

1 HONG KONG LEGISLATIVE COUNCIL -- 13 November 1991

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OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 13 November 1991

The Council met at half-past Two o'clock

PRESENT

THE DEPUTY PRESIDENT

THE HONOURABLE JOHN JOSEPH SWAINE, C.B.E., Q.C., J.P.

THE CHIEF SECRETARY

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

THE FINANCIAL SECRETARY

THE HONOURABLE NATHANIEL WILLIAM HAMISH MACLEOD, J.P.

THE ATTORNEY GENERAL

THE HONOURABLE JAMES KERR FINDLAY, O.B.E., Q.C., J.P.

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

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

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

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

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

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

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

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

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

THE HONOURABLE SZETO WAH

THE HONOURABLE TAM YIU-CHUNG

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

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

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

THE HONOURABLE RONALD JOSEPH ARCULLI, J.P.

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

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

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

DR THE HONOURABLE LEONG CHE-HUNG

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

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

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

THE HONOURABLE ALBERT CHAN WAI-YIP

PROF THE HONOURABLE EDWARD CHEN KWAN-YIU

THE HONOURABLE VINCENT CHENG HOI-CHUEN

THE HONOURABLE MOSES CHENG MO-CHI

THE HONOURABLE MARVIN CHEUNG KIN-TUNG, J.P.

THE HONOURABLE CHEUNG MAN-KWONG

THE HONOURABLE CHIM PUI-CHUNG

REV THE HONOURABLE FUNG CHI-WOOD

THE HONOURABLE FREDERICK FUNG KIN-KEE

THE HONOURABLE TIMOTHY HA WING-HO, M.B.E., J.P.

THE HONOURABLE MICHAEL HO MUN-KA

DR THE HONOURABLE HUANG CHEN-YA

THE HONOURABLE SIMON IP SIK-ON, J.P.

DR THE HONOURABLE LAM KUI-CHUN

DR THE HONOURABLE CONRAD LAM KUI-SHING

THE HONOURABLE LAU CHIN-SHEK

THE HONOURABLE MISS EMILY LAU WAI-HING

THE HONOURABLE LEE WING-TAT

THE HONOURABLE GILBERT LEUNG KAM-HO

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

THE HONOURABLE FRED LI WAH-MING

PROF THE HONOURABLE FELICE LIEH MAK, O.B.E., J.P.

THE HONOURABLE MAN SAI-CHEONG

THE HONOURABLE NG MING-YUM

THE HONOURABLE STEVEN POON KWOK-LIM

THE HONOURABLE HENRY TANG YING-YEN, J.P.

THE HONOURABLE TIK CHI-YUEN

THE HONOURABLE JAMES TO KUN-SUN

DR THE HONOURABLE SAMUEL WONG PING-WAI, M.B.E., J.P.

DR THE HONOURABLE PHILIP WONG YU-HONG

DR THE HONOURABLE YEUNG SUM

THE HONOURABLE HOWARD YOUNG

ABSENT

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

IN ATTENDANCE

MR GRAHAM BARNES, C.B.E., J.P.
SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS

MR DAVID ALAN CHALLONER NENDICK, C.B.E., J.P.
SECRETARY FOR MONETARY AFFAIRS

MRS ANSON CHAN, J.P.
SECRETARY FOR ECONOMIC SERVICES

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

MR RONALD JAMES BLAKE
SECRETARY FOR WORKS

THE CLERK TO THE LEGISLATIVE COUNCIL
MR LAW KAM-SANG

Papers

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

Subject

Subsidiary Legislation L.N. No.

Employees' Compensation Ordinance (Amendment of Second Schedule) Order 1991.....	397/91
Employment of Children (Amendment) Regulations 1990 (Commencement) Notice 1991.....	402/91
Factories and Industrial Undertakings (Amendment) Ordinance 1990 (Commencement) Notice 1991.....	403/91
Rules of the Supreme Court (Amendment) (No. 3) Rules 1991.....	404/91
Pleasure Grounds (Regional Council) (Amendment)	

(No. 4) Bylaws 1991.....
405/91

Sessional Paper 1991-92

No. 17 -- Hong Kong Industrial Estates Corporation
Annual Report 1990-1991

Address by Member

Hong Kong Industrial Estates Corporation Annual Report 1990-1991

MR STEPHEN CHEONG: Mr Deputy President, I am pleased to report that 7.5 hectares of land was granted in the financial year 1990-91 to eight companies, from the Industrial Estates Corporation. This was in line with the Corporation's forecast. Assuming that this trend continues, our remaining land bank of 28 hectares is likely to be granted in full by the end of 1994. In early 1994, however, the first phase of the Tseung Kwan O Industrial Estate is expected to come on stream with 18 hectares of fully-serviced industrial land ready for use. The rest of that estate providing another 50 hectares is expected to be available in 1996. Thus, the Corporation is ensuring a continuous supply of land for industrial use into the next century.

In view of the changing characteristics of industry in Hong Kong, the Board of the Corporation reviewed and broadened its selection criteria during the year. The criteria now allow for specialized and sophisticated supporting services such as research and development, technical centres and prototype design to be accommodated, without necessarily being linked to production facilities on the estates, but these services must be of a nature that cannot be accommodated in multi-storey industrial buildings in Hong Kong.

Mr Deputy President, the land leases of the companies already on the estates are being extended to the year 2047. Up to now, 33 subleases have been processed and it is hoped to be able to deal with the remaining 73 over the next one and a half years.

New factories are being built. Sixteen of these came into operation during the

year under review and four since. The workforce on the two estates in Tai Po and Yuen Long now numbers more than 17 000.

Work on the new estate at Tseung Kwan O is progressing well. The contract for the reclamation was awarded to the China State Construction Engineering Corporation/Van Oord ACZ B.V. Joint Venture on 2 August 1991, at a sum of HK\$507 million. Dredging for the seawalls and other preliminary work started on 19 August 1991. An 8 000 cubic metre dredger has arrived in Hong Kong and is being prepared to extract marine sand from an area of sea bed in the Tathong Channel to provide fill for this large reclamation. Early possession of almost all areas on Fat Tong Chau (Junk Island) needed for the Estate has been given to the Corporation. The Board and executives of the Corporation with assistance from the Project Manager/South East New Territories will be monitoring the progress of work to ensure that the land in the first stage will be available in early 1994.

Finally Mr Deputy President, allow me to draw Members' attention to the current healthy state of the financial position of the Industrial Estates Corporation. With hard work and a little bit of luck the Board and the Corporation's executives have completely turned around the Corporation in less than seven years.

I would like to take this opportunity to thank everybody concerned, especially the executives of the Corporation.

DEPUTY PRESIDENT: We proceed now to questions. We do have a long agenda for today with 30 speakers for the motion debate. I therefore propose to limit question time to 30 minutes with 10 minutes for each question.

Oral answers to questions

Quality of public housing units

1. MR LEE WING-TAT asked (in Cantonese): In view of the complaints about building defects and substandard workmanship of newly completed flats in Public Housing Estates and Home Ownership Schemes, will Government inform this Council:

(a) what quality standards are adopted for public sector housing and whether these will be reviewed and improved; and

(b) what measures and mechanisms are there to ensure that the prescribed quality standards are achieved; and that problems identified within the Defects Liability Period are properly rectified?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr Deputy President, both structural and quality standards are included in the conditions of contract for the construction of Public Housing Estates and Home Ownership Schemes. The structural standards are very similar to, if not more stringent than, the statutory requirements set out in the Buildings Ordinance and its regulations. They include specifications on items ranging from the materials to be used for the construction of the buildings, the wind effects which must be designed for and fire resisting materials. Quality standards apply to all materials including finishings and fittings.

The Housing Authority has, on an on-going basis, reviewed and sought to improve the building standards and related procedures on the quality of its building projects. To this end, a number of measures aimed at improving the level of construction workmanship have been adopted in recent years. These include that:

(a) It established a separate list of approved building contractors to provide for more direct control in April 1990.

(b) It required listed contractors to obtain registration under the International Standards Organizations quality code 9000 by April 1993 if they wish to continue to work for the Authority after that date, and it is funding a consultancy to advise the industry on the best way to achieve registration.

(c) Thirdly, it has established a comprehensive and objective system for the assessment of contractors' performance which relates directly to the contractors' eligibility to tender in the future.

(d) And lastly, it maintains a continuous dialogue with the construction industry to develop ways to improve working conditions and practices within the industry.

Mr Deputy President, all the measures I have outlined are aimed at ensuring that the prescribed building standards are actually achieved. The Housing Authority has also further tightened up site supervision. Buildings will not be certified complete nor taken over unless the Housing Department is fully satisfied that the standards are complied with. All defects identified within the 12-month maintenance period will be dealt with under the terms of the contracts.

MR LEE WING-TAT (in Cantonese): Will the Administration inform this Council of the system we have to supervise the works of the public housing projects? In view of the residents' severe criticism of the quality of the public housing estates, will the Administration consider reviewing and improving the system; and will appropriate penalties be meted out to contractors for substandard housing estates?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr Deputy President, in respect of Home Ownership and public rental housing, the developer is the Hong Kong Housing Authority, not the Hong Kong Government. But I understand that the Authority's contracts are supervised by professional and technical staff -- full-time teams supervising each contract. Certainly the standard of supervision is quite up to that of well supervised site projects in Hong Kong.

To answer the question as to whether supervision will be improved, I understand that the Authority considers that their supervisory teams are up to standard and, generally speaking, that the supervision for these very big contracts, with many, many flats, is up to standard.

MRS SELINA CHOW: Mr Deputy President, given that some of the complaints that have arisen are levelled against substandard quality PSPS flats, will Government please inform this Council what remedial and preventive measures are adopted to address this problem?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr Deputy President, the Housing Authority's involvement in PSPS is less direct in that the contractor is under the direct supervision of the developer and the works contract is let by the developer. I understand that the Housing Authority's position is very much one of monitoring

the developer's contractor and ensuring, on behalf of the land authority, that the developer has in fact fulfilled the terms of the lease which he has tendered for and won, and later on, following the occupation, of acting as an intermediary between the new owners and the developer.

MR EDWARD HO: Mr Deputy President, will the Secretary inform this Council how many residential units the Housing Authority has built in the last three years, how many complaints they have received in the last three years, and how many they have rectified?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr Deputy President, I do not have those statistics. The only statistic which comes closest to what Mr HO is asking for is that they do about 200 000 repairs each year in public rental estates and Home Ownership Scheme estates.

MR ALBERT CHAN (in Cantonese): As far as public housing is concerned, complaints by the public have been centred around water seepage and concrete spalling. But it always takes a very long time for the Housing Department to complete the repairs. Would the Administration inform this Council whether time limits for different repairs will be imposed as a safeguard against delays by the Housing Department staff?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr Deputy President, I am not aware of any proposal to impose time limits on the Housing Authority but I am aware of steps being taken by the Authority itself, under the encouragement of its members, to improve its own performance. And they have, for instance, recently taken steps to ensure that funding problems do not hold up repairs, the responsibility for which may be in doubt.

MR FREDERICK FUNG (in Cantonese): Mr Deputy President, whenever repairs of HOS estates had to be carried out time and again, the chairman of the Housing Authority maintained that the problem was due to shortage of manpower in the supervision of the works of the building projects. As a matter of fact, this has always been the

problem of many new HOS estates. The Secretary for Planning, Environment and Lands mentioned a while ago that four or five measures had been adopted to deal with the problem, but none of them appeared to be relevant in the context of the manpower shortage problem the chairman of the Housing Authority has been referring to. To put it in another way, the measures might just be empty talks if they are there with nobody to carry them out. May I ask how the Administration is going to deal with this?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr Deputy President, I understand that the shortage of manpower, to which the chairman of the Housing Authority must have been referring, is not necessarily permanent and it is only relative. The fact that there is some shortage of manpower does not mean to say that a great deal of attention is not being paid to repairs by the Authority.

MRS PEGGY LAM (in Cantonese): Mr Deputy President, will the Administration inform this Council whether it will consider making contractors liable for damages if residents are injured as a result of defects due to the substandard quality of the housing estates?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr Deputy President, that is a very difficult question to answer in the general terms in which it is expressed. All I can say is that there are disciplinary arrangements for contractors who do not fulfil their obligations, and if it was established that one was not doing so, I am certain that the Authority would be taking the appropriate disciplinary action.

REV FUNG CHI-WOOD (in Cantonese): Mr Deputy President, in inviting tenders for the construction of public housing estates, the Housing Authority normally will award the contract to the lowest tender - what we call "the lowest bid has it." Contractors after all are after profit; so it is often the case that contractors will compromise quality in asking for a lower price. Does the Housing Authority have any other criteria in selecting the contractors so as to avoid always awarding the contract to the lowest tender?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr Deputy President, I understand that the tenders in the Housing Authority are awarded after proper examination of the details and by reference to a tender committee. This is a totally normal method of awarding contracts in Hong Kong which is adopted by the Government, by the Housing Authority and by most people in the private sector; so I have no reason to believe that the award of contracts or the results of the award of contracts have the effects which the Rev FUNG has suggested.

Residential development in north Lantau

2. DR SAMUEL WONG asked: Will Government inform this Council what plans there are to make land available for residential development in north Lantau along the proposed new road to the Chek Lap Kok Airport?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr Deputy President, residential development in north Lantau will be centred in the two valleys of Tung Chung and Tai Ho. It cannot be sited along the actual shoreline because these areas are mostly affected by the Noise Exposure Forecast (NEF) 25 relating to the Chek Lap Kok Airport and also to traffic noise along the highway.

Tung Chung is planned for an eventual population of about 160 000 of which 20 000 should be provided for by 1997. The housing to be provided in that first stage is being planned to be of maximum assistance in the commissioning of the airport, which will need some of its workforce to be housed locally even before it opens. Tai Ho development will not be started substantially until about 2004, with about 50 000 people planned to be provided for before 2011 and some 100 000 thereafter.

DR SAMUEL WONG: Mr Deputy President, on the assumption that the railway to Chek Lap Kok Airport will be built in time, will Government initiate as many as possible above-station residential developments?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr Deputy President, the railway station developments at present come into the centre of Tung Chung; the centre around the railway is seen as being at least partially needed for commercial purposes,

probably connected with the eventual development of the airport, and also for residential purposes. So in fact the nexus around the Tung Chung development will be provided with a lot of residential premises because it is recognized that there will be a lot of people who will want to go into town as well as working in the airport area.

MR RONALD ARCULLI: Mr Deputy President, in terms of the first phase of the housing to be provided in Tung Chung, would the Secretary for Planning, Environment and Lands inform this Council of the timescale and the numbers that he is thinking of in relation to the reference he made in his answer to "providing maximum assistance in the commissioning of the airport"?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr Deputy President, if Mr ARCULLI means how many of the 30 000 are going to be people and their families connected with the airport, our ideas are only very vague; in fact we are, even at this time, working on asking the big users of the airport how many people they are actually going to need. But we visualize at this fairly early stage of planning that something like housing for families of between 20 000 and 30 000 will be necessary for the early stages of the airport and it will increase thereafter.

MR HOWARD YOUNG: Mr Deputy President, the 20 000 mentioned in the reply, by my reckoning, equates to about 4 000 households which in fact are far less than the number of people related to running the current airport, let alone commissioning. So has the Government given any thought as to what measures can be taken to try to ensure that people who are related to the airport get some sort of priority in acquiring the housing facilities, rather than let them fall prey to property speculation or whatever?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr Deputy President, certainly thought will be given to ensure that this housing is used for the benefit of the airport.

MR GILBERT LEUNG (in Cantonese): Mr Deputy President, according to the information provided by the Secretary, Tung Chung will be home to 160 000 people. Will the

Administration inform this Council how many of these 160 000 people will be living in private residential developments and how many will be living in public housing units and Home Ownership Scheme flats?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr Deputy President, as I mentioned in my reply, the 160 000 is a very long-term target; it goes right into the next century. At present, I think we are visualizing numbers of something like 40 000 or 50 000 in public housing but that could well change and I would not wish to be held to that figure later.

MR EDWARD HO: Mr Deputy President, my question has been partly asked but on the other hand I would like to ask: when the public housing tenants move into north Lantau, will adequate community facilities be provided?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr Deputy President, we will try and ensure that adequate public facilities are provided.

MRS SELINA CHOW: Mr Deputy President, in fact Mr Gilbert LEUNG has asked part of my question, but could the Secretary advise how many of the 20 000 who are supposed to be moving in by 1997, will be housed in private developments and how many in public housing; in other words, what is the planned proportion?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr Deputy President, I cannot provide the figure at this stage actually, but it is about half and half at present.

MR LEE WING-TAT (in Cantonese): Mr Deputy President, at present Tung Chung is a low density residential area with a fishing village, a country park, some heritage features and sound ecological environs. Will the Administration inform this Council whether or not such an environment will be preserved in future developments?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr Deputy President, it is inevitable

the valley is to be urbanized. On the other hand, some of the villages will be retained in their present position and certainly the landmarks and heritage features of the village also; there is no reason for them to be moved. But of course it is not going to be rural anymore; it is going to be a town.

MR ALBERT CHAN (in Cantonese): Mr Deputy President, the Secretary mentioned in his reply the areas affected by airport noise. Will the Administration inform this Council whether it intends to release information on this in the near future? Moreover, the two studies undertaken by the two consultancies in the past came to almost entirely different conclusions as regards the areas that would be affected by airport noise. Will the Administration engage another independent consultancy to carry out a third assessment?

DEPUTY PRESIDENT: It is beginning to be a bit remote from residential development. Can you answer that, Secretary for Planning, Environment and Lands?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr Deputy President, the answer to the first part of the question is certainly yes, the Government will. I was under the impression that the public was aware of the noise affected areas, the NEF 25, to which I referred in my main answer.

The answer to the second part is probably no, because I do not think such discrepancy as there is -- and I believe the discrepancies have been reconciled in any case -- is significant.

Pipe burst in Choi Hung

3. MRS RITA FAN asked: In connection with a recent incident involving the bursting of a water pipe in Choi Hung area, will Government inform this Council :

(a) what are the standard procedures for handling such emergencies and the response time;

(b) what is the estimated quantity of water lost; and

(c) whether the cause of the incident has been identified and whether any party is to be held responsible?

SECRETARY FOR WORKS: Mr Deputy President,

(a) Reports of water main bursts are telephoned, usually by the police but sometimes by the general public, to the Technical Complaints Centre of the Water Supplies Department. They are referred to the Duty Officer at the nearest Depot, and for the Choi Hung incident this was the Kowloon Argyle Street Depot. The Duty Officer sends one of the 24-hour emergency turncock gangs to the burst location to turn off the necessary valves. This stops the water flow and enables the burst to be repaired. The time to reach the site depends upon traffic conditions, but is typically half an hour in urban areas. Because the water mains are normally in a network system, several valves have to be turned off, some of which may be some distance from the actual burst location. For large diameter mains, and where there are problems of flooding, exceptionally longer time may be necessary to locate and close all of the valves to stop the flow. For the Choi Hung incident the report was received at the Technical Complaints Centre, the first gang arrived at the burst location some 50 minutes later. It then took two hours in difficult flooded conditions to locate and turn off seven valves in the network.

Answering the second part, Mr Deputy President,

(b) A best estimate of the quantity of water lost at Choi Hung is 18 000 cu m which is approximately 0.72% of the daily consumption.

And for the last part,

(c) I understand that this burst was due to a contractor working on a Highways Department road intersection contract, who damaged the water main with a backhoe digger whilst excavating for an overhead sign foundation. Action is now underway to recover the costs of repair works, the Water Supplies Department staff costs and the cost of water from the contractor.

MRS RITA FAN: Mr Deputy President, although the loss of water in this particular

instance is estimated to be only at 0.72% of the daily consumption, this is still a significant waste in our present situation of water shortage. Will the Administration look into ways and means of turning off the appropriate valves in the network quicker, for example, by sending out different teams to different locations to close the valves simultaneously?

SECRETARY FOR WORKS: Mr Deputy President, this is in fact the case now. Each incident, when it is received, is reviewed by an Assistant Waterworks Inspector who, if necessary, on being apprised of the magnitude of the burst, will send additional turncock gangs. At Choi Hung, a second gang was sent out.

MR VINCENT CHENG: Mr Deputy President, will the Secretary inform this Council whether the Government will consider imposing fines to deter such negligence?

SECRETARY FOR WORKS: Negligence, Mr Deputy President, is difficult to prove and I cannot give a direct answer. I would say that in every incident involving an identified cause -- and part of the problem is to identify the actual cause -- full recovery of cost is sought on each occasion.

MR HUI YIN-FAT: Mr Deputy President, with reference to paragraph (c) of the Secretary's reply, could the Administration inform this Council how many incidents of bursting of water pipes have occurred in the past three years, and in how many cases has the Administration been successful in recovering the cost of repairs and that of water wastage?

SECRETARY FOR WORKS: Mr Deputy President, I can only respond to a certain part of Mr HUI's question. I can say that the incidence of bursts over the last three years has been approximately 1 000 per year. Of these, approximately 40% are usually identifiable with activities in a particular area, in other words, roadworks of some sort or other. In those instances the contractor involved would be responsible for making good the costs that I have referred to earlier.

As regards the actual amounts that have been recovered, in terms of both money

and number of incidents, I do not have those figures available today.

DEPUTY PRESIDENT: Would you be able to compile these and supply them in writing?

SECRETARY FOR WORKS: Yes, I will, Mr Deputy President. (Annex I)

DR LAM KUI-CHUN: Mr Deputy President, from the answer given by the Secretary for Works, occurrence of bursting of water pipes appears to be quite frequent. Would the Secretary for Works inform this Council:

- (1) of the commonest causes of such bursts in the last three to five years;
- (2) of the frequency of their occurrence;
- (3) of the measures taken to minimize their recurrence?

SECRETARY FOR WORKS: Mr Deputy President, of the causes, approximately 40% are due, as I said earlier, to works in the immediate vicinity. Of the remaining 60%, some 40% of those can be in fact traced back to works which have been completed in the area and there may be some latent problem which has caused the mains in the area to subside. Some of the causes, approximately 10%, are related to vibration from traffic. Some 7% are eventually found to be due to some deterioration of the materials -- the water mains or the fittings themselves. We have established a working group between Water Supplies Department and Highways Department to actually analyse the statistical records which are available of such incidents, and we expect to receive a report on this by February, which will then determine if there are any further improvements that can be made to the present control systems to reduce the incidence of such bursts.

MRS ELSIE TU: Mr Deputy President, actually my question has been answered but would the Secretary confirm that there were three similar bursts in Kwun Tong in four days -- that is to say the same district? And such being a regular feature in Kwun Tong, would the Secretary advise what is being done about it? I think it needs investigation.

SECRETARY FOR WORKS: Mr Deputy President, I do not have information as to three bursts in four consecutive days, if that is the particular situation. There are, certainly, major roadworks in that area and I can only look into this and give a response.

DR CONRAD LAM (in Cantonese): Mr Deputy President, this incident of water main burst caused floodings in certain areas of the Choi Hung MTR station. In fact, a person was drowned under similar circumstances at the same MTR station last year. Will the Administration inform this Council what measures it will take to prevent Choi Hung MTR station from flooding caused by bursts or other factors? Besides, are the frequent floodings in Choi Hung MTR station due to flaws in its structural design?

SECRETARY FOR WORKS: Mr Deputy President, I will attempt an answer to this. The problem with Choi Hung MTR Station relates to the Choi Hung subway which was constructed some considerable time ago. The geometry of that subway is such that to suit the levels of the road and the access the subway is lowest at its middle point. This means that if there is any heavy rainfall, or water as from a burst, the subway does itself fill up very quickly. There are of course sumps and pumps which are regularly maintained to remove water from the subway. But if the water which is coming in exceeds a certain rate, then of course the design of the pumps is such that the subway itself is likely to flood, as has happened. The MTR Station itself is protected against this by way of flood-gates and the problem relates specifically to the subway and not to the MTR Station.

MR NG MING-YUM (in Cantonese): Mr Deputy President, will the Administration inform this Council whether consideration has been given to further improving the contingency measures currently adopted to deal with such emergencies? If yes, what are the details of the improvements?

SECRETARY FOR WORKS: Mr Deputy President, as I mentioned, a working group has been established and they will be looking into improvements in the measures available to us at the moment.

DR SAMUEL WONG (in Cantonese): Mr Deputy President, it took the 24 hour emergency turncock gang 50 minutes to arrive at the burst location; was such a delay due to shortage in resources and manpower? In normal circumstances, how many 24 hour emergency turncock gangs are there in each region of the Water Supplies Department? Does the Department have sufficient resources to carry out preventive maintenance, like regular checks on leakage and regular replacement of old and worn-out water mains?

SECRETARY FOR WORKS: The manpower resources available at this particular depot on a Sunday -- it was a Sunday at the time of this incident -- are 13 which represents four turncock gangs. At this particular incident the turncock gangs were already out and had to be redirected to this burst -- initially one gang, followed up very quickly by a second gang. Again, the availability of works staff on these occasions will be monitored by the works group who will be going back over the statistics which are available to determine whether the numbers are adequate.

The question of monitoring and checking on the existing system is very much under review. As I mentioned earlier, the number of bursts which can be traced to deterioration of the existing system is quite small, something of the order of 7%. We will obviously look into this as part of the working group's terms of reference to determine if there are any improvements in that area as well.

