous times in many of the radio programmes. We should note what vote he will eventually cast when the Light Rail has refused to reduce fares. He has really given a reply like this one. He could still say this in a gentle, reasonable and objective manner, "These votes have been cast with peace of mind because we are serving the public." This is what he said.

President, I have to admit that I am very serious about the truths I believe. I have this fire in me, particularly with certain key issues relating to people's livelihood. I heard Mr Albert HO say, "You are insulting the 1 million-odd people." There will absolutely be no concessions, not even a cent! Of course,

if I were Donald TSANG, if I were the Chief Executive, why should I be threatened by you the DAB? No. Look, if you really make a request, what will "Uncle SUEN", who is responsible for dealing with the Housing Ordinance, do? Obviously, this is the political reality. Hence, this is not a struggle between political parties. Members have originally fought together, but some of them have chosen to back down and even describe this as a struggle between political parties. This is really terrible! Members have originally fought together for the people and walked on the same path in the same direction. If someone backs down eventually, he should make it clear and direct that he has chosen to do so instead of attributing this to a struggle between political parties! He may say, "Yes, I am backing down. But still I believe I am right." He should not describe it as a struggle between political parties because that was the direction he followed and the request he made previously. The campaign for the public has been launched in earnest instead of in a pretentious or perfunctory manner. In the end, no one has come out as winners in the fight for public interest because of the constraint imposed by the master.

At this very moment, I think this expression can most aptly describe our government. I believe the Secretary cannot make the decision because it has to be made by the Chief Executive. It is known to all residents living in the Northwest New Territories that Chief Executive Donald TSANG is doing this for the sake of his notion of strong governance and his temper. Many of our colleagues have had contact with him for 10 to 20 years and know him very well. Sometimes, if I spoke a bit more when dining with him, he could get quite angry. After more than a decade, we have now got accustomed to him. OK, he is a man of quick temper. And so am I. This is because both of us are true to ourselves.

However, why can fares not be reduced for the dignity of the 1 million-odd people, for the residents travelling on the Light Rail? I really cannot understand. The crux of the problem does hinge on his face, the face of Chief Executive Donald TSANG. He is actually trying to show that he looks down on the people using the West Rail or the Light Rail for the sake of demonstrating his notion of strong governance. I still recall he said only more than a month ago that he wished to secure a "people-based" government, listen to people's opinion, appreciate the hardship suffered by the residents living in Tin Shui Wai as a result of the exorbitant transport fares, and so on. He can absolutely exert some pressure on this issue to fight for some small favours for

the commuters of the Light Rail. Even if the favours might not be substantial, they can at least make the residents feel that they are not being discriminated against.

The Housing Ordinance will not be discussed until next week. Actually, the people will not be benefited unless all of us maintain the same stance and follow the same pace in lobbying. The worst thing is that some people say one thing and mean another and back down all of a sudden. This is precisely why the people will really feel that they have been betrayed.

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

MR LEUNG KWOK-HUNG (in Cantonese): President, I have heard many crooked arguments and bizarre theories. One of them is that no one will come out winners should our efforts of lobby fail. Therefore, we should most preferably stop lobbying and co-operate with the Government instead. This is really strange. How can we co-operate with the Government? To do so, we only need to join the Government. Why do we have to stay here? A Mr CHAN Hak-kan of the DAB was once beaten by me. He has now joined the Government, earning more than \$70,000 a month. He has chosen to co-operate with the Government. Why should we co-operate with the Government here? I would come across him from time to time. He is a nice young guy. Why should we take all these troubles? Why should we form political parties, right? It cost MA Yinchu, who had told MAO Zedong that uncontrolled birth should not be allowed, his life because of his refusal to co-operate with MAO Zedong. Had he been co-operative, MAO Zedong might have been pleased and fewer children would have been born. What philosophy is this? Do we still have to save our country by circuitous means? HU Yaobang would not have been replaced by ZHAO Ziyang three years later had he not infuriated DENG Xiaoping. Had he not opposed military control and thus infuriated DENG Xiaoping, DENG Xiaoping would not have engaged in massive execution later. This was what had happened.

I would like to put these questions to Mr LAU Kong-wah who spoke earlier: When did his co-operation with the Government begin? Where? Whom did he talk to? Has he told the Government that he is now serving the Government in order that he can serve the people? He should stop lobbying if

he has not spoken to the Government in this way. Given his courage to have said something like that today, he should let us know when he started co-operating with the Government and whether he has told Secretary Dr Sarah LIAO to offer him some candies so that he can distribute them to the people should he support the Secretary. Has he said anything like that? If the answer is affirmative, he should let us know. I do want to learn from him. It has often been said that they have succeeded in lobbying because the Government is willing to compromise. So, was this what happened to the enactment of legislation on Article 23? Even TUNG Chee-hwa dared not to proceed, saying that the matter could be settled with the introduction of three amendments. Had the legislation been passed back then, you would have to tell him that the enactment of legislation on Article 23 should have been an arduous task and that he should feel very pleased with the passage of the three amendments. I also know that you have often told people in the districts to support you because the Government would not listen to "Long Hair".

Honourable Members, especially critics of the Government, you have to pay for your meal. Your deeds today will be remembered. Simply put, the Government has since the previous introduction of the so-called constitutional reform package last time adopted a tactic of "stealing the sky and putting up a sham sun" by seeking an interpretation by the Standing Committee of the National People's Congress. As a result, the original arrangement of having the Legislative Council to make the proposal with the endorsement of a two-thirds majority of all the Members of this Council and consent by the Chief Executive has been changed. Instead, the proposal was made by the Chief Executive with support from "royalists". Should the situation be reversed so that I might also put forth a proposal, my proposal would certainly be vetoed. Obviously, a more inferior package would be proposed after universal suffrage was vetoed. What fun will be brought by playing such tricks? Now Donald TSANG is being criticized, and he will not be able to "have fun to the fullest". He has been warned by WU Bangguo not to "have fun to the fullest". So, what can be done? Can you revise your party manifesto again? How about postponing the implementation of universal suffrage till 2017 or 2022?

I do not find any problem with supporting the Government. You have stated that you support the Government. Such being the case, why do you have to criticize those people who have originally planned to make similar requests as yours, scolding them for fear that the Government will not give its consent if they say something more? Are you not very smart? Will you not make the

Government accept your proposal? You are telling this Council, as well as everyone, that you have actually not spoken more than the Government does. Nor have you lobbied for anything. I have never criticized the DAB in this way. Nevertheless, can you act in this way? Can you condemn others indiscriminately and threaten them that the Government will not give consent if they say something like that? Will the Government give less if the criticism gets louder? If this is so, then it implies that your support for the Government has gone too far. I have never heard a government say to the opposition party, "If you scold me, I will definitely not accede to your request." This is not going to happen. On the contrary, it will respond to the opposition party, "You are wrong." Every Director of Bureau will act in the same manner. They will not say, "Long Hair, I will stay away from you if your criticism gets louder." They will not act in this manner. This is what your allies said, "The one who speaks louder will be even farther away from the goal he is pursuing."

May I ask who have given any response today as I made the last-ditch effort to disguise myself as an expert on lobby? I was told by someone who refused to respond that he did not like talking. Mr LU Xun had a story which goes like this: Once upon a time, there was a lackey who told a "passerby A" he met that his master treated him so bad that he had nothing to eat and his cottage was terrible. After commenting that his master should not have acted in that manner, "passerby A" left. Later, the lackey saw a "passerby B". He was told by "passerby B" that what his master had done was unacceptable and he was asked to lead "passerby B" to his cottage to take a look. When "passerby B" saw the place, he found that it was really like a dog house and he immediately dismantled the cottage and its walls. In great horror, the lackey shouted to his master, "Someone is pulling down my walls." In the end, "passerby B" was found and chased away by the master. Furthermore, the lackey was highly praised by his master too. I suppose this story should be dedicated to the DAB. In this Chamber, countless examples have proved that "a horse can be killed by cheering spectators". The previous Chief Executive dared to say "it was even harder to stay than to leave" when his popularity was at an all time low because he knew he had sufficient votes from "royalists" in support of the passage of the enactment of legislation on Article 23. Do they not feel that they have caused much suffering to TUNG Chee-hwa? Do they not feel in the same way? Today, they have employed this old trick again and supported another Chief Executive. Whether he is right or wrong, they will still press the button to give him support. Many people have said to me, "Long Hair, you will not be able to serve this Council for another term if you continue to act in this manner. Many

opinion polls are being conducted, and your popularity rating is the lowest." I can say unequivocally here that, if a political party can only secure votes by telling others to be lackeys, it must be like the person depicted by Mr LU Xun, that is, the lackey who told others that he did not like his own cottage but immediately complained to his master on seeing his walls being pulled down.

Insofar as this issue is concerned, I have stated today that if all political parties and groupings share a common public opinion and if they are to pressurize the Government, the only thing they can do is to prevent the motion from being passed before the Government sits down and discusses with Members. This is the tactic all opposition parties in the world will adopt. While the Government is seeking to discuss with us, the opposition party or our coalition, so to speak, has turned out to complain at the eleventh hour that someone is pulling down the walls and even move to the other side immediately. They will certainly be offered a piece of candy. They will certainly be awarded. This is what I call "unfortunate slaves". Even if they suffer for a thousand times, they are much stronger than a "fortunate lackey" because the latter will forever remain a lackey. A slave who realizes that he is suffering because he has been cheated will have a chance to rid himself of the identity of being a slave. Our colleagues are free to choose to be slaves or lackeys. Although a person who frankly tells of his feelings and fights for his own conviction might make mistakes, he will never cheat. While a person who distorts his own opinion might work with you for three times, he might betray you in the end. He is like the one who will say three times that he has no knowledge of Jesus before the hour of the cock's cry. He has done this the second time. He will definitely do this the third time because Donald TSANG has nothing more to do for fun and has to make a U-turn again. I am sorry, President. I have digressed. Thank you, President.

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

MR ABRAHAM SHEK: Madam President, the last three days of debate, with many hours of hard work spent, might be tiring, but I must say that it is very worthwhile. Worthwhile or not is not for ourselves, but for Hong Kong, for passage of the Bill today — if passed and when passed — marks a milestone in the transportation history of Hong Kong, for we can see the death of a good giant like the KCRC, and the birth of a new company, the MergeCo.

Despite disagreement among ourselves, there is one commonality among us, for we all agree that the services of the new railway must be improved: we want toilets in the MTR, we would like to have platform sliding doors, concessionary fares for the handicapped and the elderly, and a safer and better railway. The reform, we believe for those who support the Bill, must not be born from a threat of violent birth of the merger Bill. We believe it comes from the passage of this Bill, and we believe that the reform must come voluntarily from the MergeCo as a responsible corporation.

Those of us who have proposed amendments but lost need not worry and need not be downhearted, for what they have lost is only a battle not a war, for the war will still be fought through public pressure and persuasion by the travelling public. Your amendments have not only educated the MTR and the future MergeCo, but have also brought a new awakening to the travelling public of 3 million people a day travelling on the railways. They will be your soldiers for better rail services, and this we all believe.

I am a positive person believing that be it a person or an institution, like the future MergeCo or the present MTR, it would do the right thing for the people.

Madam President, I support the Third Reading and would like to conclude by saying a big thank you to Patrick HO and his team of staff from the ETWB for a job well done, for their devotion, tolerance and hard work which is an exemplary service of the normal Civil Service. Thank you.

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

MISS TAM HEUNG-MAN (in Cantonese): I have no intention to join in the battle of words between political parties, as perceived by certain Members. Nor have I the intention of showing disrespect for friends from the DAB. Actually, I am full of admiration for this political party. Very often, they are very united and obedient. I am also very thankful to their Chairman, MA Lik, who came to visit my father when he was ill. I have great admiration for Mr MA too.

I also have great respect for Mr LAU Kong-wah. He is indeed an eloquent speaker. However, I have reservations about his earlier remark. Madam President, we heard Mr LAU say earlier that he had succeeded in fighting for many things, including fare reduction and no fare increase within two years. I believe my party members and Members from different political parties and groupings have also made concerted efforts to fight for these things. Certainly, we would be terribly shocked if, before the announcement of such good news by the Secretary, Mr LAU Kong-wah told members of the public one day that he had met with the Government and the Government had also made a lot of promises. Of course, we will not make any more comment or criticism. Right, a lot of things have been fought for the public successfully. However, I want to say that our fight must continue. For instance, the issue of toilets has been discussed for years, and the Light Rail has not offered any fare reduction. Most importantly, Members of this Council have abandoned the sword used by them to monitor fare increases by the MTRCL. Although the rate of increase has been narrowed to 5%, the MTRCL may freely determine the annual rate of increase in the future. We have abandoned our power to monitor the MTRCL. Furthermore, the MTRCL is given a 50-year right of property development without the need to go through open tender.

Madam President, for the sake of supporting the rail merger, we have sacrificed a lot of public interest and given up a lot of things we should continue to fight for. I am sorry, LAU Kong-wah. I cannot agree with what you said earlier. Of course, I have great respect for the DAB. Not only are they very united, they are very obedient too. They will immediately follow any instructions given by the Government. As Members of this Council, we should continue with our efforts to fight for public interest. We must not stop fighting for the interests and rights of the people.

Thank you, Madam President.

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

MS MIRIAM LAU (in Cantonese): Madam President, I now speak with mixed feelings as there are only a couple of minutes to go before the Bill is read the Third time. It has taken us almost 10 months to discuss the provisions in detail

amid a lot of storms and battles of words. I believe Members are now as excited as a labouring mother. I also hope that colleagues can share the happiness with me.

Madam President, some colleagues criticized earlier that we had given up a lot of our regulatory power for the sake of the rail merger. If Members understand the entire railway operation in Hong Kong and all legislation relating to Hong Kong railways, and have really participated in the discussions, they will realize that, through the merger, we have actually required the MTRCL to give us more explanation and tightened our supervision in many areas.

Fare autonomy, which has long been in existence, is now replaced by a highly transparent and objective fare adjustment mechanism. Therefore, we have not given up anything. Instead, we have tightened our supervision of the two railway corporations.

I stated during the resumed Second Reading debate that it was not until the deliberation of the Bill began that the Liberal Party considered whether or not it should support the merger. Over the past several years, we have given a lot of thoughts to whether or not the rail merger is good for Hong Kong through debates and numerous seminars.

Our conclusion is that benefits will be brought about by the merger. In particular, synergies can be achieved following the merger, thus creating room for fare reduction to benefit the public at large. Meanwhile, the two railway corporations will operate more efficiently even when the merger is underway.

I would like to make a minor correction to the remark made by Mr Abraham SHEK earlier because he pointed out that the merger would lead to the death of the KCRC. Actually, the KCRC is still alive. I have to clarify that the KCRC is still alive, only that its business will be merged with that of the MTRCL. Not only will the KCRC continue to exist, it can even sit back and collect money vigourously. Therefore, the KCRC is alive and kicking. I hope this can at least be recorded in the Legislative Council's record of proceedings.

We are also convinced that, after the merger, MergeCo or the MTRCL will become even more efficient and stronger, and its scope of business will become even more remarkable.

I still vividly recall that exactly a decade ago, a number of colleagues and I — including colleagues from various political parties and groupings, as well as Members of the DAB and the Democratic Party — joined a delegation to Europe and Singapore to investigate the railways in those places. At that time, Hong Kong railways, particularly the MTR, were the envy of these countries. Now, with the passage of exactly a decade, I very much hope that I will have another chance to visit other countries to let them see the outstanding and efficient performance of Hong Kong railways. With this strong conviction, I am now pinning this hope on the MTRCL. Thank you, Madam President.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): Secretary, do you wish to speak?

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): The Government attaches great importance to public transport policy, the management and development of which is essential to the economy of a city and the development of a society. Railways are the main trunk and a key component in our mass transit system. The discussion today focuses on the merger of the two railway corporations and it is hoped that a new milestone can be laid for railway transport in Hong Kong. When we have a world-class railway system, it would have a positive impact on Hong Kong as a whole, not only in transport but in the financial market as well.

While achievements are made in public transport, pressure is created on the level of fares. This is because a price has to be paid for services of such a high quality. People are much more aware of this fact during an economic downturn. Hence from 2002 onwards, we have carried out detailed studies on how to ease the pressure of fares on the people and how a better system can be obtained. After studying consultancy reports compiled by experts and scholars, we find that a merger can achieve a synergy effect and it is good for railway development as a whole.

The Bills Committee has held discussions totalling 80 hours. The main point of our merger Bill is actually technical in nature but there are many provisions in the Operating Agreement. The Bills Committee discussed the Operating Agreement as well and Members proposed a large number of amendments, of which some 30 were accepted by the Government. I would like to thank Members of the Bills Committee here for all their hard work. Special thanks must go to the Chairman, Ms Miriam LAU, and the Vice-chairman, Mr TAM Yiu-chung. They have put in so much hard work for this Bill.

With respect to fighting for rights and interests, I understand that each and every Member here does represent the aspirations of the people of Hong Kong and Members would make use of the opportunities available to voice people's aspirations. A lot of conflicts and contradictions may arise and many of them may not be resolved in the context of this rail merger proposal. On the part of the Government, we would of course take into account the overall situation. Then what should we do to achieve effective operation while the people can benefit, and more? First, it is to set up a mechanism for fares. This goes without question. When this mechanism was first proposed, Members had great reservations about it. Some Members do not quite understand it even to this date. Now the railway corporations enjoy autonomy in fare determination and they are entirely free to raise the fares and they can do so under any circumstances. However, to introduce a fare reduction is not that easy. We have all had fare concessions but basic fares have not been adjusted downwards. People feel the pressure of expensive fares even more.

The merger will result in a synergy effect and under this major condition, we may include the mechanism which allows fares to be increased and reduced in the Operating Agreement. A long period of time has been spent on discussing the question of whether or not fares can be reduced. We can now see that after the rail merger, as many as 2.8 million people will benefit from reduced fares. Another issue which is often criticized by the people is that they have to pay for a boarding charge at interchange. This problem will vanish after the merger. Hence the level of fare reduction will actually be even greater. Owing to the economy of scale and the synergy effect, these two problems can be solved. But that does not mean that we can direct the two railway corporations to reduce the basic fares, for it goes back after all to their own decision after factoring in operation costs, overall corporate operations and the financial situation.

Apart from the synergy effect, after the two railway corporations have become the new MTRCL, there would be economy of scale and it is of great importance to its being able to carve out a share in the regional or even the world market. The reason for this is railway development should not be confined to Hong Kong alone and we must venture out. In Hong Kong we are seeing more and more of this expansionist pattern. This is very important for our economy to make inroads in the mainland market and even abroad. This would be conducive to competition as well. Hong Kong people may not understand this too well, but in general they would welcome such a direction. I hope that we can see some good results in that in future.

While the focus is on the merger, we should also ensure that the staff of the railways are protected. I said last time that co-ordination work from the trade unions had enabled us to have a good dialogue. The staff are satisfied with the merger. I wish to thank them here for their loyalty to their jobs and maintaining excellent service quality despite the uncertainties.

In such a process, a lot of proposals were put forward and both support and dissent were expressed and some arguments even occurred. But these arguments do not matter so much because everyone is doing this to further the interests of the public. The question is only what can be done to secure these interests and when action can be taken. So it is all a matter of procedure and timetable. The best way may be done through the Operating Agreement and we have done it when we revised the Operating Agreement. Administrative measures may be used as well. We cited a lot of examples in the course of discussions. We can see that the legislative option was not necessarily used previously in the cases of the MTRC and the KCRC. In a legislative process, at times contradictions would really arise in relation to an amendment. As legislation is a stringent process, it follows that there must never be a situation where there is no law available for people to comply with immediately after the legislative process is over. The Government does not want to see such a state of affairs. We do not think that legislation is the only option to do things well. I believe we do not have any difference in principle, though our views on the approach may not be the same. I hope Members can understand that we would like to see everyone all pitch in their efforts and make the merger a success and hence the public can benefit. Apart from upholding public interest, the needs of all parties must be balanced. An example is that the MTRCL as a listed company must hold itself accountable to the minority shareholders. This must be recognized.

Therefore, the next step we take is to introduce the relevant subsidiary legislation to the Legislative Council. The Legislative Council has set up the Subcommittee to Study the Draft Merger-Related Subsidiary Legislation to examine such subsidiary legislation. I would anticipate that the procedures of passing the subsidiary legislation can be completed before the Council rises on 11 July. I hope that work in every area can proceed soon and the public can enjoy the reduction in fares and the benefits of the rail merger.

Thank you, President.

PRESIDENT (in Cantonese): I now put the question to you as stated. The question is: That the Rail Merger Bill be read the Third time and do pass. 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, after which the division will begin.

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 James TIEN, Dr Raymond HO, Mrs Selina CHOW, Miss CHAN Yuen-han, Mr Bernard CHAN, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Dr Philip

WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Mr Howard YOUNG, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Miss CHOY So-yuk, Mr TAM Yiu-chung, Mr Abraham SHEK, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr Frederick FUNG, Mr Vincent FANG, Mr WONG Kwok-hing, Mr LI Kwok-ying, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong, Prof Patrick LAU and Mr KWONG Chi-kin voted for the motion.

Mr Albert HO, Mr LEE Cheuk-yan, Mr Fred LI, Ms Margaret NG, Mr James TO, Mr CHEUNG Man-kwong, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Ms Emily LAU, Mr Andrew CHENG, Ms Audrey EU, Mr Alan LEONG, Mr LEUNG Kwok-hung, Dr KWOK Ka-ki, Dr Fernando CHEUNG, Mr Ronny TONG and Miss TAM Heung-man voted against the motion.

Mr CHIM Pui-chung abstained.

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

THE PRESIDENT announced that there were 49 Members present, 30 were in favour of the motion, 17 against it and one abstained. Since the question was agreed by a majority of the Members present, she therefore declared that the motion was carried.

CLERK (in Cantonese): Rail Merger Bill.

MEMBERS' MOTIONS

PRESIDENT (in Cantonese): Members' motions. Two motions with no legislative effect.

PRESIDENT (in Cantonese): First motion: Commission on Children. I now call upon Dr Fernando CHEUNG to speak and move his motion.

COMMISSION ON CHILDREN

DR FERNANDO CHEUNG (in Cantonese): President, I move that the motion, as printed on the Agenda, be passed.

President, it has been an exceedingly long meeting. (*Laughter*) We have now come to another motion. I hope this motion can bring this Council some laughter, and a more promising hope too.

I originally hoped that this motion could be chosen in the lot drawing to be proposed in the last meeting (I was nonetheless a bit surprised). As the International Children's Day fell on 1 June, I hoped the motion urging the Government to set up a Commission on Children could be passed by this Council before the International Children's Day as a present for all the children in Hong Kong. Nevertheless, President, it seems that we have benefited from a missed opportunity, because the two motion debates today are related to children. I am very thankful to Mr Bernard CHAN for proposing after me a motion on children with special educational needs. This social group is of great concern to me.

My speech today can be seen as representing a coalition which has obtained the signatures of more than 60 groups in support of the establishment of a Commission on Children in Hong Kong. I am also honoured that I can act as a platform to propose this motion here in this meeting. Although I cannot read out the names of these 60-odd groups, the Children's Council of the Hong Kong Committee on Children's Rights.....

(Some noises were heard outside the Chamber)

PRESIDENT (in Cantonese): I will ask them to keep quiet. Security officers, please ask them to keep quiet.

(The noises outside the Chamber subsided)

PRESIDENT (in Cantonese): Dr CHEUNG, please continue.

DR FERNANDO CHEUNG (in Cantonese): Some of the groups, including the Children's Council, mentioned by me earlier consist of children. I believe a number of Honourable colleagues here have had the experience of visiting the Children's Council to listen to their debates and offer them advice. Not only is their standard of debating skill very high, their scope is no narrower than that of this Council. The Council has existed for several years. Apart from this, there is another children's group called "Kids' Dream", with quite a large number of its members coming from the graduates of the Children's Council. Many of them are here today. They are most welcomed to come to listen to our motion debates.

President, child problem is a concern to every society. We often say that children are our future and we will give the best to them. As parents, this is what we usually do. However, as a society, a business-oriented city, a government, can we consider policy-formulation, law and distribution of resources from this angle?

President, two weeks ago, I raised an oral question relating to the four reports published by the Law Reform Commission (LRC) between 2002 and 2005 on some reform proposals on child protection legislation, namely "Guardianship of Children", "International Parental Child Abduction", "The Family Dispute Resolution Process" and "Child Custody and Access", and asked the Government about its position, the timetable for follow-up actions and its observation. The Government replied at that time that it had neither a position nor a timetable.

Work relating to children is often treated as an inter-departmental issue. Today, we can see that this is really the case because this question, which is related to children, will see a reply by Secretary Stephen IP, who is responsible for economic affairs. It is thus evident that any Director of Bureau can give a reply to a question on any area. There is nothing I can say. Anyway, I have received a response from the Secretary.

This is the third question I raised then: In the course of formulating policies or legislation relating to children, how can the Administration ensure that children's perspectives are taken into account? President, this question of mine was answered by another Secretary, Dr York CHOW, who pointed out that a comprehensive child welfare policy was already in place. The President should

still recall that I asked the Secretary where we could find the child welfare policy and whether a paper on this policy was available. In reply, Secretary Dr York CHOW said that every government department had a child policy. In other words, all government departments have a child policy. When I asked the Secretary if he had on hand any document on the policy, he merely said that every government department had a child policy.

President, this is how children are treated nowadays. When will the children's perspective be really carried in our consideration? Today, there are 1.3 million children aged below 18 in Hong Kong. Almost one fourth of these children come from poor families. This figure is not what we should feel proud of. Can the numerous social policies in such areas as education and health care, and other public policies help these children resolve the difficulties faced by them? There is talk about inter-generational poverty and how more opportunities can be created for them through education. However, when we discuss major policies such as education policies and education reform, have the children's perspectives been given consideration? Have they been consulted? From what aspect and channels can we tell how they look at education reform, such as small-class teaching and examination-oriented systems, and have their views been taken into account? There is also talk about further studies of ethnic minorities. Unfortunately, almost no students of ethnic minorities can be admitted to local universities under the local education system. Has the Government considered this when formulating its policy on university studies?

Let us take a look at new immigrants. Many poor children are from new immigrant families. However, under the so-called population policy, new immigrants cannot enjoy any benefit within seven years from their arrival, though children aged below 18 are exempted. Consequently, many parents of poor families or single-parent families can only share the amount of Comprehensive Social Security Assistance (CSSA) granted to their children. If there is one more child in a family, the amount of CSSA receivable will double. In other words, the CSSA payment supposedly granted to children will have to support the adult members in their families as well. Has the Administration considered that this will cause an adverse impact on children?

There has recently been talk about the charging of expectant mothers coming to Hong Kong to give birth. Although members of the families concerned are Hong Kong people and the children are also born to Hong Kong

people, we choose to charge them for giving birth in Hong Kong in a punitive manner, thus preventing the members of these families from being reunited expeditiously. Has this policy taken into account the development of children? Is the arrangement of separating them from one of their parents the best way to care for them?

There are also a large number of cross-boundary students in Hong Kong. Every day, more than 4 000 cross-boundary students will cross the boundary to go to school. However, the limited number of resident permits has given rise to a host of problems. For instance, we have 20-odd children who study in special schools and have special needs. Some of them might experience certain hardship when crossing the boundary and that is, without a resident permit, they will be unable to go to school. Some children attending nurseries are experiencing the same sort of hardship too. Under the New Dawn Project, the parent of a single-parent family on CSSA has to go out to work once his or her child reaches the age of 12. Now the Government is even considering lowering the age limit to six. In other words, once the child attends primary school, his mother (the parents of single-parent families are mostly mothers) will have to go out to work, or else she will be fined. Furthermore, the amount of fine might even double. Has the Administration considered the needs of the children in doing this?

Child abuse is a very serious problem in Hong Kong. The Government has recently commissioned the University of Hong Kong to conduct a study, and the outcome of the study shows that child abuse has become so serious that the ratio has basically reached 1:99, which is the same as that of domestic violence. In other words, the discovery of one such incident means that 99 similar incidents have not yet come to light. In the face of such a serious situation, what legislation and policies are available in Hong Kong to prevent such incidents? In the event of serious casualties, is there a mechanism in place to review the situation? It has been a long time since a request for establishing a mechanism for reviewing death cases was made by a number of groups. However, the Administration is still very conservative and reluctant to address this issue.

Some statistics have revealed that 60% of rest gardens and playgrounds for children are situated at roadsides. As a result, children are exposed to exhaust gas and traffic hazards while playing. Furthermore, many major cities have set

up child hospitals for better understanding of child medicine and upgrading of treatment methods. In Hong Kong, however, not a single child hospital has been set up, despite years of campaigning. Basically, it can be said that Hong Kong has never had a platform where public policies can really be perceived from children's perspective. A present, more than 30 countries around the world have already set up Children's Councils or similar organs. Hong Kong is actually obliged to honour the United Nations Convention on the Rights of the Child. As a matter of fact, the Convention has requested Hong Kong to set up an independent Commission for investigating and receiving complaints in order to deal with children affairs.

Upon an invitation by relevant groups and me, Dr Ian HASSALL, the first New Zealand Commissioner for Children, has recently paid a visit to Hong Kong to share his experience with us. He has unequivocally mentioned that the organ is highly cost-effective because the funding required is very limited. However, he has been able to study policies having a profound impact on children from their perspective, thereby improving the relevant arrangements.

President, before I conclude this speech, I hope Honourable colleagues can take into consideration that there are not too many commissions of this kind in Hong Kong. Though there are many commissions in Hong Kong, and the Government has also mentioned its plan to set up a Family Commission too, its focus will be on family as a whole. On the contrary, a Commission on Children will consider each and every piece of policy and legislation from children's perspective, receive complaints and conduct investigation, be entitled to obtaining information, and keep death registration information for the purpose of improving our services in the future. Furthermore, the Commission may undertake research and even provide expert advice on the formulation of a comprehensive children policy. Hence, the establishment of a Commission on Children has now become a matter of great urgency. I hope Honourable colleagues can support my motion. Thank you, President.

Dr Fernando CHEUNG moved the following motion: (Translation)

"That this Council urges the Government to set up a Commission on Children to fulfill the obligations under the United Nations Convention on the Rights of the Child, safeguard the well-being of children, and ensure that children's perspectives are fully taken into account in the process of formulating government policies."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by Dr Fernando CHEUNG be passed.