Written answers to questions

Right of abode for foreign nationals in Hong Kong

4. MISS EMILY LAU asked: On 12 December 1990 the Secretary for Security informed this Council that Government was then considering how to legislate to give the right of abode to foreign nationals who have ordinarily resided in Hong Kong for a continuous period of seven years or more and who have taken Hong Kong as their place of permanent residence. Will Government inform this Council of the reasons why no such legislative proposals have yet been published; and when they will be?

SECRETARY FOR SECURITY: Mr Deputy President, Article 24 of the Basic Law sets out

the classes of persons who will be permanent residents of the Hong Kong Special Administrative Region (HKSAR) and who will accordingly be entitled to right of abode in the HKSAR.

Under this Article of the Basic Law, persons not of Chinese nationality shall be permanent residents of the HKSAR if they have entered Hong Kong with valid travel documents, have ordinarily resided in Hong Kong for a continuous period of not less than seven years and have taken Hong Kong as their place of permanent residence before or after the establishment of the HKSAR.

We wish to introduce an amendment as soon as we can to give the right of abode in Hong Kong to this class of residents. For this purpose, we need to agree certain matters with the Chinese, for example, the mechanism and requirements involved in taking Hong Kong as one's place of permanent residence. We are discussing these matters with the Chinese in the Joint Liaison Group, and will prepare the necessary legislation after these discussions have been completed.

We have considered how to align the Immigration Ordinance with the Basic Law, and have raised this in the Joint Liaison Group as part of a package of proposals on right of abode. We hope that these proposals will soon be discussed. If we get a positive response, we will introduce the necessary legislation as quickly as possible.

Bill of Rights' bearing on the Immigration Ordinance

5. MISS EMILY LAU asked: Under the Immigration Ordinance, permanent residents include, among others, persons of Chinese race who have at any time been ordinarily resident in Hong Kong for a continuous period of not less than seven years. Has Government reviewed this provision in the context of the Bill of Rights' protection against racial discrimination; and, if so, what action does it propose to take?
SECRETARY FOR SECURITY: Mr Deputy President, the First Schedule to the Immigration Ordinance sets out the criteria for determining permanent residence status. We have reviewed this provision recently.

The reference to "Chinese race" was introduced in 1971 in order to enhance the civil and political rights of a major section of Hong Kong's population, namely those who had come from China and had made Hong Kong their home. This could only be achieved

at the time by using the racial criterion to identify this class of persons. Since its introduction, this special measure has achieved its objectives. The advice we have received is that it is consistent with the Bill of Rights and with our obligations under the United Nations International Convention on the Elimination of All Forms of Racial Discrimination. However, the existing provisions will lapse in 1997, and we will take steps before then to align the Immigration Ordinance with the Basic Law, which confers right of abode on the basis of nationality and citizenship rather than on the basis of race.

Advisory Committee on Private Building Management

6. MR FRED LI asked: Will the Government inform this Council whether there are plans to dissolve or suspend the Advisory Committee on Private Building Management and if so, what are the reasons; and are there plans to dissolve the Building Management Co-ordination Teams in the various District Offices?

SECRETARY FOR HOME AFFAIRS: Mr Deputy President, the Advisory Committee on Private Building Management was first appointed by the Chief Secretary in November 1988. Its main functions were to review the effectiveness of existing policies on the management of private buildings and to recommend appropriate measures to improve their management.

Over the last three years, the Advisory Committee had completed the examination of the major policy areas on building management. This included the White Bill on unfair deeds of mutual covenant on which the Advisory Committee tendered advice to the Government last month. At the same time, measures on publicity and promotional activities had been drawn up, with a programme of events extending well into next year. In view of this, no further appointments were made to the Advisory Committee upon the expiry of its second term in October 1991. The tasks ahead are for the Government to take follow-up actions to improve the legislative and administrative frameworks for building management.

Members of the Advisory Committee were mostly drawn from the relevant professional organizations. If there are matters on which the Government wishes to be advised, those organizations and other interested bodies will be consulted, as has been the case in the past.

As regards the district Building Management Co-ordination Teams, I should like to say that there are no plans to dissolve them or to reduce their number.

Pollution of streams and rivers

7. MR NG MING-YUM asked: Will Government inform this Council:

(a) what changes have taken place in the water quality of the rivers and streams in Yuen Long in each of the past 10 years;

(b) whether the rivers and streams have been polluted during the past decade; and if so, what is the degree of and reason for the pollution;

(c) what measures have been taken and what resources have been used to improve the water quality of the rivers and streams;

(d) what measures and resources are and will be employed now and in the foreseeable future to improve the water quality of the rivers and streams; and

(e) whether consideration would be given to taking further steps to improve the water quality of the rivers and streams at source; and if so, what are they?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS:

(a) The Environmental Protection Department has been monitoring the water quality of Yuen Long Creek and Kam Tin River since 1984. According to the department's water quality index for watercourses in Hong Kong, the water quality of the rivers has been "very bad" since 1984.

(b) These monitoring results confirm that the rivers are seriously polluted. The major cause of pollution is livestock waste, although industrial discharges and domestic sewage add to the problem. In addition, tidal currents intruding from inner Deep Bay prevent the rivers from dispensing polluted waters into the sea. These currents also cause suspended material to precipitate and accumulate on the river bed.

(c) Legal measures are centred on the Livestock Waste Control Scheme under the Waste Disposal Ordinance, whereby the Yuen Long Environs became part of the livestock waste control areas on 1 June 1991. Since then some 70% of the active livestock farms in these areas have indicated that they wish to cease business and apply for an ex gratia allowance. In addition, under the Water Pollution Control Ordinance, the Deep Bay Water Control Zone, which covers the catchment of the rivers in question, was declared in December 1990. Full enforcement action under this Ordinance began on 1 June 1991 when all domestic and industrial discharges into the rivers were brought under control.

Practicable measures include an inflatable dam, together with a pumping station and some low flow channels which are being built in and near Yuen Long Nullah and which will be completed in May 1992. These arrangements -- at a cost of \$135 million -- will keep the polluted waters of the Kam Tin River from entering Yuen Long town and will exclude polluted tidal water from Deep Bay. In addition, certain sections of the rivers have been dredged occasionally, resulting in some temporary improvement. The northwest New Territories sewerage scheme, also under construction at a cost of \$1.25 billion, will provide essential sewage treatment and disposal facilities for the northwest New Territories via new sewerage in Yuen Long development areas and Tin Shui Wai new town; this sewerage scheme is scheduled to begin operation by the end of 1992.

(d) Now and in the foreseeable future, the most effective measures to improve water quality of the rivers and streams are implementation of the livestock waste control scheme in the Yuen Long Environs, and full enforcement under the Water Pollution Control Ordinance. In addition, two major flood protection projects for improving the main drainage channels in Kam Tin and San Tin catchments under the Rural Planning and Improvement Scheme will start in the coming five years; these projects, at an estimated cost of \$1.3 billion, will have a positive effect on water quality by improving the alignments of the existing streamcourses.

(e) Further steps to improve water quality of the rivers will centre on a sewerage masterplan study, which covers the area in question, and which is now in its final stage. This study will review the adequacy of existing sewerage and advise on the capacity and engineering arrangements for new sewers. Construction works would then follow, subject to funds being available. These measures, together with the full implementation of the Livestock Waste Control Scheme, the Water Pollution Control Ordinance and the major flood protection projects, will improve the water quality

of the rivers.

Control of container terminals

8. MR LEE WING-TAT asked: Regarding the land use of container terminals, will Government inform this Council:

(i) whether the ratio between a container terminal and its container handling area is specified in the contract covering the land use of a terminal, and if so, what this ratio is;

(ii) how it monitors the terminal operators to ensure that specified container handling areas are not used for other purposes; whether warnings and prosecutions have occurred in the course of monitoring, and if so, what the details are; and

(iii) whether consideration will be given to increasing the ratio of container handling areas in drawing up new land use contracts for container terminals (namely, Container Terminals 7, 8 and 9) so as to avoid traffic congestion caused by container trucks queuing up for unloading activities?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: The answers, seriatim, are follows:

(i) A container terminal, which normally comprises more than one berth, is controlled by a set of lease conditions. These conditions specify the preparation of a concept or master plan to Government's satisfaction covering the layout of the whole terminal including the vehicle parking and waiting areas to be provided by the developer as well as all buildings on site.

There is no specified ratio between a container terminal and its container handling area. However, more vehicle parking and queuing areas within the terminals than were provided in earlier terminals is required in the lease terms of Terminal 8 and will also be required in future sales. Thus in Terminal 8 sold in March 1991 and the planned Terminal 9, the ratio of the total terminal area to the number of berths has been increased from about 11 hectares to about 15 hectares per berth.

(ii) Monitoring is done through lease enforcement and not through prosecution.

All the terminals at Kwai Chung are operating within the terms of their lease conditions and hence no lease enforcement measures have proved necessary.

(iii) The traffic problem should be helped by the increased provision of total terminal area per berth for the newer terminals. In addition, steps are in hand to find additional "off terminal" land to make up for the shortfall of queuing and parking areas at the older terminals.

Golf course in country park

9. MR TIK CHI-YUEN asked: On the proposal to use some parts of the Pat Sin Leng Country Park for the construction of a golf course and private residential buildings, will Government inform this Council:

(a) what principles and factors will be taken into consideration when the Government decides on whether or not to accept such an application from the developer; and

(b) what benefits, or losses, will the proposed project bring to the Government and members of the public, and what environmental impact will there be on the surroundings?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr Deputy President, the background note annexed to this reply gives background information on this application. The following are answers to the questions.

(a) When the Country Parks Board and the Country Parks Authority considered the proposal the following factors were taken into account:

(i) the existing level of recreational use of the area;

(ii) the compatibility of the proposed development with the park plans;

(iii) the possible environmental impact of the proposed development;

(iv) the public right-of-way;

(v) the public use of the golf course; and

(vi) the facilities to be provided for public enjoyment and the possible benefits to the general public.

As the proposal will involve land exchange, approval from the Lands Authority will be required. A recommendation in principle was given by the District Land Conference in July 1990 subject to further comments from government department. The case will be resubmitted to the District Land Conference for approval of final land grant and special conditions before submission for final approval to Executive Council. The proposal will be considered on the basis of its recreational value, public benefits, landscaping, conservation of traditional villages, and circumstantial impact.

Before submission of the proposal to Executive Council, the Tai Po Rural Committee will be invited to give final endorsement of the arrangements for the reprovisioning of the Cheung Uk and Li Uk Villages. The Tai Po District Board will also be consulted on the proposal. In view of the area of land involved the agreement of the Land Commission to the inclusion of the grant in the land sales programme will be required.

(b) The Country Parks Board and the Authority considered that the public would benefit in the following aspects from the proposed development:

(i) the public right-of-way would be maintained so that the public could gain access to the country parks area nearby;

(ii) the proposed development would improve the current substandard public access and parking facilities and would enhance usage of the area (the existing level of recreational use of the area is low and there are no facilities);

(iii) the development would provide more public recreational facilities in the area such as picnic sites, shelters, a visitor centre and toilets;

(iv) the proposed golf course would not become an exclusive facility for private enjoyment and there would be reasonable provisions for public use;

(v) the proposed golf course would remain open and green with good landscaping planting;

(vi) the existing village woodland and fung shui woods would be preserved as far as possible; a group of existing village buildings with significant historical and architectural value would be preserved by the developer; and

(vii) the villagers of Cheung Uk and Li Uk would be provided with new village housing properly served with sewage facilities;

(viii) the risk of hill fire in the area would be reduced.

The proposed development would inevitably affect the existing landform and the vegetation cover. This will be carefully monitored to ensure that as far as possible, the existing woodland and the village settlements will be preserved and the final landscape will remain open, green and compatible with the surrounding area. In fact, the developer is required under the conditions of approval by the Country Parks Authority to conduct an environmental impact assessment before the development takes place and to implement a comprehensive landscaping scheme, both to the satisfaction of Government.

Annex

Background Note on Proposed Sha Lo Tung Golf Course

The proposal to construct a golf course at Sha Lo Tung was first made in 1979. It has been revised a number of times since then. In its latest form the proposal would involve the construction of an 18-hole golf course (of about 61 hectares), a residential development comprising 66 low density houses and 200 apartments (on an area of about 18 hectares) and 160 village houses (on an area of about 7 hectares).

Apart from a very small area (about 0.75 hectares), all the building development would be outside the Pat Sin Leng Country Park boundaries. About half of the proposed golf course area (about 31 hectares) would fall within the current boundaries of the Country Park.

The proposal was considered carefully by the Country Parks Board on a number of occasions over the past few years. Various factors were taken into account, including the existing level of recreational use of the area, the possible environmental impact of the proposal, the public right-of-way, the public use of the

golf course and the facilities to be provided for public enjoyment. The possible benefits to the general public were a most important factor. Changes were made to the proposal in the light of the Board's comments. In March last year, the Board concluded that, on balance, the proposed development was in the public interest, subject to the following conditions:

(a) the public right-of-way through the area would not be disrupted;

(b) the golf course would not become an exclusive facility for private enjoyment; it must be opened for public use. The developer shall enter into a commitment with Government to make reasonable provisions for public use of golf course;

(c) the improvement of public access and provision of public parking facilities in the area;

(d) the provision of public recreational facilities, including footpaths, toilets, shelters, picnic sites and a visitor centre;

(e) a group of existing village houses would be preserved in their original style and traditional Hakka character;

(f) a full environmental impact assessment should be conducted before the development takes place and adverse ecological and landscape impact should be kept to the minimum;

(g) the village fung-shui woodland would be preserved and a comprehensive landscaping scheme would be implemented to the satisfaction of Government; and

(h) the establishment of a performance bond to ensure the provision of the above public facilities.

In granting its approval, the Country Parks Board was satisfied that the proposal would not degrade the country park area, which would remain open and green, and that the public would gain from the proposed development as there would be more public recreational facilities, better access and a reduced fire risk.

The villagers affected by the proposal are aware of the details and have supported

it. The rural committee is soon to be consulted on the village relocation proposal, and the district board will be briefed in detail.

"Advised" school drop-outs

10. MR TIK CHI-YUEN asked: As some schools have advised students with poor conduct or academic performance to drop out of the schools voluntarily, will Government inform this Council:

(a) in the past five years, how many students were affected and how many parents approached the authorities concerned to lodge complaints or seek assistance;

(b) whether the approach adopted by those schools goes against the provisions or the spirit of the Codes of Aid for Schools; and

(c) whether the Government will implement appropriate measures to prevent the recurrence of similar incidents, and what assistance will be given to those students who have dropped out of school?

SECRETARY FOR EDUCATION AND MANPOWER: Mr Deputy President, the answers to the questions posed are as follows:

(a) The Education Department (ED) keeps statistics on the numbers of students dropping out from schools, on the basis of information reported by school authorities. Figures for the past five years are as follows:

School Year No. of drop-outs

1986-87 601

1987-88 794

1988-89 1 351

1989-90 1 212

There are no separate statistics showing how many students with poor conduct or academic performance have been advised by their schools to leave voluntarily. No such cases have been reported by schools to the Department. However, parents have occasionally sought the assistance of the Department in placing their children in other schools following such incidents. Statistics for the 1989-90 and 1990-91 school years, based on what information is available from District Education Officers, are now being compiled and will be sent to Mr TIK in writing as soon as possible.

(b) The approach adopted by schools in advising students to drop out of school does not itself constitute formal expulsion and therefore does not contravene the Code of Aid. However, the practice is incompatible with the spirit of the Code. According to the Code, pupils should not be expelled solely on the ground that they are academically weak. They may be considered for expulsion only on grounds of non-payment of gazetted fees or a grave breach of school discipline, after reasonable measures to enlist the co-operation of parents have proved unsuccessful. No secondary school pupil should be expelled without proper warning to parents and the Director of Education should be kept informed of all such cases at the warning stage. Moreover, the expulsion of any pupil aged under 15 years requires the approval of the Director.

(c) The ED has set up an ad hoc group to investigate the recently reported cases of schools advising pupils to leave as an alternative to direct expulsion and to formulate proposals to prevent the recurrence of similar incidents. The outcome is expected to be available soon. The ED already assists in placing drop-out pupils who are within the age of compulsory education either in their own school or in another appropriate school. For pupils beyond the age of compulsory education, the Department provides information to them on schools with vacant places to which they may apply for admission.

Motion

BUILDINGS ORDINANCE

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

"That the Fourth Schedule to the Buildings Ordinance be amended by adding after item 6 -

"7. Drainage Services Department."."

He said: Mr Deputy President, I rise to move the motion standing in my name on the Order Paper. This motion is necessitated by the formation of the Drainage Services Department on 1 September 1989.

Upon the setting up of the Drainage Services Department, the duties and powers of the Building Authority previously delegated to officers of the Civil Engineering Department are now exercised by officers of the Drainage Services Department. It is therefore necessary to formally delegate such duties and powers to the officers of the Drainage Services Department. The details are set out in the motion.

Mr Deputy President, I beg to move.

Question on the motion proposed, put and agreed to.

First Reading of Bills

INSURANCE COMPANIES (AMENDMENT) BILL 1991

STOCK EXCHANGES UNIFICATION (AMENDMENT) BILL 1991

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

Second Reading of Bills

INSURANCE COMPANIES (AMENDMENT) BILL 1991

THE SECRETARY FOR MONETARY AFFAIRS moved the Second Reading of: "A Bill to amend the Insurance Companies Ordinance."

He said: Mr Deputy President, I move that the Insurance Companies (Amendment) Bill

1991 be read a Second time.

This is a composite Bill seeking to refine existing provisions of the Insurance Companies Ordinance in four areas: first, to allow authorization and annual fees to be prescribed in subsidiary legislation; secondly, to relieve general insurers from the requirement to deposit trade sensitive documents with the Registrar of Companies; thirdly, to extend the grounds upon which the Insurance Authority may take interventionary action; and fourthly, to remove preferential treatment for United Kingdom insurers.

Authorization and annual fee

Let me first deal with fees. Section 13(1) of the Ordinance sets out the fee to be paid by an insurer upon authorization and annually thereafter. Section 59(b) provides that the Governor in Council may make regulations to amend section 13(1). This is an indirect and cumbersome way of amending the level of fees. We propose, therefore, that the Ordinance should be amended so that references to the level of fee are removed to subsidiary legislation while the principal legislation stipulates only the requirement for the payment of fees.

Documents deposited with Registrar of Companies

Regarding the deposit of documents with the Registrar of Companies, an insurer is required under the Ordinance to submit to the Insurance Authority accounts, statements and other information prescribed in the Third Schedule. He is also required to deposit a copy of such documents with the Registrar of Companies for public inspection.

The Third Schedule was amended in December last year to require general insurers to submit to the Insurance Authority an additional annual return on their Hong Kong business. The general insurers have subsequently requested that the new return, containing trade-sensitive data, should not be deposited with the Registrar of Companies, although they have no objection to such information being released by the Insurance Authority on an aggregate basis. We see no objection to this request and propose that the Ordinance be so amended.

Interventionary powers

I now turn to the interventionary actions of the Insurance Authority. The Ordinance sets out the interventionary powers of the Insurance Authority and the various grounds on which different powers are exercisable. Under section 34, as read with section 26(3), the Insurance Authority may exercise his power to obtain information and documents on the ground that he considers it to be in the general interests of policy holders to do so. However, other powers of intervention under sections 27 to 33 and 35 can only be exercised on more restrictive grounds -- for example, on grounds that the insurer has furnished misleading information to the Insurance Authority; or that it is desirable for the protection of policy holders against the risk that an insurer may be unable to meet its liabilities.

These more restrictive grounds mean that the Insurance Authority can only exercise his interventionary powers reactively. We consider this to be unsatisfactory. Experience has proved that the longer it takes the Insurance Authority to be able to react to a situation, the less effective his supervision becomes. To provide better protection to policy holders, we propose that the grounds for intervention in the general interests of policy holders should also be regarded as a ground on which powers in sections 28 to 30, 32 to 33 and 35 are exercisable. These relate to requirements about investments, maintenance of assets in Hong Kong, custody of assets, actuarial investigations, early submission of financial information and power to impose requirements for protecting the policy holders.

We propose, however, that the powers set out in sections 27 and 31 relating to restrictions in writing new business and limiting premium income should not be affected by the new provision. We consider that they should remain to be exercised only in very limited circumstances.

Exemption for United Kingdom insurers

Finally, the Bill aims to remove redundant exemption provisions for United Kingdom insurers. At present, United Kingdom insurers are exempted from complying with the authorization requirements in section 8 and the requirement to submit financial information prescribed in the Third Schedule. The Ordinance only requires them to submit to the Insurance Authority the returns which they submit to the Department of Trade and Industry in the United Kingdom.

However, following an amendment to section 8 of the Ordinance in 1987, the Insurance Authority has been given discretionary power to refuse to authorize an insurer, including a United Kingdom insurer, even though the applicant has complied

with the general authorization requirements under section 8. Since then, the Insurance Authority has in fact been applying the same authorization criteria to all applicants, including United Kingdom insurers. Thus the exemption for United Kingdom insurers has become redundant.

The exemption from submitting financial information in the format required under the Third Schedule is also redundant as any insurers which have difficulty in meeting the requirements may apply for modifications under the Ordinance. In practice, this enables the Insurance Authority to permit, where appropriate, modification of requirements to any overseas insurer on the lines of that available to United Kingdom insurers under section 52. It is therefore no longer necessary to retain section 52.

Mr Deputy President, I move that the debate on this motion be now adjourned.

Question on the adjournment proposed, put and agreed to.

STOCK EXCHANGES UNIFICATION (AMENDMENT) BILL 1991

THE SECRETARY FOR MONETARY AFFAIRS moved the Second Reading of: "A Bill to amend the Stock Exchanges Unification Ordinance."

He said: Mr Deputy President, I move the Stock Exchanges Unification (Amendment) Bill 1991 be read the Second time.

The Bill seeks to modify proxy voting to the effect that a member of the Stock Exchange of Hong Kong may only appoint a proxy while he is unable to attend and vote in person for good cause, and that a person may not be appointed by more than one member to vote at the election of the Council meeting of the Stock Exchange. It is also proposed that a proxy will have to be an employee or partner registered under the Securities Ordinance. The purpose of these amendments is to prevent abuse of proxy voting and to ensure that the Council of the Stock Exchange will be elected in a fair manner.

The Bill also seeks to impart a primary duty on the Stock Exchange to act in the public interest and, in particular, the interests of the investing public. The purpose is to ensure that the Exchange, as a quasi public sector institution with an exclusive right to raise a statutory transaction levy to finance its operations,

will have a responsibility to act in the public interest even though it owes a fiduciary duty to its shareholders. The Bill also provides immunity against civil liability to the Stock Exchange when exercising its public interest duty in good faith.

Mr Deputy President, I move that the debate on this motion be now adjourned.

Question on the adjournment proposed, put and agreed to.

HOUSING (AMENDMENT) BILL 1991

Resumption of debate on Second Reading which was moved on 17 October 1991

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

Bill read the Second time.

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

Committee stage of Bill

HOUSING (AMENDMENT) BILL 1991

Clauses 1 and 2 were agreed to.

Council then resumed.

Third Reading of Bill

THE ATTORNEY GENERAL reported that the

HOUSING (AMENDMENT) BILL 1991

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

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

Bill read the Third time and passed.

Member's motion

CONTROL SCHEMES AND FRANCHISE AGREEMENTS WITH PUBLIC UTILITY AND PUBLIC TRANSPORT COMPANIES

MR LAU CHIN-SHEK moved the following motion:

"That this Council urges the Government to consult this Council and the public on profit control schemes and franchise agreements with public utility and public transport companies before entering into such schemes and renewing such franchise agreements with the companies."

MR LAU CHIN-SHEK (in Cantonese): Mr Deputy President, I beg to move the motion standing in my name on the Order Paper.

This year's policy address has made reference to the importation of labour as a means to combat inflation while overlooking the real "culprits" behind inflation, one of them being hefty price increases by the public utilities.

To bring the people's voice into the system of policy making

Public discontent about public utility charges and quality of service has long existed. Ever since the Star Ferry fare increase in 1966, there have been a number of social actions in protest against poor service or unreasonable fare increases by the public utilities. In 1983, the Coalition for Monitoring Public Utilities was formed as civic organizations decided to join hands in monitoring the Government and public utility companies. In recent years, protests against public utility price increases and anti-price hike movements were always linked together. This shows that price increases by public utilities which affect the lives of the grassroots are one of the major factors in triggering off a price spiral and in fuelling inflation. Regrettably, we can tell from history that Government and public utility companies always turn a deaf ear to the grievances of the people and even act against their wishes.

As an elected Member of the Legislative Council and spokesman of the Coalition for Monitoring Public Utilities for years, I feel obliged to bring the people's voice into the system of policy making, and into this Council. I hope that my honourable colleagues, government officials and the public utility companies will try to better understand the opinions of the public and take the initiative to consult the public before making any decisions which affect the livelihood of the people. As a body representative of public opinion, the Legislative Council should strive to reflect the wishes of the grassroots and fulfil its role of monitoring the Administration. For this reason, I have decided to move my motion in this Council.

I think the present situation concerning public utilities in Hong Kong can be described in this way: monitoring by the Government is ineffective and safeguard for the public is inadequate. I shall identify the problems we now have and suggest ways to solve them in my speech below.

Four categories of public utility companies

Generally speaking, the term "public utilities" refers to the various kinds of public transport and public utility services which have a direct bearing on people's livelihood. They operate in different ways and are subjected to different modes of profit control and government monitoring. It is therefore necessary to divide them into different categories before further examining the issue.

Public utility companies can roughly be divided into four categories according to their franchise and scheme of control arrangements as well as the degree of government involvement:

- (1) Government departments such as the Water Supplies Department;
- (2) Public corporations such as the MTR and KCR (including Light Rail Transit) which are administratively autonomous;
- (3) The seven franchised or quasi-franchised private companies subjected to profit control schemes, namely the KMB, CMB, CLP, HEC, HK Telephone, HK Airport Terminal Services and HK Air Cargo Terminals;
- (4) Other privately run public utilities such as ferries, minibuses, taxis and

Town Gas.

Since the public utility companies have different modes of operation and profit control, it may not be possible to treat them as the same. Today, I will therefore only talk about the third category, that is, public utility companies subjected to Profit Control Schemes, with emphasis on the relationship between schemes of control agreements and the public. In fact, the operation of the other three types of public utilities, the MTR and KCR in particular, leaves much to be desired. I will move another motion debate on monitoring the two railway corporations in the near future.

Price spiral

I believe the public are most discontented with the drastic public utility fare and charge increases in recent years, particularly the alarmingly hectic increases in public transport fares. Taking the two bus companies as an example, the percentage of fare increases in the past six years has far exceeded the inflation rate for the same period. In March this year, the KMB and CMB put up their fares by 14.7% and 19.5% respectively, which aggravated the already serious inflation problem. To make things worse, the other public transport companies also followed the example of the bus companies, dealing yet another blow to the people's livelihood. Although the Government announced in May this year that all public sector fees and charges would be frozen for nine months and appealed to the public utilities not to further increase prices this year, I understand that the public utility companies are well prepared for another round of fare and charge increases early next year. Given this chain reaction of price increases, how can the general public possibly maintain their living standards?

Besides price increases, the quality of service provided by the public utility companies is another cause for concern. Take bus service as an example. Insufficient runs, non-compliance with the service schedule and inadequate routes have long been the subject of public complaints, but little improvement has ever been made. The internal management of many public utility companies also leaves a lot to be desired. For instance, two years ago, mismanagement at the CMB resulted in an industrial action by CMB staff over the issue of retirement benefits, which affected members of the public as well.

At present, public utility companies are either franchised or quasi-franchised. Patronage is thus guaranteed even though the quality of service may not be up to the

standard. There is practically no need to improve service in order to generate more income. This is very unfair to consumers. It is also to be regretted that there is no independent body to deal with public complaints against the quality of service of utility companies. Even the Consumer Council is not empowered to deal with complaints against public utilities such as the bus companies, the power companies, the Hong Kong Telephone and the Air Cargo Terminals and so on. In these circumstances, what can the citizens expect to do?

Schemes of control -- the root of the problem

The general public are always bemused by the fact that these so-called monopolies and near-monopolies which claim to serve our society can keep increasing their tariffs and that they are allowed to continue their operation with enormous profits although the services provided are of an inferior quality. In fact, all these can be attributed to the Government's "schemes of control agreements" with these companies, which guarantee the effective period of their franchises and profit levels.

Recently, the Administration has pointed out in a briefing note issued to the OMELCO Panel on Economic Services and Public Utilities that with regard to utility services, the Administration seeks to achieve the following objectives:

(1) to ensure that consumers get a reliable service and one which can meet the demands placed upon it by the community;

(2) to ensure that consumers get this service at a reasonable price;

(3) to ensure that the shareholders of the companies providing the service get a reasonable return on their investment which will encourage them to continue to invest and which will enable the companies to compete successfully in the market with other forms of investment when funds are needed;

(4) to ensure that the financial well-being of the companies is maintained and that financial difficulties, which could lead to the collapse of the company and so the utility are avoided;

(5) and to achieve these objectives without any direct financial contribution

from public funds and with minimum interference.

The Administration has claimed that in order to achieve these objectives, it has entered into "schemes of control" agreements with some of the utility companies. The briefing note also points out that the schemes of control are in essence an agreed basis for determining a reasonable level of profit that the shareholders of a company can earn from the provision of the utility service. Reasonable profit is measured as a percentage of the long-term investment in the companies.

However, we should ask whether the objectives stated by the Administration have been achieved.

The method of calculating returns

Firstly, we should look at the method of calculating returns as outlined by the schemes of control. At present, "permitted returns" of several major public utility companies which are subjected to the "schemes of control" agreements are calculated as follows:

(1) China Motor Bus Company Limited and Kowloon Motor Bus Company Limited (1933): 15% and 16% of the average net fixed asset of the respective company;

(2) China Light and Power Company Limited: 13.5% of the average net fixed asset of the company plus 1.5% of shareholders' investment made after 30 September 1978 for acquiring fixed assets;

(3) Hong Kong Electric Company Limited: 13.5% of the average net fixed asset of the company plus 1.5% of shareholders' additional investment made after 1 January 1979 for acquiring fixed assets; and

(4) Hong Kong Telephone Company Limited: 16% of shareholders' capital.

The problems of permitted returns

The "permitted rate of returns" has definitely ensured the profits of the utility companies, which are generated from tariffs levied on the consumers. When the companies think they are not making enough profits, they can, as a matter of course, apply for tariff increases, which directly accelerate inflation and affect the

people's living.

The profit margin of a commercial organization should in the first place be determined by factors such as turnover, quality of service, competitiveness and cost control. Yet, companies entering into the "schemes of control" agreements with the Government can be virtually assured of enormous profits without running into any risks. In fact, they simply need not think about providing service at a reasonable price. It has long been a bone of contention as to whether the companies can get the "permitted returns" indiscriminately or whether it should be regarded as just the maximum profit a company can get. The Administration has said that "permitted returns" means maximum profit and there is no guarantee that the companies can obtain this level of profit each year. However, the public utility companies often consider it as "guaranteed profits", thus turning "profit control" into "profit assurance"!

Moreover, the current basis for calculating permitted returns is open to question. If permitted profit is measured as a percentage of a company's net fixed asset, the company can continuously expand its asset base in order to reap huge profits. Nevertheless, certain expansion programmes may not necessarily be cost effective or in the interests of the consumers. In the meantime, the company can secure external loans as a means of raising funds to expand its asset base. This may lead to distorted commercial decisions while profits are continuously guaranteed for the company!

The Administration has said that the first 8% interest on borrowings made by the public utility companies will be charged to shareholders, that is, not deductible as operating expenses, with only the rest charged to consumers. It is intended that this arrangement will encourage shareholders to invest more. However, under the prevailing "permitted rate of returns" which is fixed at a level as high as 13.5% to 16% of net fixed assets, shareholders can still reap the remaining "guaranteed profits" even though they have to pay 8% interest on their loans.

In the meantime, the permitted rate of returns has also protected the companies concerned in that the consumers have to pay for the losses brought about by maladministration or mismanagement on the part of the companies. Take the power companies as an example. Because the companies are assured of "permitted returns", the compensation for any losses incurred as a result of electricity failure due to the companies' negligence will ultimately have to be shared by the consumers. In this way, the schemes of control have enabled the public utility companies to operate under no investment risks whatsoever and without the need to take the consequences

of maladministration while there is absolute guarantee of profit. However, have these companies ever fulfilled their social obligations to provide reasonable services or have they deferred tariff increases when the people are living in destitution?

The Administration has entered into a "scheme of control" agreement with the China Light and Power Company Limited, which has announced its major development plans such as the \$60 billion power station to be built at Black Point, and so on. As the new "scheme of control" agreement still uses net fixed asset as the basis for calculating "permitted returns", we can imagine that the CLP's "permitted returns" will increase sharply while tariffs will also have to be increased accordingly in the coming years. Even if there is only a 1% error margin in the company's forecast of electricity consumption, we can see that the consumers will have to make up for the huge profit discrepancies.

Using net fixed asset as the basis of calculation was originally intended to encourage the franchised companies to make huge investments during the initial stage of development in order to cope with demand. However, as things have changed after a decade or two, an overall review into whether there is still need for this profit-assuring mechanism is now necessary. Take the two bus companies as an example. While buses used to be the major mode of transport to the people of Hong Kong, the off-street mass transit carriers such as the MTR and the KCR have replaced the buses and become the major mode of transport today. According to the "White Paper on Transport Policy in Hong Kong", rail travel is forecast to double between 1986 and 2001 while the growth of passenger journeys on buses will be less than 20% over the same period. In addition, according to the information paper issued to the OMELCO Standing Panel on Transport, KMB's patronage has been declining since 1987 and the Transport Department considers as too optimistic the CMB's forecast of an annual 0.5% growth in patronage for the next few years. We can thus imagine that KMB and CMB do not need to launch any major development programmes at all. Then should net fixed asset continue to be used as the basis for calculating "permitted returns", thus forcing the citizens to continue to bear with the hefty increase in bus fares each year?

All in all, there are four major problems concerning the existing schemes of control:

- (1) The companies' investments may become too large;

(2) The companies will pay no attention to cost and expenditure control;

(3) No incentive will be provided to encourage the companies to upgrade service and cost-effectiveness;

(4) Most important of all, the rate of returns is obviously too high since the companies are operating under no risks. This means the public are paying too much!

The role of the Government

Though it is incumbent upon the Government to lay down the criteria for granting franchises, approve reasonable fee-charging, monitor the quality of service, supervise development plans and formulate reasonable "profit control schemes" and so on, the Government's track record on public utility issues has been very disappointing.

Firstly, on the question of determining "permitted returns", there is no indication that the Government has come up with any new suggestions to give better protection to the consumers. Take for instance the two bus companies' method of calculating permitted returns on the basis of net fixed assets. This has for years been criticized by community organizations as undesirable, but the Government appears to have turned a blind eye to it and has no intention to make any changes at all. Now that the Government has in principle concluded an agreement with the China Light and Power Company on extending CLP's franchise, it is to be regretted that the much criticized method of calculating "permitted returns" is allowed to stand. Turning to the Telephone Company, it has already proposed to the Government to change profit control to "price control" for quite some time, but government officials have yet to openly comment on the issue or offer counter proposals. This can thus be seen that the Government has no plan to initiate a review of the said scheme of "permitted returns".

Secondly, the question of fee-charging. The Government has stressed time and again that the best interests of consumers will be taken into account when determining public utility fares and charges. But what we have seen is just the opposite. Since 1984, the percentage increase in bus fares has always exceeded that of the Consumer Price Index; the increase in telephone charges between 1981 and 1987 was also ahead of the CPI increase over the same period. Despite the persistently high inflation

rate in recent years, the Government has granted applications for fare and fee increases all the same. May I ask whether the Government has effectively kept prices at a reasonable level to safeguard the interests of the public?

Let us take another look at Government's role of monitoring the relevant companies' quality of service and development plans. In fact, Government's policy has always been to minimize its interference with providers of public utility facilities in the private sector and to encourage the public utility companies to be directly accountable to the consumers as far as possible. Under these circumstances, we can imagine that there is practically very little the Government can do. As a matter of fact, the Government has simply failed to perform its duty of monitoring the utility companies by bringing about improvements to situations such as inferior bus service and frequent disruptions to power supply. There is even much less the Government can do in monitoring the companies' development plans. We simply do not see what principles the Government may have in responding to, and reasonably restricting their development in the interest of consumers. Recently, the Government has encouraged public transport and public utility companies to set up passenger and consumer liaison committees to effect direct supervision from the consumers. While it is good to establish more supervisory channels, we should at the same time closely monitor the effectiveness of such machinery which is not independent of the companies concerned. Also, the Government must not be made to think that it can thus shirk its supervisory responsibility.

As a matter of fact, government officials are playing a part in the public transport companies' boards of directors such as the two bus companies. Therefore, we see no reason why the Government should shirk responsibility. In fact, what have government officials sitting on the two bus companies' boards of directors done in recent years to safeguard public interests with regard to the bus companies' management, services, fares and other issues? If the Government is not really prepared to do anything, I suggest that this Council appoint some Honourable Members to perform supervisory duties on behalf of the public.

On the question of granting franchises and implementing profit control, it appears that the Government has done virtually nothing to brief the public on the criteria involved and periodic review programmes (except when the franchise is about to expire). Recently, I received a letter from a member of the public in which dissatisfaction was expressed over the gas company's charge increase. It was also felt that the gas company should be included in the "Scheme of Control" so as to

safeguard public interests. In this connexion, the Government should keep under constant review and make known its new stand on public utility companies' franchises.

To sum up, under the existing "Schemes of Control", the utility companies are simply treating with indifference the opinions of consumers because their profits are already guaranteed. Therefore, the Government has a decisive role to play in monitoring the performance of these companies. I hope the Government will thoroughly fulfil the task of monitoring public utilities on the major premise of safeguarding public interests and will no longer shirk responsibility.

On the question of supervision, I have the following suggestions to make for your consideration.

(1) Liaison between Government departments and the relevant OMELCO panels should be reinforced and government officials sitting on the two bus companies' boards of directors should report to the OMELCO panels on a regular basis;

(2) The relevant OMELCO panels should be fully consulted on public utility fare and charge increases;

(3) The powers of the Consumer Council should be widened so that it can deal with complaints against franchised public utility companies;

(4) Franchised companies should be asked to submit annually development plans for the next three to five years, so that OMELCO panels may give their views on the development plans.

Some proposals

There is no doubt that the present "profit control schemes" cannot effectively safeguard the interests of the public. On the contrary, they have enabled certain companies to raise charges unreasonably without regard to administrative efficiency and performance. Therefore, it is imperative that we should thoroughly review the schemes of control and make necessary amendments in order to safeguard the livelihood of the people, instead of asking the citizens to continuously guarantee the profits of these companies. I propose that a Legislative Council select committee be set up to conduct a comprehensive review of the schemes of control agreements with franchised companies, so as to provide the Government with a point of reference when considering the renewal of schemes of control agreements with public utility

companies. I would also like to put forward for comment and discussion in this Council a few proposals which I think are worthy of further examination.

One viable alternative for determining "permitted returns" is to use a certain percentage (say 10%) of share-holders' capital as the basis of calculation. When determining this percentage, reference can be made to the profit margin for risk-free investments. No price increase will be allowed unless the profit margin falls below that percentage, and the upper limit of the profit margin should not exceed a certain percentage of net fixed assets. The second alternative is to set the profit margin at a level equivalent to the aggregate of a certain percentage of a company's net fixed asset and a percentage of shareholders' capital, with respective percentage rates being determined according to the different categories of companies. The third alternative is to replace "profit control" with "price control", with price increases fixed at a percentage below the inflation rate.

The three proposals given above are only some possible alternatives. Moreover, different public utility companies may have to adopt different methods of calculating "permitted returns". This shows there is a need to establish a select committee to study the matter. It is equally important that we should carefully consider ways to monitor the public utilities more effectively. In this regard, the Government, consumers, monitoring and statutory consultative bodies and this Council should all have a part to play in order to make the public utility companies truly accountable to the public.

Public consultation

Lastly, I would like to reiterate the main aim of this motion, that is, to urge the Government to consult this Council and the public on profit control schemes and franchise agreements with public utility and public transport companies before entering into such schemes and renewing such franchise agreements with the companies. The new franchise agreement for the CLP is at present under negotiation while negotiations with the other franchised utilities will also begin shortly. If we want the public and this Council to have a role to play, it is time to make such a request.

Hong Kong is gradually moving towards a democratic system of Government, and ensuring the safeguard of basic civil rights is very important in this democratization process. In dealing with matters like the extension of public utility franchise agreements which directly affects the lives of the people, it is necessary for the

Administration to honour the people's right to know and be consulted. Similarly, as a body representative of public opinion, the Legislative Council should also be consulted. In fact, earlier this year, both the OMELCO Panel on Economic Services and Public Utilities and the Consumer Council had pledged their support for public consultation on public utility franchise agreements. And I hope that my honourable colleagues will support my motion today.

Some people may ask whether technical problems will arise in the course of public consultation, such as how to effectively assess public opinion and how to handle business and financial secrets and other confidential or sensitive information involved when franchise agreements are being negotiated. However, as the Hong Kong Government is experienced in public consultation, I am confident that Honourable Members of this Council will not doubt the feasibility of public consultation only because there may be technical problems. I propose that for each franchise agreement there should be a period of public consultation for one to two months. A Legislative Council select committee should be responsible for collecting and collating public views (public hearings should be held if necessary) which will form the basis for its discussions and debates. Finally, a report should be submitted, together with the views of the public, to the Administration for consideration. To facilitate the consultation process, it will be necessary to lay down for public comment certain criteria for extending franchise agreements in respect of a company's development plans, rate of price increase, quality of service, profit margin, quality of management and profit control arrangements. The Government should therefore prepare a consultative document, setting out the principles governing the franchise agreement, Government's evaluation of the company's past performance and future development plans of the company (including investment programmes, fixed asset growth, service improvement projects and fee-charging and so on), so as to enable this Council and the public to make assessment effectively.

It is also important that the Administration should earnestly consult this Council on the renewal of franchise agreements with public utility companies. Following the direct elections in September this year, it is believed the community will cherish the aspiration that the new Legislative Council will act as a body representative of public opinion to monitor government policies. In order to effectively achieve these aims, there must be channels for this Council to be fully consulted before any major government decision is made. I am therefore confident that Honourable Members will support my motion. In the past, this Council has probably not taken the initiative to strengthen this monitoring role. But since our

society is moving forward all the time, when the people's call for participation in policy making has become louder and louder, is it possible that this Council, as a body representative of public opinion, can stand stock-still? I recall that even the content of schemes of control agreements was kept confidential in the past. But it was eventually made public in 1984 under public pressure. This shows that the confidentiality of business or financial secrets is only relative, bearing in mind that public utilities directly affect the everyday life of the people.

To conclude, it is both necessary and practicable for Government to consult this Council and members of the public on the renewal of public utility franchise agreements. May I appeal to honourable colleagues to cast an affirmative vote on my motion.

Mr Deputy President, with these remarks, I beg to move.

DEPUTY PRESIDENT: I have received notice from Mr Stephen CHEONG to move an amendment to the motion. His amendment has been printed on the Order Paper.

Question on the motion proposed.

DEPUTY PRESIDENT: Mr Stephen CHEONG, you have given notice to move an amendment to the motion. You may now speak to the question and also move your amendment now.

MR STEPHEN CHEONG moved the following amendment to Mr LAU Chin-shek's motion:

That Mr LAU Chin-shek's motion be amended by deleting the word "consult" and insert in its place the phrase "seriously take account of the views of".

MR STEPHEN CHEONG (in Cantonese): Mr Deputy President, I rise to move an amendment to the motion before us so that it would read as follows: "That this Council urges the Government to seriously take account of the views of this Council and the public on Profit Control Schemes and franchise agreements with public utility and public transport companies before entering into such schemes and reviewing such franchise agreements with the companies."

The public always have the impression from media coverage that whenever an amendment motion is moved in the Legislative Council, it is done because one Member disagrees with another Member's motion. Some may think that the Member moving the amendment does so just for amendment's sake rather than for the anticipated actual effect. Some may even believe that an amendment motion itself is some sort of political tactics. Very few people believe in the spirit of making such amendments which, like proposing amendments to a Bill in its Second Reading, is to seek a more thorough expression of the substance in the motion so that it could be put into full effect and be monitored by this Council more effectively. It seems that it has become a common practice to speculate and infer from a negative perspective. If this continues to prevail, I believe our society will be held down in quite negative situation, which we do not want to see.

I support the spirit behind the Honourable LAU Chin-shek's motion, as public utilities and public transport are of immediate concern to the citizens of Hong Kong as well as to every Member of this Council. As a matter of fact, in November nine years ago, a majority of Members of this Council stood on the same front with various pressure groups and business associations. They unanimously requested the Government to set up a body to monitor and review the schemes of control. I would like therefore to take the opportunity to make it clear that this amendment motion is moved for the sake of pooling our ideas rather than showing our difference in stances.

Indeed, the difference lies only in a few words used in the original and my amendment motions. Whereas the former considers that the Government should "consult" this Council and the public, mine urges the Government to "seriously take account of the views" of this Council and the public. The wording of my amendment has been reported as being rather moderate. However, some careful thought should reveal that, in effect, its demand on the Government is more thorough.

I recall that in March 1986, the Honourable TAM Yiu-chung raised a question in this Council, asking the Government whether a body involving representatives from the public should be set up to monitor the profit control arrangements on public utility companies. The then Financial Secretary claimed that the existing arrangements under which the Executive Council represents the public to monitor public utilities were considered appropriate and sufficient. He further added that the Economic Services and Public Utilities Panel as well as the Transport Panel of OMELCO would be able to reflect that interest of the public. I believe those who

have served on various advisory boards are well aware of how the Government would openly conduct public consultation, and there is no need for me to describe this in detail. Some people think that public consultation can be widened to the perspective of referendum. However, it can be envisaged that a government which sees the importance of efficiency will not put every issue to referendum in the process of making policies. Hence, what actual effect can we expect if this Council only demand for "public consultation" today while the Government has already made it clear that such consultation has been carried out?

On the contrary, I request the Government to "seriously take account of" the views of this Council and the public. The Government has to account for its decision to this Council and the public if my amendment motion is endorsed. In other words, if the Government does not adopt the recommendations put forth by Members of this Council on the schemes of control, or takes any decision which contradicts public interest, it will have to give this Council a clear explanation as a responsible government should do. Only through this process of monitoring and holding the Government accountable can the Legislative Council perform its function properly.

It is bearing this in mind that I move the amendment motion, in the hope that this Council could enhance its role in monitoring the schemes of control without altering the spirit of the original motion.

In view of the time limit, I would only make two proposals regarding the schemes of control.

I support the underlying principle of drawing up schemes of control. However, as the Government will have to re-negotiate with the relevant public utility or public transport companies on their agreements some time later, I urge the Government to seriously take account of the current social and economic conditions and to take great care in formulating the terms of the agreements. I think the Government should take note of the following two points:

(1) It should be specified in the agreements with public utility or public transport companies that their development funds must be used for developing facilities to meet public needs and that on no account should it be drawn on to top up shortfalls in permitted profits. Actually, cases of setting aside the funds for non-development purposes do exist, and if the Government does not face the issue squarely, the spirit of setting up the development funds would be violated, thus

jeopardizing the interest of the public.

(2) Inasmuch as the difference in operation, investment, management and technology aspects among various public utility and public transport companies, the Government should formulate the terms and specify the permitted rates of returns with reference to individual company's own features in order to strike a balance between the interests of the investors and the public.

Moreover, the Government should publish in full the method of calculating the rates of permitted returns and make known the rationales behind such calculations. For example, such information should include the capital invested for facility development, and the data on the returns which the investors may gain from the beginning of investment all the way until total depreciation of such facilities.

Nine years ago when a debate on the schemes of control was held in this Council, a majority of Members who rose to speak requested the Government to set up a body to study and further review the schemes of control, and to seriously take account of the public's views to ensure a right balance between the interests of the public and the investors. Regrettably, I have to reiterate this point today, nine years after our request.

Before I conclude, I hope my colleagues could read between the lines to get what I mean and consider supporting my amendment motion. I would also like you to offer more ideas on this subject in order that this Council could do a proper job for the public on the subject of schemes of control.

With these remarks, I beg to move my amendment.

Question on Mr Stephen CHEONG's amendment proposed.

DEPUTY PRESIDENT: May I remind Members that a Member who now speaks to Mr Stephen CHEONG's amendment is considered to be speaking to both the original question and the amendment. Therefore he or she cannot speak again to the original question after the amendment has been disposed of. However, a Member who does not wish to speak to the amendment now may speak either to the motion or to the motion as amended after the amendment has been considered. The following Members have indicated that they will speak in this debate: Mr HUI Yin-fat, Mr Martin LEE, Mr TAM Yiu-chung, Mr Andrew

WONG, Mr LAU Wong-fat, Dr C H LEONG, Prof Felice LIEH MAK, Mrs Miriam LAU, Mr Jimmy MCGREGOR, Mr Peter WONG, Mr Albert CHAN, Prof Edward CHEN, Mr Vincent CHENG, Mr CHEUNG Man-kwong, Mr CHIM Pui-chung, Mr FUNG Kin-kee, Dr C Y HUANG, Mr LAU Chin-shek (but only to the amendment), Mr LEE Wing-tat, Mr Gilbert LEUNG, Mr Fred LI, Mr MAN Sai-cheong, Mr NG Ming-yum, Mr Steven POON, Mr TIK Chi-yuen, Mr James TO, Mr Samuel WONG, Mr YEUNG Sum, Mr Howard YOUNG and Mr SZETO Wah. Two public officers will also take part in this debate and they are the Secretary for Economic Services and the Secretary for Transport. Are there any other Members who wish to speak in this debate?

The Financial Secretary.

I would remind Members of the 15-minute rule under Standing Order 27 which does not, however, apply to public officers. The buzzer will sound after 13 minutes and again when the 15 minutes are up. The system has been slightly adjusted so that the buzzer, I hope, will be less intrusive than on the earlier occasion. We have also, for Members' convenience, installed the clock above the Chair which shows the second hand.