DR YEUNG SUM (in Cantonese): President, the Convention on the Rights of the Child (the Convention), ratified by the United Nations in 1989, agreed that it be extended to Hong Kong in 1994. Here, I would like to brief Members on the six major components of the Convention:

1. The government should ensure the survival and development of the child;
2. give due weight to the views of the child who is capable of forming his or her own views and the child's right to freedom of expression;
3. respect the right of the child to privacy;
4. the child has the right to live with his or her parents and maintain contact with them if they are separated;
5. homeless or disabled children be given special care and assistance; and
6. the child has the right to education, leisure and social protection.

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

Providing for these six internationally-recognized rights of children, the Convention was extended to Hong Kong in 1994. Deputy President, let us look at the realization of these rights in Hong Kong. First of all, the relevant government is obliged to ensure the survival and development of children. I would like to say a few words on the issue of child bullying. Earlier, the Government's handling of campus violence was criticized by the children representatives in the Children's Rights Forum, who added that violence had continued to spread on campus and seriously stifled children's learning in schools and their school life. In 2006, the Education and Manpower Bureau received up to 1 600 bullying cases from schools, and the number of these cases has continued to rise.

Next, I would like to talk about child suicide. Between 2003 and 2006, there were 54, or a monthly average of 1.5, student suicide cases in Hong Kong. Considering that 40 students had died from suicide, the suicide mortality rate was as high as 75%. According to the data provided by the Hong Kong Jockey Club Centre for Suicide Research and Prevention of the University of Hong Kong, there is actually a tendency for the age of suicidal children to drop. Between 1981 and 2005, there were a total of 36, or an annual average of one to two, suicide cases involving students aged 11 or below, with some 90% of them jumping to their death. The Government should indeed do some soul-searching about the proliferation of this undesirable trend to examine if it is obligated to ensure the survival and development of children.

Second, due weight should be given to the views of children who are capable of forming their own views because they have the right to freedom of expression. Although a Children's Rights Forum has been set up in Hong Kong, the Forum has been criticized by participating children and other attendees that it is not much different from a "garrulous" council and is practically useless.

Third, respect for the child's right to privacy. Deputy President, as everybody knows, Hong Kong is a Chinese society. It is the general view held by traditional Chinese parents that their children are part of them. Very often, parents do not give much weight to the views of their children, not to mention respecting their privacy.

The fourth point I would like to make concerns the right of the child to live with his or her parents and maintain contact with them if they are separated. Generally speaking, children are considered by their parents their flesh and blood. However, children of separated parents will become sacrifices as a result of the broken marriage or separation of their parents, and they can often choose to live with either one of their parents. Very often, the children themselves are given no choices. Mr Albert HO will explain later to Members the view of the Democratic Party on this.

Fifth, the Government should offer special care to homeless or children with disabilities. According to the statistics provided by the Census and Statistics Department, of the more than 990 000 children aged 12 or below in Hong Kong in the year 2000, 7 000 had disabilities. Due to the unsatisfactory road design and a serious lack of complementary means of transport, the Rehabus service has become the only option for children with disabilities. As a

result, they can hardly go out to participate in activities as they wish. At present, the Rehabus service is seriously inadequate. There are only some 90 Rehabuses, with each carrying 10-odd passengers only. Given that there are more than 100 000 physically handicapped people in the territory, the demand for Rehabus is extremely keen. This has adversely affected the employment, education, medical consultation and participation in community activities of more than 7 000 people with disabilities.

Sixth, the child should enjoy the right to education, leisure and social security. We can see that many families on CSSA have merely been offered some basic or minimum care by the Social Welfare Department (SWD). Their children are basically lack of support, especially support in receiving general education, participating in extra-curricular activities, and so on. This will actually have a profound impact on their physical and mental development.

I have spent quite some time explaining to Members the realization of the six internationally-recognized rights in Hong Kong. In short, the realization is not only unsatisfactory, it is far from adequate. Therefore, we greatly support Dr Fernando CHEUNG's proposal of urging the Government to set up a Commission on Children expeditiously. Under this Commission, a centralized committee should be set up to take charge of the implementation of the Convention for the purpose of improving the fragmented situation. At present, a number of government departments, including the SWD, the Education and Manpower Bureau, the Hospital Authority and the Home Affairs Bureau, are jointly responsible for the work relating to children. However, there is a lack of communication and co-ordination among them. Therefore, if a Commission on Children can be set up, a centralized committee will be put in place in the territory to implement, or implement in phases, the Convention through different departments. Furthermore, the Committee may carry out investigation and studies to explore the situation confronting children and examine the inadequacies of the existing policies with a view to proposing ways of improvement.

With policies in place, I believe a centralized, independent and inter-departmental organ can be set up to focus on the development and studies on children so that relevant proposals can be made. I also hope the Financial Secretary can take steps to put these proposals into implementation. Generally speaking, the Democratic Party supports the establishment of a Commission on Children by the Government expeditiously.

DR KWOK KA-KI (in Cantonese): Deputy President, first of all, I am grateful to Dr Fernando CHEUNG for moving this motion and, as pointed out by Dr Fernando CHEUNG, more than 60 groups that support this motion demanding the establishment of a Commission on Children by the Government. I also wish to thank them. Today, many representatives from these groups are also sitting in the public gallery. They have also done a lot of work.

The United Nations Convention on the Rights of the Child was drawn up in 1978 thanks to a proposal by Poland in the United Nations. During the Second World War, in fact, it was already found that many children were incapable of protecting themselves. Even in times of peace, children do not have the capacity to act independently, nor can they exercise their rights. In view of this, many countries requested that a convention for children be drawn up in addition to the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. The basis for this convention was adopted by the United Nations in 1989. So far, 192 countries worldwide have become State Parties to this Convention and among the six human right conventions, this Convention is signed by the largest number of countries.

On the face of it, Hong Kong is very lucky because we are not caught in any armed conflicts for the time being and there is no famine, epidemic or any factor posing a direct threat to children. However, every day, we can read lamentable or regrettable news reports in the press. Last week, a 15-year-old girl was forced into prostitution because her father was in debt. Earlier on, a child was left alone at home because his young mother wanted to travel to the Mainland for fun and he was caught in a space between the door and the iron gate for more than 10 hours. Before this, a child was dragged onto the street and had his clothes stripped off in public for disobedience. After reading these news reports, most of us would feel that something was amiss or would even be saddened but in the end, we would just lay these matters to rest inconclusively.

Apart from feeling an urge to do something to protect children when there was intense media coverage of such matters, in fact, most of the time, be it the Government or the parents in Hong Kong, it has never crossed their minds that there is a need to establish a Commission on Children that belongs to children or to appoint a commissioner to help children and speak for them. In 1996, the United Nations Committee on the Rights of the Child published its concluding

observations on the Report to the United Nations Committee on the Rights of Children submitted by Hong Kong and it is stated in paragraph 27:

"The Committee wishes to acknowledge once again the important efforts taken to deal with the question of child abuse. Notwithstanding this, the Committee is of the view that the prevention of this violation of children's rights requires further attitudinal changes in society, not only as regards the non-acceptance of corporal punishment and physical and psychological abuse but also greater respect for the inherent dignity of the child."

However, Deputy President, it is unfortunate that from the end of the consideration in 1996 to now, within a span of almost 11 years, the number of child abuse cases in Hong Kong, in particular in the past several years, has not decreased but increased. In 2004, there were 622 such cases in Hong Kong and 594 cases in 2005. Among them, the abusers of the children in 405 cases and 490 cases respectively were their parents or stepparents. As we all know, these figures are actually only the tip of the iceberg. As Dr CHEUNG said just now, we have the analogy of 1 to 99. In other words, although over 700 cases of reported child abuse cases have been detected, in reality, there are probably more than 70 000 cases. A study conducted by the Department of Social Work and Social Administration of the University of Hong Kong shows that 72% of the children said that in the past, they had been threatened physically or verbally by both or one of their parents and 36% of the interviewed children were neglected by their parents. 29% of them were subjected to serious physical neglect. These figures are most shocking, inconceivable to a lot of people who think that there is no problem with child protection or child care in Hong Kong.

In reality, what has the Government done? Deputy President, in the last couple of weeks, we have kept asking the Secretary for Health, Welfare and Food about the overall policy on children in Hong Kong. The reply he gave us was that he had it in his mind, he had it in his mind and he had it in his mind. In view of this, since Secretary Stephen IP is here today, I wonder if Secretary Dr York CHOW has given him the results of his meditation, otherwise, I do not know how he can answer this question. In fact, when the Government responded to our demand for the establishment of a Commission on Children, it only said that children were taken care of in Hong Kong and actually, it would establish an organization known as the Family Council. Deputy President, I wish to point out that in Hong Kong, 13% of the young people are between 15

and 24 years of age, therefore, we have the Commission on Youth. 11% of the population in Hong Kong are elderly people over 65 years old, so we have the Elderly Commission. However, our children account for 20%, yet there is no need to establish a commission for them. According to the Government's thinking, if a Family Council is established, basically the Commission on Youth will no longer be necessary, nor will the Elderly Commission be necessary because all people belong to the family. You, I and all people belong to the family. In fact, the Government may as well bring everything into the scope of the Family Council and there is no need to talk about anything else.

In fact, does the establishment of a Commission on Children mean that all the problems can be solved? Of course not, however, this is an important step. Last week, when New Zealand's first Commissioner for Children, Dr Ian HASSALL, had a meeting with us, he said that the difficulties he encountered were just the same as those experienced in Hong Kong. At that time, the New Zealand Ministry of Health was also extremely opposed to such a proposal. They went through a lot of difficulties and in the end, the Office of the Children's Commissioner was established in New Zealand and it has been proven that their work is successful because over the past decade in New Zealand, people have become increasingly aware of the need to protect children's rights, be it in terms of legislation or social concern.

We are not alone. In recent years, in various places such as the United Kingdom, Australia and Canada, commissions for children with statutory powers have been established. If the Government still thinks that there is no need for Hong Kong to do so and still wants to bury its head in the sand, this will only reflect the ignorance of the Government. I very much hope that after this debate, the Government will learn from the unfortunate events and establish a Commission on Children as soon as possible.

I so submit. Thank you, Deputy President.

MR WONG KWOK-HING (in Cantonese): Deputy President, 1 June is the International Children's Day, so it is still very timely to discuss a motion on establishing a Commission on Children today. Children are the masters of society in the future and their nurture and education are crucial to the success and excellence of society in future. Therefore, we should provide an appropriate environment in nurturing every child.

In Hong Kong, owing to economic affluence and the small number of children that young couples raise, many children are treated like precious jewels by the family and are attended to with the greatest care in all aspects of life. When they have their meals, every strand of vegetable or every piece of meat is cut into small pieces for the kids to eat. A news report says that some children still do not know how to tie their shoe laces even though they are eight or nine years old. In addition, parents also arrange various kinds of after-school lessons for them, for example, Chinese painting, piano, swimming, dancing and ice-skating classes and children have to attend several classes in a row over the weekend. The care and nurture that they receive is treatment that children growing up in the seventies or eighties could only dream of but could not have a taste of.

Unfortunately, this general affluence does not mean that all strata of society can benefit from it. The wealth gap and erroneous urban planning has created a group of children who are assigned secondary status in terms of education, care and attention or nurture. Deputy President, here, I will use the situation of children in Tung Chung to illustrate the problem.

Tung Chung is just like a lonely and enclosed town and often, children in this enclosed town cannot even receive basic care. In Yat Tung Estate, Tung Chung, Members will find many children loitering in the neighbourhood after school instead of going home to do their homework. This is because both of their parents have to work outside and their working hours are long. Some even have to work in shifts, and, since the trips out of and back to the district are very long, their parents can perhaps be at home for less than 10 hours each day. Moreover, most of their time is spent on taking a rest, so parents lack the time or energy to take care of their children. Without control or supervision, these small children roam everywhere and at eleven o'clock at night, groups of "night youths" can always be found in the housing estate making a lot of noise and smoking in the streets. Even children who are only 10 years old also loiter everywhere with cigarettes in their mouths. How possibly can one not find such a sight lamentable?

Article 18 of the Convention on the Rights of the Child (the Convention) says, ".....to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible". However, the care service provided by the Hong Kong Government is inadequate and this

has drawn a lot of flak, however, no improvement can be seen for many years. In Tung Chung, finding after-school care service is no easy task. Moreover, Tung Chung residents generally have lower incomes and they can hardly make ends meet, so they do not have any money to spare for child care service. What has the Government done in this regard? Are the efforts that it has made adequate? I hope the Secretary can reflect on this matter thoroughly.

While care service is certainly in short supply, even the cultural and recreational facilities in the district are also sorely lacking. According to Article 31 of the Convention, "States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity." However, Deputy President and Secretary, do you know that in Tung Chung, there is neither a park nor a swimming pool and there are only two seven-a-side soccer pitches? In summer, young people can only go to the nearby seaside or jump down from the pier for a swim, or go to the stream at Shek Mun Kap, where drowning has frequently occurred and there are many dangers, for a splash. Over the past few years, quite a number of children have been drowned there. Last year, several dozen children in swimwear and I went to the Government House to make a petition and it was after hard lobbying that the Government finally promised to build a swimming pool, however, it will be completed only in 2010, so people have to wait for four years more. What makes one feel most indignant is that there is not even a single community hall in the district. Even though some non-government organizations have the wish to go to Tung Chung to organize activities for children there more often, they cannot do so due to a lack of venues. Why can the children in Tung Chung not enjoy the community facilities and activities that children in other districts can enjoy so easily? Should the Government not reflect on this?

On another front, the car parks which were constructed by the Housing Department are underutilized due to a blunder in estimation. As a result, these multi-storey car parks have been left vacant for many years. After they were sold to The Link Management Limited, there is an even greater inflexibility in converting them to community, much to our regret.

In addition, there are also insufficient schools in Tung Chung and more than half of the school children have to go to schools in other districts. Not

only does doing so cost more in travel expenses, they also have less time for sleep, so this is not fair to children. Children in Tung Chung are also comparatively poor. The number of cases of children under 15 years of age receiving CSSA in Yat Tung Estate is the highest in Hong Kong and more than 40% of the families have an income of less than \$10,000. May I ask how a family of four earning only several thousand dollars to \$10,000 monthly can spare any money for their children to take lessons after school? If these children cannot have training in various areas such as music and sports, how can they get into university in future? How can they climb up the social ladder?

Deputy President and Secretary, our aim in exposing this problem today is to support Dr Fernando CHEUNG's motion. In addition, I very much hope that before a Commission on Children is established, the Government can take the problems confronting children in Tung Chung seriously by committing more resources to them and devoting more care, attention and efforts to the district, so as to help children in Tung Chung escape from poverty.

MR LEE CHEUK-YAN (in Cantonese): Deputy President, on behalf of the Hong Kong Confederation of Trade Unions, I support this motion moved by Dr Fernando CHEUNG today.

I believe today's motion will not arouse any controversy as the rail merger did and I believe Members will all support it. In view of this, I will find it most incomprehensible if the representative of the Government — today, Secretary Stephen IP is standing in — will have the brazenness to say in the end that a Commission on Children will not be established.

This is because there is a need to establish a Commission on Children from various perspectives. If we look at this from the perspective of the United Nations Convention on the Rights of the Child (the Convention), there is a need for the SAR Government to report to the United Nations on the implementation of the Convention regularly and as the usual practice, the relevant committee of the United Nations will also recommend to the Government the measures that it has to take and one of its recommendations is to establish a Commission on Children.

Well, if we set aside international obligations for the time being — in fact, I should not exert pressure on the authorities by referring to the international

community — still, Members really have to examine their own conscience, look at the bottom of their hearts and ask themselves who among the Hong Kong public would think that children are unimportant? I believe we may as well interview the public and ask them whether their hearts ached when they learned about certain incidents. When they learned about instances of child abuse, did their hearts ache? When they learned that a few days ago, a small child had taken some caustic by mistake, did they feel their hearts ache? When they learned that a small child had been caught in the gap between an iron gate and a door for more than 10 hours, did they feel their hearts ache? When they learned from newspaper reports that a 15-year-old young girl had been forced into prostitution in order to repay her father's debts, did they feel their hearts ache? Everyone would feel their hearts ache. Everyone would ask what the Government had done. There are many departments in the Government, however, in dealing with children's affairs, the authorities may approach them from the angle of social welfare. As a result, many things are overlooked.

Deputy President, recently, we had a discussion on an issue in a meeting of the Panel on Welfare Services of the Legislative Council and this precisely reflects the tunnel vision of the Government. The issue was that, after a number of deputations had over the years demanded that the Government take action to address the issue of children dying of unnatural causes, the Government finally established a mechanism to look into child fatality cases arising from unnatural causes on a two-year pilot basis and all cases of death due to unnatural causes will be reviewed. This is just like squeezing a tube of toothpaste very hard and finally managing to get some toothpaste out of it. However, Deputy President, you have to listen carefully because the Government's scope of review is very restricted. For one thing, it is necessary for the cases to have aroused public concern, but this does not matter. If a case arouses public concern, of course, everyone will be happy to see it being investigated, however, there is another tunnel vision that is really over the board and that is, reviews will only be conducted on cases that have implication on social welfare services. On that day, we also queried in the discussion why the Government was so narrow-minded and would only conduct reviews on fatalities that had implication on social welfare services, whereas other kinds of cases would not be considered.

To take the case mentioned by Mr WONG Kwok-hing just now as an example. If a child was drowned while swimming in Tung Chung, his death as a result of drowning at that place may not have implication on social welfare

services, however, if the authorities really want to review on cases of children dying of unnatural causes, they will not disregard cases not having implication on social welfare services and take action only if they have implication on social welfare services. This is really outrageous. How can their thinking be so narrow? To take such a fatality as an example, even though it does not have any implication on social welfare services, a review should still be conducted into the causes and the underlying social factors, and then consideration should be given to ways to prevent similar incidents. This is an approach that would be considered by a logical and rational person. If one is really concerned about children's affairs, one would want to understand and prevent this kind of incidents instead of looking at them merely from the angle of social welfare implications.

That day, we had a discussion on this and the Government also put up a defence for its restricted policy. However, will the Government in the end broaden the scope in response to our appeal? We have implored the Government to broaden the scope a little and to avoid looking at it too narrowly. In fact, it is only natural that it should do so, still, we had to implore the Government to do so. I believe the most thoroughgoing approach is not just to establish a review mechanism for child fatalities due to unnatural causes but to establish a Commission on Children, so that all relevant matters will be brought under its purview and considered holistically.

This is because the protection of children does not just involve the family. I anticipate that later, the Secretary will surely spell out item by item what the Government has done in social welfare or family welfare, then say that the authorities have already done a lot. So is that not enough? The Secretary will surely say this sort of things, so there is no need for me to listen to his speech later.

However, what is the point of all this? What we Members are saying is that child protection is not just a matter of family welfare. If we borrow the words of "Long Hair", we would say, "Man, this is not just a matter of family welfare; many other issues are also involved.". The rights to survival, education, development and social participation of children and ways to cater to all their needs by adopting a child-based policy are involved. The problems of children in poverty and inter-generational poverty are also involved. These issues all fall within the domain of children affairs instead of merely involving family and welfare.

Therefore, although the Secretary is just a stand-in, I still hope very much that you can reflect our views back in your office. In that case, I would really be grateful to you. I hope the authorities can establish a Commission on Children in all earnestness. Our greatest concern is that the Secretary will say later that the authorities will establish the Family Council in future and children affairs are included in family affairs. However, I have already pointed out that children affairs are not just simply family affair and they cover a very large scope. I hope the Government can look at this matter from a broader perspective. This is a point that I do not understand even now. Why is it still necessary to argue? Why is the Government still unwilling to do this?

Thank you, Deputy President.

DEPUTY PRESIDENT (in Cantonese): Your speaking time is up.

MR RONNY TONG (in Cantonese): Deputy President, no matter if one likes children or not, there can be no denying that children are a very important social group in the world, that is, just like men and women, children are also a very important social group making up mankind. The rights of children do not owe their existence to whether we like children or not, rather, they are basic human rights.

In fact, in what is arguably the first or most significant international covenant on human rights, that is, the International Covenant on Civil and Political Rights, it is already stated in paragraph 1 of Article 23 that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State. Paragraph 4 also says that in the case of marriage dissolution, provision shall be made for the necessary protection of any children. Article 24 specifies even more clearly that every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State. Paragraph 2 provides that every child shall be registered immediately after birth and shall have a name. Paragraph 3 provides that every child has the right to acquire a nationality.

Deputy President, apart from the International Covenant on Civil and Political Rights, there are also other international conventions that expound on

children's basic rights. In 1994, Hong Kong became a signatory to the United Nations Convention on the Rights of the Child (the Convention), which specifies that all States Parties and regions, including the SAR Government, have the duty to ensure the implementation of the responsibilities spelt out in the Convention. Since the SAR Government has the duty to implement the responsibilities spelt out in these international conventions, it should take a series of legislative measures, just as it did when it signed the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Under the CEDAW, the Government established the Equal Opportunities Commission (EOC) and the Women's Commission (WC) to undertake work relating to the protection of women through these two commissions. However, some people may think that the results of the work undertaken by the EOC and the WC are unremarkable, so is it necessary to establish a new commission for another social group? Some people even hold that in the policy address delivered by the Chief Executive last year, the Chief Executive proposed the establishment of an international council and this proposal is in fact even more desirable. However, we think that such a view is not holistic. First of all, we have to know that at present, the status of these two commissions is not high within the government framework. In particular, the EOC answers only to the Home Affairs Bureau, whereas the WC is only an advisory body under the Health, Welfare and Food Bureau. In the public's view, their performance has only been average. In particular, with regard to the EOC, with the departure of its former chairperson, Ms Anna WU, its work has seen little development and its role, status and recognition by society are all in gradual decline. As regards the WC, since it is a non-statutory body that undertakes publicity and education in an advisory capacity, it has accomplished little in respect of policy study and promotion and in its work relating to gender mainstreaming, which is a much discussed topic of late.

Ever since the Chief Executive proposed the replacement of the existing commissions by the Family Council in last year's policy address, it seems the work of these commissions have even come to a standstill. In fact, apart from good leadership, whether the work of a commission established for a certain social group is effective or not depends to a large extent on its status. The performance of the WC is unremarkable precisely because its status is not high, and it is not totally independent of the Government. As a result, its greatest achievement in all these years is the provision of additional washrooms to women in shopping malls. I do not mean that this is something not very desirable, however, the WC has really been unable to meet the demands of society for equal rights.

Therefore, since the social awareness of the protection of children's rights is rising, we should establish a commission to specifically handle children affairs. This organization should not be purely advisory in nature but should have real power founded on a separate piece of legislation, so that it can become a tiger that can really bite. By conferring power on it by way of legislation, the Commission on Children will become a statutory body and anyone who refuses to co-operate with it, including government departments and officers or members of the public who refuse to assist in investigation or provide background information, will be sanctioned one way or another. Only in this way can it be ensured that the co-operation between this organization and the Government will be smooth and free of obstruction.

In addition, the Commission on Children should not be subordinate to any government department and it should report to the Chief Executive and the Legislative Council long term or regularly. Only in this way can it be ensured that the decisions made by the Commission on Children can be enforced, and at the same time, the public can also monitor its work, so that the accountability system will be more effective.

In addition, I wish to propose here that the Commission on Children should be empowered to carry out assessments on the implications of legislation and policies proposed by the Government just like the assessments on environmental impact. The assessments will focus on whether the policies and legislation proposed by the Government in this regard will have any implication on children in particular and if so, how it should be countered or ameliorated. The Government's policies and legislation on education, environmental protection or transport all have profound implications on children actually. I think this is an issue that the Government must study and address as soon as possible.

Deputy President, just as I said at the beginning, children are an important social group and they are very important to both the world and various societies because when we look at the children, we are in fact looking at the future of society. If we do not invest as much as we can now, we cannot possibly expect any substantial progress of society over the longer term in future. In this regard, I hope the SAR Government will accept and fulfil its responsibilities under the international conventions by establishing a Commission on Children. I support Dr Fernando CHEUNG's motion.

MR ALBERT HO (in Cantonese): Deputy President, before the reunification, the United Nations Committee tasked with matters relating to the United Nations Convention on the Rights of the Child (the Convention) pointed out that there were inadequate measures in Hong Kong to ensure that the Convention was effectively and fully implemented. In January 2002, this Council passed a motion concerning the Convention sponsored by Ms Cyd HO at that time to demand that a commission be established to implement the Convention. Unfortunately, so far, the Government has not given any response and this is disappointing.

We all know that at present, there is a commission dedicated to youth affairs in Hong Kong. For the elderly, there is an Elderly Commission and there is also a Women's Commission. I really do not understand the reason for not establishing a Commission on Children.

As we all know, under the existing structure, the Social Welfare Department is responsible for welfare policies, the Education Department is responsible for the education of children, the Hospital Authority is responsible for children's health and the Home Affairs Bureau is responsible for overall responses as well as the submission and preparation of reports concerning the implementation of the Convention. However, is there any commissioner or officer specifically tasked with the overall and integrated formulation of policies on children's rights and welfare? How can the overall development and developmental needs of 1.3 million children be catered to? We think that the establishment of a Commission on Children should brook no delay. The Commission should devote its attention to children's rights, and it should also investigate and follow up complaints about the violation of children's rights. If there are child fatalities due to unnatural causes or instances of child abuse, it should also investigate these cases. The Commission must also step up public and school education to enhance the public's understanding of children's rights.

Deputy President, on the one hand, a Commission on Children will enable us to implement the Convention more effectively and fully, and on the other, it can also address some often overlooked or neglected problems relating to children. Children are individuals with dignity and their own thinking. Even as we provide food and clothing to them, we also have to care about whether they have received appropriate care, attention and protection and whether they are developing and growing up in a healthy environment. Moreover, we have to ensure that they are free from the threats and harm of violence. The

Convention stipulates that States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence while in the care of any person who has the care of the child.

However, according to a study on domestic violence conducted by the University of Hong Kong in 2005, of 2 000 children, 29% had been subjected to serious corporal punishment by their parents and the Against Child Abuse also published the results of a questionnaire survey conducted earlier on, which found that 82% of the parents had administered corporal punishment to their children before. Deputy President, this is perhaps the traditional Chinese way of child rearing and the mentality of a lot of parents is that they want their children to become a better person and they are concerned about the future of their children, however, they have adopted an inappropriate method in child rearing. Our society has the responsibility to provide suitable education and assistance to these parents.

I believe Members will all remember that last year, a child was unfortunately put into a trunk by his parents as a punishment for disobedience and in the end, he died of suffocation. Later on, it was found during the investigation of this case that the mother had also had the same experience in her childhood. Therefore, there is a need for early intervention. Had the child's mother, that is, the defendant who was sentenced to imprisonment, received therapy or counselling at an early opportunity, this tragedy would not have happened. In another case, an eight-year-old girl committed suicide by jumping from height because she could not stand the severe corporal punishment inflicted by her mother. We believe that we should attach importance to each case. The life of every individual is precious. Without a Commission on Children, since there are many government departments, children's rights are often overlooked because often, one cannot tell which department is in charge of this area.

In addition, we all hope that all children can have a happy childhood. In the past, this was also our hope. This is also the hope of everyone and our generation was no exception. However, unfortunately, we find that in Hong Kong, the members of many families are separated because there are many instances of cross-boundary marriages. As a result, parents are separated and their children have to grow up in an imperfect family. Recently, a survey found that 60% of the children yearn for a happy family and hope that their family

members are not separated. At present, many children in Hong Kong are still holding temporary permits. We believe that a solution should be found and various measures adopted to bring about family reunions by all means. We do not want to see children placed under foster care or the care of organizations. Not only will this be a waste of resources, these children will also be unable to receive proper care and attention. This will have an adverse and irreparable effect on them.

Lastly, I also wish to talk about the problem of poverty. At present, there are 370 000 children living in poverty and in particular, they can be found in areas of poorer economic conditions, such as Tin Shui Wai, Tuen Mun and Sham Shui Po in West Kowloon. I think these children should be assisted as far as possible in extricating themselves from poverty and we also hope that an office in charge of matters relating to maintenance can be established. This matter has been discussed for a long time and I hope that the hearts of children in these families with marital problems will not be scarred as a result of one party claiming maintenance from the other. Thank you.

MISS CHAN YUEN-HAN (in Cantonese): Today's motion requests that the Government establish a Commission on Children and formulate a comprehensive policy on children, as well as considering children's perspectives fully when formulating measures. Apart from Dr Fernando CHEUNG, who made such appeals by moving this motion today, all along, the public have in fact also been discussing such a proposal. Therefore, I believe that it is necessary for Dr CHEUNG to put forward this proposal in the legislature today, so that a debate can be conducted on it because as many Honourable colleagues have said, of the 7 million people now in Hong Kong, about 20% are children below 18 years of age. However, there is not any relevant committee or advisory body for them, nor is there a set of coherent policies on children.

Often, in the Panel on Welfare Services of the Legislative Council, we find that issues relating to children are raised in various panels, for example, the problem of drug abuse is dealt with by the Panel on Security, however, it is in fact also relevant to the Panel on Welfare Services because youth issues fall within the scope of that Panel. In other words, we find that many youth-related problems have emerged in society, however, when the Government deals with these issues, strictly speaking, it always deals with them in a piecemeal approach by waiting until something has happened before taking actions, so the authorities lack a comprehensive policy.

Of course, I do not wish to make comparisons. Although some Honourable colleagues said comparisons have to be made, I will not do so. They said that, for example, there are an Elderly Commission, a Women's Commission and a Commission on Youth in Hong Kong. However, I do not want to make this sort of comparison. In fact, the Government should have a policy to establish commissions for social groups of various ages and genders living in this society. I think there is such a need and this is also a hallmark of a civilized society. However, there is no such policy in Hong Kong and even though we, be it members of the public or this legislature, have talked about this for a long time, such a policy is still absent.

If we look back, after the reunification, the SAR Government often says that children are the future pillar of society. If the Government attaches such great importance to children, it should let all children living in Hong Kong enjoy equal opportunities in their development, in such areas as body, mind and education. However, one can see that the Government is in fact all words but no action. Just as Mr WONG Kwok-hing and other Honourable colleagues have said, children living in affluent families or in families with the means to take care of them fare very differently compared with children living in poor families. The former can take lessons in ballet dancing and piano playing and have computers in their homes. The computer may just be a common tool at home, however, poor families cannot afford to buy computers for their children, still less give them the opportunity to access the Internet.