MR HUI YIN-FAT (in Cantonese): Mr Deputy President, if we look at places where capitalism is being pursued, I believe there is no other place like Hong Kong where privately run public utility and public transport companies can operate in a unique investment environment to secure an impressive profit growth each year even under the threat of persistently high inflation and global economic retrogression. Of course, the so-called "unique investment environment" is related to Government's policies. While the Government has granted monopolies to these companies under the pretext of reducing the drain on resources caused by competition, the Profit Control Schemes to which the utility companies are subjected for being granted such monopolies has become the best guarantee for the companies to get the permitted returns each year owing to a lack of supervision on the part of the Government. Even if they are not properly run, the boards of directors concerned, especially public listed companies, need not be held responsible for any losses incurred.

I have no intention to use this debate to press for a complete overhaul of our unique investment environment which is at present to the advantage of the public utility companies' operation. In fact, after many years of operation, certain companies which are well managed or sharp-sighted in their investment plans are indeed

capable of providing service at a stable price, or even at a price level which is the lowest in Asia. However, as the franchise agreements and schemes of control with public utility companies have been signed or renewed for quite some time while Hong Kong's economic and political scenes have undergone many important changes since, I think it is now an opportune time for the Government to negotiate franchise agreements with different categories of public utility companies beyond 1997, so as to ensure that all companies granted franchises to secure reasonable profits will make improvement in aspects such as management and resource utilization, and will provide the public with high quality services. Bearing this fundamental requirement in mind, I really see no reason why the Government should choose not to consult this Council and the public before entering into agreement with the utility companies. Because of the time constraint, I shall only concentrate on the public transport companies.

Nowadays, in advanced communities like Hong Kong where people are increasingly conscious of human rights, convenient modes of public transport have become not only the basic needs of all to make a living, but also the prerequisite for everyone -- whether able-bodied or disabled -- to live independently, maintain his own social life and vindicate human dignity. Unfortunately, the vast majority of Hong Kong's public transport companies which now operate as monopolies or near-monopolies are unconcerned with these basic needs. They have no plan at all to improve facilities with a view to rendering them more accessible to the blind, the deaf, the physically and mentally handicapped, or people who have difficulty getting about owing to long ailment. Instead, they are trying to give all sorts of excuses to shift responsibility onto others, like the argument that improved facilities will increase operational costs. A classic example of such ludicrousness can be provided by the Mass Transit Railway Corporation which has in the past declined to provide facilities for disabled persons on the pretext that mass transit is not suitable for them. It is much to my regret that unreasonable and irresponsible excuses like this should be used.

As a matter of fact, public transport companies in Europe and the United States are still offering concessionary fares and improved facilities to elderly and disabled persons as one way of promoting the companies' image even though they have to operate under keen competition with no guarantee for reasonable profits. In my opinion, public transport companies in Hong Kong must no longer resort to economic considerations as an excuse for shirking responsibility.

Past experience shows that an ageing community, with an increasing number of people having difficulty getting about, will place great demands on our public transport. I sincerely hope the public transport companies will be more far-sighted when planning their investments. In fact, while it will not cost much in improving the basic facilities for disabled persons, any increase in future patronage will more than offset the additional funds required for such investment. Moreover, if disabled persons can travel by themselves, like making follow-up visits to hospital, this will reduce the demand for ambulance and Rehabus services, and thus cut down on public spendings to a certain extent. With Hong Kong about to face the enormous calls on our social services as a result of an ageing population, a Government truly accountable to its people must take into full account and attach great importance to the following four points when negotiating the extension of franchises with the relevant companies.

(1) The concept of making public transport more accessible to those having difficulty getting about is more than just the provision of safety facilities by service providers. As a first step, the public transport companies must take into consideration the disabled persons' requirements for travelling to and from home when making designs. Take the Kowloon-Canton Railway Corporation as an example. Though it may well be said that the KCRC has more or less catered to the disabled persons' special needs by making the platforms accessible to them, very few physically handicapped people can make use of the train services because of the lack of feeder transport services to ferry them from home and because feeder transport services, if there are any, are very expensive. However, in a society where importance is attached to human rights and equality, there is really no reason why they should pay more for similar services available to other people.

(2) As there will be increasing demand for services from an ageing population, the Government should follow the example of the United States by requiring all public transport companies, through legislative means, to provide facilities for disabled persons when purchasing new cars or replacing old ones after a specified date, and to convert existing facilities before a certain date.

(3) Hong Kong now operates a Rehabus service comprising 41 buses for 600 000 disabled persons. Obviously enough, this service appears to be grossly inadequate. Should there be insurmountable technical problems in converting existing facilities, the expenses involved should be used to operate a Rehabus service on scheduled routes and fares similar to those of the main routes should be charged. According to a report

released after a meeting of transport ministers in 19 European countries this year, public transport companies in Sweden have successfully introduced a form of "intermediary" which caters not only to the needs of disabled persons, but also other passengers as well.

(4) Viewed from both economic and social obligation considerations, all public transport companies should have a duty to offer half-priced concessionary fares to the elderly. This is not only a recognition of their past contribution in Hong Kong, but also a fundamental development towards building up a "caring society" as promised by the Government.

On the other hand, I am concerned that there are no independent units within the relevant companies to deal with public complaints and that their operations fall outside the jurisdiction of OMELCO, the Office of the Commissioner for Administrative Complaints or even the Consumer Council when public aspirations for better service from the public utility and public transport companies are soaring. In my opinion, the appointment of official representatives to the companies' boards of management alone cannot bring the monitoring role into full play. Nor can it give the companies' operations greater transparency. For this reason, the Government should consider the requirement that all companies granted franchises or legitimately operating as monopolies must appoint public opinion representatives to their boards of management, such as elected councillors of the three-tier Government structure and representatives from the Consumer Council. Of course, the most ideal arrangement is that all public utility and public transport companies, irrespective of their modes of operation, should be monitored by independent advisory bodies whose terms of reference include advising on how to improve services and receiving complaints from the public. Since the Government is or will be negotiating the renewal of franchises with the relevant companies, the establishment of such advisory bodies has become a matter of great urgency. If not, it may be difficult to take public opinion into full account during the course of negotiations.

Finally, I must sincerely advise that the times of profit assurance for franchised companies will soon be past. Nowadays, institutional investors can no longer make big profits with a small capital, especially when the public are urging the Government to beef up supervision and more attention is being paid to consumer rights. In future, the utility companies' way of securing profits must be built on better management and more efficient allocation of resources, stepped-up public relations work, as well as long-term investment plans.

With these remarks, Mr Deputy President, I support the Honourable LAU Chin-shek's motion.

MR MARTIN LEE: Mr Deputy president, I am afraid that the amendment moved by the Honourable Stephen CHEONG is both illogical and contrary to the clear position taken by the OMELCO Panel chaired by the Honourable Stephen CHEONG himself only three months ago. The adoption of the Honourable Stephen CHEONG's amendment would serve only to endorse the highly unsatisfactory status quo in relation to public franchises. It would also demonstrate that this Council is not prepared to defend the interest of the public on this vital issue.

The Honourable Stephen CHEONG's amendment is illogical because on the one hand, it asks the Administration to take into account the views of this Council and the public, but on the other hand, it relieves the Administration of any obligation to even find out what those views are in the first place. For, how is the Administration supposed to consider public views under the Honourable Stephen CHEONG's amendment when the public does not have any chance to understand or examine the issues involved or make its views known? In formulating his amendment, the Honourable Stephen CHEONG could easily have added the words "seriously take into account the views of" to the present motion, without removing the requirement that the Administration consult with this Council and the public. Yet, he has chosen instead to delete any mention of consultation from the motion. If the Honourable Stephen CHEONG would amend his own proposed amendment so as to add the new clause without deleting the reference to consultation, then the United Democrats of Hong Kong would be very happy to support him.

The Honourable Stephen CHEONG's opposition to consultation is quite surprising given the fact that the Honourable Stephen CHEONG himself had requested such consultation from the Administration only a few months ago. In a meeting of the OMELCO Economic Services and Public Utilities Panel at the end of July, the Secretary for Economic Services Mrs Anson CHAN told the Panel that the Administration was then negotiating with China Light and Power regarding an extension of that company's franchise. At that time, Panel members felt strongly that the Administration should not grant an extension to the franchise holder until it had thoroughly reviewed the scheme of control system and consulted this Council.

Writing on behalf of the Panel, the Honourable Stephen CHEONG stated: "The Administration should consider the need to carry out an in-depth overall review of the concept of schemes of control regulating public utilities companies..... It is certainly advantageous if the public and the Legislature can be consulted while negotiations are going on with certain public utility companies regarding the end of their current schemes of control agreements. In any case, it would be desirable for the Legislative Council to be given the opportunity to comment before final decision is reached by the Executive Council."

I am afraid now, however, that the Honourable Stephen CHEONG has totally changed his position. Just three months after he himself had requested the Administration to consult the public and this Council -- and I am using his very own words -- the Honourable Stephen CHEONG is now seeking to absolve the Administration of any duty to conduct such a consultation. On Monday, he even ridiculed the use of the word consult in the present motion as being "too general" and used this as the pretext for moving his amendment today. I wonder what has caused the Honourable Stephen CHEONG to change his position in the intervening three months? I would have been more than happy to give the Honourable Stephen CHEONG an opportunity to intervene now so as to explain what has caused him to change his mind. But unfortunately, he is not here.

The fact that the Honourable Stephen CHEONG has now renounced even his own limited demands of three months ago demonstrates the pointlessness of his current amendment. The Honourable Stephen CHEONG would change the motion to urge the Administration "to take into account" the views of the public and this Council, but the Administration of course has always contended that it is doing precisely that. Take the current case of China Light and Power. Many Members in this Council are deeply unhappy that the Administration, without consulting this Council in any way, has extended this franchise for another 15 years on terms that seem on their face to be unduly advantageous to the company, which recorded an astounding \$3.2 billion profit last year. Indeed, even the Honourable Stephen CHEONG himself said publicly that the guaranteed annual profit of the Company of up to 15% was too high, a view he had expressed at the OMELCO Panel meeting three months ago.

If the Honourable LAU Chin-shek's motion were to be passed today, this Council would be making clear that a public review must be undertaken before the Administration entered into further franchise agreements or extensions. Yet, the adoption of the Honourable Stephen CHEONG's amendment would mean that the

Administration would not have to change its current practice at all. It could simply continue with the business as usual and continue in effect to ignore this Council and the public in reaching further agreements with other franchisees.

I turn now to the reason why it is so important that the Administration in fact have a full consultation on the scheme of control system before it enters into further franchise agreements or extensions. The current system is highly complex and confusing, as the Managing Director of the Hong Kong Telephone Co. Ltd. himself had stated in a letter to this Council. There are also many inconsistencies in the various schemes. For example, while orders by the Executive Council regarding fare rises for ferry services are required to be brought before this Council in the form of subsidiary legislation, no such requirement applies to Executive Council decisions on fare rises for bus services. Likewise, rate increases for telephone services must be approved by this Council through a resolution, but the Legislative Council has absolutely no say over rates charged by the electricity companies. Such inconsistencies are a result of a series of diverse Ordinances that were drafted in a patchwork, ad hoc fashion. Up to this point, there has never been a systematic review of the different schemes, with a view to formulating a more logical and consistent regulatory framework.

It is precisely because of these complexities and inconsistencies that there is a need for a thorough public consultation -- such as in the form of a green paper. Without such a consultation, in which the Administration would make clear to the public the often secret details of the schemes of control agreements, the public simply does not have the ability to formulate clear, well-reasoned views on these complex issues. We currently have a highly imbalanced situation in which company representatives, who have all the facts pertinent to their franchise readily at hand, talk in confidence to the Administration about their franchise, while the public and consumer groups are denied the information to present the case for the consumers. Confronted with only one source of information and saddled by the policies of their predecessors on individual franchises, it is no wonder that our policy Secretaries have displayed such inertia towards any possible change to the current schemes.

Because of this lack of public access to critical information, the Consumer Council in August wrote two letters to the Secretary for Economic Services to request a systematic review before any franchise agreements were signed or extended. After a delay of over a month, the Council finally got a reply from the Deputy Secretary who said that the Government wished to give a single reply to the questions raised

and that the Council would "expect to receive this reply fairly shortly." Yet, as of today, the Consumer Council has still not received a reply!

In a paper to this Council on public utility companies, the Administration states that "The Government believes that the companies themselves should be directly accountable to the consumers as far as possible." Yet, at the same time, the Administration refuses to amend the Consumer Council Ordinance to allow that Council to monitor the franchised companies, and for three months it has refused to reply to that Council's request regarding consultation on the schemes of control. Furthermore, despite repeated requests by the Consumer Council, most public utility companies refuse to establish any independent monitoring body of consumers.

Mr Deputy President, this Council has likewise been similarly frustrated from properly carrying out its supervisory role. This is now my seventh year in this Council; and each time I enquired over the years about fare increases for public utilities that struck me as unduly large, I was always given the answer that there was nothing the Administration could do because it was bound by contract with the relevant franchised company. The Administration has always said that we have to wait until the franchise expires and then we could see about new negotiations. Yet, now, on the very eve of this debate about the franchise agreements, the Administration has seen fit to conclude a remarkable new 15-year agreement with China Light and Power, -- without even bothering to consult this Council! The timing of the deal, serving as it does to frustrate any attempt by this Council to offer its views on the franchise, shows the Administration's utter contempt for our views and reaffirms the need for the public consultation called for in the Honourable LAU Chin-shek's original motion.

Mr Deputy President, I have every reason to believe that the Administration is behind the Honourable Stephen CHEONG's motion to amend so as to absolve itself of its responsibility to consult the public and this Council on this vital issue. And I would be happy to stand corrected if the three government officials in this Council were to prove me wrong by voting against the amendment.

Given the amount of public money at stake, the importance of this issue to the public, and the highly unsatisfactory arrangements at present, a public review is long overdue. This request for a public review, moreover, should be seen in the context of the numerous public consultations that have recently been and will continue to be carried out on a diverse range of topics, including the Hospital Authority,

primary health care, social welfare, the Bill of Rights, and the new Organized Crime Bill, and so on. My colleagues from the United Democrats of Hong Kong will discuss the areas that we hope the review will cover as well as why the subject of public franchises is so important to Hong Kong. When Members realize the lack of information currently available on the subject, I hope that they will support the Honourable LAU Chin-shek's motion so that the Administration will prepare a comprehensive consultative document as soon as possible.

If Honourable Members wish this Administration to do nothing about this very important issue, they should vote for the amendment. If they do wish the Administration to do something before it is too late, they should vote against the amendment and support the original motion.

DEPUTY PRESIDENT: I would just point out that under Standing Order 31 a Member shall not impute improper motives to another Member. So in relation to Mr CHEONG's proposed amendment, it would not be in order to question his motives.

MR TAM YIU-CHUNG (in Cantonese): Mr Deputy President, the people of Hong Kong have all along been very concerned about the quality of services provided by public utility and public transport companies and whether the price level for such services is reasonable. The hefty increase of charges by public utility companies has also been one of the major causes for high inflation in recent years. As a matter of fact, it is time that the Government should reconsider a review of its policy on public utilities.

The public utilities and transport services in Hong Kong are monopolized by several consortia, the quality of service they provide and the charges they impose directly affect the livelihood of the public at large. Nevertheless the monitoring of these public utility companies is done behind closed doors. On important issues such as the renewal of franchise for a company and the approval for revision of charges, the public are not only denied their chance as consumers to take part in the decision but they are also not given the right to be kept informed of what has happened. While they are made to bear the heavy charges and to accept unsatisfactory services, such an arrangement is very unfair.

At present the control mechanism of the Government on public utilities are full

of defects. For example, the Transport Advisory Committee, which is not accountable to the public, operates with a very low degree of transparency. The public are always on the receiving end whenever there is a price increase. The profit control scheme cannot check the price level of public utilities, instead it facilitates price increase for those companies which are guaranteed a profit margin. The price increase does not bring about any significant improvement in service.

Without doubt the hefty increase of charges by public utility companies adds to the burden of the lower income group. There has been public outcry against it. Since the Governor has, in his policy address, set the "protection of disadvantaged members of society" as one of the objectives, why is the Government still reluctant to review its policy on the monitoring of public utilities? As a matter of fact, debates have been held more than once in this Council to urge the Government to improve its monitoring system. During the motion debate on the Green Paper on Transport Policy in Hong Kong on 12 July 1989, I had already suggested the establishment of a sound and open monitoring system and the setting up of a committee comprising members of the community to formulate standards in monitoring public corporations, to enter into annual operating agreements with these corporations and to evaluate the operation of these corporations regularly. I also urged the Government to speed up the review on policy relating to public utilities and to solicit public opinions on the recommendations and contents of the review. However, the Government has paid no heed to my proposals.

In March this year when the Government gave approval to the two bus companies to raise fares to a level above the inflation rate, I again urged the Government to review and amend "the Profit Control Scheme Applied to Franchised Bus Companies". I had the hope that the Government would conduct a substantive review on the scheme before the expiry of the franchises as a precondition for renewal of the franchises. However, to my great disappointment, the Government still evaded the question on various pretexts and the two bus companies raised their fares just the same, pushing the inflation rate to a new high.

Recently, the Government has reached an agreement with China Light and Power Company without consulting this Council and the public. The franchise of the Company has been renewed for a 15-year period and the permitted rate of returns is fixed at 13.5% - 15% of its net fixed assets. The company can now use tens of billions of dollars to expand its generating facilities. An increase in electricity charges in future is thus foreseeable. Such practice of manoeuvring behind closed doors and

taking pre-emptive actions without prior consultation will surely lead to public discontent and concern. The income group will be laden with heavier burdens.

Mr Deputy President, in order to "protect the disadvantaged members of society", the Government should no longer evade the fact that public utility companies are reaping huge profits, nor should it ignore the discontent of the public for not being able to be involved in monitoring these companies. With the opening up of our political system and a heightened civic awareness, the public, as consumers, naturally demand to be informed in greater detail on matters such as the franchise and profits of public utility companies and to have a say in the monitoring work. Thus, I now propose again that the Government should review its policies on public utilities and publish consultative documents to solicit views of this Council and the public before entering into agreements with the companies on Profit Control Schemes and extending their franchises. The Government should also set up a committee, comprising members of the community, which is accountable to the public to review the quality of services provided by public utility companies on a regular basis and to assess whether their fares and charges are justified.

I believe that in formulating policies on public utilities, if the Government allows public involvement throughout the process of policy making by way of open consultation, the public can have a better understanding on the merits and demerits of these policies as well as the options available for consideration, and unnecessary conjectures and misunderstanding can then be avoided. If the Government works behind closed doors when formulating policies which have far reaching effects on people's livelihood and refuses to allow the public to exercise their right to know and right of involvement, more conjectures and discontents will arise and the image of the Government will be tarnished as well.

In view of the above reasons, if I have to choose between the two motions, I consider the wording of the Honourable LAU Chin-shek's motion to be more in line with my view.

Mr Deputy President, with these remarks, I support the Honourable LAU Chin-shek's motion.

DEPUTY PRESIDENT: A number of Members, I understand, have urgent commitments elsewhere. I shall therefore call upon Mr Andrew WONG.

MR ANDREW WONG (in Cantonese): Mr Deputy President, I rise to speak in support of the amendment proposed by the Honourable Stephen CHEONG to the motion moved by the Honourable LAU Chin-shek. Should Mr CHEONG's amendment be defeated I nevertheless could, albeit with some reservation, support Mr LAU's original motion.

Mr Deputy President, that I have at the very outset stated in unequivocal terms how I would vote is because I shall be away from half past five this afternoon to attend a function which I cannot, without transgressing the bounds of civility, decline and which will probably keep me from returning to this Chamber later to vote.

Mr Deputy President, the spirit of Mr LAU's motion, as I see it, lies in its assertion that the Administration must extensively consult the public and this Council in respect of the profit control schemes for franchised companies. I fully support this. The profit control schemes which the Administration has relied on to control the profits of franchised companies have degenerated into some sort of profit guarantee schemes and, in a climate of high permitted returns, have further degenerated into a sort of profiteering guarantee schemes.

Mr Deputy President, Mr LAU's motion is worded thus: "That this Council urges the Government to consult this Council and the public on profit control schemes and franchise agreements with public utility and public transport companies before entering into such schemes and renewing such franchise agreements with the companies." Mark these words: there are two things in respect of which the motion urges for open consultation with this Council and the public. First, the profit control schemes for the companies concerned; and second, the franchise agreements with individual companies in respect of the rates of permitted returns and the scope of control. Therefore, though the spirit of Mr LAU's motion is commendable, the motion, once passed and implemented, will give rise to two major problems. What I am worried about is not the profit control schemes because, in legislating for such schemes, not only will this Council have been consulted but also the legislation will be subject to passing by this Council who will have the power to enact and amend as seen fit. What I am worried about is the contents of the franchise agreements for individual companies.

Mr Deputy President, the first problem relates to practicability. Agreements are signed after negotiations have been concluded. In the course of negotiation with

public utility companies, how can the Administration "openly" consult this Council and the public? It should be noted that Mr LAU is urging for open consultation. Commonsense tells us that this will not be possible. Even granted that the Administration had no power to negotiate and to sign agreements and that such power was instead vested in this Council, this Council would certainly hold discussions behind closed doors and assume collective responsibility to keep any information relating to the proceedings secret. Furthermore, does open consultation with this Council and the public include divulging the private, sensitive commercial secrets of the public utility companies concerned?

Mr Deputy President, the second problem relates to a question of constitutional significance. As I said a moment ago, this Council could take back from the Administration the power to negotiate for and sign franchise agreements with public utility companies and have such power placed within the competence of this Council to exercise. Should this happen, the legislative and executive powers would come merged and this Council would become the Administration or a super-administration and the current Administration would be relegated to the position of an implementing organ only. I believe Mr LAU cherishes no such intention. If, before the signing of an agreement, this Council must be openly consulted and then it falls to the Administration to make the final decision, then the majority view of this Council will exert enormous pressure on the Administration. A situation will emerge where this Council will possess power but with no responsibility and the Administration will be laden with responsibilities but possess no power. All credit will go to this Council if a correct decision is made and all blame will go to the Administration if a wrong decision is made. Will this be the democratic system that we are intent on building?

Mr Deputy President, Mr CHEONG's amendment seeks to delete "consult" and substitute "seriously take account of". This happens to solve the two problems that I perceive will arise. The "seriously take account of" wording as proposed by Mr CHEONG not only carries the connotation that the Administration must consult (because there cannot be "seriously take account of" without prior consultation) but it also further points out clearly the need for the Administration to follow the views of this Council and the public. This Council can any time resolve to set up an investigating committee to question the Administration as to whether it has acted properly in the exercise of the power conferred on it by this Council to negotiate for and sign the agreements concerned. Such being the case, dare the Administration act arbitrarily or irresponsibly?

Mr Deputy President, at the beginning of my speech, I already said that I supported the spirit of Mr LAU's motion because the profit control schemes had degenerated into profit guarantee schemes or profiteering guarantee schemes. The pressing task before us now is to conduct a comprehensive review to find out whether the control of franchised companies through profit control schemes is valid and effective in all cases or whether it is ineffective against some companies. Take for instance public bus services. If there is still the need for control, should the rate of permitted returns be based on net fixed assets or shareholders' equity or a certain mix of the two? Should the permitted returns be as high as 15% to 16%? These are the real focal issues. I call on the Administration here to get on with the review as soon as possible. I also call on Honourable Members of this Council to turn to themselves for a solution and let this Council do it.

Mr Deputy President, I support the motion.

PROF FELICE LIEH MAK: Mr Deputy President, the Government adheres to a policy of minimal interference in the management of public utilities and transport companies because to a certain extent it recognizes the ability of the private sector to provide utility and transport services to the public. The Government's primary responsibility in this respect is to ensure reasonable prices and quality service for the consumer, without jeopardizing the financial security of the companies.

In this role the Government walks a difficult tightrope as it balances the needs of the community with the financial success of the company. This motion debate is really an attempt to decide which side, the consumer or the company, deserves our concern. The consumer wants better service and lower costs. The company wants better profits. We are the arbitrators who must balance the needs of both sides.

I encourage Members to consider that these two sides are not necessarily opposed to each other. Good and efficient management, committed to the interests of the consumer, can provide quality service and satisfy the needs of both parties. Our discussion today on this debate, rather than passing judgement for or against the consumer and the companies, should instead focus on the gains for both in achieving better management and better accountability.

To ensure the efficient running of the public utility companies and the transport

companies their management schemes should no longer be hidden from public scrutiny. The public demand quality services at the right price and have the right to consider and suggest improvements in the operation of the company. If there is public dissatisfaction, their voices should be heard. The structure of the companies should be made more transparent to the public and provide consumers with an opportunity to consider improvements in management and in services.

This however must not mean that the companies will be controlled or managed by the Government or the people. The Government should continue to negotiate schemes of control and franchises that seek minimal interference in the business. The concerned companies should continue to be independent but however must be responsive to the reasonable demands of the consumers.