Therefore, if all children in a society start from the same line, we will find that they do not have equal opportunities. This has a great impact on the development and growth of many children. In this regard, the Government has also conducted a statistical survey. In 2006, there were 380 000 children under 18 years of age living below the poverty line and they accounted for 28.6% of all the children in Hong Kong. In other words, there are three poor children out of 10 in Hong Kong. However, did the Government do anything afterwards? No, the Government only handed over the problem to the Commission on Poverty — sorry, Ms LI Fung-ying and Mr Frederick FUNG — I do not mean that they did not have any discussion afterwards, however, they discussed some of the problems but ignored others. That is why I say the Government has not done anything.

Article 3 of the United Nations Convention on the Rights of the Child says, "States Parties undertake to ensure the child such protection and care as is

necessary for his or her well-being". Obviously, we have not responded to these problems, nor have we responded to the problems revealed by the figures compiled by the Census and Statistics Department. Therefore, I think the Government should look at the surveys conducted by civic groups. For example, the Society for Community Organization has conducted a series of surveys on the areas that the Government has not taken any action. The results of their surveys indicate that 85% of children in low-income families have to skimp food and clothing in order to pay for their tuition, textbooks and stationery. They even have to borrow money and 55% of the children in poor families have to be scavengers, for example, to help their mothers cart rubbish or scavenge items for sale, so as to resolve with their financial problems.

Therefore, since we find that such is the reality at present, if the Government still does not address this problem, how can it enable our children to start from the same line of equal opportunities, undergo good development and compete with others? This really warrants consideration by society as a whole.

In addition, I wish to talk about the issue of child protection. In the last two Legislative Council, a subcommittee was established to study the issue of domestic violence. We established this subcommittee because all along the Government had failed to address the problem of domestic violence. If my memory is correct, the subcommittee will continue operation in the third term. Deputy President, in this subcommittee, we found that Article 19 of the Convention on the Rights of the Child states that "States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse". On this point, if one says that our Government has not taken any action, it seems this is not accurate as the Government has introduced some protection in legislation, however, it is very unfortunate that this problem is tackled by various departments in a fragmented way. When cases were referred to this subcommittee responsible for studying the problem of domestic violence, Members found that various departments had adopted different approaches. In society, particularly after 1997, when the problems of working poverty, disparity of wealth or families in straitened financial circumstances emerged, the most powerless group — children — would become the object of letting out pent-up emotions. In the meetings of the subcommittee on domestic violence or the Panel on Welfare Services, many groups have expressed many views and cited many examples. Last year, there were 1 255 cases of child abuse, a rise of

4.1% year on year and the Government knows about all this. We have several Members who are in charge of the domain of social welfare and we have talked so much that we are becoming quite exasperated. Therefore, since the Secretary is not present today, I think Dr Fernando CHEUNG will take issue with this because the problem that we have been talking about is precisely the failure of the Government to take the problem of child abuse seriously.

Finally, I wish to say to the Secretary IP, whom I know very well, that I wish to lobby the Government. To cut up the problems relating to children and let various Policy Bureaux and departments of the Government deal with them is desirable if the Government wants to cite this as an excuse in its tactic to fob us off. However, as a responsible Government, you must group the problems together when dealing with them no matter how and one will see the advantages only if a commission is established for this purpose. I believe today's motion will definitely be passed. After its passage, if the Government still does not set about addressing the problem, this will become a major issue for the new administration, one which we will pursue unrelentingly. (*The buzzer sounded*)..... I support the motion. Thank you, Deputy President.

MS LI FUNG-YING (in Cantonese): Deputy President, children are the pillar of society in the future and the Government has the responsibility to ensure that they will not get into harm's way and to enable them to grow up healthily. I believe no one would object to this broad principle. However, how can the needs of children be reflected at the level of formulating actual policies? The establishment of a commission dedicated to children's affairs should be a most desirable approach. However, the circumstances in Hong Kong are rather special. We have established many commissions, as mentioned by many Honourable colleagues. There are the Elderly Commission, Commission on Youth, Women's Commission (WC), Commission on Poverty, and so on. By establishing various kinds of commissions, it looks as though there are organizations to deal with just any problem, however, in reality, the problems continue to exist and no problem has been solved.

I am a member of the Commission on Poverty. After joining the Commission on Poverty, just like many other members, I did my utmost in putting forward my views on alleviating the problem of poverty in Hong Kong. Now, the Commission on Poverty is about to be dissolved, however, may I ask

how many members of the public living in straitened circumstances feel that the work of the Commission on Poverty has made improvements to their lives? I am afraid hardly anyone feels this way. Today's motion also reminds me of the WC. I have no intention of calling into doubt the work of the WC. In fact, the WC launched quite a number of services, for example, the Capacity Building Mileage Programme which enables women to make good use of their leisure time. However, on some crucial and more pressing woman issues, for example, retirement protection for housewives at old age, the long working hours and low wages of working women and the strenuous need to take care of their family concurrently, the WC appears to be incapable of doing anything. In fact, be it the Commission on Poverty or the WC, the problem cannot be attributed to these commissions but to the Government's philosophy of governance. As long as the Government does not change its mindset of attaching importance to the market but little importance to people in its governance, it will not be able to change the reality of the overall social environment being unfavourable to the disadvantaged social groups no matter how many more commissions it will establish.

This is also the major consideration that I have regarding today's motion. Of course, I have no intention of opposing the establishment of a Commission on Children, however, I understand that the Government intends to establish a multi-functional and comprehensive Family Council which will be in charge of the policies to provide support to the family. Women and children are both central issues in a policy on the family, so if the Government wants to establish a Family Council, it will not be possible to evade the issues relating to these two groups. There are some common ground between the policy on women and that on children but each group also has their special needs, for example, the balance between family and work for women, and for children, the need for care and education. I think there are merits and demerits in tasking a multi-functional committee to deal with these issues or establishing separate commissions with specific responsibilities, so society can have further discussion on this.

Deputy President, to enhance the rights of children, it is imperative that the Government must be sincere in hoping to improve the situation of families in Hong Kong, particularly to families at the grassroots level facing difficulties. Otherwise, it will be useless no matter how many more commissions are established.

MR LEUNG YIU-CHUNG (in Cantonese): Deputy President, according to the latest figures of the Census and Statistics Department, the number of children and young people under 18 years of age stands at 1.37 million and, as Miss CHAN Yuen-han said just now, this figure accounts for about 25% of the population in Hong Kong.

No matter what the number of people is, the most important thing is we must understand that children and young people are the future of our society and there is really a need for us to look at things from their perspective and do something for them.

The motion moved by Dr Fernando CHEUNG today relates to the question of whether the Government should attach importance to the requirements of the United Nations Convention on the Rights of the Child (the Convention) on State Parties and fulfill the responsibilities required by the Convention. In fact, we can see that the basic right of these 1.37 million children and young people, as set out in the Convention, should be that "the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding".

If we look back at history, we can see that both in the Geneva Declaration of the Rights of the Child drawn up in 1924 and the Declaration of the Rights of the Child adopted by the United Nations General Assembly on 20 November 1959, it is affirmed that children require special care and protection by society. Three decades later, on 20 November 1989, the United Nations took this matter to a new level by adopting the Convention. This reflects the great importance that the whole world attaches to the basic rights and needs of children and the provisions of the Convention have also won global recognition and are regarded as important principles.

Deputy President, Article 43 of the Convention stipulates that State Parties shall establish a Committee on the Rights of the Child. I believe that this Committee on the Rights of the Child is more or less the same as that mentioned by Dr Fernando CHEUNG, that is, it is necessary to have a commission dedicated to children's affairs. The Convention requests State Parties to fulfil and assume such an obligation.

The Convention also stipulated the composition of this Committee on the Rights of the Child. It shall consist of 18 experts of high moral standing and

recognized competence in the field covered by this Convention. The members of the Committee shall be elected by States Parties from among their nationals and shall serve in their personal capacity. It is in fact stated clearly in the Convention that such a committee must be established and the way in which it should be formed is also stipulated clearly. However, it is unfortunate that after the reunification in 1997, although Hong Kong is one of the regions to which the Convention is applicable, so far, I cannot hear the sound of anything approaching and no noise whatsoever can be heard. I also have no idea whether a Committee on the Rights of the Child will come into being or not.

Mr LEE Cheuk-yan said just now that there should be no controversy over this, and I also believe this to be the case because the motion today is not binding, so I have no doubt that this motion will surely be passed. However, experience tells me that if something has the likelihood of becoming the law in the future, the sailing will not be so plain.

However, no matter what, the aim of our debate today is to set a direction. It is specified clearly in the Convention that a Committee on the Rights of the Child has to be established, so why does our Government not heed this? Sometimes, I am very concerned about what our official representatives would do when attending meetings of the United Nations. We are required to do so — unless the official concerned is very thick-skinned, otherwise, how is he going to account for the failure to meet the requirement?

Concerning the concept of a Committee on the Rights of the Child, apart from the need to establish a committee, what is even more important is that the Convention states that State Parties should be convinced that "the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance". However, Deputy President, it is a shame that we cannot help but raise another issue when it comes to this point, which is the issue of long working hours and low wages.

If we are facing the problem of long working hours and low wages, how can we enable children to grow up in a happy environment and afford them necessary protection and care? Just now, many Honourable colleagues have cited a number of examples, but they are all unfortunate examples. The children in those examples all lacked family care. Members can see that merely establishing a Committee on the Rights of the Child may not be adequate and many complementary measures are called for. Among them, I believe the issues of working hours and wages must be addressed.

(THE PRESIDENT resumed the Chair)

Apart from dealing with the issues of working hours and wages, just now, some Honourable colleagues also pointed out that the New Dawn Project posed problems. At present, over 100 000 children in families receiving CSSA do not meet the requirements of the Convention. Why? Because the Convention hopes that they can attain "the full and harmonious development of their personality". However, we can see that children in families receiving CSSA are facing a problem and that is, even the father or mother in single-parent families are forced to go out to work. May I ask how they can attain full and harmonious development? How can they receive care and attention? It is very worthwhile for us to ponder these issues.

In addition, apart from local children, it is also necessary to talk about children of ethnic minorities. I think it is necessary to address the problem of language and culture and the Convention also mentions this aspect. Therefore, I hope the Government will address these issues.

Finally, I have to say that even if we really establish a Committee on the Rights of the Child, I am concerned that it will just be like the other 400-odd statutory advisory bodies, such as the Labour Advisory Board, that all engage in empty talks, do not have any power and cannot do anything. With only form but no substance, it will waste taxpayers' money and give us false expectations. Therefore, the last point that I wish to make is that while I certainly support Dr Fernando CHEUNG's motion, I hope the Government will do something in earnest instead of just making empty gestures.

I so submit, President.

MISS TAM HEUNG-MAN (in Cantonese): Madam President, two months ago, the Against Child Abuse published a survey which found that 83% of the parents had administered corporal punishment to their children before. At present, there is legislation prohibiting teachers from administering corporal punishment to their students — last month, a tutor who hit a nine-year-old student with a ruler was sentenced by the Court to a fine of \$2,000 and a prison term of three months. However, there is no law banning parents from inflicting corporal punishment on their children. In view of this, the Against Child Abuse

proposed that the Government legislate against the imposition of corporal punishment by parents and establish a Commission on Children.

In 2005-2006, the Against Child Abuse received 800 cases of request for assistance and among them, 360 cases involved child abuse, sexual abuse and the neglect of children. Some Honourable colleagues have also cited quite a number of examples just now. The figures are probably just the tip of the iceberg and there are perhaps more instances or cases that are not reported. Therefore, there is a need to establish a Commission on Children. This Commission will be responsible for advising the Chief Executive on children's affairs and proposing policies on protecting children's rights.

In fact, it is not just the Against Child Abuse or the Civic Party that have made the request to establish a Commission on Children. More than 60 social organizations and professionals concerned about children's problems have signed a joint petition to urge the Chief Executive to establish a Commission on Children as soon as possible.

In the policy address delivered by the Chief Executive last year, it is said that a high-level Family Council will be established to set a direction for family policies in Hong Kong. It is suggested that the Family Council should be responsible for handling matters such as children's rights. We oppose such an approach. We hope that there will be an independent commission dedicated to the policies on children and that it will make recommendations on the resources and services required by children in education, health care and social welfare in a comprehensive manner. This Commission on Children will also study and analyse the situation of children in Hong Kong and review the existing legislation, then make recommendations on law reform with a view to furthering the protection of children's rights.

Often, as children do not know how to express their thoughts and do not know how to advance their rights, they are neglected and even oppressed by adults. Madam President, the Commission on Youth is responsible for studying problems relating to young people in Hong Kong. This Commission was established 17 years ago. The Elderly Commission is responsible for studying problems relating to the elderly and it was established 10 years ago. The Women's Commission is responsible for studying problems relating to women and it was established six years ago. It is only in respect of children, who are the masters of society in the future, that the Government has all along refused to

establish a commission for them. I wish to ask the officials present today (it is a pity that the Secretary for Home Affairs is not present): Is the Government riding roughshod over children? Are we riding roughshod over them because they do not understand a lot of things and do not know how to advance their rights? Is this the case?

If we look at this matter from another perspective, can we take the reluctance of the Government to establish a Commission on Children to mean that the existing Commission on Youth, Women's Commission and Elderly Commission have done little throughout all those years and cannot perform their functions and this is why the Government refuses to establish a Commission on Children? Is this the reason? I hope I can hear the public officer give an explanation when it is his turn to reply.

However, I hope I will not hear them say later that the Family Council will also be responsible for children's rights because this will not be an effective approach at all. Although a child is the youngest member in a family who has the least say, he has the greatest need for adults to listen to him. Therefore, we need a Commissioner for Children well-versed in children's needs and psychology to lead a group of professionals equally concerned about child development to form a Commission on Children and co-ordinate various government departments and private or non-government organizations in the quest for ways to improve policies and legislation on children's rights and promote various kinds of services conducive to child development.

Of course, I am pleased to see that the Government is prepared to commit \$300 million to establishing a Child Development Fund. However, the use of this sum of money is still open to discussion. The funding and services provided by the Government to children have always been paltry and fragmented. The Government should formulate a comprehensive package of policies on children to meet the needs of children in growth.

Regarding children with intellectual disabilities, autism or who require special education and assistance, it is all the more necessary for the Government to formulate policies and provide adequate resources to help them in their growth. If the Government can help these children with special needs, in fact, this will also alleviate the pressure on other members of the family.

Separately, there has been a significant increase in the number of single-parent families in the past decade. Many children in single-parent

families need our care. If the Government is really concerned about the future pillars of society, that is, our children, it should listen to and take on board public opinion quickly and establish a Commission on Children.

With these remarks, Madam President, I support the motion moved by Dr Fernando CHEUNG. Thank you, Madam President.

MR FREDERICK FUNG (in Cantonese): President, last Friday, that is, 1 June, was the International Children's Day and on the same day, the Commission on Poverty held its last meeting. I wonder if that was a coincidence or an ironical gift presented deliberately by the Government on Children's Day to children living in poverty.

Although the work of the Commission on Poverty has drawn to a close, the problem of poverty has not been solved. The latest information indicates that there are 80 000 poor families more compared with a decade ago and the number has nearly doubled compared with that of a decade ago. This shows that the Government in fact lacks the resolve in tackling the problem of poverty. When parents cannot get enough food and clothing even for themselves, how can we expect them to take care of their children properly?

Furthermore, poverty is only one problem among a host of family problems. Young women married to old men, the cultural differences of new migrants, parents on two-way permits, long working hours, the need to work across the boundary, and so on, are increasingly common situations encountered by grass-roots families in Hong Kong. I come into contact with such families in my district frequently and most of them have to bear a heavy pressure of living. Family relationships are strained and family disputes occur easily. Sometimes, this even gives rise to domestic violence and children often become the victims of such incidents.

It is a shame that not only has the Government failed to provide greater support to these families, on the contrary, by tightening the relevant policies gradually, for example, the policy on kindergarten fee remission, it has rendered it impossible for many parents to make use of whole-day child care services. Moreover, by insisting on the introduction of the New Dawn Project and forcing parents of families at the grass-roots level to go out to work, the Government has disregarded the needs of single-parent families and as a result, instances of

parents being compelled to maltreat or neglect their children have occurred. It is unacceptable for ill-conceived policies to endanger or lead to the death of children.

In fact, the international community has requested various countries to establish an independent and effective mechanism centring on children to examine the loopholes of their existing policies in protecting children's rights. As early as 1989, the United Nations adopted the Convention on the Rights of the Child (the Convention) and in 1994, the Government of the United Kingdom extended the application of the Convention to Hong Kong, whereas China also became a State Party in as early as 1991. Article 43 of the Convention states that "For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child".

Many Western countries have formulated policies on children and allocated resources accordingly. Not only did Hong Kong start late, its legislation in this regard is also backward. Even the United Nations Committee on the Rights of the Child and a number of civic organizations in Hong Kong have demanded many times that the Hong Kong Government establish an independent Commission on Children. However, for many years, the Government has tried to meet the requirements of the Convention only through the provision of services for children. Yet it has neither formulated nor implemented any objective relating to children's rights of survival, development, protection and participation. With the lack of a mechanism to truly represent children, the efforts on protecting children have come to a standstill in Hong Kong.

In this year alone, a number of news reports that involved children has aroused social concern. For example, a 15-year-old girl was forced into prostitution in order to help her father repay his debts and a mother left her young sons in the gap between the door and the metal gate of their home while she was having fun on the Mainland. These two cases are both most shocking. How can our society, which is so affluent, tolerate such incidents? Why did this kind of incidents happen? In fact, they showed that some child abuse cases had to do with parents who failed to perform their duties. The Against Child Abuse published the results of a survey two months ago and revealed that over 80% of the interviewed parents had administered corporal punishment to their children. However, at the same time, over 80% of the students interviewed

believed that corporal punishment was physically and psychologically damaging to them and affected parent-child relationship. Half of them also said that since they had been subjected to corporal punishment, they would resort to violence to express their emotions.

In fact, children are not the appendages of adults and they should not be the victims of domestic violence or objects for their parents to vent their spleens. Children also have their own rights and they must have a representative with legal status to speak for them and advance their rights.

President, recently, the mass media has been letting out news that the next administration plans to establish a Family Council instead of a Commission on Children. The Hong Kong Association for Democracy and People's Livelihood (ADPL) and I hold that a Family Council cannot — and I stress "cannot" — replace a Commission on Children because there are different members in a family, children are separate individuals and they should not be adults' appendages. Children's affairs should be dealt with by a separate platform established for the purpose and the scope of family affairs is very broad. If children's affairs are also put under the charge a Family Council, this will have the effect of concealing children's affairs in various kinds of family problems, and as a result of this, immediate and effective follow-up action cannot be taken on children's affairs.

The ADPL and I are of the view that the establishment of a Commission on Children brooks no delay. This measure can ensure that the authorities will implement the provisions of the Convention, give priority to children when examining the shortcomings in existing policies and enhance the educational efforts on the rights of children.

With these remarks, President, I support Dr Fernando CHEUNG's motion.

MISS CHOY SO-YUK (in Cantonese): President, in traditional Chinese society, the most important thing for a so-called "well-behaved" kid was to be obedient. When an adult said something, a child should by no means talk back, otherwise, it was likely he would be treated to a beating with a cane. However, in the 21st century, in the beliefs of modern society, children are no longer like play dough that other people can shape to their liking but entities with

independent thinking. They have their own thinking and feelings and have the right to be respected. Our responsibility is to establish a system to ensure that children's rights of survival, of being protected and of development will not be curtailed for any reason.

As early as 1994, the United Nations Convention on the Rights of the Child (the Convention) became applicable to Hong Kong. Generally speaking, the DAB is of the view that the existing legislation, practices and policies in Hong Kong are basically compatible with the provisions of the Convention as applied to Hong Kong. In fact, when the Committee concerned in the United Nations considered the report submitted by Hong Kong, it said that a number of measures taken by the Hong Kong Government to protect children were acceptable. However, it does not mean that the present state of affairs is already perfect and it is no longer necessary to conduct any review or make any improvement. In particular, given that the policy areas involved are so extensive and the subject involved so important, it is all the more necessary for us not to take this matter lightly.

In view of this, the DAB fully supports the United Nations' recommendation that a Commission on Children be established in Hong Kong to implement the obligations specified by the Convention and oversee the fulfillment of these obligations. We believe that putting in place such a framework will be conducive to the establishment of a healthy environment, so that children can have ample room for development in addition to receiving the protection to which they are entitled.

President, since the policy areas covered by a Commission on Children are very broad, today, I wish to comment in particular on the work in two areas, namely, child pornography and child care services.

I believe Members still remember that last year, a media group, citing press freedom as the pretext, tested the moral bottomline of society by publishing on the cover of its magazine a wet-shirt photograph of a 14-year-old female singer. This incident caused a furore in society, however, the most unbelievable thing is that the media group concerned subsequently flouted conventions and rules repeatedly and displayed an attitude that seems to say, "What can you do about it?" Apart from exposing the inadequate deterrent effect of the existing legal system, this incident also revealed that the regime for protecting children is still not well-established. If this situation does not

change, given the tremendous commercial inducements, how can we stamp out the prospect of people continuing to flout moral standards and carrying on with such unscrupulous practices of exploiting children like milch cows?

We can make reference to overseas experience in our quest for a solution. In New Zealand, a marque of fashionable clothes recruited some children to pose as models in some photos for its underwear and briefs. Apparently, this matter did not involve any pornographic element, however, on receiving complaints, the Children's Commissioner there believed that this would make children exhibit their bodies unnecessarily, therefore, he exercised his power to order the withdrawal of the photos. If we look at Hong Kong, at present, there is not any Commission on Children, still less a children's commissioner dedicated to the protection of children. In the event that the same problem occurs, who can protect the rights of our next generation effectively and immediately?

In this connection, the DAB urges the Government to model on the concept of "environmental scan" and introduce "children's right scan", so that an ongoing assessment mechanism can be established to ensure that the Government has taken into full account children's rights when formulating policies and drafting legislation. To put into practice this concept, first of all, the Government has to draw up a list for children's right scan for internal use to assist government officers in considering the needs of children and incorporate children's perspective into the formulation and implementation of policies and legislation, so that the concept of children's rights can become really commonplace.

To cite a very simple example, in many families, both parents have to go out to work, so the demand for child care services is very keen. However, at present, the Government just lets the situation in this regard develop naturally and, as a result, child care services are inadequate and the fees are very high. The effects of inadequate care services on children's physical and mental development are of course profound. In view of this, with a view to protecting children, the authorities should boost existing child care and after-school care services by extending their service hours and perhaps even by providing fee subsidy to low-income families.

President, since the Government has established such organizations as the Women's Commission, Elderly Commission, Commission on Poverty and Equal Opportunities Commission to demonstrate the importance it attaches to the

relevant policy areas, I urge the Government to establish a Commission on Children as soon as possible to further the implementation of the Convention in Hong Kong.

Of course, the work in this regard cannot be accomplished merely by establishing a commission. A more important and necessary task is to enable the public to gain a good understanding of the details of the Convention. Therefore, the DAB urges the Government to design a relevant curriculum for schools and at the same time, expand the publicity campaign to cover parents. As regards professionals serving children, the Government must provide adequate and systematic training to deepen their understanding of children's rights.

Meanwhile, we also notice and are concerned about the weakening family cohesion in recent years. Coupled with the frequent occurrence of incidents of domestic violence, a lot of family crises are lurking. In view of this, we urge the Government to study the establishment of a Family Council, which should be accorded a higher status, so as to provide all-round protection to every member of the family.

I so submit, President.

MS AUDREY EU (in Cantonese): I am very pleased to have this opportunity to support this motion brimming with love moved by Dr Fernando CHEUNG of the Civic Party.

President, today, many Honourable colleagues have said in their speeches that children are our future. However, I wish to point out that when I came into the Legislative Council Building on Wednesday, a group of children outside handed us some documents and stickers and one of them was very meaningful. It was in English and I wish to read out one line in particular, "We are not only the future, we are also the present". This is in fact a very apt reminder. We often say that they are the future, however, if we want to plan and create a future for them, there are in fact a lot of things that we have to do now.

The question proposed by Dr Fernando CHEUNG today is to establish a Commission on Children. In fact, this has the extensive support of society. Dr Fernando CHEUNG pointed out in his speech that many groups supported this demand and there were also many coalitions. One of the advocates is the

Civic Party. At the international level, we only have to browse the Internet to find that there are Children's Commissions in many places around the world. I believe the children in Hong Kong will be very envious if they know that.

President, regarding the legal dimension, need I say more. Many Honourable colleagues have talked about it, Mr Ronny TONG has cited everything and Dr YEUNG Sum has also mentioned it. Many other Honourable colleagues have mentioned that we have the international obligation to implement the Convention on the Rights of the Child. Dr Fernando CHEUNG also pointed out in his speech that the United Nations had said before that there was a need for Hong Kong to establish a Commission on Children. Therefore, as a world city crowing about its rule of law, I think the SAR Government ought to be ashamed of its failure to fulfill its duties and obligations under an international convention all along because the Government has actually made it clear that it would not do so and does not think there is the need to do so. In this regard, I think it is really very difficult for it to explain to the international community or here in the SAR, to Hong Kong people. How can it say on the one hand that ours is a society with the rule of law, but on the other it is not prepared to honour its international obligations?

Perhaps many people may think that this is a legal requirement. However, the social conditions in Hong Kong are quite good and society is very affluent. Everyone considers their children to be precious like jewels and some children are under the attentive care of foreign domestic helpers day and night, just like princes or princesses. They are given all-round care, so why would they still think that something is wanting? First, taking care of children does not just refer to the material dimension. Just as many Honourable colleagues such as Dr Fernando CHEUNG pointed out in their speeches, the families of 24% of the children in Hong Kong are poor and that means one in about every four children lives in poor families. This percentage is not low and in fact, a lot has to be done in this regard.

I think one of the tasks of the Commission on Children is to evaluate in which policy on child care we have failed to think from the perspective of children, or what policies should be implemented if we think from the perspective of children. If we formulate a piece of legislation relating to the impact on children by modelling on the Environmental Impact Assessment Ordinance, I believe many policies will not be able to pass muster. Many Honourable colleagues have talked about the New Dawn Project. It is obviously designed to force single-parents to go out to work in order to be

eligible for the single-parent allowance. The project has been proved a failure and Honourable colleagues of the Legislative Council have pointed out right from the beginning its shortcomings, however, I think that often, on many issues, the Government is worse than children in that it does not mend its ways on hearing other people's advice.

In addition, Dr Fernando CHEUNG also mentioned in his speech that when the mainland wives of many local men gave birth in Hong Kong, they were classified as non-locals instead of eligible persons, so they were required to pay punitive fees and charges before they could give birth to their babies in Hong Kong. In addition, it so transpired that the date of appointment for pre-natal examination was actually set on a day after the expected date of delivery. This is tantamount to discriminating against these pregnant women as much as one can, and as a result, a lot of such mothers were forced to give birth to their babies on the Mainland, so it was not possible for these families to be reunited. Obviously, this will have an impact on the children of Hong Kong people and these children are also affected.

I believe that if we establish a Commission on Children, apart from immigration, it will also be possible to monitor issues relating to children's rights in education and child care in a holistic manner.

In addition, I think some new policies must also be mentioned in particular. Recently, the Children's Council of Hong Kong passed a motion on improving parent-child relationship. The child councilors conducted a survey for this purpose and found that 48% of the respondents communicated with their parents for less than 30 minutes per day — President, I think I also belong to this category — and 68% of the respondents said that their parents' topics of discussion with them mainly evolves round their study. Only less than 20% of the adults would talk about matters relating to emotions, interpersonal relationships and personal growth. President, this is in fact a big problem. In a crucial period of child growth, if parents do not have the opportunity to discuss with their children their interpersonal or emotional problems, it will have great implications on their children's growth.

Another survey shows that the older the children are, the more they feel that their parents do not care about them. If we classify them according to their ages, 30% of the respondents aged between six and 10 said that their parents did not care adequately about them, whereas 50% of the respondents in the two age groups between 11 and 15 years and between 16 to 18 years also held the same

view. Inadequate care from parents has a direct impact on the growth of children and will also harm their confidence.

In view of this, President, we hope that, with the establishment of a Commission on Children, flexi-working hours, paternity leave and other family policies can be implemented. I believe that from the perspective of children, things will change for the better. Thank you, President.

MRS SELINA CHOW (in Cantonese): President, many Honourable colleagues have said that children represent our hopes and the future of society, therefore, we have to create an environment conducive to their healthy growth.

As society is becoming more and more complex, we cannot rely solely on the family to achieve this end. However, the scope and spectrum covered by a policy on children are very extensive and they straddle various bureaux and departments, therefore, it is necessary to put in place a co-ordination mechanism and complementary measures. However, so far, the SAR Government does not have the thinking cap to consider and formulate policies at a macro level and in the perspective of children. This will require professional advice and assistance. In view of this, the Liberal Party supports the establishment of a Commission on Children. This will provide a platform for co-opting experts on this and pooling resources together, as well as drawing on collective wisdom, so as to facilitate focused and in-depth study. Moreover, it can offer professional advice to the Government and help streamline the policies in various areas. As regards the approach to be adopted, one can make reference to the existing Women's Commission and Commission on Youth.

Perhaps due to the fact that children's rights are often related to the family, it is not entirely unjustified for the Government to consider assigning the relevant matters to a Family Council. However, if we think deeper, we will find that a lot of children's affairs may not be related to the family, therefore, an independent framework should be established to study and deal with them from various angles.

President, I am an advisor to the Against Child Abuse, so I know a thing or two about the various problems resulting from child abuse. For example, Dr Fernando CHEUNG mentioned a study on child fatalities due to child abuse,

however, no such study has ever been conducted actually. The group has also discussed this issue with the Government but to no avail. On issues that all of us are concerned about, for example, a register of sex offenders, Members all know that this is a controversial issue and the views on this are divergent. However, have we really made reference to the practices in various parts of the world? As we all know, in the United States, this move is probably criticized as going too far and it is considered that this measure has violated the human rights of those people because nearly the whole list has been uploaded onto the Internet and everything is made public. The practices in Australia and New Zealand strive to strike a balance. Although there are registers, they are kept confidential. However, it is possible to inspect them when necessary. In this way, it is in fact possible to prevent people who intend to commit the same offences from preying on children. It really is necessary for the Government to study this matter in earnest and, as I said just now, it has to show its sincerity by examining how to prevent the occurrence of such unfortunate incidents.