Our utilities and franchised companies are currently providing very reasonable costs with very adequate service in some areas not in all. If we look at territories other than Hong Kong and look independently at utilities and transport services we find that there is a lot to be said about them. If we look at cheaper and more efficient services many of these are invariably subsidized at the cost of the taxpayer. Hong Kong's favourable comparison is a tribute to our current system of public utilities and transport services management that is run by private companies but under government control and some degree of protection. There is room for improvement in this formula. In recent years there have been complaints about the quality and the price of services. Some of our companies no longer value innovative management and as a result are mismanaged. The goal of increasing profits has replaced accountability to the public as a priority in the consideration. The inefficiency and complacency of a monopolistic organization is revealing itself.

The Government unfortunately has lost its ability to adequately monitor these companies. They have assumed a high level of organizational competence in the companies and this is not always a wise approach. The public has suffered from those assumptions. The Government has limited expertise to advise them on these matters. They are always out-done and out-manoeuvred by these large companies. Therefore, it is essential for these companies to make that move and if not they will be forced to make this move that they should make the schemes more transparent to the Government and to the public. This will reveal potential mismanagement and ensure the companies' responsiveness to Government and public monitoring.

The appropriate channel for public monitoring must be wisely considered and

understandably this is the point of debate here. There are many possible means for gathering public opinion, but some of them are more efficient and accurate than others.

Public surveys and opinion polls have become popular sources of information. Interviewing a large number of people and compiling their statements may seem to be a reliable source of public opinion. I encourage Members to consider the accuracy and the cost effectiveness of this public consultation. As the polls that predicted a 60% to 70% turnout for September's elections revealed, surveys are not able to predict the future or reliably gauge public sentiments.

The opinion survey attempts to converge the views of a great number of people into a few categories and then generalizing the attitudes of the population as a whole. But opinions are too varied, ambiguous and complicated to be reduced into four or five degrees of agreement and disagreement on a particular question. The interviews and results are biased by the questions and the interviewer's personal attitudes. The intensity of the respondent's answers cannot be properly monitored.

Public surveys stumble when confronted by ignorance. If we take this matter to the public, how many will have the necessary information to express an intelligent opinion or the expertise to do so even if the facts are presented in the simplest manner. We perform a disservice to this debate by assuming the public's understanding of the complexity of this matter, and thus conducting an opinion poll to guide us. But we should make available to those who do have interest or expertise in this matter an opportunity to express their opinions. We should listen very closely to those who have sought an opportunity to voice their sentiments, instead of those who have responded to an interviewer's questions.

Opportunities for expressing opinions on this subject need to be created. The suggestion of consumer consultative committees extending the power of the Consumer Council is a good one. The companies should set up these avenues for public consultation themselves or else, as said earlier, they will be forced to do so. This will allow concerned members of the community to come and voice their opinions and complaints. In addition, citizens can make their feelings known to their elected representative so that the views of the public can be conveyed into this Council. These means of public consultation are more valuable than opinion surveys and would cost less.

As to consulting this Council, being a new Member I hesitate to be so critical, but let us be realistic. How many Members do have the expertise to understand the financial intricacies of the scheme of control, or indeed will take the time to do so? The Administration's briefing in the various meetings on this matter was attended by more than half of the panel members, and even less stayed until the end. To truly understand the schemes, this Council will need to employ financial consultants, who in fact will be duplicating the Administration's work. This will add onto the cost of consultation but not necessarily accuracy or legitimacy.

As we search for the proper balance between the consumer and the companies, we must be careful not to allow the ruin of a successful system under the banner of reform. This debate considers not only the proper amount of public control over utilities, but also larger concerns about the generation of profits and the redistribution of wealth. There are greater evils than our present system, and we should be careful not to implement excessive reforms that will ultimately result in higher prices and bad services from our companies.

We do not want state controlled and managed utilities and transport systems. Traditionally, this situation has resulted in the breakdown of services as well as high prices. Too much public intervention into the management of the utility and transport companies is no better. The companies' survival is often sacrificed at the expense of low fares. Services become unreliable when company after company fails to provide the services at impossible costs.

The attempt to deregulate public utilities and transport systems will also fail. The deregulation of airlines in the United States in the 1980s resulted in poor service and unnecessary confusion. New companies gained their experience in the business at the expense of the customers.

Our present system of minimal interference is sound. But as we consider the renegotiation of long-term contracts, we must address the growing dangers of poor management and the lack of accountability in our public utility and transport companies. Some adjustments to our system today will prevent increasing dissatisfaction and hasty reform in the future that might place the companies entirely in the hands of the people.

The subject of today's debate is not the struggle between impoverished people and greedy monopolists. We are not lifting a burden of unfair prices off the

shoulders of our people. Our task is not to redistribute the wealth of the community. Instead, we should try to perfect an already proven system. We should reaffirm the condition that has formed the basis of our economy: the opportunity to create wealth without interference. Let us modify our current system slightly but not jeopardize the rewards for industry.

Mr Deputy President, with these remarks, I support the Honourable Stephen CHEONG's amendment.

DR LEONG CHE-HUNG: Mr Deputy President, I thank you for letting me jump the queue and apologize to my colleagues for taking this manoeuvre.

Five weeks ago the Governor, Sir David WILSON, in his policy address, called for a co-operative partnership between this Council, the Executive Council and the Administration.

Five weeks later, this Monday, Government took the liberty to inform the Omelco Economic Services and Public Utilities Panel that it has already made a decision to renew the scheme of control agreement with China Light and Power Company Limited.

We do not even have the pleasure of Government to brief the full Council on this in the Legislative Council In-House meeting or a special in-house meeting!

Is it the first concrete example of Government to realize a "co-operative partnership"? Or has this partnership unilaterally turned sour.

Mr Deputy President, many people, including myself, are harbouring a suspicion that Government has been too soft and too lenient to public utility and public transport companies.

Time is ripe for an overall review

Most schemes of control were initiated decades back. They are now clearly wide off the mark.

At that time, a few decades ago Hong Kong was but a premature baby. Essential public services had to be taken good care of to ensure that, firstly, the people here

could receive efficient and reliable services at reasonable cost, and secondly, the companies could receive a reasonable return and be encouraged to continue to make necessary investments to meet growing demand and improvement in service standards.

Under those circumstances, profit control schemes and franchise agreements are essential "vitamins" to help these companies to stand up on their feet and grow up healthily.

But time flies. They have now grown up and in good shape. Do they still need these vitamins? Or are we producing some degree of "morbid obesity" in the central public services at the expense of the public at large.

Mr Deputy President, these schemes may be justified in the past. But now they should be put under the microscope. Furthermore, guaranteed profits do not necessarily mean better services. China Motor Bus Company is an example. For numerous times they have been criticized for providing an inadequate service to commuters on the Hong Kong Island.

Consideration should therefore be given to whether the public interest has been duly protected, whether benefits could be derived from increased competition, what safeguards in financial and technical monitoring procedures of the companies and what cost efficiency and technological advancement should be made and achieved and whether sufficient channels have been established for the public to monitor the performances of these companies.

Public must be consulted

Mr Deputy President, I strongly object to the argument put forth in a letter by Mr G L CREW, managing director of Hong Kong Telephone Company Limited to this Council that and I quote: "It is difficult and time-consuming to present a clear picture to the public, to gain an informed response".

The letter went on to say that "it is inevitable that such consultation will provoke responses from vested interests, which may not have the best interests of Hong Kong in general as their prime motivation."

I appreciate the trust Mr CREW in the same letter has put on the Legislative Council which he said is well placed to represent public viewpoints and can handle

complex subjects by experts. But what is wrong with getting public opinion?

Besides, it is always dangerous to leave things to the self-proclaimed experts or technocrats with the laymen -- the members of the public -- being cast outside the doors.

Let the franchised companies be reminded that the public are the very people who pay for the services. They have the full right to be consulted and be assured that every dollar and cent they paid is well spent. Their views should therefore be fully heard, not by proxies or by technocrat overlords, but by themselves.

It is for this reason, Mr Deputy President, that I do not and cannot support the amendment put forward by the Honourable Stephen CHEONG which has deliberately struck off the word "consult". To "seriously take account of the views of this Council and the public" as he suggested is simply not enough.

No blackmail please

Mr Deputy President, it is totally absurd to hear arguments that protected schemes are needed as "the price for meeting challenges" in face of future economic uncertainty and the 1997 jitters. I do not agree. It simply is a blackmail.

The future of Hong Kong is a challenge for everyone who calls Hong Kong his home. There should not be any advantages bestowed on a few privileged investors at the expense of the majority. Having said that, Mr Deputy President, I do not mean that these companies should run in the red and suffer financial losses. But certainly the protection shields should be lifted.

These shields, which guaranteed recognizable profits, are the culprit for spiralling of fees and charges in public utilities and services, and adding fuel to the flames of increasing inflation.

I tend to agree with the suggestion made by the Consumer Council in September that the time is ripe to conduct an overall objective review of the mechanism of the schemes of control governing these companies.

Indeed, Mr Deputy President, the Omelco Economic Services and Public Utilities Panel has, in the last Legislative Council Session, made similar calls. The panel went further to suggest that a white paper should be put forth to solicit views of

the public. I support this call and consumers from all walks of life should be involved in the consultation process.

A Legislative Council select committee should be set up

Moreover, Mr Deputy President, in sounding a chord of unison with the Honourable Andrew WONG, I also call for the setting up of a select committee under this Council to review the overall control schemes and the franchises. This committee can summon witnesses and government officials and can call for public hearing. Recommendations will be made to this Council and then to Government. This, Mr Deputy President, is a way to effect a co-operative partnership and I expect the official to reply in this particular direction.

As the renewal of these agreements and control schemes will obviously straddle 1997 and have long-term implications to Hong Kong people, Government should not rush to make decisions.

A new and flexible profits control called for

I would like to stress here on the urgent need to review the current mechanism over profits which observes only one principle of net average fixed assets.

The problem with this principle is that the return profit is calculated after deduction of all operating costs. This means that the companies would have no incentive to control their cost: they can allow their cost to rise and then simply raise the prices to achieve the same level of profit as guaranteed by the control schemes.

Public utilities in Britain are regulated under a very different scheme. Instead of guaranteeing the company a rate of return the scheme fixes the prices the company may charge and leave the company to seek greater efficiencies and earn greater profits.

Let us take the Hong Kong Telecom's counterpart in Britain as an example. British Telecom (BT) for example has been granted price increases less than the rate of inflation for some years. Yet its service to customers has improved and it now, despite lower prices in real terms, makes enormous increase in profits, in the order of something like HK\$35 billion per year! Both BT's shareholders and its customers

have benefited under this scheme.

The Hong Kong Democratic Foundation, Mr Deputy President, has for a long time urged that some Retail Price Index (RPI) formula be adopted for setting prices. A formula such as RPI-minus five, that is allowing prices to rise by 5% less than the inflation rate, would probably be appropriate for Hong Kong Telephone for example and some other utilities.

Government should also consider the Omelco Economic Services and Public Utilities Panel's call for a more flexible mix of control mechanisms over profits than just fix to one criterion of net average fixed assets. Such recommendation is called for as it was the product of collective wisdom of our colleagues after in-depth discussion with the Administration on this matter.

After all, all these public utilities agreements will have direct bearing on Hong Kong people. They should not be considered in a piecemeal approach. An overall rationale ought to be established so that these agreements should be made with both the interests of the consumers and the companies taken full care of.

Mr Deputy President, it is pointless for Government to pay lip service to advocating partnership while in reality it rubs off the part to be played by this Council in the public. If Government is to stick to its foregone decision and approaches to make decision then it is really pointless to carry on with this debate in this Council and I would rather suggest Mr LAU to withdraw his motion to save time and embarrassment that may likely incur the Government.

With these remarks, Mr Deputy President, I cannot accept the amendment by the Honourable Stephen CHEONG and I support Mr LAU's original motion.

MR LAU WONG-FAT (in Cantonese): Mr Deputy President, the present development of Hong Kong has reached a stage which necessitates the perseverance of transparency by the Government in the process of decision making. The principle should be applicable to the control of the operation of public utility companies and public transport companies. Such control is directly related to everyone and it has significant impacts on people's standard of living.

Concerning the franchise issue, I am of the view that a comprehensive review

should be conducted by the Government now. Franchise came into existence years ago as a result of investment projects involving huge capital. It was necessary at that time to give assurance and protection, in the form of franchise, to investors who had made major promises, bearing in mind that Hong Kong was only a fishing village with a small population and its industry and trade were on a very small scale. But is it still necessary to give protection and assurance to investment on electricity and transport systems when Hong Kong has developed into a famous international financial and commercial centre? That is a question that many people want to ask, I believe.

The normal practice of classifying franchise arrangements as confidential by the Government has caused worries. It is claimed that over the past two decades the level of tariffs has been far below inflation rate. It is also argued that why should we bother to have a review or change when the current system is operating with efficiency? However, I opine that all data given may be totally misleading unless the relevant franchise agreements are disclosed.

Mr Deputy President, I would like to pose the following questions:

(1) What are the criteria, rules, and regulations regarding profit control on investment and restrictions on other relevant business?

(2) What are the land arrangements for major franchised developments? What is the amount of underlying subsidies involved if the provision of land is made at discount prices?

(3) What arrangements will be made by the Government when franchised companies no longer apply the original development purposes to the land provided? Do franchised companies have the exclusive right to redevelop the land?

I fully understand the complexity of the operation of large public utility companies. But to a large extent, the future of Hong Kong has to rely on a healthy and efficient infrastructure. I hope a fair, balanced, and reasonable system which provides no room for the existence of monopoly will be established in Hong Kong.

Mr Deputy President, as government administration is becoming more open, there is a genuine need to enhance transparency in mapping out the profit control schemes and in renewing the franchises for public utility companies and public transport

companies. Meanwhile, public views should be taken into account seriously. It is obvious that the profit control schemes for public utility companies and public transport companies are very complicated issues involving a variety of technical and specific knowledge as well as classified commercial information. In this regard, the Government should strike a balance among the enhancement of transparency, the consideration of public opinion, and the caution of not obstructing the achievement of reasonable agreements with relevant companies. I do not see any contradiction between the original motion and the amended motion as far as the spirit is concerned. Yet, I support the latter because its wording obviously suits the actual situation more and is favourable to the Government in reaching the balance.

Mr Deputy President, I support the motion.

MRS MIRIAM LAU: Mr Deputy President, public utilities and public transport are basic and essential services which affect the daily life of the ordinary citizen. It is clearly the responsibility of a good government to ensure not only that such services provided to the community are adequate and reliable but also that the prices charged therefor are reasonable. Hitherto the Administration has sought to fulfil these two objectives through profit control schemes and franchise agreements with the various utility companies and transport operators.

When first introduced in 1975, the profit control scheme was a measure clearly intended to safeguard the interests of users of public utilities and transport services. However, this shield for the protection of consumers is now viewed, rightly or wrongly, by many to be a sword for advancement of the cause for price increases. The criticisms in this regard are particularly acute in the case of public transport services. Many of such criticisms could have been averted if the Administration had been more ready to explain in detail the basis upon which the approvals for fare hikes were granted, and the operators had been more open about information and data supporting their case for fare adjustments. But in my view the root of the problem lies in the fact that the scheme of control agreements themselves contain terms which are not exactly unequivocal or water tight and such ambiguities have given rise to many controversies. In the adjournment debate on Franchised Public Transport Services in Hong Kong in this Council on the 13 March this year, I have outlined some of those controversies and I shall not repeat them today. Suffice it for me to say that misunderstandings over the true meaning of permitted return, the rationale behind the pegging of permitted return to net fixed assets, the control over asset expansion, the control over quality of performance, the role

and function of the Development Fund and so on are all matters which require elucidation or improvement as the case may require. To my mind the controversies which have arisen cannot be removed unless the ambiguities are expunged from the agreements. Since many of the scheme of control agreements are coming up for renewal, the Administration must seize this opportunity to review existing schemes and to address whatever inadequacies there may be to ensure that such inadequacies are not carried forward into the new agreements.

Mr Deputy President, since the users of public utilities and transport are members of the public, they are certainly entitled to voice their views as to what they feel should be the proper framework for the operation and control of such services. The Administration certainly cannot ignore such views when negotiating renewal of the scheme of control agreements. However, it must be appreciated that our utility and transport services are not state-operated; therefore the matter is not one exclusively for the Administration to decide. As much as we would like it, it is not just what the public wants that dictate, for it must take two sides to make a contract. The private operators themselves must be sufficiently enthused by the opportunity to receive reasonable returns on the investment before they would be prepared to strike a deal. The public naturally wants maximum control and low charges; the operators, being commercial enterprises, understandably want flexibility of operation and profits. The Administration must therefore strike a right balance between the conflicting interests of the service provider and the service recipient to find an arrangement which would on the one hand be commercially viable and on the other hand capable of reasonably meeting public expectations. In this balancing exercise, the Administration must never lose sight of the fact that the ultimate objective is to ensure the continued provision of proper and efficient services to the community at reasonable cost. That is what our community requires and that must be the crux of public interest. The task is by no means an easy one but provided the Administration is prepared to listen to and seriously consider the views of both sides, to understand and address the concerns expressed by both sides and to explain and justify the rationale behind the ultimate decision made, I am sure that fair and reasonable franchising arrangements acceptable to all can be arrived at.

The Honourable LAU Chin-shek's motion calls on the Government to consult this Council and the public on the profit control schemes and franchise agreements before they are made. Whilst I can support this spirit behind the motion, I have reservations about the practicability of the move called for. In my profession, I see contracts being negotiated and concluded almost every day. Negotiation of any

contract is usually a lengthy and complicated process, necessitating the adoption of strategy, skill and care and a great deal of give and take on both sides. There is no way that one party can force its way through because the other party always has the option of backing down. How then does public consultation fit into this process? When and how often should the public be consulted? Should they be consulted before an offer is made? Should they be consulted again after a counter-offer is received? Bearing in mind that there are bound to be umpteen offers and counter-offers along the process, some of which may require quick responses, can we afford to hold up the negotiations from time to time to await the outcome of public consultations which in any event may or may not be conclusive?

Mr Deputy President, I agree that the views of this Council and public opinion are both very important on this very important subject. But in the past such views have been expressed many a time through debates and questions in this Council, through contacts with the Administration via the Omelco panels, through deputations turning up at our Omelco Complaints Office and through the media. I believe that the Administration closely monitors those views and is well aware of the same. If the views already expressed have not been sufficient, I have no doubt that the new Members of this Council, particularly those who are directly elected, will not hesitate to point this out and make up for the deficiency. Honourable colleagues who spoke before me have clearly indicated their intention to make full use of this forum for expression of their views and I am sure that those speaking after me would do likewise.

As I see it, the problem is not the lack of expression of views or the lack of forum for expression of views. The problem lies in how much weight the Administration attaches to such views. It is important that the Administration hears the views of the public but what is more important is that the Administration is prepared to fully and seriously consider and bear these views in mind when negotiating the new franchising arrangements. This is what we should urge the Administration to do. In this regard, I find that the Honourable Stephen CHEONG's proposed amendment more adequately addresses the real concern underlying the original motion. Hence I support the same.

MR JIMMY MCGREGOR: Mr Deputy President, I have only a few comments on this motion. I understand the concern expressed in this Council and more widely in Hong Kong from time to time that franchises and monopolies granted by the Government to private sector companies shall not become licences to print money and that the services being

provided shall be efficient and cost-effective. There have been examples of the failure of the Government to enforce the requirement for operational efficiency. There have also been complaints that some of the companies granted a franchise or some other form of protected operation have taken profits which were unreasonably high and which therefore exploited their privileged position. In recent years there has been great pressure on the Government to rectify any past errors of judgment and to improve the efficiency of the companies concerned, particularly where franchises are to be considered for renewal.

The Government has in my view reacted well to these calls and, certainly during the last three or four years, has tried to introduce competition where this has seemed fair and equitable. I believe these efforts have been quite successful. Even the threat of competition can sometimes work wonders. Certain transport companies seem to have greatly improved their services as a result of competitive pressure.

I am therefore all for competition if this will improve the services provided to the Hong Kong community by these companies. However, I do think that, generally speaking, we get good value for our money, compared to other similar territories and cities around the world. It also seems the case that our utilities are comparatively efficient and one or two of them are up among the most efficient in the world. I do not personally include China Motor Bus in this category.

In regard to the motion now under consideration, I must say that I am doubtful about the value of public consultation over the renewal of franchises and schemes of control. These are complicated arrangements requiring very detailed examination of technical, economic and operational aspects of each of the utilities concerned. Public concurrence with proposals for renewal of profit making franchises and schemes of control would be well nigh impossible, given the normal and natural desire of the general public to have the services provided at the least possible cost. There would be endless argument and, in the end, the Government would still have to decide what to do.

I can see a case for this Council being involved in the approval of extensions to franchises and schemes of control but, even here, where is the expertise that will permit accurate assessment of proposals? It is not unlike our trying to understand what is happening with the financing for the airport. Even the best accountant cannot say whether the assessed costs are reasonable or not since much of the relevant information is of a highly specialized technological nature and will eventually in

any case be subject to competitive tender. In short, this Council is trying to assess the results of months of work by teams of specialists across a wide spectrum of disciplines. This is not an easy task.

In examining the extension of government franchises, we are in much the same position. We can consider the public view about the efficiency of the company and its service to Hong Kong. We can consider complaints about costs and charges and also the historical record of performance, growth, profit and investment, but it is very difficult for us to come to sensible conclusions as to whether proposals for renewal of franchises or schemes of control are properly and fully protective of the public interest. We have to rely heavily on the Government in its negotiations with each company. The Government itself may not have the expertise and may have to use outside consultants before reaching an agreed position.

In case my colleagues may think I am over-stressing the problem for this Council in effectively assessing detailed proposals for renewal of franchises, let me just point out that, during the last three years and despite thousands of questions put by the Finance Committee, mostly by Mr POON Chi-fai, to the Government to query proposed items of government expenditures, virtually every proposal has been agreed, often because we had no means of knowing whether the expenditure was cost effective or not. More importantly, we accept that the Government does its job effectively and with great care on costs.

How many Budget proposals for expenditure have been struck down? None that I can remember. I have noticed also that, despite thousands of questions put to the Government by the Finance Committee, virtually every proposal for expenditure has been approved without delay or modification.

The truth of the matter is that this Council does not have the means to consider complicated and detailed financial information relating to the operation of public utilities. The Government does.

That does not mean to say that we must accept everything put to us in regard to franchise renewals. We have a responsibility to do the best we can to monitor these public services and to ensure that the companies concerned are efficient and cost-effective, also that they are planning fully for the future. In this regard, I see no difficulty in allowing franchised companies to build up reasonable development funds for future expansion and upgrading. It should also be remembered that most of the franchises are publicly listed companies with extensive local

shareholding. The perceived strength of these companies will be clearly indicated in the stock market. Their published operational and financial performance will determine their capability to raise loans here and elsewhere when these are needed for expansion.

I have to repeat that our service utilities are generally very efficient and I see no sign that the system used to keep them so has failed Hong Kong.

In these circumstances, I should prefer not to change the present procedures for extension or renewal of public utility franchises and schemes of control. The Government should be trusted to do this work in the public interest with the concurrence of the Executive Council and, where appropriate, with the help of professional consultants whose reports should however be published.

The Legislative Council should continue to act as a watchdog in terms of quality and charges for services, and in maintaining pressure on the Government to ensure the best possible arrangement at all times.

Finally, I am in favour of a government review of the entire system of the public services which are supported and protected by the Government. Policies, principles and procedures should be examined in detail and appropriate expert consultancies should be helped in the process. Such a review should be published for public comment and changes made to bring these systems up-to-date whilst retaining a higher level of efficiency.

Mr Deputy President, I support the amended motion submitted by Mr Stephen CHEONG.

MR PETER WONG: Mr Deputy President, this call for consultation in the motion cannot be really challenged by anyone. However, unless the consultation process is carefully planned and controlled, it can all too easily be turned into a social pressure cooker to cook items that we do not need, or even to impute improper motives.

While Hong Kong's consuming public wants the services to be as cheap as possible and their delivery as often and as reliable as possible; the providers must also be permitted a certain level of profitability. We need to strike a balance between the level of return and the satisfactory services rendered. This balance is not easily arrived at and I have yet to be really convinced that our Administration has the

professional firepower to match those of the utility companies.

Ideally, we should give full rein to market forces to control supply and demand. There are areas where developing technology should allow us to give greater choice to consumers. Telecommunication is one such fertile area. Choice brings in competition which is the best guarantee that consumers get a fair deal.

The existing 13% to 15% scheme of control returns are inherently conducive to inefficiency because that return is more or less guaranteed regardless of performance. We really need to set objective benchmarks of what we consider to be acceptable standards of service which have to be met before the return can be claimed. These benchmarks can be the subject of public consultations before the Administration sets them.

My office has done a study, of necessity a rather cursory one, of the various methods used by other governments to try to balance out the big guns of the utility companies. Each method has its pros and cons. They may or may not be applicable in the special circumstances of Hong Kong. The CPI(A) - X method has been proposed by the Hong Kong Telephone Company as having the virtue of providing incentives to the Company to improve productivity and innovation. I would agree that the RPI - X (or Retail Price Index minus X percent) is a distinct possibility. However, while the CPI(A) could be an indication of the level of domestic inflation, our utilities are dependent on overseas supplies such as coal, oil, rolling stock, spares and so on, which do not relate to CPI(A). We need some appropriate index to gauge the level of return.