In addition, it is of course necessary to introduce legislation to control child pornography. I know that people concerned about this issue have said that the recent review was inadequate because the effectiveness was low. However, I have enquired about the situation with Ms Miriam LAU. In fact, it is not the case that no review has been conducted, only that the effectiveness still leaves much to be desired. In that case, is it necessary to conduct a further review? This is perhaps necessary. In addition, another rather controversial issue is corporal punishment. I believe that in the past, it gave no cause for criticism to administer corporal punishment to one's own children at home and it was regarded as a tool for disciplining one's children. However, in present-day society, in particular, in an advanced city like Hong Kong, I believe people's view on this has changed. However, is it necessary to make a decision immediately today? It may not be the case. However, I believe we must carry out studies, hold discussions and make a decision as soon as possible.

In addition, is it also necessary to study and discuss other areas such as the education and social life of children? These matters are not confined to the family context. Of course, some people may ask whether the relationship between children and parents will be affected in the long run if we highlight children's rights. For example, will the emphasis on various rights of children such as their rights to privacy, autonomy and confidentiality give children the opportunity to distance themselves from their parents or cause family conflicts

easily, thus affecting harmony and the relationship between them? Sometimes, we can hear of instances of children suing their parents in overseas countries. My children received their education in the United Kingdom. I found that there is the Children Act in the United Kingdom where children have the right to privacy and they can even refuse to let their parents look at their school reports. Will such a situation have any implications? I believe we have to dispel such concerns as far as possible. The method is in fact to tackle this matter through parental concern for their children and by protecting children's rights. I believe this is very important.

I have raised this issue with many child welfare workers and they also told me that this was in fact the most important point, that is, how to approach this matter together with parents. Members all know that child-parent relationship is very important for a harmonious family and so is the family as a fundamental social unit. In fact, parents also wish to receive some assistance and the Commission on Children (*the buzzer sounded*).....

PRESIDENT (in Cantonese): Your speaking time is up.

MS EMILY LAU (in Cantonese): President, I speak in support of Dr Fernando CHEUNG's motion.

Dr Fernando has waited for a long time and so have our friends up there. They thought this motion would be debated on Wednesday but they had to wait until Friday before this debate really took place. Before this, there was a worry that they had to wait until Saturday. I think they are friends from the coalition lobbying for the establishment of a Commission on Children and I welcome them to the Legislative Council. I believe Members will support Dr Fernando CHEUNG's motion unanimously and this motion will be passed smoothly.

However, honestly, President, what does its passage mean? We have wrangled over the Rail Merger Bill for three days. The Bill is legally binding, so we argued over it a lot. This motion is not binding and now, Secretary Stephen IP has come here as a stand-in. This is really deplorable. I really do not know what he will say later. Perhaps he will speak from the angle of economic development and labour.

President, I have a question here and it was asked by Mr Albert CHAN on 29 November last year. It is about a policy on children. I really do not know why Secretary Dr Patrick HO is always so busy. He was also not present on the day that I raised my question. On that day, it was Secretary Denise YUE who replied to it on his behalf. I asked the Secretary if ultimately, a formal policy on children would be formulated and whether a commission would be established, as was also asked by Dr Fernando CHEUNG. However, the answer was so very "succinct" that it could take off on its own because it consisted of only several lines. It mainly said that a good job was being done at the moment and the duties were assumed by various departments, so there was no plan to establish a commission.

We are grateful to Dr Fernando CHEUNG for inviting us to breakfast at the Hong Kong Club next door on 30th of last month and the former Children's Commissioner of New Zealand was also invited. On that occasion, I said to him that the experience of New Zealand was most valuable but in Hong Kong's case, there was one issue that the authorities were unwilling to address and it could be seen from the Secretary's "succinct" reply because it was said therein that many different departments were involved. I also told the former commissioner that there were problems in requiring so many departments to co-ordinate and co-operate with one another because they may not have any communication among them, nor did they like one another, so it was very difficult for them to co-operate. I have seen many such instances in the Public Accounts Committee. They never talk to one another and sometimes, it looked as though they regarded one another as the killer of their father. In view of this, I asked him what could be done.

Another issue is money, which is also a problem. The former commissioner told us, and as mentioned by an Honourable colleague just now, that initially he had hired seven persons with \$3 million and now, 20 persons are hired at a cost of \$12 million, so money is not a problem.

A number of colleagues have engaged in debates for three days and I thought that they would be out of breath from speaking so much by now, yet I found that they still had a lot to say. If Members have a lot to say, that means they are very concerned about and approve of this motion very much. I hope that Secretary Stephen IP — I do not know what the future holds for him but I suppose he will remain in office after 1 July — however, I do not know whether the Resolution concerning the three Secretaries of Departments and 12 Directors

of Bureaux will be passed or not, President, because everyone is very concerned about this and the Finance Committee has not had any discussion on this. Moreover, there is no telling for how long this matter will be debated next week. However, I really hope that Secretary Stephen IP can give me a substantial reply on behalf of the authorities so that everyone will be happy.

Just now, it was said that a lot could be done. The former commissioner told us one thing and that is, the authorities were most afraid of being investigated, therefore, this may discourage the authorities. However, sometimes, if one makes mistakes, one has to be investigated. In fact, I have also told Dr CHEUNG about this point and he asked me what could be done and when the commission could be established. I told him that it depended on whether any wave would come along, that it would only be necessary to ride the wave for this matter to be accomplished. He asked how such a wave could be whipped up. President, insofar as whipping up waves is concerned, people should not turn to me because I am not good at this sort of thing.

However, I think that sometimes, something has to happen first. If Members have looked at the research done by the Secretariat, they will know that in the case of the United Kingdom, a child had a terrible experience because he was abused to death. This incident aroused a great deal of concern and an investigation had to be conducted. I hope it will not take a serious tragedy to arouse concern in Hong Kong. Frankly speaking, it is not the case that no tragedy has ever occurred here, however, will it be necessary for us to wait for an opportune moment? Today, there is a very good foundation and one can no longer say that the legislature does not support this move. However, President, if it is necessary to enact legislation in the future, I do not know if any Member will back-pedal. This is hard to say. Dr CHEUNG, you were not born yesterday. Sometimes, all Members voiced their support for something but when a piece of legislation is tabled before the Legislative Council, some would then say that there were problems. Anyway, just as Mrs Anson CHAN said, let us find our way as we proceed.

President, just now, a reporter said to me outside, "Someone in the State Council has spoken again. After WU Bangguo made some comments, the State Council is again telling people not to go overseas and bad-mouth Hong Kong everywhere.". In fact, many groups have gone to the United Nations before. I hope the State Council will not think that people are bad-mouthing Hong Kong just because a hearing related to the Convention on the Rights of the Child (the

Convention) will be held. However, it is necessary to go there and speak. President, why is it necessary to speak? This is because the authorities are unwilling to implement the Convention, unwilling to do this or that. Therefore, I really do not know what the State Council wants. I am afraid it would be happy only if all Hong Kong people have become dumb. Such matters must be taken to any corner of the world. There are people who are prepared to listen and I encourage everyone to do so.

On that day when Dr CHEUNG invited us all to breakfast, everyone spoke. I know that their coalition is an organization of professionals and some of them do not favour staging a rally and this is somewhat different from our thinking, President. However, I want to say to these professional groups that if they want to wage a struggle, it is very important to secure the support of the legislature. Today, you are successful and I hope all the people who are going to cast their votes will support you, however, it is still necessary to come out and wage a struggle. So, President, when should the struggle be waged? It should be on 1 July.

I hope that all groups that support advancing children's rights and hope that a commission and the post of a commissioner will be created will bring your hearts and banners to the Victoria Park. I will also continue encouraging various groups to convey their views to the United Nations and they should not let the State Council intimidate Hong Kong people. If we have something to say, under the "one country, two systems" principle, we must hold our heads high and continue to speak out.

I support everyone in doing so.

PROF PATRICK LAU (in Cantonese): President, in fact, I was not prepared to speak. Of all the Members whose speeches I have heard, I found that none of them opposes the establishment of a Commission on Children, so I think it will surely be established.

As an architect, I will speak only if I have a brainwave. I am happy that they have given me this "heart", however, when I looked at it closely, I found that it was not a heart for it had five petals. I remember that a friend of mine who is a school principal once asked me what the most important things to children were. He said they were five mental qualities. Firstly, I think that

the members of the Commission on Children to be appointed by the Secretary in future must have commitment. If they lack commitment and do not understand children's needs, they will not do any good.

The second quality is care and concern. If we do not care about children, how can we know what their needs are? President, I myself like children very much. When my daughter was in Canada, I even video-taped how she was burped. In this way, one will know the conditions of one's children and can maintain close relationships with them. If you care about a baby, it can communicate with you through actions, even though it was only a baby.

Third, I think the most important thing is love. If one has no love, how can one know how to care and be concerned about children? This is very important. If the members do not have love and do not understand children, the commission will just be another commission and nothing much can be achieved. What can possibly be achieved?

The fourth quality is devotion. I think everyone wants to be devoted to what they are doing, but to the Commission on Children, what has it got to do? This really warrants examination because we are not children and do not understand their mind. My grandson often says to me, "It isn't fair". I think he has learned this from Ms Emily LAU, who also says, "It isn't fair." To them, everything has to be fair. To them, what does it mean to be fair? To us, what does fairness mean? We have to know this, therefore, one must be devoted if one wants to get this job done.

President, the last quality is sincerity because children are very sincere. They will not say false things, unlike some people who put up a show in this Chamber. They will not do so. In fact, the most important thing is to be able to sense the expression of true feelings by children.

President, it is a pity that you have to assume the role of the President and does not have the opportunity to speak. I think you are most qualified to speak on this question because I have heard the stories about you and learnt how you love your own children and children in general. In fact, it is not just our children but also other children that we care about, and this is why I chose to speak here.

Thank you, President.

MR LEUNG KWOK-HUNG (in Cantonese): President, in fact, what Prof Patrick LAU said just now can be summed up by an ancient Chinese proverb: Expend the love of the young ones in one's family to that of other families.

I do not have any children and I will not have any. However, if we take a look at children in various circumstances in society, people in fortunate circumstances can also notice those in poverty and hardship. Children are a disadvantaged social group because they are incapable of advancing their demands. They do not have any power, including the power to vote, and this is why their demands or circumstances are overlooked.

In fact, how a society treats its children is a yardstick of its morality. The policy of this Government on the treatment of children is very bad indeed. In fact, we have already said here a number of times that due to the poverty of their families, many children cannot even enjoy the rights and happiness to which they are entitled in childhood. In this Chamber, we had a war of words with government officials over the reduction of CSSA payments. In the end, the Government was unconvinced, and the Liberal Party had to launch a campaign to collect spectacles because children on CSSA had neither spectacles nor sneakers.

Since people want to spend less on our CSSA system, and since new migrants are discriminated against, instances of mothers having to raise their children by relying on the CSSA payments for their children have happened. This cannot be tolerated. Action speaks louder than a load of objectives. It is useless to talk. It is only by righting the injustices done to children at present that the Government can establish the basis of its credibility.

Children are mentioned in many works of literature. Hans Christian ANDERSEN's stories include *The Little Match Girl*, which is the story of a girl frozen to death. Of course, the moral it wants to tell may not be poverty *per se*. The story *The Emperor's New Clothes*, in which the emperor was exposed as not wearing any clothes, was also written by him. These two well-known stories represent what happens in our legislature. We put up with the existence of the little match girl and we neglected the child who tells everyone that the emperor is not wearing any clothes. I trust that the story of *Oliver Twist* will not be played out nowadays, however, if Members think further, even though those children do not have to work as child labourers, if they cannot obtain enough resources to promote their own development because they are mired in poverty, they are in fact another group of *Oliver Twists*.

Each time when we discussed the issue of poverty here, we would mention inter-generational poverty. How does inter-generational poverty come about? This is because the grown-ups are poor and as a result, there is a lack of respect and regard for them. There is also another story about children, which is *The Prince and The Pauper* by Mark TWAIN. Do our government officials have any intention of sending their children to poor families for them to get a taste of poverty and let children from poor families live in their homes so that they can see how it is like? Mark TWAIN was really a great essayist who revealed the truth. After the prince had returned to the palace, he introduced reforms because he understood the hardships of the people. Of course, we do not know how he carried out his reforms.

As regards the Commission on Children that we have been talking about today, in fact, the Government has said repeatedly that it would suffice to have a Family Council. What is the use of establishing so many commissions, such as the Women's Commission and a Commission on Children? In fact, from this, one can see the Government's short-sightedness and the lack of respect for the rights of individuals. In modern society, the nuclear family as the basic unit of social fabric has been battered for a long time and can no longer serve as a refuge. I hope the Government can really summon up its resolve to establish a Commission on Children and provide funding to it, so as to do something in earnest. I hope all Members will vote for this motion.

Thank you, President.

MS MIRIAM LAU (in Cantonese): Madam President, I have been very concerned about the children's problems for more than 10 years. I began to be very concerned about the problem of children being left alone at home some 10 to 20 years ago. In recent years, I joined the Law Reform Commission Subcommittee on Guardianship and Custody.

In these some 10 years, I have taken part in many of the motions and Bills on children handled by this Council and I have made it a rule. I can therefore say that I am very concerned about the children's problems. But unfortunately, I can see that now that more than a decade has passed, there are still many problems related to children in Hong Kong. The problem of children left alone at home is still not addressed. We can still see many parents leave their children uncared for at home. There may be some children who climb out of

the balcony and fall down as they try to watch their parents come home. Some of these children are injured and some even lose their precious lives. We can also see some parents lock up their children in some tiny space at home. A recent case is about a child who was caught in the gap between the door and the metal gate because the child's parents had gone out.

We can see that there are many cases of child abuse. The parents may not want to batter their children. Maybe they just want to teach them a lesson, but they have hurt the children unknowingly. Some children are wounded and some even lose their lives. We can also see many children who fail to get any guidance from their parents or relatives when they come across a problem. They may get into a mental or emotional dead-end and some may even take their own lives. We can see some children abuse drugs too. All of these problems still exist. It seems that there is very little that we can do and there are lots of things that we have not yet begun doing. If Hong Kong aspires to becoming an international city, should we not be doing better than this?

Now I would like to come back to the Law Reform Commission Subcommittee on Guardianship and Custody. Work in the Subcommittee began in 1997, then research work was undertaken for some six or seven years, including collection of information on the situation in foreign countries. Finally, from 2003 to 2005, the recommendations of the Subcommittee were accepted by the Law Reform Commission (LRC) and a total of four reports were released by the LRC. Recommendations made by the Subcommittee include those on how greater attention can be paid to children's rights, such as whether or not children's rights would be made a point of focus when their parents divorce and they will not become victims of the fight between their father and mother. We therefore advocate that there should be joint parental responsibility. We also advocate the right to visit the parents, that is, after their parents' divorce, the children should have the right to visit their parents and this right to visit should not be seen as a right of the parents but that of the children. Children should have the right to keep in touch with their father or mother. This is a right they are entitled to enjoy.

Everyone here will approach the problems from the perspective of the children. We have also asked the Courts to respect the views expressed by the children in dealing with the divorce proceedings of their parents. However, during the few years when we undertook the study, we came to notice a big problem and that is, the laws of Hong Kong on children are scattered among

many pieces of legislation and it was very difficult for us to arrive at a comprehensive view. Are our laws comprehensive enough? Are they able to go deep enough to the root of the problems? As the laws on children are fragmentary, we suggest that in the days to come, the Government can consider formulating a comprehensive law on children, *a la* the Children Act of the United Kingdom. We also notice that not just one department but many departments are tasked with handling children's affairs. Policies on children are handled by many departments. Hence there may be conflicts between policies. It would be difficult to formulate a set of sound policies on children which can help them solve their problems. We have submitted our recommendations to the Government and we are waiting for the Government to adopt our recommendations and then formulate policies or introduce laws to the Legislative Council to rectify the current system.

The United Nations Convention on the Rights of the Child was extended to Hong Kong in 1994 to protect the four major rights of the child, namely the right to non-discrimination, giving consideration to a child's best interests — I have just talked about the LRC and that is made the focus of its work — the right to survival and development, and the right to participation in cultural life and the arts, and so on. However, although a lot of commissions are established in Hong Kong through the years, including the Women's Commission, Commission on Youth, Elderly Commission, and so on, there is no commission at the central level on the child to co-ordinate work on studies into problems relating to the child and how these should be handled.

Now the Government says that it is considering the setting up of a Family Commission. It certainly bears some relevance to the child, but we always think that while the problems faced by children can be related to their family, there are also some other problems unique to children. Hence there should be some specific policies to take care of their needs. The problems that need to be handled would therefore straddle many policy areas, including education, health care, welfare, health and leisure. It would be difficult to get such work done if many Policy Bureaux and departments are involved. But if one Policy Bureau is required to handle all the problems related to the child, the establishment of that Policy Bureau may become bloated. Thoughts must be given to addressing this problem and before any solution is found, it would help very much to set up a specific Commission on Children. The Commission can serve as a platform to pool all those who are interested in children's welfare. There we can listen to what the children have to say, the policies they want and what their needs are.

We can also ponder over the direction of policies on children. So we would think that there is a need to set up this Commission on Children.

In the long run, we would still hope that there can be a comprehensive law on children. We also hope that there can be a Policy Bureau or a mechanism in place that can bring various Policy Bureaux together to deal with problems faced by children. We hope very much that after this motion debate, the Government can think seriously about our demand. I believe this motion will be passed today and since there is such a demand from all sectors across society, at least the Government should contemplate whether such a Commission should be set up and if so, how it should be set up.

Thank you, Madam President.

MR ABRAHAM SHEK: Madam President, I thank Fernando for bringing up the motion. This time, I am not only supporting you in spirit, but also in action.

Madam President, I stand to speak for the motion and on behalf of the children. Everyone of us here has once been a child, and we now have children of our own, and some lucky ones have grand children even. Ask ourselves what do we want for our children? We do not want them to be rich, nor to be wealthy. Our answer is very simple. We want them to be healthy, happy, educated and be law-abiding citizens. Those of us who are fortunate enough come from families where care, family warmth, love, sharing and child/parental communication are common features. These children can enjoy a happy childhood in a healthy environment, both physically and spiritually. Think, think of those unfortunate ones. There are many and many of these unfortunate children who are lacking in family care, love, communication and guidance. Why should they be pre-maturally exposed and be subject to adult hardship and society's ills and evils?

In the absence of good families, who would fend for them and protect them? The answer is simple — society, for it is the duty of the Government to protect the weak and the needy. Many of my colleagues today spoke eloquently on the subject and made sterling recommendations to the Administration, hoping that the Administration could hear them. They asked that the Administration listen to expert advice for policy guidance, for what better expertise can there be in respect of children's matter? So, there is an urgent need for the establishment of a Commission on Children. As Audrey rightly said earlier,

how could we give our children a future if they do not even have a present? Mandy lamented that we do not have the pleasure of having York CHOW and Patrick HO. But I must say that we have a better substitute in a better bargain with Stephen, for he is known to be a better listener to the underprivileged, and I know you, Stephen, as a good man and a very good father, love your family and your children. So, children, do not worry, you have a very good representative to relay your wishes to the Chief Executive and he would do it, I am sure.

Children, I know you all have fought hard for a Commission on Children, and your cries are like a voice in the wilderness. Nobody cares, nobody listens. Do not be disheartened or discouraged, just keep up the good work and have faith in what you are doing. We all care and do have faith in you people, for you are our future.

As I said earlier, I would speak for you and there is no better way to speak on your behalf than to read a paragraph of your letter which you have addressed to each and every Member of this Council. I would like to read out this letter, the second paragraph is so well written, every word comes from the heart of the 1.3 million children, in particular, their wish of having a Commission on Children. If I may quote this second paragraph of this letter:

"We are not protestors, chanting slogans on the streets. We have used various platforms to negotiate with the Government, Patrick HO, for more than a decade in the most logical and sensible way by generating studies, drawing overseas references and consolidating views from children and professionals of various sectors. We are the professionals who are working for and with children at the front line, and have witnessed the existing policies and systems that are insufficiently comprehensive to protect our children and to truly implement the United Nations Convention on the Rights of the Child that has been ratified in Hong Kong since 1994."

These are my words. I am sure Stephen has heard. Madam President, I support the motion.

MRS SOPHIE LEUNG (in Cantonese): Madam President, I think we should look deeper into the motion question today. If we just keep on talking about it, we may bring up all sorts of fanciful but unrealistic ideas. I think Members would agree that a Commission on Children should be set up and no one would

oppose it. Before the Government set up the Women's Commission (WC), it asked me if I could help. I had talked with them for four months. At first, I had some reservations because I thought the organization might just be a formality devoid of any substance. But after some bargainings, I agreed and I am very glad that I was given that opportunity. I would like to tell Members that we should not worry that a commission would need to liaise with many Policy Bureaux and that the Bureaux may not accede to the demands put to them.

Prof Patrick LAU has just said that we should have "five hearts". I agree very much with him. I think a few more "hearts" should be added to his list. First, we must also have a heart of perseverance. If we can persevere, we would speak out from our heart and the hearts of the Directors of Bureau will be touched. In the course of my work in the WC, I have never regretted that there is something that I have failed to do or there is a person whose heart I cannot touch. I have seen some people who used to think that certain things may not be their concern and these should be taken care of by Dr YEOH Eng-kiong. But they later came over to help us nonetheless. I think we should not worry too much about these things and all we need is a heart of perseverance.

Second, there should be a heart of profundity. We should not look at the cases at their surface. We may think that these are tragic or what and we may shed a tear or two and do something superficial and then close the file. This is useless. When I work in the WC, I am very happy. We borrowed many places for use and we worked till very late at night. We tried to approach the problems faced by women with a profound approach and we wanted to find out the causes and how women could be helped. I hope when dealing with problems faced by children, we can have such a mentality, that is, we can approach them with a heart of profundity.

There is another heart which we should not have — it is a heart of indulgence or infatuation. The children in Hong Kong, as compared to those in other places, Hong Kong is quite rich and so the children here are very rich in a material sense. But at times, adults think that they have done their part by giving material satisfaction to the children. They take no regard at all of the mental and psychological needs of the children and they do not know how to provide the right kind of soil for these tender saplings to grow. Actually, we have had many discussions on many issues in the WC. One such is a question about those young people who are going to get married soon. As in the practice elsewhere, should they be required to learn the skills of good parenting before

they can be allowed to tie the knot? I think this should be considered by the Commission.

I can read from the newspaper reports of children who have accidents on elevators while wearing Crocs; some children got trapped between a lift door; or some children who have accidents when they are left alone at home. How can people deserve to be called parents when such things happen to their children? These people still want to give birth to more children and then say that it is the fault of society and they should be given assistance. What can we do about these cases? I really do not know and I do not see their point. I have also seen many people quoting these examples and say that we must be very careful and things like that. Of course, I think laws should be enacted, but we should also think about how to promote the idea that parents should have a heart of loving care.

I can see that in many cases when the children reach secondary school, junior secondary school or primary school, many parents do not know what they should do under the current education system. I believe Mr CHEUNG Man-kwong must have come across many such cases in which the parents say that they do not know what to do and that it is all the teacher's responsibility and they ask the teachers and the school to handle the problems. They say that they know nothing about dealing with them. However, we should know that education is not the responsibility of the schools or even that of society. Education is the responsibility of all, including that of the parents and it depends on how they play their role in educating the children and motivating them to learn.

Madam President, I was glad to see one of the organizations of which I am in charge is now in its tenth year of operation. It is the Young Entrepreneurs Development Council. All along we have been trying to enable students and adolescents (especially teenagers) lead a happy life. We have always been studying into how this goal can be reached. The way is to cultivate creativity in them from childhood. They should learn how to make a heaven out of hell in adversities and bad times. This is the job we do in the Development Council. I am very glad that last week the Hong Kong Jockey Club agreed to donate \$1.5 million to the Development Council after seeing the kind of work we do. The sum is meant to fund our work in this regard over the next three years. Right now we have extended the targets of our training from university students to secondary school students. Our next target would be primary school students.

This is because we are convinced that the earlier such kind of work is done, the more children with creativity will be raised (*the buzzer sounded*).....

PRESIDENT (in Cantonese): Time is up. Please sit down.

MRS SOPHIE LEUNG (in Cantonese): Thank you, Madam President.

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

MR ALAN LEONG (in Cantonese): President, the United Nations Committee on the Rights of the Child considered the second periodic report submitted by China according to the Convention on the Rights of the Child (the Convention) on September 2005 and also made its concluding observations. The contents of the report cover the situation in the Hong Kong Special Administrative Region (SAR). In the concluding observations, the SAR Government is urged to take a holistic and comprehensive approach to the implementation of the Convention, with priority being given to children's issues, ensure such policy is properly co-ordinated and assess the potential impact of policy decisions on children.

In the concluding observations, it is considered that in the context of Article 12 of the Convention, the SAR should systematically ensure active participation of children's organizations in the development of policies or programmes affecting them. And consideration should also be given to the establishment of a standing body, so as to represent children's views in the course of political discussion. In fact, more and more countries have adopted the approach of establishing a specific children's commission or appointing a commissioner for children. It is really necessary for Hong Kong to adopt this approach, so as to make improvements to the situation of children's policies originating from various departments.

President, these days, we are often concerned about the problem of an ageing population and racking our brains to devise policies to cater to the needs of the elderly effectively. In fact, one major challenge posed by an ageing population is that the dependency ratio will keep rising and the burden of people capable of supporting disadvantaged social groups will become heavier. In

fact, it is possible that the children nowadays will become the income earners in future and it is also possible that they will also become dependents. This will depend entirely on whether or not the policies conceived by the Government can give children a healthy environment conducive to their growth, thus raising their quality of life and productivity. Therefore, the need to improve the policy on children is all the more pressing in societies with an ageing population.

A research in the United States shows that if appropriate care in terms of policy can be given to children in disadvantaged social groups at an early stage, society can reap a net return of US\$17 for every US dollar it spends by the time these children are 40 years old. President, we certainly do not mean that all we want is to reap a return from our social welfare policies; I only wish to point out that the view of the SAR Government on social welfare policy has all along been rather one-sided. In fact, to improve children's welfare does not just amount to a kind of spending, but it is also a rather long-term and most rewarding social investment. Moreover, it is totally in line with the concept of sustainable development.

Later on, the Legislative Council will discuss the motion of improving special education. In fact, this in itself is a good example that highlights the importance of a department dedicated to children's rights. A professional department that devotes all of its efforts to the protection of children's rights will be able to monitor the Government's policy of integrated education and examine if any detail has been overlooked or if the needs of children have not been taken into account, as well as urging the persons in charge of education policies to make improvements from the perspective of children's rights.

President, the first Children's Commissioner of New Zealand, Mr Ian HASSALL, visited Hong Kong last month and shared his work experience with us. The executive department under him would investigate individual incidents relating to children's rights and publish investigation and study reports. Testimonies on matters relating to children's rights would also be submitted to the Court. In addition, the department also organizes various activities to promote the children's rights advocated by the United Nations. It also provides advisory service to other government departments and assists them in streamlining their policies with a view to protecting children's rights.

President, in fact, the concluding observations of the United Nations point out that there are still shortcomings in the protection of children's rights in

various areas in Hong Kong, for example, corporal punishment in the family, the education right of children without identity cards, the education environment, human trafficking, matters relating to juvenile delinquents, and so on. There is still room for the SAR Government to make improvements. Although children in the SAR can generally live safely and healthily, in a fair number of isolated incidents and in the implementation of policies, adults have neglected the feelings of children. The attention given to children of various ethnic origins or status is also not equitable.

President, an effective regime for protecting children's rights can help the SAR Government do its best even to the last detail. In fact, the Government has an unshirkable responsibility to enable all children to grow up in an equitable, happy and healthy environment irrespective of their wealth, ethnicity and physical abilities or handicaps and to nurture them into excellent members of society in the future.

With these remarks, President, I support the motion.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): Secretary for Economic Development and Labour.

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): Madam President, I very much admire Members for still being able to put forward many valuable opinions on the motion despite that they have had a debate for three days in this Council. On behalf of Secretary Dr Patrick HO, I would like to thank Members for their valuable input. Members may find it strange as to why it is me, instead of Secretary Dr Patrick HO, who is giving a response here. I would like to tell Members that as Secretary Dr Patrick HO is on an overseas visit, I am, therefore, responding to this motion here today on his behalf. Members can be assured that I will not make a policy decision on behalf of Secretary Dr Patrick HO from the perspective of economic development, because my response today was given to me by Secretary Dr Patrick HO and

colleagues of the Home Affairs Bureau, and Members can be assured of that. Yet, I have still listened to Members very carefully earlier, and Members have indeed made their views very clearly. I can assure Members that I will jot down the points made by Members, and so will colleagues of the Home Affairs Bureau, and I will certainly convey the opinions expressed by Members earlier to Secretary Dr Patrick HO and the relevant Policy Bureaux for their consideration.

Children's rights are an issue of international concern, and among all human rights conventions of the United Nations, the Convention on the Rights of the Child (the Convention) is most widely ratified. The Government of the Hong Kong Special Administrative Region (SAR) is firmly committed to fulfilling the obligations set out in the Convention. In accordance with the requirements of the Convention, the SAR Government submitted the first report in June 2003 to give a comprehensive and detailed account of our work in this respect. The report, which was submitted to the United Nations as part of China's Second Report to the United Nations, was examined in the hearing of the United Nations Committee on the Rights of the Child in September 2005. The concluding observations and the Government's initial response to the concluding observations were submitted to the Legislative Council Panel on Home Affairs in November 2005 and February 2006 respectively for its perusal.

I understand that the objective of the motion is to safeguard the well-being of children and ensure that children's perspectives are fully taken into account in the process of formulating government policies. It has all along been a major policy objective of the Government to ensure that children in Hong Kong can be provided with a good environment where they can live safely with good health and good education, so as to achieve growth and development.

Some Members call on the Government to set up a single responsible or monitoring agency in respect of policies relating to children. As the policies and initiatives of many Policy Bureaux of the Government will have a bearing on children and adults, it is therefore not the most suitable measure for Hong Kong to adopt an age-based approach and set up a single agency in charge of or responsible for monitoring all the policies on children. Most importantly, the Policy Bureaux of the Government will, on the one hand, continue to thoroughly consider and take into account the interests and needs of all sectors of the community which, of course, include children, in formulating all their policies as well as the impact of the policies on them and on the other hand, the Government will continue to forge close co-operation on issues relating to children, so that

concerted efforts can be made to formulate and implement policies to the benefit of children and ensure co-ordination between policies and actions, while responding to the aspirations expressed by the community flexibly and promptly. This policy objective of the Government is actually in line with the aspiration expressed by Members today.