In making an objective study of the levels of return, it is indicative that the 1990 (before interest and tax) return on capital employed by our leading non-utilities quoted on the Hang Seng Index varied from 13% to 20% for asset-based property companies and 19% to 40% for the two major trading hongks which are not asset-based. It cannot therefore be said that the 13% to 15% returns for the utilities are unreasonable.

Mr Deputy President, we must allow our public utilities to make sufficient profits so their owners and bankers are prepared to invest and bankroll their proposals for innovation. But we must also set standards of efficiency and monitor them closely.

In this regard, it is high time the Government conducted an overall objective

review of the basic mechanism of the scheme of control governing public utilities. In addition, the existing ad hoc monitoring and public consultation system comprising piecemeal and inconsistent approaches must be re-examined. It came as a surprise to me that some of our public utilities companies are not subject to the scrutiny of any monitoring body. The membership composition, terms of reference and statutory powers of the various advisory bodies responsible for formulating policies for major areas such as transport and broadcasting ought to be reviewed. This will enable committee members and non-executive directors to fulfil their duty of representing public interest when making policy decisions on matters such as renewal of scheme of control agreements and tariff increases. By adopting a coherent, consistent policy, we can maximize the effective use of our public consultation channels.

While we must give the public utilities companies every incentive to cut costs and improve efficiency, we must never forget that we have the ultimate weapon to balance out the inequities -- choice.

When I compare the original motion of Mr LAU with that of Mr CHEONG, I find them equally bland and in spite of Mr CHEONG's explanation, I had intended to vote for Mr LAU's original motion. However, I would like to thank the Honourable Martin LEE's explanation and I am definitely in favour of the spirit of Mr CHEONG's amendment.

MR ALBERT CHAN (in Cantonese): Mr Deputy President, in relation to the debate this afternoon on a motion to urge the Government to consult the public and this Council before reaching schemes of control agreements with and renewing franchises for public utility and public transport companies, I should like to give my views as follows:

As described by the Honourable LAU Chin-shek, the fact that most companies included in the profit control schemes are awarded franchises makes it possible for them to attain a much higher return on their investment in a competition-free environment. As the services provided by these companies are closely related to the daily lives of the public, these companies, endowed with the investment advantage of extremely low risks and extremely high profit margins, have become super conglomerates and the wealth of some of them matches that of a nation.

The Government has reiterated that there are two basic principles for the conclusion of schemes of control agreements. One of the principles is to enable the Government to ensure that people using public utility services will get efficient

and reliable services from private-run organizations at reasonable prices. The other is to guarantee that people investing in public utility companies can get reasonable returns as an investment incentive. Unfortunately, as users, the public at large is very often unable to get reasonable and reliable services from these companies. This is borne out by public outcries of dissatisfaction with public utility services over the years. Perhaps our officials have turned a deaf ear to such voices. On the other hand, investors in such companies are having a smooth ride. They have been getting handsome returns for years. Is this kind of imbalance between quality of service and returns reasonable?

Under the existing schemes of control, "reasonable returns" are calculated on the basis of net fixed assets. Such being the case, public utility companies tend to expand their net fixed assets for greater profit. Take the examples of the Hong Kong Electric and China Light and Power. The average value of net fixed assets (ANFA) of Hong Kong Electric in 1980 was \$2.14 billion. By 1990, the company's ANFA jumped to \$13.316 billion representing a more than sixfold increase. As for China Light and Power, its ANFA for the year 1980 was \$4.113 billion. By 1990, it rose to \$27.618 billion. Again the increase is more than sixfold. Furthermore, China Light and Power is expected to invest around \$60 billion after 1991 with at least half of the sum coming from loans. The company's net fixed assets can therefore be expected to rise substantially. If the existing control regulations are not altered, we can anticipate large increases in charges to be initiated by China Light and Power in the next few years so as to reach the level of "permitted return".

In fact, our two power companies face relatively lower risks among public utility companies under control schemes. This situation is however not reflected in their rate of permitted return. Our two power companies basically enjoy "natural monopoly". Such being the case, when reviewing control schemes for the two power companies, the Government should seriously consider the fact that they are risk-free investments and whether their rates of return should be pegged so high. As China Light and Power will buy electricity from the Daya Bay Nuclear Power Plant and the hydro-electric generation plant of Guangzhou, the costs of which will be charged by China without supervision by the Hong Kong Government, China Light and Power will most probably increase electricity charges. There will simply not be any protection for the interests of consumers. Furthermore, on investing in the nuclear power plant at Daya Bay, China Light and Power has disregarded the wishes and interests of the people of Hong Kong and invested substantially in the nuclear plant. It leaves us wondering where, if at all, so-called supervision by the Government has come in.

Many of the companies currently included in control schemes will have their agreements expiring soon. They are now negotiating with the Government for renewal of franchises. In my view, this is an opportune time for an overall review of the franchise policies and profit control schemes applicable to public utility companies. In order to change the formula for a linkage between profit and net fixed assets, the Government should study and consider the use of various calculation methods. For example it can consider linking profit with the inflation rate, company performance, efficiency and so on. If the Government still insists on continuing with the much criticized schemes of control, it can hardly account itself to the public. Although the Government did state its intention to protect users with regard to the provision of reasonable and reliable services, it is in fact tolerating fat gains by these companies because of an unreasonable method of calculation of assets. This practice of ignoring the interests of the public is really disappointing. I think the Government should consider seriously the conditions for renewal of franchises. There is a need for a full review and for a sound and responsible supervision mechanism to be put in place to ensure that the public utility companies will not become over-powerful but will provide the public with reliable services at reasonable prices.

Having said this, I would like to point out that as a responsible government, the Administration should adopt a neutral and fair approach in negotiating with public utility companies for renewal of their franchises. This is to avoid creating among the public an illusion that the Government and the business sector collaborate. I am sure we are aware that an ex Chief Secretary is now employed by a large public utility company and charged with the task of rationalizing the unreasonable method of calculating profit against net fixed assets.

As the deputy spokesman of the United Democrats of Hong Kong (UDHK) on public utility matters, I agree with UDHK Chairman Martin LEE that government procedures with regard to price increases and financial control of public utilities vary from company to company. I am asking the legal adviser of this Council to brief the Economic Services and Public Utilities Panel on the circumstances.

Finally, I fully endorse the comments made by the Honourable Martin LEE on the amendment to the motion put forth by the Honourable Stephen CHEONG and I oppose the amendment. I support the motion moved by the Honourable LAU Chin-shek.

PROF EDWARD CHEN: Mr Deputy President, the Government will soon have to negotiate with a number of public utility companies the renewal of scheme of control agreements. It is my view that the Government should take this opportunity to conduct a comprehensive review of the existing scheme of control. Even if the past performance of most public utility companies had been satisfactory, there is no reason for the Government to be complacent. For the following two reasons, a fresh look at the regulation of public utilities in Hong Kong is in order.

The first reason is: It is easy for the Administration to tell us that a basic principle of the Government in regulating public utilities is to ensure the provision of an efficient and reliable service at reasonable cost. But in practice it is by no means simple and clear how this can be achieved in the absence of a competitive market environment. Like many other governments, the Hong Kong Government resorts to a rate-of-return regulation in its attempt to ensure the efficiency of public utility companies. Specifically, a permitted rate of return on average net fixed assets is specified for each company. The question here is not whether the permitted rate of return is too high or too low, but is the distortion to allocation of resources inherent in this form of regulation. It is well documented in economic studies that this form of regulation will give rise to the A-J effect or a tendency to overexpand capital capacity to augment the asset base in order to strive for more profits. Moreover, the company will tend to overspend on staff expenditure once the permitted rate of return has been achieved.

Statistical evidences do suggest that these distortions can probably be found in Hong Kong's public utility companies under the rate-of-return regulation. During the five-year period, 1985-90, China Motor Bus and Kowloon Motor Bus increased their fixed assets by 10.4% and 95.2% respectively, despite the fact that the number of passengers carried decreased considerably. For Hong Kong Electric and China Light and Power, the increase in fixed assets was 671% and 622% respectively for the 10-year period 1980-90. In wage increases for 1980-89, the average annual real wage increase was 10.3% for electricity and gas and 8.3% for transportation, storage and communications: both figures were higher than the average annual productivity increase of about 5%. More seriously, the staff cost as a percentage of fare increased from 35% in 1980-81 to 57% in 1989-90, in the case of China Motor Bus and from 39% to 50% in the case of Kowloon Motor Bus. As regards Hong Kong Electric and China Light and Power, for the period 1981-90, fuel cost decreased by 25% and 23% respectively, but operational cost increased by 407% and 428% respectively, while

sales increased by only 130% and 145% respectively. There might certainly be good reasons for such a fast expansion of fixed assets and operational cost for improvements in the quality of the goods and services delivered. But one cannot preclude the possibility that the efficiency of public utility companies in Hong Kong was hampered by the rate of return regulation under the existing scheme of control.

The second reason for a review is: Even if regulation was proved to be satisfactory in the past, technological change and changes in demand patterns would have made some of the guiding principles in the existing scheme of control obsolete. A case in point is the possibility of a greater extent of competition in bus services and telecommunications. For example, technological innovations of optical fibres and satellite transmission has made possible the provision of telecommunication services in one place by a number of competitors. In the past, more than one operation means uneconomical duplication of the service network. Another example is the changing pattern of population distribution and the demand for bus services with greater comfort (such as air conditioning), many of the bus routes should no longer be monopolized by one company. Wherever possible, competition should be encouraged. Competition is far more effective than regulation in promoting efficiency.

If we accept that a fresh look at the scheme of control agreements is necessary, the following six issues should, in my view, be considered.

First, the existing scheme of a profit guarantee plus fare regulation make the latter (that is, fare regulation) a very weak constraint or a non-constraint as fare increases can always be justified by insufficient profits. The existing scheme also discourages the motivation for profit maximization. Alternative methods of regulation should be explored for at least some of the public utility companies, if not for all. For example, regulation of fare without a profit guarantee can be considered. In some countries (such as the United Kingdom), fare increases are not allowed to exceed inflation rate minus a certain factor, for example, the economy-wide rate of productivity growth. Understandably, there is no one scheme of control which will ensure optimal efficiency. But if a scheme of fare regulation can maintain low prices, consumers will benefit even if efficiency is not optimal.

Second, if the rate of return regulation is to be maintained, some additional safeguards to discourage overexpansion of capacity of fixed assets, and some additional incentives to encourage efficiency should be introduced. Like commercial banks, public utility companies should perhaps also be subject to some

financial-ratio constraints. For example, a financial ratio can be set to constrain the debt financing of capacity expansion; a staff cost-to-fare ratio can be imposed to constrain increases of wages and headcounts; also, the permitted rate of return should take into account the demand relative to potential capacity.

Third, the Administration should try to identify areas and types of services in which a greater degree of competition is now possible as a result of technological change and new patterns of demand. The Administration should then review whether the existing franchise conditions should be modified in the cases so identified.

Fourth, in the regulation of public utilities, it is not only important to monitor the level of profits and fares but it is equally important to ensure management and operational efficiency. To impose financial-ratio constraint is one way. But in the end, management efficiency can only be ensured by a close supervision and monitoring of independent bodies and persons. I would therefore suggest that in addition to officials and independent persons sitting on the boards of directors of public utility companies, advisory or supervisory committees with the appointment of independent professionals should be set up at different levels of the management structure. This "outside" supervision can certainly be justified on the ground that the operation of public utility companies affects the daily life of everybody and that these companies operate in a non-competitive market structure.

Fifth, the public utilities in the United Kingdom and many other countries are monitored closely by their respective statutory consumer bodies. There is perhaps no reason for us to establish such formal bodies now, but there is certainly a need to set up consumer consultative organizations for each utility company to channel consumer's views regarding prices and the quality of service. For the time being, there are no independent bodies which are responsible to deal with consumer's complaints in connexion with electricity supply and telecommunication services.

Lastly, the Administration should review whether they have the adequate manpower and expertise in their existing establishment to undertake the complex and onerous task of monitoring the accounting practices and financial matters of the public utility companies. This is particularly important in view of the rapid diversification of public utility companies into business activities not under regulation. While we have every confidence in the competence of the Administration, we must not lose sight of the importance of checks and balances. In this connexion, I would like the Government to consider the proposal of setting up an advisory body

comprising independent professionals to oversee the work of the Administration in monitoring public utility companies in Hong Kong. Confidential as the Exchange Fund is, there is an advisory committee. I do not see why a scheme of control advisory committee cannot be set up.

Mr Deputy President, I have given this Council more questions than answers for the six issues I have raised. For most of the issues, further investigation and discussion are required. I myself certainly cannot answer all the questions raised, nor would the Administration in my view be able to do so by itself. Public consultation is therefore very necessary.

I cannot support the Honourable Stephen CHEONG's amendment which just asks the Administration to seriously take into account the views of this Council and the public. Such an amendment does not make sense and reduces the original motion to saying nothing. This is because it goes without saying that any responsible and sensible government must seriously take into account the views of its legislative body and the public in its formulation of policies at all times. The original motion now before us gives a high degree of flexibility to the Administration to decide on the exact form of consultation which could, in my interpretation, range from a territory-wide referendum to simply the issuing of a consultative paper stating the alternatives and inviting written submission from the public. I have no objection to some form of public consultation within this range.

I cannot agree with the view that public consultation is not practicable for schemes of control agreement negotiations. First, there are enough broad issues not involving individual company's business secrets such as those I have outlined earlier which the Administration should consult the public. More importantly, I think public utility companies should not have too many business secrets in view of the fact that all of them are public companies quoted in the stock exchange and most of them are enjoying and will continue to enjoy monopolistic status.

By public consultation in the present case, I do not think we mean the conducting of opinion polls and surveys. What we mean is a systematic and scientific approach to call for responses on the basis of consultative documents. In the end, it is the Administration which will make the final decision on the basis of the views of this Council and the public.

With these remarks, Mr Deputy President, I support the Honourable LAU Chin-shek's

original motion.

MR VINCENT CHENG: Mr Deputy President, I fully support the spirit of Mr LAU Chin-shek's motion and share many of his feelings. Government should fully take into account the public's views and Hong Kong's economic and social conditions when negotiating schemes of control in future. However, I have reservations about the practicability of this motion for a number of reasons:

(1) A proper consultation exercise whether it is in the form of a referendum or consultative document is invariably long and tedious, and the results oversimplified and sometimes politicized.

(2) A Scheme of Control or a Franchise Scheme is a complex document because it involves many technical and economic issues. It also has to balance a number of conflicting objectives and vested interests such as between low price and high quality, reliable environmental friendly service; between shareholders and customers; between employers and employees; between risk and reward. Given this complexity, it would be very difficult for the authorities to present a clear case to the public and ensure an informed response.

(3) I am doubtful whether the community as a whole would spend the necessary time to understand the issues. I am not even sure whether this Council would give the necessary time and attention to these issues. In the last OMELCO meeting on China Light's Scheme of Control, less than half of the 30 Members turned up, and only six stayed till the end. The experience I have is therefore not that the Administration is unwilling to consult this Council, but just the other way round. It is just the opposite. When the Administration tried to consult this Council on the Scheme of Control, we did not live up to the responsibility that we now so eagerly seek. I have to be honest with myself, I cannot support a motion which this Council may not be able to deliver.

I am not going to talk about the economic and social issues involved. I just want to sum up by saying that there are at present many checks and balances in Hong Kong to ensure that public voices are heard by Government, whether they are in the form of demonstrations on the street, outside Legislative Council, inside Legislative Council, petitions to Government and this Council, comments in the press and indeed the scrutiny by Legislative Council Members of the operations of the public utilities.

Indeed this Council can throw out any scheme of control or franchise agreement which we do not agree. There is plenty of room for improvement in monitoring the performance and efficiency of the public utilities and the public utilities must be more sympathetic to the views of the consumers. But the need for a formal public consultation exercise, when balanced against the complexity of the schemes of control and the many channels which are available, is not apparent.

I support the amendment.

MR CHEUNG MAN-KWONG (in Cantonese): Mr Deputy President, the original motion for today's debate moved by the Honourable LAU Chin-shek carries the belief that the Legislative Council and the public should play an important and irreplaceable role in the monitoring of public utilities.

Ironically, on the eve of this debate and before the public have ever had a chance to voice their views, the Government announced that it had reached an agreement in principle with China Light and Power to extend the profit control agreement with the company for 15 years, with the permitted rate of returns to remain unchanged.

This piece of news has rendered today's debate totally meaningless. We are now taking part in a trial where the verdict is already known. No matter how well-grounded public opinion's case may be, death sentence is already passed. Who will be so naive as to think a Legislative Council debate can really change the agreement already reached between the Government and the CLP? Who will honestly believe that the relationship between the Legislative Council and the Administration is one of partnership as said in the Governor's policy address? I feel indignant and sorrowful because public opinion is being trampled on. In this regard, I accuse the Government of ignoring the existence of the Legislative Council and taking an autocratic attitude in dealing with the issue.

Nevertheless, as an elected Legislative Councillor, it is my duty to reflect the opinion of the public even though this will be done to no avail. My focus today is on how the Legislative Council and the public can effectively monitor the public utility companies. I think that as public utilities have a direct bearing on the everyday life of the people, the operation of public utility companies should be closely monitored by the community. All along, the public have not been given channels or opportunities to monitor the public utilities. On the other hand,

monitoring work performed by the Government and Executive Council has been ineffective or nominal given the absence of input from the public and the lack of the necessary manpower and information. What is frightening is that by exploiting the existing schemes of control agreements, public utility companies can expand endlessly until they become cumbersome monsters who can threaten to withdraw their investment every time they want a bigger profit. The Government is reduced to a lame duck in front of these monsters and has lost its bargaining power completely, not to mention to monitor their operation.

To prevent the situation from deteriorating and eventually doing harm to the community, it will be necessary for the Government to consider establishing, before the expiry of various schemes of control agreements from now on until 1993, an effective monitoring body to implement proper monitoring measures.

Having studied the experience of other western countries in monitoring their public utilities, we would like to put forward the following suggestions:

(1) To establish one or more monitoring bodies to be specifically responsible for the monitoring of public utilities. These monitoring bodies should be administratively independent of the Government and should not be involved in the day-to-day management of the public utility companies.

(2) The monitoring body should operate under a management board comprising Members of the Legislative Council, professionals in relevant fields and members of the community to be appointed by the Governor. Decisions of the boards should be carried out by a remunerated executive of the monitoring body.

(3) The monitoring body should be adequately and stably funded, for instance by a fixed percentage of the utilities annual franchise.

(4) The monitoring body should be provided with adequate statutory powers, especially access to information, so as to carry out its functions. Public utility companies should be required to supply necessary information to the monitoring body to facilitate its work.

As the work of the monitoring body is basically technical in nature, there may be little room for participation by the public. Therefore, a committee should be set up to receive and deal with public views and complaints concerning public

utilities. This function can be absorbed by the Consumer Council initially but a separate committee should be established in the long run.

Following the introduction of elected seats, the Legislative Council should play a much more important and influential role in monitoring public utilities. A select committee should be set up by the Legislative Council to examine reports and recommendations submitted regularly by the monitoring body and to carry out necessary monitoring measures. Price increases, or changes to schemes of control agreements arrangements or profit control schemes should be debated and endorsed by the Legislative Council before they can be implemented.

Lastly, I would like to say a few words in respect of the Honourable Stephen CHEONG's amended motion in which the words "to consult" of the original motion is amended as "to seriously take account of" the views of this Council and the public. Literally, "to consult" implies an undertaking to act. Once the Government commits itself to this approach, it must take necessary measures such as conducting public hearings, opinion polls or publishing white papers to collect public views. The Government should be subjected to restraints imposed by public opinion, while the Legislative Council should exert its influence on government policies regarding schemes of control agreements arrangements on the basis of public opinion. Public consultation is essential for the Government to be seen as being responsible and respectful of public opinion. However, if the wording of the the motion is changed to "seriously take account of" the views of this Council and the public, it will not impart any commitment to act. The Government will have no obligation to seek the views of the public, let alone to subject itself to restraints by public opinion.

As a matter of fact, the agreement reached between the Government and CLP shows very clearly that the Government is not even prepared to consider the views of the Legislative Council. How then can we expect it to listen to the views of the public. Today in the Chamber, Honourable Members of this Council are making a great show of debating vigorously over which motion is more appropriate. Just like arguing over which rubber stamp is more artistically carved, it is totally meaningless. Worse still, it will give citizens a false impression that public opinion has already been fully reflected through the Legislative Council. And before we know it, we have already become the accomplices of an autocratic Government in this incident. This is the reason why I said earlier on that I felt indignant and sorrowful. Nevertheless, Mr Deputy President, I will still support the Honourable LAU Chin-shek's motion because I can find in it the basic principle and insistence Legislative Councillors

should uphold.

5.59 pm

DEPUTY PRESIDENT: I would take a 15-minute break.

6.18 pm

DEPUTY PRESIDENT: Council will now resume.

MR CHIM PUI-CHUNG (in Cantonese): Mr Deputy President, the franchised public utility companies, whose profits are guaranteed, are special products of colonialism in Hong Kong. Because the United Kingdom is Hong Kong's sovereign state, some British companies, particularly the four major companies of the past and perhaps such other companies as those having rendered meritorious service in Hong Kong, were awarded franchises. Their returns are spectacular. For example, China Light and Power Company is allowed an 8% return from interest and a 2.8% return from interest on reserves, making a total of 10.8%. With the addition of a 15% business return, its aggregate return should in principle come to 25.8%, which other companies simply find it very difficult to attain. The major topic that we are discussing today is the Government's policy. As everybody knows, the franchises of the seven existing public utility companies are due to expire at one time or another between 1993 and 1997. Without the consent of this Council, the Government has in principle reached agreement with China Light and Power Company on a 15-year extension of franchise. The spirit in which the matter has been handled shows a total disregard for this Council's existence. Therefore, our most important target is to seek and to ensure the right spirit on the part of the Government. Everybody knows that 1997 is approaching. China has indicated in strong terms that its consent must be sought on issues affecting post-1997 Hong Kong. This means that China's consent must be sought if the companies in question are to continue with their franchises after 1997.

Our discussions today are concerned with two matters. The first relates to how the Government handles the question of franchises for the public utility companies. The second relates to the question of the significance in the Honourable LAU Chin-shek's motion. Regarding the first, the Government's resolve is the most important. If the Government is simply not determined to consider any views of the public or of this Council, all our discussions today will be for nothing. If the

Government is determined to face the entire population of Hong Kong and to respect this Council's existence, then it should reduce "permitted return" to 9%. Any of the companies in question with a return in excess of 9% will not be permitted to raise rates or charges. As I have just explained, these companies yet have a 10.8% interest income, which brings total return to a spectacular 19.8%. Secondly, most of these companies simultaneously engage in other trades and businesses. Among others, there are profits derived from development of the land allocated to them by the Government. These profits are simply much more than their regular profits. Thirdly, if the Government intends to do something about the franchised companies, that is companies that pay franchise dues, then, when the franchises are about to expire, public tenders should be invited to bid for them. That is to say, the franchises should be put up to public tender. The company that offers a higher bid for a franchise than the original franchised company should be awarded the franchise. The original company may also participate in the bidding. Of course, the changes that I am talking about in the relevant regulations and practices will depend on what wise decisions the Government will make on our suggestions. If the Government is wise, it surely will make the correct decisions.

Finally, I would like to address the point raised by the Honourable LAU Chin-shek regarding consultation with this Council and with the public. Everybody knows that this Council has, apart from the Deputy President and the three ex officio Members, 55 Members who are directly elected from the districts, returned from the functional constituencies or appointed by the Government. Our representativeness cannot be denied. We cannot ask the public for their views on well nigh everything. We should realize that all Members of this Council, in this Chamber, are representing the people and their opinions. It is impossible to seek views from the public on everything. It is not that we do not respect the public. If we do not respect the public, then we are not fit to be in this Chamber. Therefore, the spirit of the Honourable LAU Chin-shek's motion deserves support. A moment ago, I asked whether the Government had the same spirit. Very unfortunately, only one government representative in the person of the Attorney General is here to listen to me. The other senior officials are absent from this Chamber for the moment. But I hope they are listening to me somewhere. In other words, with regard to the Honourable LAU Chin-shek's motion and the Honourable Stephen CHEONG's motion for amendment, I will reserve my final decision until voting time later. Thank you.

MR FREDERICK FUNG (in Cantonese): Mr Deputy President, although Mr CHEUNG Man-kwong

has just stated that the Government already signed an agreement with the China Light and Power Company Limited yesterday and that it would not seem too meaningful now to discuss this topic today in this Council, I believe that there is even greater meaning to discuss this one day following the signing. This demonstrates how much importance a government or a future Chief Executive not directly elected by the people attaches or will attach to the consultation of public opinion. Therefore today's discussion has a meaning. I believe that even if we had discussed this topic two days earlier, the Government would not have balked from signing the agreement.

Firstly, I would expressly state my stand. I am in favour of the motion "that the Government should openly consult the public on profit control and the franchise policy for public utility companies". I think that in controlling the profit of public utilities, the original intention of the Government was to protect the public interest and to prevent public utilities from making huge profits at the expense of the public. To consult the public is only fitting and proper. I do not understand why public utilities took the lead and queried the merits of consulting the public. From past experience, in order to protect the interests of the public, it was indeed a good intention to control the profits. But in the course of implementation, abuses have arisen. There is no monitoring, nor are there any checks and balances. Hence, it is even more necessary to openly consult the public.

Some have suggested that schemes of control are quite complex and it would be difficult to explain them to the public. Nevertheless, the purpose of profit control is to prescribe a certain percentage as the permitted rate of return. This is relatively simple and is not so complex. Looking from whatever angle, members of the public will see through to the truth and that is that the wool ultimately comes from the sheep.

Permitted return turns out to be assured profit

The permitted percentage of return is in fact the upper limit of profit. To a member of the public, it is the maximum limit that one can afford. Increasing the charges in order to make more profit would be unreasonable or tantamount to profiteering. But in the eyes of public utility companies, permitted return is their bottom line of reasonable profit which must be maintained. Should there be any shortfall, it would mean an unsatisfactory return and they would have every reason to increase their charges. In fact, there are many factors that would cause a fluctuation of short-term profit rates. Whether management is good or not is also

one of the factors. Moreover, since the bank interest rates tend to be low, to "assure" public utility companies of a 10%-plus profit is most unreasonable.

Risk of over-expansion

The control mechanism of permitted return is not only simple, but it is also inflexible. The net fixed assets value is taken as the denominator and the return the numerator. I believe all primary students have learnt how to divide: if the numerator stays the same, the bigger the denominator, the smaller will be the percentage; conversely, if the percentage is fixed, then the bigger the denominator, the bigger will be the numerator. For public utility companies, what they need to do is to invest continuously and their profit margin will increase. Hence, one is apt to doubt whether the mechanism for effective investment by public utility companies can really fulfill the function it is designed for. Let us take the example of China Light and Power. The company's bargaining chip is that from the time it last entered into a scheme of control agreement up to the time of its present agreement, it has invested \$38 billion. In the next couple of years, it will invest \$17 billion more. During the next decade, it intends to invest more than \$50 billion. With such ambitious investment plan, its profit will triple correspondingly. The public should be psychologically prepared for an increase in electricity charges. But whilst paying for such increases, I would like to pose a question. Is it really necessary to make such huge investment at such an early stage? Is the estimate on the growth rate of electricity consumption by China Light and Power a bit too high? Is the estimate on stand-by electricity generation too conservative? There is a Cantonese saying that "even if you provide the chicken and I am to provide soya sauce, I cannot afford it." Yet with greater force can this apply to public utilities? No matter how big the chicken is, we as members of the public will have to provide the soya sauce. Therefore the public should know why such a big chicken is needed and why they are required to produce so much soya sauce. I remember there is a saying from the Consumer Council which Dr CHEN mentioned a moment ago and that is "consumers have the right to know".

Is there any risk?

Permitted return means that "the door to loss is closed". There is no risk at all. I do not understand why public utility companies, China Light and Power for one, stated that Hong Kong's credit standing in the international financial market has dropped and the risk has been correspondingly increased. Hence, the permitted

return should never be lowered because a high return is needed to set off the increase in risk. In actual fact, there is a provision in the control legislation that any interest on long-term loans which exceeds 8% may be passed on to and be borne by the consumers. Such being the case, are consumers to doubly compensate for this kind of "risk"?

Is profit control the best system?

The above is only the tip of the iceberg. How can the Government convince the public that profit control is the best system in monitoring public utilities? If it is not the best system, then it should encourage the free airing of views and consult public opinion so as to seek improvements.

Are there any other alternatives?

I am elected to the Legislative Council as a representative of the Association for Democracy and Peoples' Livelihood. The Association has suggested several alternatives:

(1) Reference should be made to monitoring systems of other countries. The United Kingdom has lately adopted the "price control" formula, that is, to adjust charges according to the inflation rate less a certain percentage and there is no limit on profit. Comparing with our present rate of return on net fixed assets value, the United Kingdom system is much more forward-looking and courageous. On the one hand, it restricts the range within which to increase charges. On the other hand, it encourages public utility companies to find out ways to reduce costs and to boost efficiency in order to get higher profits.

(2) The Association also proposes that the Government should heighten competition among providers of public services. Some developed countries are introducing competition into monopolized enterprises so that the quality of service and cost effectiveness can increase in direct proportion to each other. Take the example of electricity supply. Electricity grids can be the subject of a franchise but electricity can be supplied by different companies. In a nutshell, if the public is to be consulted, on the positive side, improvement plans may be devised so that the interests of both shareholders and the public can be protected. Public utilities which are the daily concern of the general public can be improved if the Government acts as a middleman. Under such circumstances, schemes of control agreements can

then be signed. I am therefore in favour of the motion.

I have been acquainted with Mr LAU Chin-shek for many years. All along I have known that he is not satisfied with the monitoring policy in respect of public utilities. Some Members have said of him as intending to interfere with commercial acts between the Government and private enterprises. I sincerely hope that in his concluding speech, Mr LAU will make his stance clear. I fully support the proposal that this Council should review and openly consult the public on profit control schemes and the franchise policy. I emphasize that this is only to express opinion on "policies". Further, I sincerely hope that the Government will respect our opinion. If Mr LAU's motion means what I have just said, I am going to support his motion. But if his motive in moving the motion is just to interfere with some commercial acts between the Government and private enterprises, I will have reservations with regard to the motion.

Nevertheless, I feel that the motions as moved by Mr LAU Chin-shek and Mr Stephen CHEONG respectively might not be contradictory to each other. I do not understand why we have to debate on these two motions. If they can be incorporated as one to a certain extent, they can be complementary to each other. I believe that my colleagues in this Council will agree to a comprehensive review of and public consultation on profit control schemes and the franchise policy for public utilities. I very much hope that the Government will fully consider and accept our opinions after listening to our speeches. I received notice of the amendment to be moved by Mr Stephen CHEONG only last night. I intended to integrate these two motions into one and move another amendment. Unfortunately this is not allowed under Standing Orders.

Anyway, these two motions reflect purely the personal opinions of the two of them. I hope that this will not be regarded as a fight between two camps by the mass media.

Mr Deputy President, I support the motion. Thank you.

DR HUANG CHEN-YA (in Cantonese): Mr Deputy President, this Council has been concerned, during the past few weeks, with inflation which is growing more and more serious. No one would doubt the fuelling effect on inflation of increases in charges by public utility and public transport companies. Therefore when we consider the profit control schemes and franchises of Hong Kong's public utility and public transport companies, we should raise several questions.

First, should public utility companies which now enjoy the protection of franchises continue to enjoy such protection; or at this stage, should some public utility services be appropriately opened to market competition?

Secondly, is there any problem with the present profit control schemes; and should they be revised?

On the first question, we feel that now public utility companies should not be given the protection of franchises as far as possible, for we cannot create franchise empires for public utilities. We consider that franchise protection is unfavourable to the general public. In a market of free competition, prices of commodities or services should be decided by the market. If the investor wants to survive, he must improve his operating efficiency and raise the competitiveness of his commodity. Ultimately, not only can consumers enjoy quality commodities or services at lower prices, but investors may also reap higher profits through improvement in their operation and production, which will be mutually beneficial and gratifying. However franchise protection brings the opposite effect. Without any competition, a franchisee has the power to determine the price of its commodity or service, and attain exactly the level of profit which it aims at; it may also decide the quality of the commodity or service it is going to provide. The result is that franchised commodities or services are often priced at unreasonably high levels, which do not reflect the production cost. The quality of franchised commodities or services often fails to improve or even worsens because the franchisee lacks the incentive to improve and renovate continuously. And it is the broad mass of consumers who will be affected. Therefore from the stand point of the general public, we consider that to open the market to free competition can most effectively protect the interests of the consumers, and also provide the motive force to the operators to seek continuous improvement. Therefore we welcome the opening up of bus services by the Government in recent years to introduce competition. We also pin our earnest hope on the breaking of the monopoly on telephone and telecommunication services following the review of telecommunication networks. The opening up of the aviation industry which may bring benefits to tourism, hotels, catering and retailing should also be reviewed.

The second question before us relates to whether profit control schemes conform to economic principles, whether they are perfect, and whether they are beneficial to the public. Mr Deputy President, if you take a bus in my own constituency (Hong Kong Island West), you will find for yourself problems which are in the profit control

schemes. At present profit control schemes are applied to seven companies: China Light and Power Company Limited, Hong Kong Electric Company Limited, China Motor Bus Company Limited, Kowloon Bus Company Limited, Hong Kong Telephone Company Limited, Hong Kong Air Cargo Terminals Limited and Hong Kong Air Terminal Services Limited. The permitted return is a percentage of the value of the fixed assets. Therefore profits are unrelated to quality of service and operating efficiency. Take the bus passenger's experience in the Southern District as an example. The public has long been dissatisfied with the quality of service of China Motor Bus. During peak hours, frequencies on many routes fall short of the basic requirements and passengers have to wait for a long time. However air-conditioned buses which charge higher fares are available in large numbers, and run more than the scheduled frequencies. Inflation in recent years has been very serious; yet the Government approved increases of China Motor Bus fares by about 19% despite poor service. The reasons for increasing fares were that the number of China Motor Bus passengers then was declining and the quality of service could not be maintained if the profits were not raised, and that China Motor Bus had established a new retirement scheme for its staff. In fact the fall in the number of passengers and poor frequencies precisely reflected that the operating efficiency and the quality of service should be improved. On the contrary, under the profit control scheme, the company was not penalized but was awarded, for that very reason, increases in fares. May I ask is this not absurd? How can other companies be encouraged to do better? As to Kowloon Motor Bus, its quality of service is also similarly criticized. The number of its passengers is declining instead of rising. However since profit is linked to the increase of asset value, therefore this does not encourage franchised companies to hold assets commensurate with their operating efficiency. Between 1983 and 1990, in spite of the fall in the number of passengers, the number of vehicles and plants kept growing. Prof CHEN just mentioned that during these seven years, KMB assets increased 1.9 times, which enabled the Kowloon Motor Bus to raise its fares above the inflation rate every time. This certainly pushed up inflation. We consider that the disadvantages of the present profit control schemes are fairly obvious, which are contrary to the public interest and should be reviewed and rearranged. Apart from China Light and Power and Hong Kong Electric whose enormous economic scale has formed a natural monopolistic situation which requires some good profit control schemes to safeguard the public interest, other public utilities and services may be opened to free competition so that their operating efficiency may be improved. Several Honourable Members already touched on the methods of calculating profits, and in so doing offered a few modes for consideration. However we should observe every business, which may call for a different mode as a solution.

In a nutshell, franchises and profit control schemes for Hong Kong's public utility and public transport companies should be reviewed. I hope that the Government can set up a Public Utilities Commission to conduct an overall review, and to present plans for consideration by the public, this Council and the Government. Once we understand all operating data and the pros and cons of the modes of control, a more intelligent management of Hong Kong's franchised businesses may be implemented.

The Honourable Andrew WONG just mentioned that it would be quite sufficient for this Council to establish ad hoc monitoring groups and therefore there was no need for the Government to consult the public. Regrettably, whilst many Honourable Members were enamoured with the co-operative partnership as mentioned in the Governor's policy address, the Government had a "secret rendezvous" with China Light and Power and reached an agreement. I wish to point out that this action by the Government to reach an agreement with China Light and Power, without consulting the public or this Council, to extend the original scheme of control agreement for 15 years, underlines the fact that not only does China not recognize this Council, but even the Government does not have any regard for this Council. Therefore when the Honourable Stephen CHEONG requested the Government "to take account of the views of this Council and the public", this is understandable and merits our sympathy. However the Legislative Council was not set up in Hong Kong just yesterday and Honourable Members have been expressing their views in this regard for quite some time. The Honourable Stephen CHEONG's motion requesting the Government to take account of the views of the Honourable Members means that the Government has not been doing this. How can the Government be made to realize its previous faults and to begin anew? I think there must be some mechanism to compel the Government to perform its duty; and there must be criteria to measure whether the Government has sufficiently considered our views. In other words, the Government needs to consult openly. The public does not want a few hours of futile debating before this Council with no improvement made in any way to the present situation. To request the Government to take account of the views without demanding the Government to consult openly is only idle posturing without real action. It is already a pity that the Hong Kong Government has become a "lame duck" government, and even the Legislative Council would become a "lame duck" if it supported the Honourable Stephen CHEONG's motion. What can the public do except to bury their heads in their arms and to cry bitterly?

Some people thought that public utilities are complicated issues which do not lend themselves readily as topics for discussion by ordinary people who should trust the experts in the Government. However according to information and data in other countries, when government officials fail to grasp the overall picture, they are prone to be brain-washed by the companies which they are supposed to monitor, and very often speak for those companies. Therefore the public should, before the Government comes to the final decision, raise queries and comments on the viewpoints of the decision-making authority concerned within the Government. At the same time, there is no need for me to point out that inside and outside this Council, there are many professionals. They are also members of the public and have a thorough understanding of the issues, and are not as ignorant as some Honourable Members would like us to believe. To those who assert that open consultation wastes too much time and who are therefore not in favour of consultation, I must emphasize once again that public utilities and public transport are closely related to people's livelihood and have a strong impact on inflation. We, the United Democrats of Hong Kong, can never accept any rash, reckless and slovenly attitude in dealing with matters. We consider that a decision can only be made after clear information has been presented to this Council and the public, and sufficient consultation has been conducted.

Mr Deputy President, I support the original motion of the Honourable LAU Chin-shek.

MR LAU CHIN-SHEK (in Cantonese): Thank you, Mr Deputy President. First, I would like to thank Mr Stephen CHEONG for proposing an amendment. I thank him not because I support his amendment but because his amendment points out the same question as does my motion and that is that the Administration has never seriously taken into account the views of this Council and the public in respect of the profit control schemes and the renewal of franchises for public utility companies. However, I must solemnly point out that if Mr Stephen CHEONG's amendment is carried today, the fact that the Administration does not need to take into account the public's views will perpetuate. That this could happen is because of the lack of a mechanism whereby to turn the Administration's past style into one of seriously taking into account the views of the public. My motion which spells out the requirement to consult this Council and the public is precisely meant to put in place a mechanism of this kind to institutionize in a clear and unequivocal way the collection of public views and to take the results of consultation as the basis for the Administration's deliberations. Only in so doing will the views of this Council and the public be seriously taken

into account; otherwise it will be no more than a subterfuge because of the lack of public consultation as a basis. Public consultation, on the other hand, will be a mechanism to ensure that account of the public's views will be taken seriously. As a matter of fact, in a letter to Secretary for Economic Services Mrs Anson CHAN on 9 August this year, Mr Stephen CHEONG pointed out that it would be of help if this Council and the public would be consulted over the profit control schemes in respect of public utility companies in the course of negotiation for renewal of schemes of control agreements between the companies and the Administration and that it would be best if this Council would first express a view before the Executive Council made its final decision. In other words, Mr Stephen CHEONG adopted the same stand last August as I do today. But why is it that he has switched to a different stand in less than a few months and is now proposing to replace "consult" in the motion with "seriously take account of the views of" (words that, on the face of it, bear every semblance of reason)? Even more regrettable was the fact that despite its knowledge that this Council would debate today a motion on the profit control schemes and franchises the Administration nevertheless went ahead with unseemly haste two days ago to inform the OMELCO Standing Panel on Economic Services and Public Utilities that it had agreed to extend for 15 years the Scheme of Control Agreement for China Light and Power Company. Without doubt this reflects the haughty disregard the Administration has for the views of this Council and the debate that goes before it today. It could be perceived from this episode that we really lack a mechanism for public consultation, which has made us powerless to require the Administration to first consult this Council and the public and to make its final decision after having seriously taken account of views derived from consultation. It is unfortunate that Mr Stephen CHEONG's amendment has taken out the very soul of my motion and only sought to replace it with the flowery yet hollow words "seriously take account of". This is indeed puzzling.

I would like here also to respond to a query raised by Mr Frederick FUNG. The purpose of my motion is to seek to review, through open consultation with this Council and the public, the profit control schemes and franchises for public utility companies in order to better monitor their operation.

Finally, I earnestly hope that Members of this Council will consider the arguments I have advanced and realize what the likely effects of the proposed amendment will be.

MR LEE WING-TAT (in Cantonese): Mr Deputy President, the motion moved by the Honourable LAU Chin-shek today is a very important one, because the schemes of control agreements for many public utility companies will expire in a few years, and now is the appropriate time to review them. Furthermore, for many years the public has criticized strongly the profit control schemes for public utilities and the monitoring of same. The debate today will reflect the cry from the hearts of the public, with the hope that the shortcomings of the present system may be put right.

Before my discussion begins, let me comment briefly on the following two incidents. First, the Secretary for Economic Services revealed that the Executive Council had reached an initial agreement with China Light and Power Company Limited to extend its franchise for 15 years, and the profit level would remain unchanged. Let me first express my regret that the Executive Council reached such an important agreement with China Light and Power without widely consulting the public. Colleagues in the Legislative Council were notified of this only after the agreement had been reached. From this we can see what an insignificant position the Legislative Council has been relegated to by the Government and the Executive Council. One would also see that the co-operative partnership promoted by the Governor and Members of the Executive Council is no more than a relationship between master and servant. Since the master has the sole power to reach a new agreement with China Light and Power without having it endorsed by the servant, the master could in a situation akin to "private give and take" sign with this British company a 15-year "profit protection agreement" without any regard for restraint. Such an "under table deal" is an instance of "naked protection of the interests of the big capitalists at the expense of the rights and interests of the humble citizens", for which I criticized the Administration during the policy debate. Only this time, the party protected is not only a big capitalist, but a big British capitalist. No wonder officials at the Secretary level in the colonial bureaucracy described that the negotiation this time was difficult, because they had to find a convincing explanation of protecting the interests of a company of their sovereign country. The Executive Council also had a part in the discussions and decision relating to this agreement. In order to uphold the principle of collective responsibility, I hope our Executive Council colleagues will explain to colleagues of the Legislative Council and the general public, during the up coming OMELCO In-House meeting, why this agreement was reached, any why throughout the whole process colleagues in the Executive Council failed to consult colleagues of the Legislative Council whom they considered to be their partners.

Secondly, I should like to discuss the query raised by another public utility

company on the value of open consultation. It "considered that the profit control scheme involves so many complicated issues that it is difficult to explain clearly to the public. To conduct open consultation on this will inevitably trigger the reactions of some people with vested interests, and such reactions may not take the best interest of Hong Kong as the starting point". Incidentally, the company which raised this open query is another British company. It would seem that British companies feel that the protection from their mother country over more than a century is now under threat, and they could only make irresponsible comments on "open consultation". The first absurdity is the argument that "as the issue is complicated, the public would not understand". However I would ask Members and Secretaries who sit on the Executive Council how much more they understand public utilities than their colleagues of the Legislative Council and the general public do? With due respect, do university lecturers, academics, the relevant professional associations and their members, who are members of the public, have half-baked knowledge about public utilities? The second absurdity is the argument that "open consultation on this will inevitably trigger the reactions of some people with vested interests". This is even more absurd, because the party with the biggest vested interest at present is just this company which is openly objecting to consultation. Under the present system, it has made a profit of over \$4 billion last year. Obviously, open consultation would lead to public monitoring which would reduce "private give and take of benefits" and "under table deals". Mammoth multinational corporations are patently in a position to influence the Executive Council whose membership is small and the Secretaries. With the support of the colonial sovereign country, they have the schemes of control agreements safely in the bag.

I will now turn to the topic of today's debate. Public utilities generally operate in a franchised or monopolized market; so they need not face competition or would only face very little competition. Thus they enjoy great security of profit. Since these companies provide public services, and also as consumers' interests have to be protected, various franchise agreements and monitoring systems have come into being. I must emphasize that the Government's role is first to protect the interests of the people. For public utilities to obtain reasonable profits under appropriate clauses of a scheme of control agreement is only the secondary consideration.

Then how to protect consumers' interests? What is a company's reasonable profit? Different people have different criteria. However, looking around the world, the profit level of public utility or public transport companies in other places is usually lower than that of local companies. They have to face more competition, and

it is very common that some of them sometimes suffer losses. On comparison, Hong Kong's public utility companies are over-protected. They normally monopolize the market without the threat of competition, and there is never anything such as losses, because most agreements permit local public utility companies to have guaranteed profits by raising the charges. This alone is sufficient to enable us to see how much these companies are protected.

On the monitoring aspect, there is even less to commend on. In countries abroad, it is very the case that every public utility must set up a consumers monitoring body, but this method is not adopted in Hong Kong. Furthermore, in Hong Kong, the larger the public utility companies, such as China Light and Power and Hong Kong Telephone, the more they lack any form of public monitoring. Again, incidentally, the two companies mentioned above are British companies. In protecting the interests of British companies, our Government has gone the whole hog of nursing them with every care.

Now I shall concentrate my discussion on the two bus companies. Since the major strike of the China Motor Bus (CMB) in November 1989, the improvements have not been sufficient. What the public is seeing is that apart from one more Public Relations Manager, all the shortcomings of CMB in the past, problems including inadequate bus services and unpunctual frequencies still remain the same. A management company proposed last year that CMB should implement some thorough improvements in management but it would seem that this has not gained the respect of the Board of Directors of CMB. I consider that it is inappropriate to entrust a service for the general public to a company with such backward management. Since some people want to retain this family-type operation, and turn a public service into a bounteous gift, as a king would make to the subjects of his own kingdom, the Government should rethink the matter having regard to the reality that consumers are enduring hardship every day because of very limited choice of transport modes.

It is not enough to rely on the self-improvement of the company internally. A more orderly opening of the market and tendering for routes will exert competitive pressure on CMB, so that reform will be carried out by the "kingdom" of CMB, either willingly or reluctantly. During the summer holiday this year, the Transport Department offered a bus route in Central for open tendering. This method may be extended gradually. What is more important is that there is no profit protection of any kind for this route.

The frequent and higher-than-inflation increases in fares by Kowloon Motor Bus (KMB) in the past years could be attributed to the "profit control scheme". The scheme stipulated the maximum return for KMB at 16% of the value of its net assets of the current year. This scheme was drawn up in the mid 1970s. At the time, in order to stimulate investment in public utility companies and to expand services in the New Territories, the Government offered the above mentioned "preferential" conditions when signing the scheme of control agreement with KMB.

The first drawback of calculating profits on the basis of the value of assets is to induce KMB to inflate excessively. In 1989 and at the end of 1990, when KMB applied for fare increases, it had behind it an enormous development programme for vehicles and depots. The fleet of vehicles would expand from 2 700 in 1989 to 3 500 in 1994, an increase of 30% over four years. Depots would expand from a value of \$200 million in 1989 to a value of \$1.4 billion in 1994, a seven-fold expansion within a short period of five years. The expansion of the fleet and depots is obviously inconsistent with passenger growth, because from 1989 to 1994, passenger growth is estimated to stagnate. After criticism from the general public in the past year, KMB began to "slim down" -- many new depots planned to be built are frozen and the expansion of the fleet was slowed down. However as "assets" during the 1980s had inflated excessively, KMB assets still remained as high as \$2 billion in 1991. Therefore KMB could apply for the maximum permitted return of \$320 million. Yet in the past and coming years, owing to competition from other public transport services and since the services of KMB have not been improved significantly, the number of passengers has remained at about 960 million passenger-trips. Without the growth in passengers, KMB could only raise its fares in order to catch up with the "permitted return".

Another problem of the "profit control scheme" is that profits of public utility companies have no direct relationship with their performance and services. From 1989 to 1994, KMB estimates that the number of passengers will remain at 960 million passenger-trips annually, but the "permitted return" will grow on average at 15% annually. KMB services have been subjected to much public criticism, but the criticism has failed to convince KMB to improve its services and efficiency.

The third loophole of the profit control scheme is that this scheme has afforded an "amulet" for officials in the Transport Branch and the Transport Department to resist public pressure. This year, on the ground that "reducing at will the permitted return under the profit control schemes would deter private companies from

participating in public services", the Transport Branch suggested that KMB could still obtain very high profit even in a climate of economic slowdown this year.

The fourth problem of profit control schemes is that the terms of the agreements are somewhat equivocal leading to different interpretations by different people. During the past three years, I have had many meetings with KMB, the Transport Advisory Committee, the Transport Department/Transport Branch. They all had different understanding as to whether the two bus companies should enjoy maximum permitted return every year. The Transport Department/Transport Branch thought that "permitted return" did not necessarily mean the highest percentage. After KMB raised its fares in 1988-1990, its return still failed to reach 16% of the value of its net assets. Yet KMB considered that it should enjoy the "maximum permitted return", and even declared that it would take the Government to court. The shortfall in return would be made up in subsequent applications for fare increases. After the increases in 1991, KMB in its annual report said passengers in Kowloon and the New Territories still "owed" KMB \$44 million being the shortfall in permitted return during the past three years. This amount might be "recovered" from passengers in the fare increases in 1992. The stance of the Transport Branch on this problem is unclear. The concessions are obviously related to the tough attitude of KMB, which show even more the equivocality of the agreement and the confusion within government departments.

From the analysis mentioned above, the following conclusions can be drawn:

(1) The profit control schemes of the two bus companies have to be revised, particularly with regard to the calculation of profits. To base permitted return on the value of fixed assets is not a reasonable way to protect consumers' interests.