Madam President, I will explain what the Government has done and will do in future in four policy areas, namely, welfare, labour, education and housing policies, in order to fulfil its obligations under the Convention, safeguard the well-being of children and ensure that children's interest is an important consideration when considering legislative proposals or policies.

First of all, I would like to explain our welfare policies. The Government has attached the utmost importance to the healthy growth of children, and has formulated welfare services for children on a "child-centred, family-focused and community-based" principle, targeting at the needs of children at different stages of growth to ensure suitable care and protection for them.

In respect of family service, the integrated family service centres provide support to children in need and their families as well as suitable service for children of different ages, with particular emphasis on early intervention and proactively reaching out to families in need, in order to help them build up a network of mutual support to strengthen their resilience against adversities.

To better support the development of children both physically and psychologically, we have introduced in phases the pilot Comprehensive Child Development Service in Sham Shui Po, Tin Shui Wai, Tuen Mun and Tseung Kwan O, using a community-based approach to foster co-operation among various sectors of the community and facilitate early identification of children or families in need and then provide them with suitable services. We will extend the Comprehensive Child Development Service to other districts of Hong Kong in phases to strengthen the support provided by social services.

To meet the needs of children from a disadvantaged background, we have provided a range of diversified services, while the Comprehensive Social Security Assistance (CSSA) Scheme has also taken care of the special needs of children with financial difficulties or disabilities by providing comprehensive financial assistance to these children and their families.

To support the prevention and alleviation of poverty, we have consolidated the existing resources and redeployed additional resources to provide services to children with a disadvantaged background. In response to the recommendations of the Commission on Poverty, the Government has earmarked \$300 million for the establishment of a Children Development Fund to draw up personal development plans for children from disadvantaged groups and implement target savings plans on a pilot basis.

On labour policies, under the existing labour legislation, the employment of persons under 18 is subject to the regulation of the relevant legislation. The Employment of Children Regulations prohibited the employment of children under 13, while children below 15 cannot be employed in any industrial undertaking. While the employment of children aged 13 or above but below 15 in non-industrial undertaking is permitted in law, their employment is subject to stringent restrictions. The restrictions on children aged 13 or above who have not yet completed Secondary Three are even more stringent in respect of the working hours, work premises and job types. The objective is to safeguard the interest, safety and health of children.

The existing legislation also imposes certain restrictions on the employment of youth aged between 15 and 18, and the employment of persons under 18 is strictly prohibited in dangerous trades.

The Labour Department has stringently enforced legislation regulating the employment of children. Routine and surprise inspections are conducted for the protection of the rights of children, and a diversity of publicity campaigns have been launched to enhance public awareness.

On education policies, the Government has all along upheld the children-based principle in developing education. With an expenditure accounting for more than one fifth of the total government spending, education is the policy area which takes up the largest share of public expenditure.

Hong Kong residents and children with permission to remain in Hong Kong are eligible for nine-year free universal basic education. Our objective is to ensure that all children between the age of six and 15 can receive education in school. If parents refuse to send their school-age children to school without a good reason, the Government may, under the Education Ordinance, serve an attendance order on the parents requiring them to send their children to schools.

The Government appreciates that early childhood education has a positive impact on the growth of children and so, more resources will be ploughed into this area, in order that all school-age children in Hong Kong can receive quality early childhood education at reasonable costs. We will introduce the Pre-primary Education Voucher Scheme shortly to provide direct fee subsidies to parents for the pre-primary education of their children.

With regard to the allocation of school places, all students enjoy equal opportunities in the choice of school. Primary One places are allocated basically on the principle of vicinity, in order to minimize selection and competition. Secondary One admission is mainly based on academic performance in school, while allowing students with different aptitudes the opportunity to study together. The Government will continue to actively encourage school sponsoring bodies to try out diversified modes of education and curriculums, so as to allow more choices for students.

Our policies on education have taken care of students with special needs (including children with disabilities), children from low-income families and also children of ethnic minorities, in order to ensure that the potentials of students can be brought into full play. For students with special education needs who can benefit from the ordinary school environment, we have endeavoured to promote Integrated Education, using a whole-school approach to promote the effectiveness of learning. Subsidies will be provided to children from low-income families, and School-based and District-based After-school Learning and Support Programmes have also been implemented. We have also provided support to students of ethnic minorities on various fronts.

The objective of the education reform is student-focused, with a view to developing in students an interest and initiative in learning and hence the ability to pursue lifelong learning. The new secondary education system will be implemented in 2009 and by then, 12-year free education will be provided to all students, with a view to promoting whole-person development.

The needs of children are also taken care of in our housing policies. For instance, children under 18 can, together with their parents or legal guardians, apply for public rental housing (PRH). New arrivals and their children can also apply inclusion in the Waiting List for PRH flats. The Housing Authority has repeatedly relaxed its policy to enable families with newly arrived spouse as well as children under 18 to apply for PRH flats more easily.

When planning and designing public housing estates, the Government will consider the needs of residents in different age groups. To address the needs of children, we will provide adequate open space, children's playground, retail shops, public transport facilities and bicycle parking facilities in line with the scale of individual public housing development projects. The relevant departments will also provide other facilities such as schools, kindergartens, child care centres, children and youth centres, study rooms, and so on, depending on the needs of the district. The barrier-free access design has been adopted for new residential flats and public space to cater for the needs of residents, including young children and children with disabilities. We will make continuous efforts to improve the planning and design of public housing estates to enable children to live and grow up in a safe, healthy and convenient environment.

Apart from ensuring that the well-being of children is protected and their interest fully taken into account when formulating and implementing policies, the Government will make continuous efforts to ensure that the Convention is widely recognized in the community.

The Government has established the Children's Rights Forum to provide a platform for exchanging views on matters concerning children's rights among non-governmental organizations (NGOs), children and the Government. The Government has also implemented on a pilot basis a Children's Rights Education Funding Scheme to provide funding for community organizations, including NGOs, schools, residents' groups, and so on, to organize various types of activities to promote children's rights, hoping to put across the message of children's rights to the community, so that members of the public will understand the concept of children's rights and hence translate the protection of and respect for children's rights into actions in their daily living.

Members supportive of the motion hope that the Government will undertake to ensure that it will fulfil the Convention and safeguard the well-being of children and that children's perspectives are fully taken into account in the process of formulating government policies. The establishment of a Commission on Children is not the only way to achieve this objective. Madam President, I wish to reiterate that the Government attaches great importance to the Convention. We will certainly continue to work hard for this cause; we will conduct reviews regularly and actively listen to the views of all sectors of the community, in order to ensure that the legislation and policies of the Government

can be more in line with the provisions and spirit of the Convention in all aspects. I will convey the valuable opinions put forward by Members today to the relevant Policy Bureaux and Secretary Dr Patrick HO for their consideration and follow-up.

With regard to the protection of and respect for children's rights, the most important responsibility falls on the family and family members. Mutual support and care among family members is the most direct and effective way to realize the rights of children.

The Government always endeavours to maintain and consolidate family solidarity. In the 2006-2007 policy address, the Chief Executive said that the Government will study the establishment of a Family Commission responsible for policies and initiatives relating to family. The study will focus on how social policies which aim to strengthen the functioning of family can be implemented in a most cost-effective manner, and it will also explore a mechanism for handling issues relating to different genders and age groups (including youth and children). The study will be completed in a month and a final decision will be made by the next Administration. We will study further actions and policies according to the findings.

Here, I hope Members will not misinterpret the establishment of a Commission on Children as the only or most effective way to ensure that the Government fulfills its obligations under the Convention. The determination of the Government to fulfil the Convention bears no relation to the establishment of a Commission on Children or otherwise. We will definitely continue to actively identify ways to provide more comprehensive protection for children's rights.

Thank you, Madam President.

PRESIDENT (in Cantonese): Dr Fernando CHEUNG, you may now reply and you have one minute 36 seconds.

DR FERNANDO CHEUNG (in Cantonese): I am grateful to the 21 Members who responded to my motion. From Members' replies, I can see that all Members, be it Members themselves or the political parties that they belong to, have all along been very concerned about children's affairs actually.

Put simply, I find that Members' speeches share several points in common. First, Members hold that although our economic conditions are very good, many children are still mired in poverty or in need of care, so improvements are still called for in many areas.

Secondly, our present approach is fragmented and disorganized and there is neither a comprehensive policy nor a focus.

Therefore, the third point is that all of us agree that it is necessary to establish a centralized platform to handle children's affairs and consider public policies from children's perspective. In view of this, the establishment of a Commission on Children is a very desirable proposal.

Fourthly, all Members consider that a Family Council and a Children's Commission covers two different scopes and they should be dealt with separately.

President, I remember that in a Question and Answer Session, the Chief Executive promised that if this legislature reached a consensus on something, the Government would not refuse to take action. I hope Chief Executive Donald TSANG and the officials concerned can honour their promise and will not continue to shirk the responsibility. Having listened to the views expressed by us today, the Government has to follow up.

Thank you, President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by Dr Fernando CHEUNG 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, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the motion passed.

PRESIDENT (in Cantonese): Second motion: Concern about students with special educational needs. I now call upon Mr Bernard CHAN to speak and move his motion.

CONCERN ABOUT STUDENTS WITH SPECIAL EDUCATIONAL NEEDS

MR BERNARD CHAN (in Cantonese): President, I move that the motion, as printed on the Agenda, be passed.

President, it has finally come to my turn. I was initially worried that I might not have a chance to speak today.

President, whenever students with special educational needs are mentioned, many people may simply consider them to be the disadvantaged who represent only a small proportion of our total population. It is precisely for this reason that their interests are often neglected by others in the community. Through this motion today, I hope to remind Honourable Members not to neglect them and raise the awareness of these students through the motion debate today. I also hope the Government and society can step up their support and formulate more specific policies to ensure that the interests of these students are taken seriously and respected.

Although these students represent only a minority in society, I believe quite a number of colleagues must have the experience of coming into contact with them or heard about their stories. I have a few friends whose children are autistic. Although these children have intrinsic special needs, their parents have not given up on them. On the contrary, their parents are willing to make even more efforts in their fight for a more equitable learning and development environment for their children. Their wish is actually very simple. They only hope that their children can learn happily as other children do. There is already abundant proof that, with appropriate support, these children can excel in skills they acquired and contribute to society in the future.

The Government has currently strived to promote integrated education to enable students with special educational needs to attend ordinary schools. I support integrated education because students with special needs can thus attend mainstream schools to learn with other children, so that it will be easier for them to integrate into society in the future.

However, I have been told by many (including the parents and teachers of these children) that the result of integrated education is unsatisfactory at present. Some parents have even claimed in a rage that if their children are required to attend schools implementing bogus integrated education, they would rather send them back to their special schools.

Launched by the Government in 1997, integrated education now covers students with hearing impairment, visual impairment, physical disabilities, Autistic Spectrum Disorders with average intelligence, Attention Deficit and Hyperactivity Disorder, speech and language impairment, Specific Learning Difficulties, and mild intellectual disability. In addition to integrated education, other government support, such as the School-based Remedial Support Programme and the School-based Curriculum Tailoring Scheme, has also been provided. Under a new mode of subsidy, a primary school may apply to the Government for a subsidy of \$10,000 to \$20,000 on admitting one integrated education student. Furthermore, additional resources, such as additional teaching manpower for supportive educational programmes and school development allowances, are also provided to primary and secondary schools.

Having said that, the assistance and curricula provided for students with special educational needs seem to be quite substantial. What about the actual situation? Why are there still so many complaints from parents and teachers despite the abundant support?

I understand that it is impossible for any policies to achieve their goals in one step. However, integrated education has, since 1997, been implemented for a decade and yet it is still progressing very slowly, particularly so in secondary schools. During the transition to secondary schools, ordinary students, not to mention students with special educational needs, face even greater difficulties than when they were in primary schools. Not only are they required to cope with more advanced curricula, they have to address the adolescent and emotional problems brought about by their development as well. In primary schools, the gap between special students and ordinary students might

not be very large. Therefore, if the former are taught properly so that their learning foundation can be reinforced at this stage, it will be helpful to them in attending secondary schools in the future.

However, it is shared by many parents of integrated students that there is a lack of sufficient complementary facilities in schools. Some of the parents consider that the teachers are not sufficiently trained to cope with the needs of the students. In particular, given the diversity of students with special educational needs, even though some teachers may have received dozens of hours of training, they may still not clearly understand students with special educational needs. Nor are they sufficiently capable of taking care of different types of integrated students. Furthermore, they have to take care of other students as well. This is not at all an easy task.

I was once told by a parent of an incident which took place in a grade four classroom in a primary school receiving the new funding. A student with Hyperactivity Disorder who suddenly experienced emotional problems was left alone in his classroom venting his emotions by shouting and throwing things all over the classroom as his classmates were led by a teacher to the corridor outside the classroom to idle away their time. Furthermore, I was told by another parent that when his child experienced emotional problems in his school, the school management would immediately give him a call and request him to bring his child home promptly to avoid affecting the learning of other students. I am no expert, so I do not know how to comment whether this way of handling is appropriate or not. Nevertheless, I feel sorry for the children involved in the incidents, their parents, teachers and classmates. Is a school not a place for learning? Why can every student not be allowed to stay in their schools to learn properly? In the incidents, the teachers involved were under great pressure to take care of all students too.

Although both integrated students and schools will receive extra assistance, is the assistance used appropriately? Can the Government ensure that the assistance is spent on all students? Is the amount of assistance enough for the schools to employ teachers or teaching assistants who have received specialized training to assist, in particular, these children in resolving the problems they encounter in classrooms? Is the process sufficiently transparent? Are there any means by which parents can find out how the resources are utilized? Some parents have even doubted that the authorities have not performed its monitoring role properly.

While even special students who are born in Hong Kong or know Chinese cannot avoid these difficulties, what about those special children who do not know Chinese? I have some expatriate friends who come to Hong Kong for employment and some friends who are returnees. None of their children knows Chinese. I have been told that the support offered to students with special educational needs by the local education system is grossly inadequate. First of all, the number of mainstream schools willing to admit these students is small. After all, the number of international schools providing full English-teaching in Hong Kong is proportionally small. Furthermore, the vast majority of these schools are reluctant to admit these students. It is the view held by a number of parents that, for the sake of overall learning, the schools might, to a certain extent, put the interest of these students aside. Some parents even worry that their children will be isolated or rejected. Do they really have to make arrangements for their children to learn in special schools? Although deployment of resources or teaching might be made easier if these students are grouped in a certain school or class for learning, this is against the principle of integrated education. Nor is this compatible with the major global trend. It might be even harder for these students to integrate into society when they leave school in the future.

I have some expatriate friends who originally worked in Hong Kong but, for the sake of their children, decided to leave Hong Kong for such places as the United States, Canada, Australia and Japan for employment, so that their children can study and grow up in places where better integration education is provided. I also have a friend who works in a centre providing assistance to students with special educational needs. He told me that whenever he was consulted by his expatriate friends on the integrated education provided in Hong Kong, he would advise them not to come to Hong Kong because such support in Hong Kong is inadequate. This is definitely bad for Hong Kong, particularly when competition for talents is so keen at the moment. Should the situation remain unchanged, more talents might refuse to come to Hong Kong. In the end, society at large will suffer.

Despite the fact that the number of students with special educational needs is small, it has continued to rise, probably because of the growing awareness of parents. As a result, they will pay more attention to their children and undertake relevant tests. In a written reply to me in February, the Government indicated that 2 384 autistic students in total were studying in ordinary or special

schools. According to the latest statistics, the number of new cases of language and speech defects is 1 906, while that of retarded development and special learning defects is 1 147.

Last year, a topical article in *Time Magazine* quoted a projection by the Centre for Disease Control and Prevention in the United States that one in every 166 American children is autistic. While autism has no specific cause, experts predict that the situation will continue or even deteriorate, implying that we will face many more students with special needs. Although the academic results of these students might be unsatisfactory, they might have excellent abilities in music or arts. I believe integrated education, if effective, can greatly help these students realize their potentials and integrate into mainstream education and society.

It is precisely for this reason that a Subcommittee to Study Issues Relating to the Provision of Boarding Places, Senior Secondary Education and Employment Opportunities for Children with Special Educational Needs has been set up under the House Committee to follow up relevant matters. Although I am not a member of the Subcommittee, I am still very concerned about its work. Since its establishment in January 2005, the Subcommittee has held more than 20 meetings and met with a number of deputations. I believe some Members here, especially those who are members of the Subcommittee, have heard a number of stakeholders expressing their aspirations.

Parents might initially fantasize what professionals their children will become and what achievements they will have when they grow up. However, health will actually become the greatest concern to the parents after the birth of their children, and they will only hope that their children will grow up healthily and happily. Even if their children are unfortunately born with disability, they will still do their utmost to take good care of their children. They are not begging others for their sympathy. What they want is the understanding of society at large. They are not seeking to make unreasonable demands on the Government so that all education resources will be tilted towards their children. They only hope that the Government and society can, to a certain degree, provide assistance, support and care to their children to prevent them from feeling lonely and helpless.

Thank you, President.

Mr Bernard CHAN moved the following motion: (Translation)

"That, as integrated education in Hong Kong is currently implemented by a whole-school approach, and as some schools do not have sufficient complementary facilities and adequate training for front-line teachers, and they have to take care of too many types of students with special needs, the result achieved is not proportionate to the efforts made; for example, although some autistic students have excellent learning abilities, not only do they fail to exploit their strengths in class, their social adjustment and communication difficulties also make it difficult for teachers to deal with their behaviour, emotions and discipline in class, this Council urges the Government to deploy more resources to mainstream schools which admit students with special educational needs, so as to consolidate the foundation of such students for learning and help them integrate into mainstream education as soon as possible."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by Mr Bernard CHAN be passed.

MR CHEUNG MAN-KWONG (in Cantonese): President, the policy of integrated education is one which sees the implementation of a law before everything, one which is fully implemented before there is any support for the education sector. As a result, everybody is trapped in a dilemma, greatly aggrieved. The so-called Whole School Approach is nothing but the wishful thinking of the Education and Manpower Bureau, which reckons that by hoisting the standard of integrated education, it can make all the schools "overcome Heaven". The spectrum of students with special educational needs which schools must take care of is far too wide. Teaching has become a painful task, and teachers are unable to do what they want to do.

Parent organizations have been criticizing the policy of integrated education as being all about "haphazard placements and wasting students' youthful years". They have time and again come to the Legislative Council to voice their views, and their views are most saddening. Integrated education has been implemented for many years, but why are schools and parents still so helpless? Why is education still so ineffective? Why are parents still so disappointed? And, why are both the people and the Government still caught in

such a no-win situation? Recently, the Office of The Ombudsman has queried whether the Government has given any accurate figures of students with special learning difficulties in Hong Kong. Why is it that in foreign countries, the rates of dyslexic students alone are already higher than the 0.99% for all students with learning difficulties in Hong Kong? Is this the true picture or just a "fabricated" rate? If integrated education is implemented before we can even identify those with learning difficulties, what are schools going to do? What are parents going to do?

In accordance with the Disability Discrimination Ordinance, integrated education is implemented to make education open to all types of students. However, teachers are not adequately trained to deal with all types of school children (especially autistic or hyperactive children). The Education and Manpower Bureau has recently announced that it will provide training to 10% of the teachers of every school within the next five years, so as to look after students with various types of special educational needs. This can show the absurdity of the Education and Manpower Bureau's "foolhardy" attempt to implement the policy even before teachers were provided with any training. Besides, integrated education in primary and secondary schools also faces a bottle-neck situation. At present, integrated education is implemented in some 300 primary schools, but the number of secondary schools providing integrated education is just 37. Even schools for band three students which admit the greatest numbers of students with special educational needs must rely on themselves and make do with the lack of any special assistance, subsidy and training. This is simply like "driving without a licence".

The policy of integrated education must be pragmatically revised, so that a fresh start can be made. The Government should review the Disability Discrimination Ordinance, with a view to exploring whether it is possible for schools to admit just one or two types of students with special educational needs at the early stages of implementing integrated education, so that schools can concentrate on providing the training required by their teaching staff and parents can select schools according to the needs of their children. Before the ordinance is amended, the Government should encourage the professional specialization of schools. Parents should also be told the types of students admitted by individual schools. And, the Government should provide specialized manpower and resource support according to the needs of schools. The policy of "portable assistance" should be implemented for autistic or hyperactive students, whereby every student with special educational needs

admitted by a school will entitle the school to Class III assistance, including the employment of school assistants or resource-support teachers and the Education and Manpower Bureau's expert support for the provision of personalized care to students.

President, I agree to the motion, which urges the Government to invest more resources in enabling students with special educational needs to enrol at mainstream schools. At present, under the new subsidy scheme for primary schools, each school is given a subsidy of \$10,000 to \$20,000 per student, depending on the seriousness of each case. But this is totally unable to cater for the needs of students. The Government should immediately increase the unit grant under the new subsidy scheme. Since subsidy is granted based on the number of students, and since "subsidy is portable", there should not be any "nonsensical" subsidy ceiling. Instead, subsidy should be extended to all secondary schools admitting such students. This can at least provide schools with fair and "timely" assistance. We cannot tolerate the continuation of a hollow policy marked by integration without subsidy and student intakes in the absence of teacher training.

President, early identification and early intervention form the most important principle underlying the provision of integrated education for students with special needs. For the sake of standardization and in order to eliminate the confusion arising from parallel assessments by the Department of Health and the Education and Manpower Bureau, I propose to introduce a division of responsibilities for the departments involved. The Department of Health should be vested with the responsibility of conducting comprehensive pre-school assessments, and the Education and Manpower Bureau should be responsible for conducting pre-Secondary One assessments. Reports must contain assessment results of students' intelligence and abilities and expert recommendations on their learning. Reports must also be sent to parents and dispatched to schools with the consent of the former. This is to facilitate the work of schools to follow up experts' learning recommendations, provide reports to parents on parents' days and give advice on students' further studies according to their conditions, thus ensuring that each student can receive sustained care in the course of learning. The Education and Manpower Bureau must provide extra resources and manpower to cope with the mounting pressure and increasing workload resulting from integrated education.

President, integrated education is a very difficult task and also a responsibility which teachers must shoulder. The education sector needs

assistance and subsidy in order to meet the ever-increasing expectations of parents and society. I further hope that society can understand that teachers are also mortals, not supermen. They must cope not only with integrated education but also an avalanche of education reform initiatives, academic structure reforms, curriculum reforms and examination reforms. Excessive reforms and hastiness in their implementation will only make the education sector a total loser. The problems with integrated education are just the tip of the iceberg. A slower pace of education reform, the implementation of small-class teaching and the reorganization of integrated education are the most important direction pointed out in the motion today and also the greatest aspiration of the education sector and society.

With these remarks, President, I support the motion.

MR WONG KWOK-HING (in Cantonese): Madam President, I rise to speak in support of Mr Bernard CHAN's motion. I think this is a very meaningful motion and it is also related to the previous motion. The previous motion urges the Government to establish a Commission on Children. This motion can aptly illustrate why there must be a specialized body — without such a body, there cannot be any specialized studies on the issue. It is really very strange that even the Secretary for Education and Manpower is not present during this second motion debate today.

First, we should start our discussions by looking at the source of the problem. The Government should be fully responsible for protecting the rights of children with mental or physical disabilities. Article 23(1) of the Convention of the Rights of the Child provides, "States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community." (End of quote)

Article 23(2) states even more clearly, "States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child." (End of quote) The ending part of Article 23(2) states especially clearly that assistance appropriate to the child's condition and to the

circumstances of the parents or others caring for the child shall be extended to the eligible child and those responsible for his or her care. This can show the need for such assistance. But has enough been done in Hong Kong to ensure the right of children in need of special education? The answer is definitely negative.

Second, I am also very familiar with the problem of children with special educational needs, though I am not an expert on this. The reason is that the first special school in the Eastern District is located next to my home. It was warmly welcomed by residents of the district as soon as it was completed, because there is indeed a need for such a school. I witnessed its opening a decade or so ago, and since then, I have seen how it is welcomed by kaifongs, parents and children in need. I have also visited the school to see how the children are educated.

I observe that the provision of special education must require teachers having received special training. These teachers all have expertise in child psychology, problem analysis and the provision of assistance. They have to handle their students, and not only this, they must also deal with parents and work with parents and schools to assist children in growing up properly and eventually integrating into society. I think that children who are admitted to special schools and their parents are really very fortunate, because such schools are of great help to children's growth.

I notice that these teachers are also dedicated to nurturing their students, so the Government has already worked out a direction for the implementation of integrated education. But how can we ensure that integrated education can cope with children with special educational needs? How can we ensure that the two will not become mutually exclusive, and that both will not be adversely affected? I can therefore fully realize the need for those things mentioned by Mr Bernard CHAN just now.

Therefore, if the Government thinks that integrated education is just about admitting children in need of special care or nurturing to ordinary schools, if it thinks that this is all about the social integration of these children, I must say that it is in fact ignoring them totally. I very much hope that the Government can conduct a comprehensive and thorough review. Only this can ensure the genuine implementation of the two aforesaid provisions of the Convention on the Right of the Child for the protection of the right of these children.

My third point is about why the Government should make efforts and conduct studies especially for the issues under discussion. As I pointed out in the previous motion debate today, as a result of the Government's town planning imbalance, there is inadequate care for remote new towns. I cited Tung Chung as an example in the previous motion. The children in this area are not given any care normally required by children. In the isolated town of Tung Chung, normal children are not given any care they need, and not only this, even children with special educational needs are not taken care of. The situation of these children is of course even more miserable.

According to the Government's town planning standards, additional community facilities will be provided in an area only after the population there has attained the size of 230 000 to 250 000 people. The population of Tung Chung is just some 80 000, less than 90 000, so the provision of social, community and educational facilities has been brought to a standstill. For this reason, in the previous motion debate, I said that there was a shortage of all basic social facilities (including schools). As a result, more than half of the school children in the area must go to schools in other districts, and they must spend more than an hour on travelling. Even normal children must suffer like this, so it is easy to imagine the situation of hyperactive children or children with intellectual disability in need of special care and nurturing. Their situation is even more miserable, for they are provided with nothing.

As a result, children in need of special care and special education living in remote new towns have to face an even more miserable situation. Therefore, I hope that the Government can give serious thoughts to this problem.

PRESIDENT (in Cantonese): Mr WONG, time is up.

MS AUDREY EU (in Cantonese): President, today I am glad that a piece of paper, which is a sticker given to me in connection with the Commission on Children just now, can be used on both occasions because I find it also suitable for this motion.

The motion moved by Mr Bernard CHAN today urges the Administration to improve the complementary facilities and training for front-line teachers in special schools. I would like to look at the issue from a wider perspective

because an increase in allocation of resources may not be enough unless the resources are used in an effective way. Where should the resources be deployed in order to maximize the result? It is tantamount to baking of bread in which yeast would be used to get a bigger bun. So, in my speech today in particular, I suggest commendation be given to parents of children with special educational needs for their role.

President, I always participate in various activities of different schools which often tell me to get to know some parents whom are then introduced to me. "They spend a lot of time in school every day and come back to help even though their children have graduated," said the schools. In fact, the role of these parents is as important as the yeast in baking bread, in particular the parents of children with special educational needs. I think they deserve more respect because of their effect.

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

Recently I visited a special school with 77 students. Like many other ordinary schools, it took part in a contest for environmental protection with the purpose of encouraging lesser use of plastic bags. The students were therefore required to collect receipts on purchases to prove the number of plastic bags saved. Compared with almost 1 000 students in an ordinary conventional school, there are only 77 students in this special school. Despite that, the receipts collected to prove the plastic bags saved made them secure the position of second runner-up in a contest with other conventional schools taking part as contestants. From this, we can see how great the support of parents of children in special schools is.

Also, I have joined a subcommittee on special education under the chairmanship of Dr Fernando CHEUNG and met a group of parents who were very patient and devoted their attention to this matter. They know the subject better than any Members except Dr Fernando CHEUNG. In fact, the Government will know where the resources should be deployed, which objectives should be accorded priority and how policies should be implemented so that the best result can be achieved from the resources by listening to the parents' views.

I recall that when this subcommittee was first convened, their request was very simple. Their most basic request is to have regular meetings with the Education and Manpower Bureau so that they can reflect their needs to the authorities. I can reflect that the initial situation was very bad with several meetings being held. As this is a subcommittee and the chairman had to attend other meetings, we had convened many such meetings and parents had also come and then the situation began to improve, though there was still room for further improvement. I also reflected to the chairman, Dr Fernando CHEUNG, that a very basic blueprint would emerge if the parents' views could be collected by the Secretariat for our reference. In other words, it will be very clear about what should be done and where resources should be deployed after the motion has been passed.

Besides, Deputy President, regarding resources, I would like to point out that as there are two school-based social workers in all primary schools, each of them is required to deal with around 300 students. Regarding psychologists, according to a recent survey by the Hong Kong Psychological Society, there are 100 educational psychologists in the territory, meaning that each psychologist will deal with 10 000 children on average. These figures show that the workload of social workers and psychologists has reached capacity and attention should be paid to other complementary facilities, apart from school facilities or training for front-line teachers.

Furthermore, according to a paper submitted by the Government in January this year, the support for parents provided by the Education and Manpower Bureau mainly focuses on selection of schools, information on choice of schools and relevant counselling services. However, to implement integrated education, the Government should help the parents and children overcome the latter's learning obstacles in their daily lives and provide information for this purpose. This is the minimum support. Now we are asking for the maximum support. So, much more information will be needed in the consolidation and implementation of integrated education.

In addition, it is too late for the Government to provide support when the children are promoted to Primary One or Secondary One. According to the Government's current policy, assessment will be conducted at Primary One. But identification should not be done at Primary One. Rather, it should be done at the pre-school stage or when the child is one or two years old. If a child is found to be slow or need special education, training and counselling for the

family should be provided in a timely manner so that the problem can be mitigated as early as possible. The Government also concurs with our view on early identification. However, it was found that follow-up actions should be taken on issues concerning identification and how relevant reports would be delivered to parents in order to hold interviews with them when these were discussed at a meeting a few days ago.

Concerning training for the teachers, as many colleagues said, the existing integrated education can hardly achieve its targets and has posed great difficulty to the front-line teachers and school principals.

So, Deputy President, to put it simply, I very much support Mr Bernard CHAN's motion today and hope that the Government can really consider the views of parents of children with special needs in the deployment of resources.

Thank you, Deputy President.

PROF PATRICK LAU (in Cantonese): Deputy President, I think integrated education should aim to encourage more schools to take on students with special educational needs, so that they can have more opportunities of studying in mainstream schools, and this would be most desirable. But as pointed out by Mr Bernard CHAN, adequate support is required in order to achieve the desired results. Otherwise, it would only be counter-productive, for it would not only affect the teaching quality of schools but also prevent students' potentials from being brought into play.

With regard to the support provided in this area, apart from implementing small-class teaching to better care for students with special educational needs, it is equally important to utilize resources more effectively. To this end, I think a gradual and orderly approach should be adopted by implementing integrated education in phases. It is best to place these students in well-equipped special schools at an early stage, so that under the guidance of teachers with professional qualifications in special education, they will receive focused basic training to prepare for their integration into mainstream schools at a later stage.

Under a phased approach of learning, students are initially provided with basic training, including how to use specially-designed learning aids and how to take care of themselves and get along with others, and they will also be taught

how to adapt to school life before they integrate into mainstream schools to learn textbook knowledge together with other students. On the one hand, this can pool resources to enhance the basic training provided in the curriculum of special education in primary schools, while easing the pressure on mainstream schools in providing basic training on the other, thus enabling them to utilize resources in other areas more effectively.

On the contrary, if they are directly admitted to mainstream schools before they have received adequate basic training, and as they do not even know how to use the relevant learning tools or how to get along with fellow students, their inability to cope with school life would only put pressure on them and make them feel depressed.

In fact, my alma mater, St Paul's College, is very experienced, especially in taking care of students with visual impairment. I understand that a number of Members and government officials are old boys of St Paul's College, and Dr Fernando CHEUNG may also have some visually-impaired students. St Paul's College has admitted many students from the Ebenezer School for the Blind (Ebenezer) who have completed basic training, giving them the opportunity to integrate into mainstream schools and access mainstream education like other students. The College started to admit Secondary One students from Ebenezer as early as in 1971, and 42 students have since been admitted. Apart from the two visually-impaired students, one currently studying in the College and the other to be admitted in September this year, two other students are also being considered for admission.

In fact, as these visually-impaired students particularly cherish their learning opportunities, this is conducive to promoting a positive learning culture in schools. Many of them are high achievers and they even have the opportunity to pursue further studies in tertiary institutions. I know a Professor in Physics in university who also grew up with such a background. The success that he has made over the years is attributed to the follow-up support provided by Ebenezer, because government subsidies are very limited in this regard, and schools which have switched to the Direct Subsidy Scheme are not even provided with any government subsidy, thus making it impossible for schools to further enhance integrated education.

For instance, the special teaching equipment for assisting the teaching of visually-impaired students is very expensive. As such equipment is now

financed by the school itself, the school can afford only one set of such equipment and put it in the library and so enormous restriction is imposed on the school. There is a practical need to provide more ancillary equipment for use in classrooms to facilitate learning. Moreover, to ensure the safety of students, additional teachers have to be arranged to provide assistance to these students during Physical Education lessons and in the course of laboratory experiments during Science lessons. Furthermore, St Paul's College has all along been willing to employ student-teachers with visual impairment, because it is generally difficult for them to have pre-employment training opportunities. While the employment of visually-impaired teachers plays an important role in taking forward integrated education, it is regrettable that government support has been negligible indeed and as a result, what the schools can do is very limited.

Deputy President, integrated education is proven to be complementary to mainstream education. However, it must be implemented strategically and in a gradual and orderly manner. As a first step, efforts must be made to lay a solid foundation, so that students with special educational needs will integrate into mainstream schools only after they have acquired the learning skills and their communication barriers removed, and this will hence obviate the need to spend double the resources to provide basic training in mainstream schools and enable resources to be pooled to provide suitable aids and facilities for students with special educational needs or even to improve the architectural design of schools, especially the design of classrooms and corridors, to provide them with safe access. This will make the school a truly safe place for them and provide an environment conducive to the learning of students with different needs to truly serve the purpose of integrated education. I so submit. Thank you, Deputy President.

DR YEUNG SUM (in Cantonese): Deputy President, integrated education aims to enable children with special needs to study in ordinary schools or mainstream schools, so as to remove the misconceptions among members of the community about people with disabilities and bridge the gap between them, thereby promoting the objective of a "Society for All". This principle is very much worthy of support. The Education Department has since 1997 promoted integrated education in primary and secondary schools and made certain achievements indeed. Summing up the implementation of integrated education over the years, I would say that there are three problems and I hope that the Secretary will pay attention to them. First, inadequate support for students;

second, inadequate teacher training; and third, the situation of bullying in schools warrants attention.

Children with Autistic Spectrum Disorders (ASD) are often less competent in socializing and communication and they are not good at expressing personal feelings and needs, but they have talents in some areas. This has resulted in problems with their behaviour and academic performance, thus requiring the use of more resources by schools to provide support in terms of teachers, facilities, and so on. But given a lack of resources, schools often face plenty of difficulties in implementing integrated education and it is, therefore, impossible to achieve the objective of integrated education.

At present, a school is provided with a subsidy of \$10,000 to \$20,000 for each student with special educational needs, depending on the condition of the student. In other words, a school must admit at least 20 to 30 children with special educational needs in order to have sufficient resources to employ an additional resource teacher. Moreover, the school must have regard to the tailoring of curriculum and compile teaching kits to suit the needs of these students. Unlike the past integrated education programme whereby one resource teacher would be provided to a school which admitted five to eight children with special educational needs, the provisions made to schools under the existing funding model are obviously less than those before. Given a shortage of resources, the implementation of integrated education has added to the burden on schools.

Inadequate teacher training is another problem. According to the plan of the Education and Manpower Bureau, at least 10% of the teachers in each school will have completed the 30-hour basic training course on special education in the next five years starting from 2007-2008. As more and more schools have joined the Integrated Education Programme — because it is a mainstream programme — the demand for this course will continue to rise. The Education and Manpower Bureau should provide adequate supply teachers to relieve teachers for the training course, and encourage more teachers to take up the advanced course on special education and other thematic courses to equip them with the skills for teaching children with ASD. This is the second problem, that is, the problem of teacher training.

The third problem is that different kinds of professional support are required to cater for the different types of disabilities of students. It is very difficult for teachers in mainstream schools to handle children with different

types of disabilities at the same time. We understand that according to the Code of Practice in Education under the Disability Discrimination Ordinance, education institutions have the obligation to ensure that their admission procedures do not discriminate against students with disabilities, and the admission of not more than two types of students with special educational needs may very likely constitute a breach of the Disability Discrimination Ordinance by the school for selective admission. We, therefore, urge the Government to encourage a professional division of work among schools for each school to develop expertise in handling one to two specific types of students with special educational needs, so that focused training can be provided to the teachers according to the types of students, thus enabling schools to provide better care to their students. This is the third point that we particularly wish to make.

At present, the authorities have in place a three-tier intervention model targeting students with learning difficulties. Tier-1 support mainly targets at students with early or transient signs of learning difficulties; tier-2 support targets children with persistent learning difficulties, including children with special educational needs. Students are provided with add-on support and pull-out programmes under which students are identified and pulled out for remedial teaching. Tier-3 support is provided mainly to students requiring intensive support and special accommodation in learning and in particular, additional financial and manpower support, such as teaching assistants, is provided for schools with more hardcore cases and a larger cluster of students with special educational needs. As children with ASD often require more care and attention from teachers, the Government should immediately provide tier-3 support to schools with autistic students by providing more teaching assistants to assist them in learning.

Moreover, students with special educational needs may study in mainstreamed skills opportunity schools for secondary studies, hoping to acquire a particular job skill to make a living. The problem is that under the policy of the mainstreaming of skills opportunity schools, the class size has increased substantially with as many as 30 students per class due to excessive demand and as a result, teachers cannot possibly take care of their needs. We consider that the class size should be reduced to 20. In other words, if small-class teaching cannot be implemented on a territory-wide basis in Hong Kong for the time being, we propose that the Government should implement small-class teaching in this type of schools and reduce the class size to 20, so that teachers can focus on the diversities of students in a small-class setting.

We urge the Government to seriously consider our demands, so that students with ASD can have the opportunity to access good education under integrated education. With these remarks, I support Mr Bernard CHAN's motion.

MISS CHAN YUEN-HAN (in Cantonese): Deputy President, the two topics of debate today are related to children and youngsters. These are very good topics which we have often discussed in the relevant meetings. For instance, the points made by Mr Bernard CHAN in his speech earlier are often heard in the Subcommittee on special education needs. His feelings are shared by members of the Subcommittee and officials in this Chamber — except Denise YUE; there is another official who always listen to our complaints.

The complaints are lodged not just by Members of the Legislative Council and parents, but also school sponsoring bodies, and the Office of The Ombudsman has even conducted a survey on students with special educational needs in Hong Kong. This survey, which was not conducted in the distant past but only a short time ago, criticized the Education and Manpower Bureau for seriously underestimating the number of children with specific learning disabilities. According to the statistics published by the Education and Manpower Bureau, the number was some 1 600 in 2005-2006, accounting for 0.43% of the total number of primary students. But according to information on foreign countries, the percentage of students with specific learning disabilities, say, in Italy, which is already the lowest of all, is 1.3%. So, these statistics..... Certainly, the situation in the United States is more serious, as theirs is 8.5%, compared to ours of only 0.43% in Hong Kong. So, it is only natural for us to think that our figure is obviously low on a per capita basis. There is definitely something wrong with the estimate. I do not know whether the Government did this intentionally or unintentionally, but according to our observations, the officials with whom we have had contact in the Subcommittee, including those in this Chamber now, are very committed and dedicated to their work.

But more often than not, due to insufficient government resources, even though they are professional, and even though they are aware of the problems, they still cannot resolve them. For instance, the Department of Health provides the child assessment service as well as other health services for children, but many parents have criticized that it takes too long to conduct the assessments and there are also many loopholes. This problem has already been discussed for a

long time. From another perspective, how many resources have been provided by Hong Kong in this area? I really do not quite understand. In fact, insofar as the provision for education is concerned, in 2007-2008, for instance, the total expenditure on education is estimated at \$57.194 billion, accounting for 21.4% of the public expenditure, the largest share among all policy areas. In theory, this is an enormous amount of money but we do understand that although large provisions have been allocated, there is still a problem, and this may also affect the VTC of which I am a member. I think even though the Government has injected so many resources, students with special learning needs obviously feel that...Some colleagues said that they are like "the outcasts". Although this description is going a bit too far, it is true that they are very much neglected. In the Subcommittee set up by the Legislative Council in this Session, we have kept on bringing up this issue, and they have been making improvements. I think that the officials are actually committed to this cause, just that resources are lacking. Even The Ombudsman is also very committed, only that resources are lacking.

Mr CHEUNG Man-kwong has a point in making his criticisms. Does integrated education not sound fabulous? It sounds right and very well if we do not see the full picture of it. But what support is there for integrated education? Deputy President, as I have said in this Chamber, I am the Chairman of the school management committee and the school supervisor of some schools, and we have invited Prof Arthur LI to visit our schools which are Direct Subsidy Scheme schools. The teachers told him that the biggest difficulty they face is that under integrated education, schools cannot refuse the admission of these students, or else such refusal would constitute discrimination. If, in a class there are two or three students with problems in reading and writing, hyperactivity disorder or Autistic Spectrum Disorders (ASD), it would be very difficult for teachers to handle them. They have neither the resources nor expertise, and little training has been provided to them. I have said this in this Chamber many times. Whenever we talk about integrated education, we will certainly throw weight behind it. But when resources are lacking, teachers cannot solve the problem even though they have exerted their utmost. I wish to tell the Secretary for the Civil Service that this is a fact.

Such being the case, and from what we can see, the situation is depressing in many aspects. For instance, some parents and children groups came to us and cited some examples to explain that the earlier the intervention and assistance..... For example, children with intellectual disability — No, not

intellectual disability; it should be children with ASD — they are actually very intelligent, just that they do not know how to express themselves. The son of my friend is very clever and he is now in the United States. His situation may be like that of Bernard CHAN's friend who has also sent his children to the United States for education. The boy is very clever, and when he was in Hong Kong, he did not go along with other people and had been very much closed, but he is very talented in other areas.

That is to say, when teachers have neither the resources nor expertise, what should they do when they are required to play a role in integrated education? They simply do not know what to do. For example, children with hyperactivity disorder should be OK when given a little more attention. According to the parents, some children have made some improvements after they are placed in and taken care of in the 30-odd schools under the existing policy of the Government. For instance, the parent of a young child told us that when his child, who is autistic, was in Secondary One, the academic performance of this child was almost the last among some 180 students in the whole grade, not the whole class, but thanks to the care of schools, teachers and parents, the child made continuous improvement and finally made it to be the first of his class with remarkable academic performance. I was very much moved after listening to this parent and I immediately went to this parent after the meeting for more exchanges. If assistance could be provided at the initial stage when the problem emerged, these children would be OK, but once they are placed under integrated education, how can teachers teach them when they cannot even handle the ordinary students properly?

These are just a few examples that I can think of casually, and there are many others. But I must point out again that these children are not sick, only that they have something different and some special needs. Like the gifted students, they can give better play to their talents when given special treatment.

So, I think the Government must give some thoughts to this. Everyone is born talented. To children with problems in reading and writing, hyperactivity disorder, ASD, and so on, their talents can still be developed if they are provided with suitable assistance at the initial stage.

Everyone is born talented. Particularly, as the Secretary for the Civil Service is attending this meeting on behalf of her colleague, I very much hope that the Government, when considering policies in this regard, will provide

additional resources, so that the officials would be spared..... our frequent strong reproach. Having said that, I know that they are all very committed professionals, only that resources are lacking. Deputy President, I support this motion today. Thank you.

MR LEUNG YIU-CHUNG (in Cantonese): Deputy President, I am generally supportive of Mr Bernard CHAN's motion but I must stress one point: In what context do I support it? I support it in the specific context of children with special needs who are suitable for integration into mainstream education.

Why? Because insofar as integrated education is concerned, not all the students are suitable for integrated education, because some students have special needs, and special education is particularly necessary, whether in respect of facilities or teacher training, in order to provide assistance to them.

I am gravely concerned about one thing and that is, while the Government was vigorously promoting integrated education, it nevertheless continued to slash the provision of special education, and this is what I consider most heartrending and depressing, and this is also the cruelest thing to do. Why? It is because students who are not suitable for mainstream education will be forced to study in mainstream schools. I think this will affect both the students and the operation of the schools. So, on this premise, I think what Mr Bernard CHAN has suggested certainly refers to students who are suitable for integration into mainstream education and this, I very much agree.

So, under this principle, I must make it clear to the Government that Members are not suggesting that the Government can reduce its funding for or investment on special education. It is because during our exchanges with the parents of students with special educational needs or the relevant organizations, we realized that the situation is very bad indeed. For instance, there is a shortage of residential care places in special schools, and there is also a shortage of schools as schools have been scrapped by the authorities one after another. This is very distressing to students in need of special education. I clearly remember that there have been cases when some deaf-mute students must go to schools in Kowloon because no school on Hong Kong Island could admit them. This is so worrying to them, and saddening too. Why have the authorities nevertheless condemned the students to an even more dreadful state just when they are saying that they will attach importance to them? This is certainly undesirable and so, I think this warrants separate discussion.

Certainly, speaking of students who are suitable for integration into mainstream education, it is true that mainstream schools now face a shortage of resources, manpower and training, as already pointed out by many colleagues. I fully share their views, for this is the case in reality.

However, I think it is still not enough to just discuss these problems at this moment. Why? If we fail to effectively conduct pre-school assessments of students, little assistance could be provided to them. Could we just brush aside their needs and push them all to mainstream schools? These students have diversities, and if their diversities are not duly identified and if they are just pushed to mainstream schools, I think it is no different from treating them as garbage and sweeping them aside in lumps.

So, I think the first and foremost task is certainly to conduct assessments effectively and if assessments can be conducted effectively, more suitable facilities can be provided to them for their assistance and only in this way will the measures be effective.

As far as I know, Deputy President, and if my memory has not failed me, a school sponsoring body has plans to provide a school under the Direct Subsidy Scheme in Tseung Kwan O where students with specific disabilities will be admitted. I think it would be a good thing if there is really such development, for we really need these special schools to help students with special needs, and it may not be suitable to integrate them all into mainstream schools, because other than the reasons of inadequate resources and manpower, it is more suitable for them to develop under certain environment. Therefore, I think the authorities must pay attention to this. They cannot just adopt a broad-brush approach. The authorities may not necessarily have to advocate integrated education or their integration into mainstream schools.

Meanwhile, I think the greatest difficulty faced by students with special needs now studying in mainstream schools is that the Government seems to be concerned about primary schools only. What about secondary schools? It seems that the Government has not given them any consideration for the time being. The Government may think that as there is already the head start programme, work can be carried out gradually. But the problem is that the students may not really go through a process of gradual progression from primary school to secondary school, for students may be admitted halfway, and what will happen to these students in secondary schools? It seems that the

authorities are watching them stew in their own juice and as a result, it is difficult for secondary schools to address the problems of these students.

(THE PRESIDENT resumed the Chair)

Although some training is currently provided to teachers, we all know that it is just dozens of hours of training which is actually just symbolic, rather than truly providing assistance to them. Teachers who have completed the training told us that the training courses are rather superficial and do not teach them sufficient in-depth knowledge. For example, with regard to identifying students with learning disabilities, teachers are only taught some rudimentary skills and so, while they may still be able to identify the less serious cases, they are simply incapable of identifying the more hardcore cases. Moreover, it is also difficult for them to adopt a better approach, because they do not have the knowledge and there are many kinds of methods involved.

So, I think the integration of students with specific disabilities into mainstream schools requires not only resources, but also a myriad of support, such as community support for them to achieve development. I remember that in the Subcommittee on students with special needs, we have discussed the feasibility of identifying some resource centres in the community where students from various schools can be gathered, so that resources can be pooled to help them, and this will be a good thing. So, I hope that the Government can effectively provide support measures to help these students integrate into mainstream education, rather than implementing individual measures, such as providing a small amount of financial subsidies to schools only. In the meantime, as I said just now, it is most important not to neglect the development of special schools, which is of greater importance.

President, I so submit.

MR TAM YIU-CHUNG (in Cantonese): President, according to government statistics, in addition to the 8 730 children with disabilities currently studying in special schools, 2 057 children with disabilities are studying in mainstream schools in this school year. The Government has since 1997 implemented the Integrated Education Programme using a whole-school approach, covering

students with hearing impairment, visual impairment, physical disabilities, Autistic Spectrum Disorders, Attention Deficit and Hyperactivity Disorder, speech and language impairment, specific learning difficulties, and mild intellectual disability. Schools are required to draw up a policy on integrated education to provide enhanced support to these students with special educational needs. Integrated education is developed with the objective of encouraging students with disabilities to study in mainstream schools, thereby facilitating their integration into society. In this connection, the Government should address and ameliorate the problems that exist in this process early and provide more support, in order to enable these students with special educational needs to study and learn in school happily.

As reflected by organizations of parents of children with disabilities and schools, there are problems with the implementation of integrated education by the Government mainly in four areas. First, integrated education is implemented at too fast a pace. The lack of comprehensive support has made it difficult for mainstream schools to build up an inclusive culture. Students generally do not accept classmates with special learning difficulties, whereas teachers are unable to provide extra care to them. As a result, these students cannot fit into the mainstream schools and their school life is miserable. Although the workload of teachers has become heavier, teachers cannot provide assistance to these students in need and hence develop a sense of failure. Second, as there are many different types of students with special learning difficulties, mainstream schools which have admitted different types of these students have to provide different types of support depending on the different needs of students and this will simply go beyond the resources of the schools. Third, a government policy on comprehensive support to students with learning disabilities is lacking. For example, support is lacking for secondary schools where students with learning disabilities are admitted, and even though resources are provided, the students are not properly cared for as a result of a mismatch of resources due to internal competition for resources in schools and also because the use of the funding is neither specified nor monitored. On the other hand, as the criteria for assessing learning disabilities are too stringent, some students with special learning difficulties are nevertheless assessed as not having learning difficulties and are therefore not provided with the necessary care. Fourth, when primary students with special learning difficulties move onto the secondary level, it is necessary for the secondary school to start all over again learning how assistance can be provided to these students given a lack of co-ordination in the transition from primary to secondary education.

In April this year, the Office of The Ombudsman conducted a survey on the Assessment of Children with Special Learning Difficulties by the Government and concluded that the statistics provided by the Education and Manpower Bureau may not represent the real prevalence rate of special learning difficulties in Hong Kong. Besides, a performance pledge is also lacking for the educational psychology service. The Education and Manpower Bureau does not provide on their own initiative the assessment report to the student's parents, and parents are required to pay an additional fee in order to obtain a copy of the report, and transparency is lacking in the process of assessment. On the other hand, parents in general lack the awareness of special learning difficulties and knowledge of the assessment services available, and there are also problems with inter-departmental co-operation within the Government. While the Education and Manpower Bureau and the Department of Health provide assessment services, they keep separate statistics and adopt different counting methods and reporting years.

Therefore, to further improve integrated education to help students with special educational needs, the Democratic Alliance for the Betterment and Progress of Hong Kong suggested that firstly, efforts should be made to implement teacher training courses and support services expeditiously to enable front-line teachers to effectively identify students with special learning needs and to assist teachers to draw up suitable teaching strategies. Secondly, the Education and Manpower Bureau should step up monitoring of the implementation of integrated education under the whole-school approach and consult parents regularly in order to understand the situation of the schools. Extensive surveys should be conducted on a regular basis among teachers, principals, parents and students, in order to identify the problems and improve the provision of various services.

Thirdly, the Government should set up a centre for research and development on teaching materials and teaching aids for learning disabilities, specifically tasked to develop teaching materials and teaching aids. At present, teachers are required to develop teaching materials and teaching aids on their own after they have completed the 90-hour training, but this will only substantially increase the workload on teachers, and only when this centre is established can front-line teachers truly give play to their role. Fourthly, the Government must expeditiously implement the recommendations made by The Ombudsman on the provision of assessment service for children with special learning disabilities and improve the assessment mechanism in order to enhance the accuracy of the figures obtained from assessments.

Fifthly, in respect of the transition from primary to secondary levels, the authorities should promote a case-based approach to provide follow-up assistance in the course of transition, requiring schools with students having special learning difficulties to proactively contact the primary schools where these students studied before, in order to facilitate exchanges between the teachers, thereby providing suitable support to the students and obviating the need to find out about the students all over again. Sixthly, as the New Funding Model now implemented in primary schools has yet to mature, it is necessary to carefully consider how effective strategies should be formulated to provide support before it can be further extended to secondary schools for implementation.

With these remarks, I support the motion.

DR FERNANDO CHEUNG (in Cantonese): With regard to students with special learning needs, in fact, which student does not have special learning needs? But of course, we are talking about those who really have specific disabilities and who face challenges, and I have a daughter who is profoundly mentally handicapped. I surely have knowledge of the situation of special education in Hong Kong from my personal experience. I very much thank Mr Bernard CHAN for proposing this motion, which gives us the opportunity to discuss in this Council the problems faced by students and children with special learning needs.

Hong Kong is actually doing not bad in this respect. I have lived in the United States for many years, and my daughter had also been placed in the education system of the United States and she has studied in a special school in Hong Kong after we came back. Generally speaking, I think Hong Kong has been doing quite well, with many people working wholeheartedly for this cause, and there is no particular shortage of resources. But with regard to students with special educational needs, what their parents have experienced is saddening indeed. The situation is actually very complicated, for it involves different types of students with different needs, and in our education system there are also these two major components of special education and integrated education.

Insofar as special education is concerned, there is actually still plenty of room for improvement, and a Subcommittee has also been set up in this Council. I am the Chairman of this Subcommittee which has worked for more than two years. Although we have had continuous discussion on various issues, we still

find a lot of difficulties, and it is difficult to fully express them in just a few minutes. Let me try to cite some examples. With regard to students with visual impairment..... what has been done is actually quite good, and there are also schools which are genuinely committed to providing support. So, many of these students are studying in mainstream schools. However, there is still a shortage of many basic things, such as Braille textbooks. Many parents are still saying that they received their Braille textbooks only at the end of the school term. Why is it the case? We are also aware that some students with hearing impairment are not even provided with an ordinary FM transmitter — when the teacher speaks into the transmitter microphone, students with cochlear implant can hear the teachers more clearly with the use of the receiver.

But today, many teachers still do not quite understand their needs, and schools also do not provide adequate FM transmitters. Students, therefore, have to buy this device, which is very expensive, at their own expense. All that the teacher can do is to tell the students to sit in the front. But when these students change to another class, they may be placed at the back as the new teacher may not know their situation, and if that is the case, they cannot even read from the lips of their teachers.

Moreover, many of the basic requirements have not been met. For example, the waiting time for assessment of special learning disabilities and difficulties as I mentioned earlier on, inconsistency between the Department of Health and the Education and Manpower Bureau in conducting assessments, and the problem that adaptations are sometimes made but sometimes not in examinations. In public examinations, there are many inadequacies in terms of system and basic facilities. Residential places are a case in point, as there is still a shortage of residential places in special schools. At present, many hostels provide residential service only five days a week, which means that parents have to take their children home on Friday and send them back to school the next Monday. But sometimes, some families, especially single-parent families and even cross-boundary families, may require occasional care service and strangely enough, the provision of such service has been ceased in many schools and only a small number of schools provide seven-day residential service. What can they do without this service? They have made enquiries with the Social Welfare Department (SWD) and the SWD told them that this service is no longer provided and that the SWD does not provide occasional care or occasional residential service to students between six and 15 years of age. If neither the

schools nor the SWD will provide this service, a gap will be opened. Even though we have highlighted this problem, it has not been addressed yet.

In respect of the "3-3-4" academic structure proposed in the reform of the education system, special education was almost left out completely at first. In the relevant policy papers, and from what I have heard, it was only at the final stage that they found out the omission of this part which was totally neglected in their consideration. So, a paragraph of some 50 words was then added in the end, and this is how the entire special education will be developed under the "3-3-4" academic structure proposed in the education reform. It is only after the Subcommittee was set up later that more improvement has been made.

Speaking of integrated education, it is all the more saddening. Many colleagues have mentioned this earlier on, and Mr CHEUNG Man-kwong also gave a very detailed account of it and so, I am not going to repeat the points. In his earlier speech today, Mr Bernard CHAN also mentioned English-speaking students with special needs. The services currently accessible by them are actually of a high standard, and he also mentioned this point. But as I know them very well, I found that they are also among those whose needs are ignored and the assistance provided to them is also inadequate because people generally think that they come from the middle class and are financially better off. But it turns out that not all of these non-Chinese speaking students with special needs are from the middle class, for some of them are the grassroots who also face many difficulties.

All in all, insofar as this issue is concerned, we are not saying that what the Government has done is unsatisfactory or the Government is not working for this cause wholeheartedly. Instead, we are calling on the Government to rethink its mindset. First, at the last meeting Mrs Selina CHOW made a very good point. She said that while we could see so many parents and experts in each of our meetings, which showed that each one of them was trying to contribute his effort with great enthusiasm, the Education and Manpower Bureau or the Department of Health nevertheless told us at every meeting that they had done their best and that they had made their utmost effort. Even though the parents put forward their views, the Education and Manpower Bureau would invariably respond that they would carry out work. Why does it not co-operate with the parents and work in concert for this cause? They really have no intention to thwart any efforts, for they are the stakeholders themselves as they are the parents of these children, and it is not their wish to see that schools or the education system have performed unsatisfactorily.

Second, it should take a broader perspective, instead of considering purely from an economic angle, and cherish these children. That I have a daughter with serious disabilities is my blessing, and I am proud of this too. I hope that our system will focus on their quality of living, their development as well as learning, rather than setting eyes only on (*the buzzer sounded*)..... financial benefits.

Thank you, President.

MRS SELINA CHOW (in Cantonese): President, to me, special or integrated education is quite an academic topic. While we are certainly sympathetic towards students with special educational needs and wish to help them, we do not have much direct contact with them indeed.

It is only until recently that I have an opportunity to meet a group of parents who came for help. I wish to express my gratitude to them because, though they came to seek help, I have instead learnt a lot from them. They told me that in spite of the implementation of an integrated education programme, their situation is actually very lamentable. Their children used not to receive integrated education, but were only admitted to normal schools subsequently, of which some are pretty famous. Their admission turned out to be very painful for both parties. It is not because those schools do not have designated staff to take care of these students, but perhaps due to various reasons, the officer-in-charge may be too rigid or consider themselves under tremendous pressure, thinking that they were being sandwiched. While there is great demands from parents, it seems that the school policy fails to cope with them. Certainly, this will create great inconveniences to schools, so in order to implement integrated education, there must be adjustments and adaptation in many respect.

Furthermore, another problem is that when pressed for details about why those students were admitted to that school, we discovered that it actually belongs to a large organization — I should have no fear to disclose it now. It is one of the ESF schools — I then made enquiries with the ESF and the reply was that, it was not because they were reluctant to do so, but there was really a lack of resources. Although the Government has provided them with more resources, they were asked to increase the number of school places. In other words, no extra resources are given. Under this special circumstance, where

there is a need for adaptation as a result of integration, but without extra resources, it would be impossible to achieve its end. Therefore, I hope that the Government will take particular note of this.

As we can see from the information, the so-called special education actually covers different learning problems, and dyslexia is one of them. Other students may have different needs, and they are large in number. The Subcommittee noticed that the number of students with dyslexia alone reaches over 2 000. We doubted very much, and so did The Ombudsman, whether the number is really that small. The percentage in the rest of the world ranges from the smallest 1.3% to the largest of more than 8%, and there is no reason for Hong Kong to be as small as 0.43%. We doubted if there is any problem with the assessment conducted. The reply to this question was a shortage of experts, and there had been such difficulties as the recruitment of experts. We are not belittling the Government, but the absence of an overall strategy will certainly lead to enormous grievances and increasing conflicts. Therefore, we think that the Government should devise a comprehensive strategy.

Furthermore, just as Dr Fernando CHEUNG said earlier and I had also stated clearly at the last meeting that, the issue has already aroused widespread concern. I think that the Government is also concerned about it, so it would be unfair to say that the Government was cold-blooded. This is not the case. Rather, I have a feeling that a door is now open, just like them and us. Experts are supplied by us, such that experts of other fields would be engaged to do what is expected of them. Yet, what they did or said was beyond the understanding of other people, and so was the report compiled by them. It is therefore meaningless to submit the report to them. Neither is it meaningful to ask people who are not experts (that is, laymen or ordinary people) to study the report.

I think that we should do away with such a concept and culture, otherwise it would be impossible for other people, be they parents, enthusiastic persons, other concerned parties, teachers..... Teachers who have received training only account for 10%, but they have to help integrate a large number of students. Upon admission of these students, teachers will face this challenge. Nothing can be done if they have not received the relevant training — in particular, it is often heard that teachers are under immense pressure — they really cannot help. Under such a helpless circumstance, everyone feels unhappy; parents also feel unhappy, so do the teachers, and the schools are also subject to enormous pressure.

There must be a comprehensive plan to attract people who can really help. Why did we often sit here for meetings? People who attended the meetings conducted by the Subcommittee would sit on either side: one for education officials and the other for parents and other interested parties. Despite the heated discussions, there is yet any conclusion on what is to be done or what will be the way forward. I still think that the issue should be addressed under government leadership and guidance, but meanwhile, it is also very important to ensure complementary efforts in terms of resources and expertise.

I very much hope that the Government will expedite the relevant work. I know that there are currently a lot of problems, but they have to be resolved one by one, and it takes time. No one is saying that the problems can be resolved overnight. Yet, we should at least devise a plan that will enable us to open that door, such that people who may help can put their heads together to find solutions to ultimately solve the problem. I believe only by so doing can the problem be expeditiously resolved without creating any gap.

Therefore, the Liberal Party absolutely supports, in principle, the motion moved by Mr Bernard CHAN. Nonetheless, having indicated our support for it, we do hope that the Government will be able to devise more thorough and comprehensive strategies. Thank you, President.

MR ALAN LEONG (in Cantonese): Madam President, the motion proposed by Mr Bernard CHAN today urges the Government to deploy more resources to mainstream schools which admit students with special educational needs so as to help them integrate into mainstream education as soon as possible. When we talk about resources, it is certainly a matter about money or manpower and hardware such as equipment purchased with money. Equally important, however, is a comprehensive support system, including professional intervention, an identification mechanism, a framework of teachers' training as well as improvement to the curriculum and examination arrangements.

Recently, my office has received a letter from a parent whose son has learning disabilities. Today, perhaps let me describe the problems encountered by a student with learning disabilities from the experience of the parent. The letter was written by a parent whose son is a gifted teenager with an IQ of 137, a candidate of this year's Hong Kong Certificate of Education Examination (HKCEE). The parent applied for adaptation measures for him on the ground

of his learning disabilities and a one-off adaptation arrangement was granted after having overcome a lot of difficulties and making repeated requests. The parent felt very puzzled by the process.

In fact, the gifted student, who was assessed to be gifted at the age of seven and 14, was rejected when first applying for adaptation. According to the parent, even his classmaster and English teacher shed tears of sympathy for him. Later, the school principal, an educational psychologist and a brain specialist also ran errands for him and offered him assistance on a voluntary basis. The brain specialist had even written a 10 000-word report free of charge for which he worked until 4 am in the morning. With all these efforts, a one-off adaptation was eventually granted as just said.

Madam President, in fact, the so-called adaptation provided by the Hong Kong Examinations and Assessment Authority includes only extension of time, examination papers printed on single page or in enlarged fonts, approval for writing on alternate lines and longer rest time. But critical difficulties faced by students with learning disabilities such as diction handicap, confusion of character structure and weakness in logical expression are not taken care of. The parent was worried that her son would still fail in the examination and need to sit for it again despite such better-than-none adaptation measures. Even if the HKCEE is passed, the Advanced Level Examination is in store for him two years later. Regardless of the result, her son will have to re-apply for these dubious adaptation measures with tremendous efforts of so many people.

Madam President, I recall that in last year's policy address, the Chief Executive excitedly talked about Hong Kong's success in gifted education and the honours repeatedly received by our youngsters in international competitions. He therefore proposed the setting up of an Academy for Gifted Education as the forum for international exchanges, research and development. To our surprise, right before us is a youngster with an IQ of 137 who has been bumping along the way in the rigid examination system, being unable to participate in learning equally like everybody else.

Madam President, to improve the situation of students with learning disabilities, the first priority is the early identification of students in need of help. Although the Education and Manpower Bureau has introduced the Observation Checklists for Teachers three years ago, quite a few schools conducted learning assessments at random only. As a result, many students who have minor learning disabilities or are gifted despite such disabilities are unable to receive

assessment. Besides, even though some students are found to have learning disabilities, they will be referred for further professional assessment which will be a protracted process. Moreover, parents who have a different opinion from that of the schools are required to seek re-assessment on their own from the Department of Health.

When students with learning disabilities are preparing to go to secondary school, they will not be provided sufficient support. It is because some schools consider that the adaptation mechanism can be withdrawn if the students are making progress or in the examinations for Primary Five or Primary Six pupils, although the results of these examinations will be submitted to the Education Department for secondary school places allocation. When the students have been promoted to secondary school, many of those with learning disabilities cannot cope with their learning at all even before taking the HKCEE due to a lack of clear guidelines for the schools on adaptation and teaching, and a lack of knowledge of learning disabilities on the part of the teachers. In view of the fact that, in the new senior secondary school curriculum, there will be enhanced requirements in linguistic skills and cancellation of multiple-choice questions which will be replaced by essay questions, thus leading to a great demand in writing, students with learning disabilities will face greater difficulties.

Madam President, the Government should be clear about the right direction and the train of thought for resource deployment through problems in learning disability education. Resources are certainly needed by schools in terms of additional manpower and equipment. But the Government should also allocate more resources to improve the learning assessment for Primary One students. Improvement should be made to adaptation measures for students with special needs both in school and in examination arrangements such as the addition of oral tests, interactive computer answering system and restoration of multiple-choice questions. Furthermore, the curriculum should be reformed in the light of the new "3-3-4" academic structure so that students with special educational needs can have the opportunity to display their individual talents and be given a more diversified progress path in further studies and employment.

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

MRS SOPHIE LEUNG (in Cantonese): President, concerning today's question, I have listened to a lot of views and found that the Government seems to have a

lot of work to do. Perhaps I can offer some insights to the Government. All the problems mentioned by my colleagues are real. I will not talk about one or two cases. Instead, however, I have joined an organization formed by a small group of people dedicated to helping children with reading difficulties.

They have set up an organization called The Pathway which has existed for four to five years. Assistance is offered by a group of volunteers on their own initiative. Moreover, they do not do anything superficial in a perfunctory manner, but they will conduct research to find out some better ways in a pragmatic manner. Instead of training teachers purely on how to perform assessments, they will directly teach them skills to correct the students' reading difficulties. Last year, they successfully helped a student to go to the United Kingdom for university education. There are such students every year.

Dyslexia, the problem I just mentioned, is a disorder with a known average rate of 10% among the population in foreign countries. In China, where the language is a kind of ideogram, the average rate is only 9%. Children with dyslexia often write words in a reversed order, not understanding why it is wrong. So, we have to teach them to rectify their mistakes with patience.

Why did I specifically mention The Pathway? Because all the issues mentioned by colleagues are not necessarily or entirely the job of the Government or society. I hope, through this example, the Government will become aware that this is a very good job for social enterprises. The reason is that, apart from training the teachers on performing assessments, they can also advise the teachers on how to upgrade their skills. I recall that they are now working hand in hand with the Tung Wah Group of Hospitals to provide training to teachers approaching them. The teachers will then, first of all, know how many students in their schools have such a problem and commence enhancing their skills. When these stories were spread, more and more teachers would enrol in courses run by the organization. Initially, all the courses are free of charge but the teachers after training will receive a very high hourly rate in tuition fee. As a social enterprise, the organization will be responsible for training the teachers who can charge a fee according to a certain rate after training and then return some of their remuneration to the organization as funding for training other teachers. This is a very good practice because most importantly, more dedicated teachers will be able to perform assessments and improve the students' skills. In that case, there is no need for us to worry too much.

Of course, this is not a case relevant to all the issues discussed today. But I very much hope that this is a new example, giving us a little bit insight because after listening to Members' speeches, I feel that they are very frustrated. However, I hope Members can follow the spirit of The Pathway and help our community do something pragmatic with unswerving determination instead of engaging in empty talk. Only in this way can our children be helped. Thank you, President.

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

MR LEUNG KWOK-HUNG (in Cantonese): President, in fact, I do not know much about this topic, and I only listened to the speeches of colleagues. Then, I heard Mrs Sophie LEUNG say that social enterprises may be a way out.

But where do social enterprises come from? Certainly there must be a "subjective initiative", that is, there must be people willing to do it. When we say leaving wealth to the people, it does not only mean putting money into their pockets, but also bringing their potentials into play. This is not just a case of social enterprises giving a hand to help-seekers or people relying on these social enterprises, but also a way which enables participants to feel the greatest joy of life and that is, helping other people to become self-reliant.

I must make it clear once again that I know nothing about this topic, and my comments are just common sense. I found that there is a problem..... let us not talk about social enterprises for the time being, as everybody seems to be willing to do this, including the Government. But firstly, there are too many departments involved in policymaking and co-ordination is lacking among government departments. This is actually a mirror. The Government may have allocated resources for the purpose or it may have the determination to do it, but the lack of co-ordination has prevented it from providing one-stop service or drawing on collective wisdom to achieve better resource deployment.

Do people not always say that there must be a mastermind in everything we do? I think it is time to identify the mastermind, and Chief Executive Donald TSANG should appoint a group of people or an individual to take up this job. This person may already exist and if that is the case, he is certainly not competent for the job. This is the first point.

Secondly, as things now stand, we have no idea to what extent resources are lacking. That is, there is not an overall yardstick for measurement. This is also a problem, because resources are not unlimited. We have consistently been told by government officials that resources are not unlimited. What is the most important area in need of resources? Different people may have different views. Some people consider it necessary to make assessment first because teaching should be tailored to students' varied abilities and so, even for normal students, it is still necessary to conduct assessment first. A good teacher or a good mentor must have regard to the individual aptitude of the students. This is what should be done. Where is the problem then? The problem is that too many departments are involved in policymaking and the concepts are realized before everything else.

Integrated education is a progressive concept but if the Government, in implementing integrated education, is too eager to achieve results, there would be a problem similar to that in the merger of universities and that is, whether the carrot or the stick should be employed. If the carrot will be used, certainly it would require more resources, for it means using benefits as an inducement. When there are the two methods of special education and integrated education, and if the "carrot" approach is adopted, the authorities would have to plough in more resources for parents or practitioners to choose. But it seems that this is not quite the case in reality. While we cannot say that the authorities have entirely resorted to the stick, what they have done is still making it difficult for choices to be made through the allocation of resources. I think this is a key problem of education, or else it would not have taken dozens of days for the hearing. Merger is a good thing, and it may also be a good thing to come up with new policies. But is it that the authorities have long decided the method to be used and one would not be able to enjoy more resources if one does not follow this method? This is where the key problem lies.

Therefore, before making a decision on whether to adopt a policy on integrated education or special education, the Government should provide more resources for both options to fully develop first and then decide on which direction to take and make a choice which is more scientific.

I must say that rationally, I think I should sympathize with these unfortunate people but in my mind, if I do not see them, I would not remember their existence. Had Mr Bernard CHAN not brought up this issue today, I would seldom think about these problems. I only think of them occasionally

when I sometimes attended their parents' gatherings. My impromptu response now is more of a sentimental expression of feelings than a product of rational thinking.

Disregarding whether this will be done by way of social enterprises or injection of funds by the Government, and as we review this very important issue, I think nowadays we can no longer follow the old practice of different departments groping in the dark for a solution to the problem according to their own understanding and using their own resources.

My conclusion is simple: The Government should appoint a committee or an individual person and complementing this committee and person with sufficient resources to implement a pilot scheme and then make a scientific analysis before considering the next step in policymaking.

Thank you, President.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): Secretary for the Civil Service.

SECRETARY FOR THE CIVIL SERVICE (in the absence of Secretary for Education and Manpower) (in Cantonese): President, I very much thank Mr Bernard CHAN for proposing this motion on "Concern about students with special educational needs" today. I also thank Members who have spoken for their valuable input. As the Secretary for Education and Manpower is not in Hong Kong, I would give a response on behalf of the Government.

Indeed, I must thank Secretary Prof Arthur LI as well, because his absence from this meeting today has given me the opportunity to have a quick lesson on the education and development of children with special needs. I am deeply impressed by Members' commitment and devotion in putting forward their opinions on various aspects concerning children with special education needs despite the three-day marathon meeting.

The Government is committed to implementing integrated education in order to take care of students with special education needs and enable them to learn in ordinary schools. In the learning environment of ordinary schools, these students, through their peers, are provided with a more enriched environment for learning and school life and exposed to proper social skills and behaviour patterns, which are conducive to reducing barriers in the learning, growth and social life of these students. For students with severe, profound or multiple disabilities who cannot benefit from ordinary school settings, they will be placed in special schools where their needs will be appropriately catered for.

The concept of integrated education was first introduced to Hong Kong in the '70s, mainly in the form of special classes in ordinary schools. In 1997, we launched the Integrated Education Programme with emphasis on the whole-school approach. Under this approach, schools are encouraged to develop an integrated education policy with the objective of enhancing the effectiveness of support for students with special education needs through improvement of the culture, policy and practices of the school, while putting emphasis on enhancing the professional competency of schools and teachers in order to cater for students with special education needs.

A three-tier intervention model is now practised in schools to support early identification and intervention and provide resources and support to schools.

We have been providing primary and secondary schools with additional basic resources, which include additional teachers for remedial teaching, the Capacity Enhancement Grant, Primary School Master (Curriculum Development) posts, additional teachers for specialized teaching and student guidance personnel/school social workers. These basic provisions will enable schools to provide the most basic tier-1 support for students with mild or transient learning problems through quality teaching and pastoral care.

The tier-2 add-on support is mainly provided for students with persistent learning difficulties. In primary schools, there are the Intensive Remedial Teaching Programme and New Funding Mode, which enable schools to take on additional teachers to facilitate small-group learning and pull-out programmes. In secondary schools, we used to have the School-based Remedial Support Programme and the School-based Curriculum Tailoring Scheme, but starting from the 2006-2007 school year, these two programmes will be replaced in phases by a new initiative, under which additional teachers will be provided for

secondary schools with more Territory Band 3 and bottom 10% Secondary One to Secondary Three students. This will cater for the academically low achievers, while at the same time take care of most junior secondary students with special education needs.

For the tier-3 support, there are the Integrated Education Programme for primary schools and an annual grant of \$20,000 for each student with severe special education needs under the New Funding Mode in primary schools, as well as the Integrated Education Programme for secondary schools. Additional teachers and teaching assistants are provided for schools participating in the Integrated Education Programme to cater for students with severe special education needs (including students with Autistic Spectrum Disorders and mild intellectual disability) under a whole-school approach. Besides, primary and secondary schools with hardcore cases or a larger cluster of students with special education needs will be provided with support on a need basis in the form of secondment of resource teachers from the Education and Manpower Bureau with time-limited additional provisions for employing additional teaching assistants, or support from the network of resource schools.

President, we understand that teacher training is indispensable to the development of integrated education. To tie in with the three-tier intervention model, a five-year teacher training framework will be implemented starting from the 2007-2008 school year to enhance teachers' professional competence in taking care of students with special education needs. Our targets are that in the five-year period, at least 10% of the teachers in a school will have completed the basic training course on special education, at least three teachers per school will have completed the advanced training on special education, at least one teacher per school will have completed the thematic training on specific types of special education needs, and at least one Chinese teacher and one English teacher will have attended the course on special learning difficulties. Schools may arrange the teaching work of teachers attending the courses to be taken up by supply teachers. Moreover, training programmes will also be provided for principals and teaching assistants. Diversified teaching resources and teaching guidelines will be compiled for teachers, and seminars, workshops and forums will be organized to update them on the latest development of integrated education.

Apart from resources, schools are also provided with professional and specialist support, including educational psychology service, speech therapy service, student guidance and school social worker service. With effect from

the 2006-2007 school year, we have assigned to each primary school a Special Education Support Officer as a resource person to help schools promote an inclusive culture and develop the school-based policy for education of students with special education needs. They pay regular visits to schools to give advice to teachers on their concerns and conduct case conferences on a need basis, provide on-site support for difficult cases, meet with parents, and advise schools on teacher training and resource deployment.

With the assistance of ordinary schools and special schools experienced in integrated education, we have also provided support and networking services, including on-site support, experience sharing, and so on. In the new school year, the number of resource schools will increase to 26 and they will provide support services to ordinary schools. Moreover, we are further exploring room for co-operation with non-governmental organizations which have also accumulated enormous experience in respect of support techniques, preparation of learning resources and teaching kits, and provision of direct service to students with special education needs.

Parents play a very crucial role in the promotion of integrated education. In this connection, we will foster communication with parents to help them better understand how they can cater for their children's special education needs, how to choose a school for them and how to complement the support provided by school to their children.

President, a number of Members mentioned earlier that the Government must effectively identify students with special education needs and provide support to them early. The Office of The Ombudsman (The Ombudsman) has completed a direct investigation into and published a report on the assessment services of children with special learning difficulties. We generally accepted the recommendations of The Ombudsman and we will implement them. For the purpose of assessment, the Hong Kong Special Learning Difficulties Behaviour Checklist for primary school pupils will be used for screening Primary One students with special learning difficulties. Primary students in other grades can be referred to educational psychologists in school or the Education and Manpower Bureau. With regard to secondary students, we will develop an assessment tool for secondary teachers to assess secondary school students' reading and writing ability in Chinese. This assessment tool is expected to be available in mid-2007 and by then, secondary teachers can make use of this

assessment tool to screen students suspected to have special learning difficulties and assess the relative strengths and weaknesses of students in Chinese writing for planning appropriate intervention strategies. On professional support, school-based support will be provided, and efforts will be made jointly with schools to explore effective strategies for teaching students with special learning difficulties. Moreover, we will participate in a five-year project known as "Read and Write: A Jockey Club Learning Support Network" sponsored by the Hong Kong Jockey Club to develop teaching resources and conduct the relevant studies.

Members mentioned the types of special education needs, questioning whether ordinary schools should take care of too many types of special education needs. The Government's policy on special education advocates equal opportunities and full participation. Students with special education needs should have equal access to education. We have no objection to the idea that schools should first develop expertise in providing support for one or two types of special education needs to provide choices for parents. On the proposal that schools should cater for just one or two types of students with special education needs, we have consulted the relevant departments and the academia. It is generally considered that such a rigid requirement violates the spirit of the Disability Discrimination Ordinance and will result in a scenario where there will not be enough schools willing to admit students with those types of special education needs that are difficult to handle (such as students with core autism or attention deficit or hyperactivity) or to develop expertise in these areas. The Education and Manpower Bureau encourages schools to set out in school selection documents for parents their experience or intention in catering for or developing skills for handling certain types of special education needs. Meanwhile, we will revise the layout and explanatory notes of the School Profiles to facilitate the inclusion of information on their provision of support to students with special education needs, in order to assist parents in choosing the suitable schools for their children with special education needs.

Members mentioned earlier whether the Government should implement integrated education through small-class teaching, with a view to enhancing effectiveness. Schools have flexibility in deploying the additional resources provided to them for taking care of students with special education needs, and they can also flexibly arrange small-group teaching or guidance to better cater for students in need.

Moreover, regarding the lack of sufficient educational psychologists to provide service for students in need, given a comparatively high academic qualification requirement for educational psychologists and the stringent requirements in the two-year training programme, and as the University of Hong Kong, which is the only course provider, conducts an admission exercise on a biannual basis, there will only be about 20 graduates every two years. We do recognize that the demand for educational psychology service has been increasing and we are in the course of discussing with various tertiary institutions the feasibility of expanding the provision of training.

Members also asked earlier what support the Government has provided to non-Chinese-speaking students with special education needs. A number of government/subsidized/Direct Subsidy Scheme primary and secondary schools, including Sir Ellis Kadoorie (Sookunpo) Primary School, Li Cheng Uk Government Primary School, Islamic Primary School, Yaumati Kaifong Association School, Hong Kong Taoist Association School and Sir Ellis Kadoorie Secondary School (West Kowloon), which use English as the medium of instruction, provide remedial teaching service for English-speaking students with learning difficulties. In addition, the English Schools Foundation (ESF) has run a special school, namely, the Jockey Club Sarah Roe School, to provide education in English for children with special education needs who are not suitable for admission to mainstream schools. We will provide recurrent funding to this school with reference to the amount of subsidies provided to other subsidized special schools.

The ESF has also implemented integrated education where appropriate. Arrangements have been made for students with special education needs who are suitable for learning in a mainstream school environment to study in learning support classes in mainstream schools. There are at present six primary schools and two secondary schools under the ESF where learning support classes are provided. Although the review of the long-term funding arrangements for the ESF has not yet commenced, we have since this year made an additional provision of \$2 million to the ESF per annum for it to enhance the relevant services in order to meet the demand. According to our information, the ESF has provided additional learning support classes in three of its primary schools using the additional provisions.

President, in the 2005-2006 school year, there are a total of 334 schools where integrated education is implemented using a whole-school approach.

According to the findings of self-evaluation surveys conducted by the schools, an inclusive culture has been cultivated gradually in schools with mutual acceptance and assistance between teachers and students. The overall academic performance, learning motivation, social adjustment and self-esteem of most students have shown stable performance or improvement. Parents' co-operation with schools and their awareness of special education needs have been enhanced, and they have become open-minded and more willing to discuss with schools the special education needs of their children, and this has, in turn, facilitated early intervention by schools. Most of the schools considered that the whole-school approach is the right direction for promoting integrated education.

In the 2006-2007 school year, government expenditure on the provision of additional resources and professional support to public primary and secondary schools for taking care of students with special education needs amounted to \$550 million, an increase of 17% over the \$470 million in the 2005-2006 school year. We will continue to review how support can be provided to students with special education needs more effectively. We are now reviewing the resources and support provided to secondary schools, including exploring the feasibility of extending the New Funding Mode to secondary schools, thereby stepping up the promotion of the whole-school approach in secondary schools.

Finally, President, I will reflect the valuable opinions expressed by Members today on integrated education to the Secretary for Education and Manpower. Thank you, President.

PRESIDENT (in Cantonese): Mr Bernard CHAN, you may now reply and you have three minutes eight seconds.

MR BERNARD CHAN (in Cantonese): President, I am very grateful to the 13 colleagues and representatives of the six major political parties and groupings who have spoken on this motion today. I must particularly thank colleagues, and especially you, Madam President, for staying in this Chamber to debate this issue despite the very long debate held for three days in a row spanning a total of 30 hours 25 minutes, in order to show their concern and support to children with special educational needs.

In fact, President, I was allocated with this time slot today for my motion shortly after I had submitted my application to the Legislative Council. The Government then called me soon afterwards telling me that the Secretary would be out of town today and asking me if I still wished to propose this motion for this time slot today. I was a bit worried at first, but considering that this Legislative Session is drawing to an end and I may not have another chance if I chose to wait, I, therefore, decided to go ahead as scheduled. Of course, never had I expected that my turn to speak came only after the meeting had been held for more than 30 hours.

Later, we learnt that Secretary Denise YUE would give us a response today and indeed, we should be thankful that she is attending the meeting. Why? First of all, as the Secretary has said, she is given the opportunity to listen to our discussion on this issue today, thus enabling her to gain a fuller understanding. This is exactly the objective of this motion today, for it is hoped that more people, and especially in the Government, and not only officials responsible for education, but also other officials, will appreciate this problem.

Certainly, as many colleagues said earlier, we may not be able to solve the problem in a short time, and the most important thing is whether or not we have the "heart". Mr Abraham SHEK reminded me that I must mention the word "heart", that is, a loving heart. Do we have a loving heart in addressing this issue?

I wonder if the Secretary is aware that this issue, which seems to have nothing to do with her though, actually bears a relation to her. Why? It is because I found that many parents who lodged complaints with us are senior civil servants. So, this problem concerns not only a small group of people. Rather, each and every person may stand a chance of coming across it.

Today, I have prepared a small card for Members, but perhaps not everyone has got it. This is a picture drawn by me and the theme is "Mom, Dad and Son". On it there are messages written by 60-odd students with special needs. This one is for Secretary Prof Arthur LI. Perhaps Secretary Denise YUE can give it to him.

Colleagues should feel exhausted today and so, I do not wish to hold you up any longer. I hope that we can proceed to vote quickly, so that the meeting can end earlier. But Members still cannot leave, for there is a House

Committee meeting to follow. I believe the end of this marathon meeting today absolutely does not mean the end of our concern over this issue. Here, I wish to express my gratitude to the President and to all colleagues.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by Mr Bernard CHAN 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, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the motion passed.

NEXT MEETING

PRESIDENT (in Cantonese): I now adjourn the Council until 11.00 am on Wednesday, 13 June 2007.

Adjourned accordingly at twenty-six minutes past Eight o'clock.

Annex I

RAIL MERGER BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for
the Environment, Transport and Works

<u>Clause</u>	<u>Amendment Proposed</u>
2	By deleting "the Secretary for the Environment, Transport and Works" and substituting "the Secretary within the meaning of section 2(1) of the Mass Transit Railway Ordinance (Cap. 556)".
Part 2	In Division 1, in the heading, in the Chinese text, by adding "詳題及" after "修訂".
3	Paragraph (c) is deleted.
3(d)(i)	In the English text, by adding "at the end" after "comma".
5(c)	In the Chinese text, in the proposed definition of "鐵路", in paragraph (a), by adding "各" before "九鐵公司鐵路".

- 5(d) In the proposed definition of "railway premises", in paragraph (a) -
- (a) in subparagraph (i), by adding "and" after the semicolon;
 - (b) by deleting subparagraph (ii);
 - (c) in subparagraph (iii), by deleting "or (ii)".
- 5(e) (a) By deleting the proposed definition of "Concession Period" and substituting -
- "Concession Period" (經營權有效期) means the period for which that part of the franchise relating to the KCRC Railways is in force, and any period for which the whole or any part of such part of the franchise is suspended under this Ordinance;".
- (b) In the English text, in the proposed definition of "service concession", by deleting the comma before "and".
 - (c) In the Chinese text, in the proposed definition of "九鐵公司鐵路", by adding "各" before "九鐵公司鐵路的提述".

- (d) In the Chinese text, in the proposed definition of "西北鐵路巴士服務", by deleting "營運" and substituting "經營".
- (e) In the Chinese text, in the proposed definition of "經營權財產", by deleting paragraph (b) and substituting -
- "(b) 為供港鐵公司使用而獲取、購買、租用、生產、創造、建造、發展、加工處理或改裝，並只用於修理、維修、更換或改善(a)段提述的財產，且屬服務經營權協議中 "Concession Property" 的定義所指的財產；及".
- 6(a) In the proposed section 4(1)(e), in the Chinese text, by adding "各" before "九鐵公司鐵路".
- 6(b) In the proposed section 4(1A), in the Chinese text, by deleting "或" and substituting "及".
- 8(b) By deleting the proposed section 9(2) and substituting -
- "(2) Where the Corporation operates the TSA bus service during the Concession Period, the Corporation shall ensure that the TSA bus service is operated properly and efficiently under -

- (a) this Ordinance and all other applicable laws; and
- (b) the operating agreement."

- 9 (a) By deleting the proposed section 12A(2)(b) and substituting -
- "(b) in respect of any matter in relation to which any person whose right to occupy the land has been prejudiced has made no objection or claim during the time of the construction of that part of the KCRC Railway affecting that land or in relation to which that person has accepted compensation; or".
- (b) In the proposed section 12A(2)(c), in the Chinese text, by adding "的" before "作為".
- 10 By adding "operated by the Corporation" after "service".
- 11 (a) In the proposed section 15A(2), in the Chinese text, by deleting "經營".
- (b) In the Chinese text, by deleting the proposed section 15A(3)(a) and substituting -

- "(a) 凡在與該部分的專營權被暫時中止有關連的情況下，根據第15(5)條被接管的經營權財產蒙受任何損失或損壞(但為免生疑問，不包括使用或管有該經營權財產的權利的損失)，政府有法律責任就該等損失或損壞支付補償；及".
- (c) By deleting the proposed section 15A(3)(b) and substituting -
- "(b) subject to paragraph (a), the Government is not liable to pay compensation for any loss or damage of any other kind (including consequential loss) sustained by the Corporation and in any way arising from or attributable to the suspension of that part of the franchise."
- (d) In the Chinese text, by deleting the proposed section 15A(4)(a) and substituting -
- "(a) 在與該部分的專營權被暫時中止有關連的情況下，根據第15(5)條被接管的經營權財產蒙受任何損失或損壞(為免生疑問，包括使用或管有該經營權財產的權利的損失)；及".

- (e) By deleting the proposed section 15A(4)(b) and substituting -
- "(b) any actual loss or damage of any other kind (but excluding, for the avoidance of doubt, any consequential loss) sustained by the Corporation and resulting directly from or attributable to the suspension of that part of the franchise."
- (f) In the proposed section 15A(5), in the Chinese text -
- (i) by adding "就該損失、損壞或損害" before "而支付，";
- (ii) by deleting "首述的" and substituting "該".
- (g) In the proposed section 15B(1), in the Chinese text -
- (i) by deleting "有關";
- (ii) by deleting "該等使用" and substituting "將該等財產用於經營該等服務";
- (iii) by adding "經營" before "該等服務。".

- (h) In the proposed section 15B(2), in the Chinese text -
- (i) by deleting "有關";
 - (ii) by deleting "該等使用" and substituting "將該等財產用於經營該等服務";
 - (iii) by adding "經營" before "該等服務".
- 12(e) In the proposed section 16(2) -
- (a) in paragraph (c), by deleting the comma and substituting a full stop;
 - (b) by deleting everything after paragraph (c).
- 14(4) In the proposed section 18(8A), in the Chinese text, by adding "各" before "九鐵公司鐵路".
- 15 (a) In the proposed section 19A(2), in the Chinese text -
- (i) by deleting "關乎經營" and substituting "關乎各";
 - (ii) by deleting "有關".

- (b) In the proposed section 19C(1), in the Chinese text -
- (i) by adding "各" before "九鐵公司鐵路";
 - (ii) by deleting "該等使用" and substituting "將該等港鐵共用財產用於經營該等服務".
- (c) In the proposed section 19C(2), in the Chinese text -
- (i) by adding "各" before "九鐵公司鐵路";
 - (ii) by deleting "該等使用" and substituting "將該等九鐵共用財產用於經營地下鐵路".
- (d) In the proposed section 19C(3)(a) and (b), in the Chinese text, by adding "各" before "九鐵公司鐵路的部分".

16 By adding before subclause (1) -
"(1A) Section 33(1)(a)(ii) is repealed."

- 16(1) (a) In the proposed section 33(1A), by deleting "all or any" and substituting "any or all".
- (b) By deleting the proposed section 33(1A)(b) and substituting -

- "(b) controlling and regulating the maintenance and operation of the TSA bus service by the Corporation; and".
- (c) By deleting the proposed section 33(1A)(c).
- (d) In the proposed section 33(1B), in the Chinese text, by adding "各" before "九鐵公司鐵路".
- 17 (a) By deleting the proposed section 34(1A)(a) and substituting -
- "(a) prescribing the terms upon which any goods or class of goods will be received for carriage by the Corporation or stored by it including limitations on the liability of the Corporation in respect of the goods; and".
- (b) In the proposed section 34(1B), in the Chinese text, by adding "各" before "九鐵公司鐵路".
- 18 In the proposed section 35(6)(b), in the Chinese text, by adding "各" before "九鐵公司鐵路".

New By adding immediately after clause 18 -

"Division 5A - Amendments to Part IX (Vesting provisions and transitional arrangements)

18A. Interpretation

Section 36 is amended by adding -

"(3) In this Part, "Corporation" (地鐵公司) means the company -

- (a) which, as at the appointed day, is incorporated under the Companies Ordinance (Cap. 32) and registered under that Ordinance by the name "MTR Corporation Limited" in English and "地鐵有限公司" in Chinese; and
- (b) the Chinese name of which is changed to "香港鐵路有限公司" on the Merger Date under section 66(1)."."

19 (a) In the proposed section 52A -

- (i) in the definition of "relevant date" -

- (A) in paragraphs (a) and (b), by deleting "which is" and substituting "or a contract of a class of contracts";
 - (B) in paragraph (d), in the Chinese text, by deleting "與";
 - (ii) in the Chinese text, in the definition of "合約", by deleting "的協議、債券" and substituting "或作出的協議、保證".
- (b) By deleting the proposed section 52B(1)(a) and (b) and substituting -
- "(a) the rights which are exercisable by KCRC at any time on or after the relevant date under the terms of the contract or a contract of the class of contracts; and
 - (b) the liabilities which are to be discharged by KCRC at any time on or after the relevant date under the terms of the contract or a contract of the class of contracts,".
- (c) In the proposed section 52B, by adding -

"(1A) Where a right is exercisable by KCRC before, on and after the relevant date under the terms of a contract or a contract of a class of contracts specified in a Vesting Notice, subsection (1) does not apply to the right which is exercisable by KCRC in respect of the period before the relevant date."

(d) In the proposed section 52C, in the heading, in the Chinese text, by deleting "及合約" and substituting "及".

(e) By deleting the proposed section 52C(1)(a) and (b) and substituting -

"(a) the rights which are exercisable by the Corporation at any time on or after the relevant date under the terms of the contract or a contract of the class of contracts; and
(b) the liabilities which are to be discharged by the Corporation at any time on or after the relevant date under the terms of the contract or a contract of the class of contracts,".

(f) In the proposed section 52C, by adding -

"(1A) Where a right is exercisable by the Corporation before, on and after the relevant date under the terms of a contract or a contract of a class of contracts specified in a Re-vesting Notice, subsection (1) does not apply to the right which is exercisable by the Corporation in respect of the period before the relevant date."

- (g) In the proposed section 52C(2)(b), in the Chinese text, by adding "各" before "九鐵公司鐵路".
- (h) In the proposed section 52D(1), in the Chinese text, by deleting "由" and substituting "與".
- (i) By deleting the proposed section 52E and substituting -

"52E. Pension fund schemes, etc.

(1) All rights and liabilities to which KCRC was entitled or subject immediately before the relevant date under any specified instrument shall vest in the Corporation by virtue of this subsection on that date.

(2) In subsection (1), "specified instrument" (指明文書) means any contract or other document -

- (a) which -
 - (i) constitutes or relates to any pension fund scheme, provident fund scheme or any other retirement benefits scheme established for the benefit of employees of KCRC; or
 - (ii) relates to any gratuity benefits payable by KCRC; and
 - (b) which was in force immediately before the relevant date."
- (j) In the proposed section 52F(1), by adding "as from that date" after "(as the case may require)".
- (k) In the proposed section 52F(3), by adding "as from that date" after "(as the case may require)".
- (l) In the proposed section 52G(5), in the Chinese text, by deleting everything after "而言，" and substituting "港鐵公司及所有其他人為確定、完成或強制執行該項轉歸的權利或法律責任而具有的權利、權力及補救方法，與假使該項權利或法律責任在所有時候均屬港鐵公司

的權利或法律責任，港鐵公司及上述其他人便會具有的權利、權力及補救方法相同。".

- (m) In the proposed section 52G(6), in the Chinese text, by deleting everything after "而言，" and substituting "九鐵公司及所有其他人為確定、完成或強制執行該項轉歸的權利或法律責任而具有的權利、權力及補救方法，與假使該項權利或法律責任在所有時候均屬九鐵公司的權利或法律責任，九鐵公司及上述其他人便會具有的權利、權力及補救方法相同。".
- (n) In the proposed section 52H(1), in the English text, by adding "effected" after "other than any vesting".
- (o) In the proposed section 52H(2) and (3), in the English text, by adding "effected" after "any vesting".
- (p) In the proposed section 52J(1), in the Chinese text, by deleting "及法律責任" and substituting "或法律責任".
- (q) In the proposed section 52J(2), in the Chinese text, by deleting "及法律責任" and substituting "或法律責任".
- (r) In the proposed section 52L(1), by deleting "desirable" and substituting "reasonable".

21

- (a) By adding before the proposed section 54A -

**"54AA. Disapplication of section 54(1)
during Concession Period**

During the Concession Period, section 54(1) (insofar as it relates to sections 3 and 4 of Schedule 2) does not apply in relation to any part of the franchise relating to the KCRC Railways."

- (b) In the proposed section 54A, in the heading, by adding "**during Concession Period**" after "**Ordinance**".
- (c) In the proposed section 54B, in the heading, by adding "**during Concession Period**" after "**service**".
- (d) In the proposed section 54B(3), in the Chinese text, by deleting "的資料" and substituting "的資料的意向".
- (e) In the proposed section 54B(4)(b), in the Chinese text, by deleting "營運" and substituting "經營".
- (f) In the proposed section 54B(5), in the Chinese text, by deleting "調查" and substituting "檢查".
- (g) In the proposed section 54B, by adding -
- "(6) In this section, "TSA bus service" (西北鐵路巴士服務) means the service provided through the operation of bus services within the North-west Transit Service Area by the Corporation."

New By adding immediately after clause 21 -

"21A. Securities of Corporation as authorized investment

Section 59 is amended by adding -

"(3) In this section, "Corporation" (地鐵公司) means the company -

- (a) which, as at the appointed day, is incorporated under the Companies Ordinance (Cap. 32) and registered under that Ordinance by the name "MTR Corporation Limited" in English and "地鐵有限公司" in Chinese; and
- (b) the Chinese name of which is changed to "香港鐵路有限公司" on the Merger Date under section 66(1)."

21B. Requirement for Secretary to consult Corporation

Section 61 is amended -

- (a) in the heading, by adding ", etc." after "**Secretary**";
- (b) by adding ", the Commissioner or any other person ("the first-mentioned person")" before "to consult";
- (c) by repealing "in relation to any matter does not oblige the Secretary" and substituting "("the second-mentioned person") in relation to any matter does not oblige the Secretary, the Commissioner or the first-mentioned person (as the case may be)";
- (d) by repealing "that other person" and substituting "the second-mentioned person".

21C. Section added

The following is added -

"66. Change of Chinese name

(1) On the Merger Date, the Chinese name of the Corporation is changed from "地鐵有限公司" to "香港鐵路有限公司".

(2) The Corporation shall, as soon as practicable after the Merger Date, deliver to the Registrar a copy of this Ordinance as amended by the Rail Merger Ordinance (of 2007) and published in the loose-leaf edition of the laws published under the Laws (Loose-leaf Publication) Ordinance 1990 (51 of 1990).

(3) The Registrar shall register the copy of the Ordinance delivered to him pursuant to subsection (2) and -

- (a) enter the new Chinese name of the Corporation in the register in place of its former Chinese name; and
- (b) issue to the Corporation a certificate of change of name in respect of the change of the Chinese name of the Corporation under subsection (1).

(4) The change of the Chinese name of the Corporation under this section does not affect any rights or obligations of the Corporation or render defective any legal proceedings by or against it and any legal proceedings that could

have been commenced or continued against it by its former Chinese name may be commenced or continued against it by its new Chinese name.

(5) Section 22 of the Companies Ordinance (Cap. 32) does not apply in respect of the change of the Chinese name of the Corporation under this section.

(6) Nothing in this section shall be construed to affect the operation of section 22 of the Companies Ordinance (Cap. 32) in respect of any subsequent change of name of the Corporation.

(7) In this section, "Registrar" (註冊處處長) means the Registrar of Companies appointed under section 303 of the Companies Ordinance (Cap. 32).".".

22 By deleting paragraph (b) and substituting -

"(b) by adding "to enable that corporation to dispose of its property to, or grant its rights over its property and its other rights to, the MTR Corporation Limited, to enable that corporation to own or take a lease of other railways," after "other railways,".".

- 23(1)(c) (a) By deleting the proposed definition of "Concession Period" and substituting -
- "Concession Period" (經營權有效期) means the period for which that part of the franchise relating to the railways granted under section 4 of the Mass Transit Railway Ordinance (Cap. 556) is in force, and any period for which the whole or any part of such part of the franchise is suspended under that Ordinance;".
- (b) By deleting the proposed definition of "service concession" and substituting -
- "service concession" (服務經營權) means an arrangement under which the rights of the Corporation to have access to, use or possess certain railways and certain other property for the operation of those railways or the operation of bus services within the North-west Transit Service Area, are granted to the MTR Corporation Limited;".
- (c) In the English text, in the proposed definition of "Service Concession Agreement", by deleting the semicolon and substituting a full stop.

- (d) By deleting the proposed definition of "TSA bus service".
- 25(b) (a) In the proposed section 4(8), in the Chinese text, by adding "有關" after "涵蓋的".
- (b) In the proposed section 4(9), in the Chinese text, by deleting "建造工程" where it twice appears and substituting "建造".
- (c) In the proposed section 4(9), in the Chinese text, by deleting "該工程" and substituting "該鐵路的建造".
- (d) In the proposed section 4(9)(a), in the Chinese text, by deleting "該工程" and substituting "該鐵路的建造".
- (e) In the proposed section 4(9)(b), in the Chinese text, by deleting "管有或使用" and substituting "使用或管有".
- 28 (a) In the proposed Part VIII, in the heading, in the English text, by adding "OPERATION OF" after "SUSPENSION OF".

- (b) By deleting the proposed section 40(1) and substituting -

"(1) The operation of the following is suspended during the Concession Period -

- (a) Part IV and sections 25 and 38;
- (b) sections 23, 34B and 35A; and
- (c) the Kowloon-Canton Railway Corporation (Permitted Activities) (Consolidation) Order (Cap. 372 sub. leg. D)."

- (c) By deleting the proposed section 40(2) and substituting -

"(2) Subsection (1)(a) does not apply where the franchise granted to the MTR Corporation Limited under section 4 of the Mass Transit Railway Ordinance (Cap. 556), or any part of it relating to those railways covered by a service concession, is suspended under that Ordinance."

New

By adding immediately after clause 29 -

"29A. Second Schedule amended

The Second Schedule is amended, in paragraphs 3 and 4, by repealing "Corporation to operate" and substituting "operation of".

29B. Fifth Schedule amended

The Fifth Schedule is amended -

- (a) in paragraph 2(b), in the English text, by repealing "Corporation to operate" and substituting "operation of";
- (b) in paragraph 3(a), by repealing "Corporation to construct and maintain" and substituting "construction and maintenance of".

30(2) By deleting paragraphs (za), (zb), (zc), (zd), (ze), (zf), (zg), (zh), (zi), (zj), (zk), (zl), (zm), (zn) and (zt).

30(3) By deleting paragraphs (e) and (i).

- Schedule 1 (a) In section 1, in the Chinese text, by deleting "而經營" and substituting "而運作".
- (b) In section 3, in the proposed section 104E(1)(b), in the Chinese text, by adding "在經營權有效期內" before "有權接觸".
- (c) By deleting "**Traffic Accident Victims (Assistance Fund) Ordinance**" and substituting -

"Eastern Harbour Crossing Ordinance

3A. Interpretation

Section 2 of the Eastern Harbour Crossing Ordinance (Cap. 215) is amended -

- (a) in subsection (1), by repealing the definitions of "Mass Transit Railway Corporation" and "Corporation";
- (b) by repealing subsection (5).

3B. Section added

The following is added -

- "2A. Interpretation: references to "Mass Transit Railway Corporation" and "Corporation"**

(1) In relation to any time before the appointed day, in this Ordinance or in any notice or other document made under this Ordinance, unless the context otherwise requires, a reference to "Mass Transit Railway Corporation" or "Corporation" is a reference to the Mass Transit Railway Corporation established by section 3(1) of the Mass Transit Railway Corporation Ordinance (Cap. 270) that was repealed by section 64(1) of the Mass Transit Railway Ordinance (Cap. 556).

(2) In relation to any time on or after the appointed day, in this Ordinance or in any notice or other document made under this Ordinance, unless the context otherwise requires -

- (a) a reference to "Mass Transit Railway Corporation" or "Corporation" is a reference to "MTRCL"; and

(b) a reference to "Mass Transit Railway Corporation Ordinance (Cap. 270)" or a provision of the Mass Transit Railway Corporation Ordinance (Cap. 270) is a reference to "Mass Transit Railway Ordinance (Cap. 556)" or the provision to the corresponding effect in the Mass Transit Railway Ordinance (Cap. 556).

(3) In relation to any time on or after the appointed day but before the Merger Date, in this Ordinance or in any notice or other document made under this Ordinance, unless the context otherwise requires -

(a) a reference to "地下鐵路公司" is a reference to "地鐵有限公司";
and

(b) a reference to "《地下鐵路公司條例》(第270章)" or a provision of 《地下鐵路公司條例》(第270章) is a reference to "《地下鐵路條例》" or the provision to the corresponding effect in 《地下鐵路條例》.

(4) In relation to any time on or after the Merger Date, in this Ordinance or in any notice or other document made under this Ordinance, unless the context otherwise requires -

- (a) a reference to "地下鐵路公司" is a reference to "港鐵公司"; and
- (b) a reference to "《地下鐵路公司條例》(第270章)" or a provision of 《地下鐵路公司條例》(第270章) is a reference to "《香港鐵路條例》(第556章)" or the provision to the corresponding

effect in 《香港鐵路條例》 (第
556章) .

(5) In this section -

"appointed day" (指定日期) has the same meaning
as in section 2(1) of the Mass Transit
Railway Ordinance (Cap. 556);

"Merger Date" (合併日期) has the same meaning as
in section 2(1) of the Mass Transit Railway
Ordinance (Cap. 556);

"MTRCL" means the MTR Corporation Limited as
defined in section 2(1) of the Mass Transit
Railway Ordinance (Cap. 556);

"《地下鐵路條例》" was the Chinese short title
of the Mass Transit Railway Ordinance (Cap.
556) immediately before the Merger Date;

"地鐵有限公司" was the Chinese name of MTRCL
immediately before the Merger Date;

"港鐵公司" has the same meaning as in section
2(1) of the Mass Transit Railway Ordinance
(Cap. 556).".

**Traffic Accident Victims (Assistance
Fund) Ordinance".**

- (d) In section 10(1)(a), in the Chinese text, in the proposed definition of "輕鐵站", in paragraph (b), by deleting "指根據《九廣鐵路公司規例》(第372章, 附屬法例A)指定的" and substituting "指在《九廣鐵路公司規例》(第372章, 附屬法例A)所指的指定".

Schedule 2 (a) In Part 1, by deleting section 3.

- (b) In Part 2, by deleting section 4 and substituting -
"4. Item 1 of Part 1 of Schedule 1 to the Banking (Capital) Rules (Cap. 155 sub. leg. L).

4A. Section 2(a) of the Banking (Specification of Public Sector Entity in Hong Kong) Notice (Cap. 155 sub. leg. O).".

- (c) In Part 2, by deleting section 6.

RAIL MERGER BILL

COMMITTEE STAGE

Amendments to be moved by the Honourable Cheng Kar-foo

<u>Clause</u>	<u>Amendment Proposed</u>
5(e)	By adding -
[NOT PROCEEDED WITH]	“ “Committee” (委員會) means the Railway Development Fund Management Committee established under section 32B;
[NOT PROCEEDED WITH]	“Fund”(基金) means the Railway Development Fund established under section 32A;
[NOT PROCEEDED WITH]	“scheduled occurrence” (表列事故) means an occurrence mentioned in Schedule 8;”.
8	By adding –
[NEGATIVED]	“(aa) by adding - “(1A) Without affecting the generality of the Corporation’s obligation to maintain a proper and efficient service under subsection (1), the Corporation shall – (a) provide adequate facilities, including platform screen doors and automatic platform gates, for the purpose of protecting the safety of persons on the railway or on railway premises; (b) provide facilities to enable or facilitate the reception of sound broadcasting services

by persons on the railway or on railway premises; and

- (c) comply with the performance levels specified in the third column of Schedule 7 as applicable to the performance criteria specified in the second column of that Schedule.

(1B) For the purpose of subsection (1A)(b), a “sound broadcasting service” (聲音廣播服務) means a service that includes broadcasting as defined in section 13A(1) of the Telecommunications Ordinance (Cap. 106) in respect of which a licence is granted under that Ordinance.

(1C) The Chief Executive in Council may by order amend Schedule 7.”.”.

New

By adding immediately after clause 10 –

NEGATIVED

“10A. Section added

The following are added immediately after section

14 -

“14A. Railway Penalty Point System

(1) The Corporation shall incur the number of the points in respect of each scheduled occurrence.

(2) The appropriate number of points in respect of each scheduled occurrence is that set out

opposite that occurrence in Schedule 8.

(3) No points shall be incurred under this section unless the Corporation has been given an opportunity to make representations to the Chief Executive in Council.

(4) The Legislative Council may by resolution amend Schedule 8.

NEGATIVED

**14B. Power to make regulations for the proposes
of the Railway Penalty Point System**

(1) The Secretary may make regulations providing for such matters as may be necessary or expedient to carry out effectively the railway penalty point system specified in section 14A, including but not limited to regulations for the purposes of any or all of the following –

- (a) conferring powers upon the
Commissioner to establish and
maintain a register of points;
- (b) prescribing the matters that are to
be recorded in a register of points;
- (c) providing for the circumstances
under which the Corporation may
be exempted from incurring points
in respect of a scheduled
occurrence; and
- (d) providing for such other matters

which are to be or may be
prescribed under this section,
sections 14A, 14C and 14D.

NEGATIVED

14C. Calculation of points

In calculating the number of points incurred, where 2 or more of the occurrences in respect of which points have been incurred are constituted by the same, or substantially the same, act -

- (a) only that occurrence attracting the highest number of points; or
- (b) where those occurrences each attract the same number of points, only one of those occurrences,

shall be taken into account.

NEGATIVED

14D. Chief Executive in Council may impose financial penalties

(1) Where the Corporation has incurred an accumulation of 15 points or more in respect of scheduled occurrences which occurred within a period of 3 months of each other, the Chief Executive in Council may serve a notice on the Corporation requiring the Corporation to pay to the Government the financial penalty specified in the notice.

(2) A financial penalty imposed under subsection (1) shall not exceed -

- (a) \$50,000 for the first occasion on

which a financial penalty is so imposed;

(b) \$100,000 for the second occasion on which a financial penalty is so imposed; and

(c) \$200,000 for any subsequent occasion on which a financial penalty is so imposed.”.”.

New

By adding immediately after clause 15 –

NEGATIVE!

“Division 4A — Addition of new Part

15A. Part VIIA added

The following is added immediately after Part VII –

“PART VIIA

RAILWAY DEVELOPMENT FUND

32A. Railway Development Fund

(1) There is hereby established a fund to be known as the Railway Development Fund.

(2) The Fund shall consist of –

(a) moneys paid into the Fund under section 32F;

(b) any other moneys paid by the Corporation into the Fund under the operating agreement; and

(c) interest or other income derived from the moneys of the Fund.

- (3) The Committee –
 - (a) shall –
 - (i) administer the Fund; and
 - (ii) apply the moneys of the Fund, in accordance with this Part and section 32G;
 - (b) may pay from the moneys of the Fund the cost of administering the Fund.

~~NEGATIVED~~

32B. Railway Development Fund

Management Committee

(1) There is hereby established as a body corporate to be known as the Railway Development Fund Management Committee, which may in that name sue and be sued.

(2) The Committee shall provide itself with a common seal and the affixing of the seal shall be authenticated by the Chairman or a member referred to in subsection (3)(b), (c), (d) or (e) as may be authorized by the Chairman for the purpose.

- (3) The Committee shall consist of –
 - (a) the Secretary for Financial Services and the Treasury who shall be the Chairman of the Committee (in this Part referred to as the "Chairman");
 - (b) the Secretary for the Environment,

~~NEGATIVED~~

Transport and Works;

- (c) the Commissioner for Transport;
- (d) the Non-executive Chairman of the Corporation; and
- (e) the Chief Executive Officer of the Corporation.

(4) At any meeting of the Committee -

- (a) there shall be a quorum of 4 members;
- (b) all questions arising for determination shall be decided by a majority of the votes of the members present and voting; and
- (c) in the event of an equality of votes, the Chairman shall have a casting vote.

(5) The moneys constituting the Fund shall be deposited in a separate interest bearing bank account opened and maintained by the Committee in any authorized institution registered or licensed under the Banking Ordinance (Cap. 155).

(6) Subject to this section, the Committee may determine its own procedure.

~~NEGATIVED~~

32C. Advisers and consultants

- (1) The Committee may engage any such

advisers or consultants as it considers necessary or expedient for any purpose connected with or arising from the administration of the Fund.

(2) Any fees due to a person engaged under subsection (1) may be paid out of the Fund.

NEGATIVED

32D. Accounts

(1) The Committee shall -

(a) keep proper accounts and records of its financial transactions; and

(b) as soon as practicable after the expiry of a financial year prepare a statement of accounts which shall -

(i) include an income and expenditure account and a balance sheet; and

(ii) be signed by the Chairman.

(2) A statement of accounts referred to in subsection (1) shall be audited by an auditor appointed by the Committee.

(3) The auditor may prepare a report on the statement of accounts and, if he does so, shall certify the statement subject to such report.

(4) The Committee shall cause a copy of the

NEGATIVED

audited statement of accounts, together with the report under subsection (3), if any, and a report by the Committee on the administration of the Fund during the period to which the statements relates, to be laid on the table of the Legislative Council not later than 31 January next following the end of the financial year or such later date as the Chief Executive in Council may allow in a particular case.

(5) In this section and this Part, "financial year" (財政年度) shall be the period of 12 months beginning on 1 January, but its first financial year shall commence on the Merger Date and end on the following 31 December.

NEGATIVED

32E. Cessation of Committee

(1) Upon the cessation of the rights and obligations of the Corporation where the franchise is revoked under section 18 or the franchise has expired and has not been extended under section 5 –

- (a) the Committee and the Fund shall cease to exist, except to the extent of giving effect to paragraph (b); and
- (b) the Committee shall pay the moneys constituting the Fund as at the date of such cessation into the accounts of the Corporation.

NEGATIVED

(2) Upon the Committee and the Fund ceasing to exist under subsection (1), the provisions of this Part relating to the Committee or the Fund shall cease to have effect.

(3) Subsection (1) or (2) shall not operate to affect anything done or any right, obligation or liability acquired, accrued or incurred before such cessation or the institution, continuance or enforcement of any legal proceeding, arbitration or remedy in respect of such right, obligation or liability.

NEGATIVED

32F. Payments into the Fund

(1) In each financial year, the Corporation shall pay into the Fund 3 per cent of the net profit derived from the Corporation's property development, property investment and property management.

(2) In subsection (1), "property" (物業) includes residential and commercial property above or annexed to any station and along any part of the railway.

(3) A payment due under subsection (1) shall be made not later than 31 December next following the end of the year to which the payment relates or such later date as may be specified in the operating agreement.

~~NEGATIVE~~

32G. Payments from the Fund

(1) The Fund shall be used for any or all of the following purposes –

- (a) providing or improving facilities and services on the railway and on railway premises; and
- (b) enhancing the safety of the railway and of persons on the railway and on railway premises.

(2) Where the Committee considers that it is necessary to apply the moneys of the Fund for any or all of the purposes specified in subsection (1), the Committee shall determine an amount of the moneys for the aforesaid purposes and serve a notice on the Corporation informing the Corporation of its decision.

(3) The notice served under subsection (2) shall specify –

- (a) the purpose for which the moneys of the Fund are to be applied;
- (b) the amount to be applied for the purpose referred to in paragraph (a);
and
- (c) the period within which the Corporation shall apply the amount of the moneys for the purpose as

NEGATIVED

specified in the notice.

(4) The Committee shall pay to the Corporation the amount of the moneys specified in the notice referred to in subsection (2) within a period of 2 months after the service of the notice.

(5) The Corporation shall comply with the decision of the Committee contained in the notice.””.

16(1) In the proposed section 33(1A)(a), by adding “, information on the fare level for the service” after “frequency of service”.

NEGATIVED

New By adding –

NEGATIVED

“20A. Application of certain laws to Corporation

Section 54(2) is amended, by adding “(other than the Building (Standards of Sanitary Fitments, Plumbing, Drainage Works and Latrines) Regulations) (Cap. 123 sub. leg. I))” after “any provision”.”.

New By adding in Part 2 –

NEGATIVED

“21D. Provisions of Public Health and Municipal Services Ordinance disappplied

Schedule 2 is amended by repealing sections 1, 2, 3 and 4.”.

New By adding before Part 3 –

NOT PROCEEDED WITH

“21E. Schedule 7 added

The following is added -

“SCHEDULE 7 [s. 9(1A)&(1C)]

PERFORMANCE REQUIREMENTS

[NOT PROCEEDED WITH]	First Column	Second Column	Third Column
	Item	Performance Criteria	Performance Level
	1	Train service delivery	99.5%
	2	Passenger journeys on time	
		(a) KCRC Railways	99%
		(b) Mass Transit Railway	99.5%
	3	Train punctuality	
		(a) KCRC Railways	99%
		(b) Mass Transit Railway	99%
	4	Add value machine reliability	
		(a) Mass Transit Railway	96%
		(b) KCRC Railways	98%
	5	Ticket issuing machine reliability	
		(a) Mass Transit Railway	94%
		(b) KCRC Railways	97%
	6	Platform screen reliability	98%
	7	Escalators reliability	99%
	8	Passengers lift reliability	99%
	9	Train reliability (train car-km per train failure causing delays \geq 5minutes)	500,000”.

[NEGATIVED]

21F. Schedule 8 added

The following is added -

“SCHEDULE 8 [ss. 2(1)&14A]

SCHEDULED OCCURRENCE

NEGATIVED	Item	Description of nature of occurrence	Points
	1	Delay or termination of train service for 10 - 20 minutes	1
	2	Delay or termination of train service for 21- 30 minutes	2
	3	Delay or termination of train service for 31- 40 minutes	3
	4	Delay or termination of train service for 41- 50 minutes	4
	5	Delay or termination of train service for over 50 minutes	5".".

RAIL MERGER BILL
COMMITTEE STAGE

Amendments to be moved by the Dr. Honourable Fernando CHEUNG Chiu-hung

Clause

Amendment Proposed

8

By deleting paragraph (b) and substituting —

NEGATIVED

“(b) by adding —

“(2) For the purposes of subsection (1), the Corporation shall —

- (a) provide adequate facilities, including platform screen doors and automatic platform gates, for the purposes of protecting the safety of persons on the railway or on railway premises;
- (b) provide or install lifts to provide passengers a direct access from the ground level to the station platform; and
- (c) provide adequate staff on the railway and on railway premises to assist passengers.

(3) Where the Corporation operates the TSA bus service during the Concession Period, the Corporation shall ensure that the TSA bus service is operated properly and efficiently under —

- (a) this Ordinance and all other applicable laws; and
- (b) the operating agreement.”

RAIL MERGER BILL

COMMITTEE STAGE

Amendments to be moved by the Honourable LEUNG Kwok-hung

ClauseAmendment Proposed

New By adding -

{NEGATIVED}

“20A. Application of certain laws to Corporation

Section 54 is repealed.”.

New By adding in Part 2 -

{NEGATIVED}

“21D. Provisions of Public Health and Municipal

Services Ordinance disappplied

Schedule 2 is repealed.”.

New By adding -

{NEGATIVED}

“PART 3A

AMENDMENT TO NOISE CONTROL
ORDINANCE

29C. Application of section 13 to MTR Corporation

Limited and Kowloon-Canton

Railway Corporation

Section 37 of the Noise Control Ordinance (Cap. 400) is repealed.”.

30 By deleting subclause (7) and substituting –

{NOT PROCEEDED WITH}

“(7) Section 20(2) of the Tung Chung Cable Car Ordinance
(Cap. 577) is repealed.”.

RAIL MERGER BILL
COMMITTEE STAGE

Amendments to be moved by the Honourable LEE Wing-tat

<u>Clause</u>	<u>Amendment Proposed</u>
New [NEGATIVED]	<p>By adding –</p> <p>“6A. Section added</p> <p>The following is added -</p> <p>“4A. Development Projects above new stations</p> <p>(1) The franchise granted to the Corporation under section 4 does not include the right to develop residential or commercial projects above or annexed to any new station and along any extension to the railway.</p> <p>(2) The right to develop residential or commercial projects above or annexed to any new station and along any extension to the railway shall be granted through open tender.</p> <p>(3) The Corporation shall co-operate with and provide reasonable assistance to the successful bidder in the open tender for the right to develop residential or commercial projects above or annexed to a new station or along an extension to the railway.””.</p>