(2) The market for public transport services should be thrown open in phases, thus forcing each company to undertake reform through benign competition.

(3) A consumers monitoring body should be set up in every public utility company and given appropriate powers.

The debate today is the first step in protecting the citizens' interests, but in the face of the enormous and complicated nexus of interests of the colonial administration and the capitalists, our voice today is not loud enough, unless every citizen roars his indignation. Only then can we have the chance to change these

unreasonable policies.

Mr Deputy President, with these words, I support the motion of the Honourable LAU Chin-shek.

MR GILBERT LEUNG (in Cantonese): Mr Deputy President,

The public have the right to demand good service and reasonable fare level

Public utility and public transport companies are closely related to the livelihood of the public. Electricity service, bus service and telephone service have become indispensable in our daily life. Since we cannot do without these services, we have particular concern for the quality and fare level of these services provided by the public utility and public transport companies. There is no doubt about it.

In the seventies, when the Government entered into the schemes of control agreements (SCA) with various public utility and public transport companies, it clearly stated that since certain companies were providing services to the public in a monopoly or semi-monopoly situation, the Government, in the public interest, had to establish certain guidelines (known as schemes of control) under which the companies would operate. This is to indicate that public utilities are in fact services necessary to the public and large corporations are not allowed to cause great financial burden to them by monopolizing the operation of such services. The public should pay a minimal cost to get the best service as far as possible. It will defeat the purpose of the SCA and will be a disadvantage to the community if public utilities become a monopoly of those companies under the "protection" of the schemes which run their business in pursuit of high profits while providing poor services. The Government is in any way to blame for this.

The need for a good watch-dog system

To prevent public utility and transport services from being profiteered, a good monitoring system is necessary. In the early eighties, there was strong demand for a monitoring body with public participation to act as a watch-dog of various public utilities, but the Government turned a deaf ear to such a public clamour. No functional advisory committee has been formed for public utilities except that for

the transport services. Public opinion has not been heard. No wonder that there was widespread protest among the public whenever the public utility companies demanded for fare increase.

It has been recently reported that the Government has urged the public utility and public transport companies to form liaison groups for customers or passengers to enable them to exercise direct check over the services. I am glad that the Government has taken a positive attitude towards the matter. However, this is not enough. Since the public can only have a superficial understanding of the operation of services by these companies through such liaison groups, their supervisory power is limited. A watch-dog body should be set up above such liaison groups to co-ordinate and reflect public opinion given to the groups, so as to compare the services provided by different public utility companies. The composition of the watch-dog body should include professionals and representatives from the general public, Government and the public utility companies so that advice from the body will be representative, professional and practicable and the public utility companies will have no excuse for not implementing the recommendations.

Perhaps the above liaison groups and watch-dog body can only monitor the services provided by these public utility companies. Apart from services, effective management and operation are equally important. We understand that the provision of public utilities is a commercial activity too. Some data of a commercial firm is confidential and cannot be disclosed. However, since the public utility companies are given the privileges that the other companies do not enjoy under the protection of the "permitted rate of return" and the grant of "franchises", they cannot be treated as commercial institutions and have to bear a greater responsibility to be accountable to the public. Data on operation of such public utility companies should therefore be submitted to the Legislative Council confidentially for scrutiny, so that Members of this Council, who are mostly elected, can represent the public to monitor the operation of such utilities in an effective manner.

Consultation before the grant of franchises and entering into the Schemes of Control Agreements

Close checks have to be exercised over the conditions for the grant of franchises and the SCA between the Government and the public utility companies in order to facilitate an effective monitoring of the performance of such companies. If the conditions are too lax, it will have detrimental effect to the public and make

monitoring work difficult. Therefore, advice should be sought from various sectors.

The negotiation between the Government and the China Light and Power Company Limited for extending the SCA for 15 years is at the final stage. It is not until this Monday that the officials concerned reported it to the OMELCO Economic Services and Public Utilities Panel and the Secretary for Economic Services (SES) had earlier replied in writing in response to a Legislative Council question that the Administration wished to have the conditions for the SCA finalized by the end of this year. It can be seen that this will be done in a haste. On the other hand, the SES pointed out in the reply that China might express her views on the conditions for the SCA according to the arrangement agreed by the Joint Liaison Group. However, the SES did not mention that the public might also air their views on such conditions. While the people of Hong Kong are those who use and pay for such utilities, they are not invited to give opinions. It is puzzling that the public do not have any say in the conditions agreed between the Government and the public utility companies. This has caused public indignation. The Government should therefore disclose the details and consider views from this Council and the community before entering into the new SCA.

A change to the method of calculating the permitted rate of return

As regards the conditions for SCA, the public are most concerned about the methods of calculating the permitted rate of return. In the seventies, the Government had made such agreements with seven public utility and public transport companies. Five of them adopted a calculation method of their permitted return on the basis of the average net fixed assets value within the accounting year. If their actual profit was below the permitted return, such deficiency can be deducted from the development fund. Such a method of calculation has drawn public criticism that the public utility companies always formulated large development plans not necessarily catering for the future need in order to increase the fixed assets value. As a result, even though their annual earnings are high, there is still deficiency and deduction from the development fund is necessary as the earnings have not reached the maximum permitted level of return. The increase in operating cost and the profits below the permitted return have provided good excuses for the public utility companies to raise the fares of their services. This has caused much greater financial burden to the public. Besides, the main purpose of setting up the development fund is to assist in the acquisition of fixed assets, but it is now used to subsidize the permitted return of the public utility companies. This is to put the cart before the horse. When

the Government is formulating new agreement with the public utility companies, particular attention should be paid in this respect.

To prevent the abuse of expanding the fixed assets by public utility companies for the purpose of raising the permitted rate of return, I urge the Government to study an alternative way of calculation. Methods adopted in foreign countries may be considered. For instance, the rate of permitted return can be fixed at the inflation rate less a certain percentage, so that fare increase of any public utility companies will be lower than the inflation rate. Furthermore, if the earnings of any public utility companies exceed the permitted amount of profits after tax deduction, the excess should be added to the development fund. If a company running a business under franchise is efficient in its management and operation, it will definitely make earnings higher than the permitted level and the reserves of the development fund will be increased. As a result, there will be greater funding sources for the purchase and renewal of equipment of the company to improve the service and the public can enjoy a better service at a reasonable cost.

Creation of healthy competition

I understand that the calculation of permitted return on the basis of annual inflation rate may dampen the incentive of the operators to invest. If there is any public utility company which is unwilling to make investment, the Government may urge it to do so when reviewing the SCA. Besides, the Government may open certain part of the public utilities to other companies with potential to create healthy competition among the market so that the public utility companies may recognize the need for improvement and achieve better management and quality of service and invest for the future.

As a matter of fact, the public utility and public transport companies have been enjoying the privileges of franchise and the permitted rate of return for a long time. The Government may carefully consider whether such situation should be maintained. I believe that there must be a lot of financially strong companies which have the intention to invest for the public utilities and participate in their operation. The Government should consider opening more opportunities for such companies to run the utilities so as to offer more options for customers and to achieve a higher level of service through healthy competition among the public utility companies. This will be beneficial to the public.

Conclusion

In conclusion, I hope that the Government will carry out the following proposals:

(1) To set up an effective monitoring system as well as a co-ordinating body to monitor the services of various public utility companies and to submit the data on the operation of utilities to this Council so that Members of this Council may check whether their business is operated in the public interest.

(2) To conduct public consultation and fully consider the views from this Council and the public before renewal of the SCA between the Government and the public utility companies.

(3) To study the possibility of calculating the permitted rate of return on the basis of inflation rate in order to prevent the public utility companies from aiming at unreasonable maximum rate of return.

(4) To open opportunities for other companies for the operation of public utilities so as to create healthy competition under which quality of service will be improved and the public may have more options.

Mr Deputy President, with these remarks, I support the amendment motion.

MR FRED LI (in Cantonese): Mr Deputy President, let me begin by expressing support for the Honourable LAU Chin-shek's motion. This is not because he is a member of the United Democrats of Hong Kong. At the same time, I do not support the Honourable Stephen CHEONG's motion. This is not because he belongs to a certain other party. I would like to emphasize that, as popularly elected Members, and especially as directly elected Members, we have promised our constituents that we will take care of the problems that concern them most. For their part, they have many times indicated that they are concerned with the rapid increases in the charges of the public utilities. During our election campaigns, we made the promise that we would do the best we could to monitor the charges and operations of the public utility companies. Because of these considerations, I think that the Honourable LAU Chin-shek's motion is better able to fulfill our election platform. To say the least, open consultation means a positive approach and the taking of initiatives and provides a higher degree

of transparency. "Seriously taking account of", should that be the case, means passivity and makes one wonder whether or not relevant data will "be taken into account" and what data there will be to take account of. Because of these factors, to be for or against the motion is not a fight between parties or sects. I would like to make my position clear. I have analysed and noted the wording of the motions. I have compared them with my own political stand. So I must give a clear explanation here.

Where public utilities are concerned, two major principles must be noted. Firstly, any government anywhere in the world, including the Hong Kong Government, must bear responsibility for providing public utility services. Different countries differ in their methods of providing these services. Nevertheless, a government must inevitably bear the ultimate responsibility and become involved in management. Secondly, public utilities are different from general economic activities. Normally, public utilities or franchised services involve huge investments in fixed assets. They therefore are in the nature of a monopoly. Free market principles do not apply under such circumstances. If the question of monopoly is analysed from the angle of economics, natural monopolistic activities do exist in each community. For instance, for the supply of electric power and water, the investments needed and the cost of operation are huge. If those providing the services do not have a monopoly, there will be no profit to be made. However, monopoly has a drawback, which is the absence of competition. Many Members have said that, in the absence of competition, it is easy for service companies with monopolies to seek profits at the expense of consumer interests. Under such circumstances, government control over franchised public utility companies is particularly important. Government control addresses the questions of profit and structure. From the angle of consumer protection, the Government must make sure that public utility companies do not acquire at will fixed assets that have nothing to do with services, lest this should become a justification for raising charges. Poor management, resulting in higher operating costs, may also become a cause for increasing charges. This relates to the internal operations and management policy of the public utility companies. Should the Government intervene in the internal management of the public utility companies? This, I think, is the question that the Honourable Frederick FUNG has put to the Honourable LAU Chin-shek. It is a big question. It is also a complex controversial question. An additional question is: How can the Government ensure the best long-term protection of consumers during the 10 or 15 long years which is the usual term of a franchise, with all the changes which can happen? To come up with a suitable mode of supervision that will enable the Government to take a constructive part in the management decisions of the

companies without encroaching on their autonomy is indeed a major challenge. I hope that this Council will take up the challenge and discuss the question seriously.

One way would be to let the Government and the companies jointly appoint a third party as the public utilities permanent adviser who will make objective and balanced recommendations. The Government and the companies are then to consider these recommendations separately and co-ordinate on their implementation. In addition, following the example of other countries, the Government may fund the establishment of consumer groups for the various public utilities. I think that the participation of Members of this Council will be essential. The establishment of consumer groups is to serve the purpose of centralizing consumer demands and playing a monitoring role.

Finally, I will pose a question with which to end my speech. The MTRC and the KCRC are government owned public-utility-type undertakings. The relevant Ordinances permit the boards of directors of the two companies to set fares on their own. Not even the approval of the Executive Council is required. Compared with the other public utility companies, they are less subject to control. Nor need they be accountable to this Council. These two railway companies and the two bus companies are all monopolies. Why, then, are they so different in respect of service, profit and fare?

Finally, I support the Honourable LAU Chin-shek's motion.

MR MAN SAI-CHEONG (in Cantonese): Mr Deputy President, the Honourable LAU Chin-shek's motion and the Honourable Stephen CHEONG's motion for amendment today appear to be a contest over the wording, but "an error the breadth of a hair can lead you a thousand li astray." If the Honourable LAU Chin-shek's motion is passed as it stands, the Government then must take practical steps to consult openly with this Council and with members of the public, and it will be possible to place the public utility companies in a position where they can be effectively monitored. If the Honourable Stephen CHEONG's motion for amendment is passed, the way of monitoring public utility companies will remain intact, unchanged in any way from what it is today. It will be just like a feigned going through of the motions but never really moving.

Firstly, I wish to point out that, in Hong Kong's free economic system, a "free market" is our ever-vaunted philosophy. It is the free market which enables Hong Kong to prosper. But look at the public utility companies. Protected by franchises

or variations thereof, they face no competition. There is no avenue whereby members of the public, as consumers, can monitor the quality of service or the charges of the public utility companies. Deals between providers and patrons are made under unfair conditions. The end-user is completely without the right to know. Nor has he the right to be consulted or the right to have injustice redressed. This is ironical for Hong Kong, which always advocates a capitalist free market. Recently, Mr STONE, Chief Executive Officer of China Light and Power, visited Beijing and met with Chinese leaders. The question of franchise for China Light and Power was discussed. I cannot but ask: Why did Mr STONE not ask China Light and Power's customers in Hong Kong but instead travelled all the way to consult the leaders (or elders) in Beijing? Since he did go to Beijing to consult the leaders, why could he not similarly consult the vast number of local consumers? Perhaps some will say, "There are millions of consumers in Hong Kong. How is it possible to consult them individually? That would be a waste of time and effort. Better not consult them." Perhaps some will say, "The scheme of control and the extension of the franchise will involve many technical issues. The public is unable to understand them. It is better to leave public consultation and take account of the views of the public instead." This is a sheer insult to the intelligence of the public. It denies the public the right to know and to speak out. Why do we turn public consultation into taking account of the views of the public? What are the views of the public? How can such views be determined, and who is to determine which views are those of the public? What are the avenues to collect public views? Should the Government some day, after fully taking account of the views of the public, find that its stand is contrary to the views of the majority of the public, what then? Public consultation will mean that this Council will set up an office to oversee the quality of service of the public utility companies and consider whether their franchises should be extended. One may say that this is an avenue whereby the public utility companies can be effectively monitored.

For a long time, the public lacked the avenue and the opportunity to participate in the monitoring of the public utility companies. Such a major social responsibility was borne by a few government departments or the Executive Council with its handful of members. They made all the decisions "cozily, behind closed doors." In the past, as we saw clearly, government departments, snowed under with work and provided with insufficient information, often considered matters from the administrative point of view. They never seriously or fully monitored the operations of the franchised companies and public utility companies. As for the Executive Council, not being an elected body and not having to be responsible directly to the

public, it made final decisions that could be at variance with the views of the public. Now, elected members have joined the Legislative Council, increasing its representativeness. Some independent organizations, such as the Consumer Council, are able to gather effectively within a short time the views and complaints of the public. Therefore, if this Council and organizations such as the Consumer Council are able to meet more often and to acquire accurate information, I personally do not see any reason for stating that public consultation is technically and practically difficult. Besides, the process of public consultation is a process of education. We cannot deny the public their right to know just because they at first do not understand the franchises and the schemes of control, which involve a multitude of data and are highly technical. If we provide sufficient information and give clear explanations, the public will be rational enough to make sound judgments and able to express their views. We must treat consumers as consumers. Consumers have the right to know. If we provide an effective avenue and place the public utility companies under a monitoring mechanism, this will prevent the views of the public from being manipulated and prevent things from being done perfunctorily and without a clear purpose before the views of the public are fully considered. Where the public has been hoping for a long time that this Council will become an organ with a representative role, there must be some substantive change in order not to disappoint them.

Finally, I stress in particular the consumer's right to know and to choose. The existing schemes of control are based on calculations in terms of percentages of the average value of net fixed assets. Will this not cause the public utility companies to seek gradual expansion of its fixed assets? Members of the public are consumers. I believe that, if we do not hold public consultation, if we do not, through such means as green papers, white papers and public hearings, let the members of the public fully think things over in their minds, if we do all the thinking for them, then, eventually, they will submissively let others deprive them of their right to express their views and their right to know and to speak out. Therefore, I support the Honourable LAU Chin-shek's motion.

MR NG MING-YUM (in Cantonese): Mr Deputy President, many of my colleagues in this Council who have spoken have debated the motion by advancing well-organized and rational arguments. Now I would like to make some additional comments on "open consultation" and "seriously taking account of" the way a humble citizen would.

I am a humble citizen. I regularly commute between Tuen Mun, Sha Tin, Central and Chai Wan. Every day, I ride the MTR, KCR, LRT and the bus. I am directly affected by the public utility companies. As a humble citizen, I am not interested in knowing the motives behind the motion and the motion for amendment. On the contrary, I am interested in which motion will afford more protection for my rights and interests, enable me to receive more information and give me a greater opportunity to express my views.

Many of our colleagues were clearly divided in their interpretation of the connotations of "open consultation" and "seriously taking account of." Of course, I agree with the interpretation of "open consultation" propounded by one of my colleagues from the United Democrats of Hong Kong who spoke a moment ago. However, if "seriously taking account of" can be interpreted to mean the mode that was mentioned just now by the Honourable Andrew WONG, a mode that includes the consultation process, then the gap between "open consultation" and "seriously taking account of" has been narrowed. However, will that be the Government's interpretation? Will that in fact be the interpretation? History has taught us a very good lesson. Nine years ago, in this very forum, Members of this Council urged the authorities to take full account of the Council's views. But what happened in the end? A "tightening of the schemes" in name became "a slackening of the schemes" in fact. For many years, the public utility companies were excessively favoured by the Government's schemes of control, with the result that the just interests of the humble citizens were sacrificed. That can be seen by and is known to all and sundry. If the motion for amendment is carried today, it is quite probable that the situation will remain unchanged, while the Government will continue to point it out and say self-righteously, "The views of this Council and of the public are constantly being seriously taken into account." Honourable colleagues, do you want such a phenomenon to continue?

Mr Deputy President, just now, the Honourable Andrew WONG pointed out that consultation would make this Council too powerful and turn it into a so-called "super-government." So he had reservations about the original motion. I do not intend here to take issue with this sort of argument which belittles the intelligence of the public. However, I would like to point out that the Honourable Andrew WONG, too, said that "seriously taking account of" included consultation. How can there be "seriously taking account of" without consultation? I really do not understand what kind of logic it is. One has reservations about the original motion which favours consultation. So one supports the motion for amendment which favours "seriously taking account of." Then one points out that "seriously taking account

of" will include a consultation process. If the Government should adopt such self-contradictory arguments as the basis for administration, how can there be minimum protection for the rights and interests of us, the humble citizens? As a humble citizen, I would not be so presumptuous as to ask the competent authorities to make a 100% disclosure of all information at consultation time. Still, the Government must not regard members of the public as ignorant animals. People can tell truth from falsehood. It is essential that information be disclosed as fully as possible so that members of the public and private experts may have it and use it as the basis for the views they express. This is fair, reasonable and lawful. Some say that there is a lack of private experts. Mr Deputy President, experts are always a minority. But to say that there is a lack of private experts is really an exaggeration. From my many years' experience of working as a private citizen, I think that there are private experts but that they cannot apply their skills and expertise because the Government never discloses sufficient information. In fact, are there really many experts within the Government? Can the Government tell us confidently that the experts it does have are fully capable of monitoring the companies in question? Why does the Government not welcome private experts from outside the Government hierarchy to become involved, thus increasing the capacity for monitoring?

Mr Deputy President, I naturally think that the Government must fully consider the views of this Council and of the public. But simply "seriously taking account of" is not enough. The Government must conduct open consultation and "seriously take account of the views of this Council and the public." History is the best witness. Having learnt lessons from history, I will make a better choice in order to protect the rights and interests of ourselves, the humble citizens.

With these remarks, I support the Honourable LAU Chin-shek's motion. Thank you, Mr Deputy President.

MR STEVEN POON (in Cantonese): Mr Deputy President, I will begin by declaring interest. I am currently the general manager and operational superintendent of China Light and Power Company and a member of the company's board of directors. I have already given notice to resign my positions as general manager and operational superintendent, effective from 1 January 1992. I will then be only a non-executive member of the company's board of directors.

I have worked for 26 years in a public utility company. I also sat on the

Transport Advisory Committee. So I have some knowledge of the operation of public utilities.

MR STEVEN POON: Mr Deputy President, we do not seem to have a quorum, do we?

DEPUTY PRESIDENT: Yes. And once my attention has been drawn to that fact, under Standing Order 10 I am to direct the Members to be summoned.

(Several Members have returned to the Chamber.)

DEPUTY PRESIDENT: Do proceed, Mr POON.

MR STEVEN POON (in Cantonese): Mr Deputy President, I am very grateful to those colleagues who have come back to listen to my speech. Had it taken them a moment longer to return to this Chamber, I believe that I would not have had to continue and this would attract considerable press coverage tomorrow. My overall impression is that the achievements of Hong Kong's public utility companies have been greatly overlooked or underrated. Their image has often been unjustifiably trampled upon. In this Chamber today, I have heard many Members' speeches that are unbridled attacks on the public utility companies. It has made me wonder if I was working in a socialist legislature.

A lot of the credit for Hong Kong's prosperity today goes to the public utility companies. Today, air-conditioners are turned on by casually pushing the switch buttons. Electricity meter connections for public housing units are made before the tenants move in. Telephones are installed soon after the applications are made. International direct dialling enables calls to be placed to any part of the world within three seconds or so. In the remote corners of the New Territories, wherever there is a sizeable population, there is public transport. Hong Kong's success is in fact inseparable from the successful development of public utilities.

The achievements of the public utility companies in the past few years have been astounding. The power companies' successful switching to the use of coal for the generation of electricity enables Hong Kong to avoid the volatility of supply due to the second oil crisis of the 1980s and the price fluctuations due to the Gulf war

of 1991. The telephone company's installation of fiber-optics cables has greatly enhanced the capacity and reliability of the telephone. Advanced technology has thus been applied to put Hong Kong at the head of the march of the times. New buses and air-conditioned buses provide the public with a wider range of choices in the area of public transport.

During the 10 years from 1981 to 1990, the consumer price index rose 90%. But many do not know or do not want to know that telephone rates rose only 59% during the same period, and that the rates charged by China Light and Power Company rose only 12%. After eight years of no increase, the new rates of China Light and Power Company are actually lower than the consumer price index by 40% or more. If the rates charged by these companies had been linked to the consumer price index, as some suggested, they would have been much higher than they are today. I do not know if those making the suggestion have done careful thinking or whether they made the suggestion because of their political position.

Hong Kong's telephone rates for local calls are cheaper than those of the United States, the United Kingdom, Taiwan and Japan. Hong Kong Telecommunications Company's rates for international direct dialling calls are generally lower than the rates for incoming calls. Hong Kong's bus fare is cheaper than Singapore's. Hong Kong's electricity rates are cheaper than those of many other countries in Southeast Asia. It may be said that the public utility companies have ever been raising their efficiency and quality of service while keeping rates at the minimum.

The public utility companies are not only important pillars of the economy but also safeguards of confidence in Hong Kong. In 1983, during the Sino-British talks on the future of Hong Kong, the future of Hong Kong was very uncertain. However, the public utility companies continued to be devoted to their work and to have full confidence in Hong Kong. They procured advanced equipment and invested large amounts of money, continuing their relentless effort to build Hong Kong's future. During the past 10 years, public utility companies with schemes of control agreements, including companies in the power, telecommunications and transportation sectors, invested more than \$60 billion. I dare not imagine what would have become of Hong Kong's economy if the public utility companies, like many institutions, had pulled out from Hong Kong, relocated their head offices elsewhere or cut back on investments.

During the past 10 to 20 years, I was involved in countless controversies over schemes of control agreements. I can say that most of the controversies were due

to the failure of the Government and of the public utility companies to give appropriate explanations to the public. It was thought that the public utility companies could capriciously raise the value of their assets for the purpose of maximizing permitted returns. In fact, under the schemes of control agreements, all public utility companies must submit five-year operation and financial plans to the Government for approval. The operation plans cover the procurement of equipment to meet ever-increasing demand and to improve the quality of service. The Government will carefully consider and review these plans and will approve them only if they are found to be really necessary. Also, the Government conducts a review every year to make sure that any change in the plans is a necessary response to changing circumstances. In such a review process, it is simply impossible for the value of fixed assets to be expanded without justification.

As to whether permitted returns are high or low, investors know very clearly that the interest rate on export credit, which is totally risk-free, is 10.55%. If their investment in a public utility company does not yield returns at so high a rate, they simply would not be interested in investing. I would like to point out that, to international investors, Hong Kong is a high-risk area.

Mr Deputy President, during February to April this year, I led a China Light and Power Company delegation to Japan, the United States, the United Kingdom, France, Germany and Switzerland. The purpose was to talk to those countries' manufacturers, bankers and export credit institutions concerning the proposed Black Point Power Plant. Our opposite numbers began every meeting by asking two questions. The first was: Does Hong Kong, with its uncertainties over the 1997 issue, still have a political and economic future? The second was: After the existing scheme of control agreement for the power industry expires in 1993, will there be a reasonable new agreement to enable the companies concerned to remain healthy financially and to repay loans without problem?

I understand very well the concerns of international financiers over those two questions. Today, capital is internationalized and has no nationality. If Hong Kong provides a good environment for investment, it will be able to attract new capital. If the environment for investment is not good and if the rate of return is not reasonable, then even the capital that Hong Kong now has will be transferred away. Many Members are vociferous in attacking the schemes of control agreements. But we must not forget that we could be as high-sounding as we like and we could even ask for the moon, but when we finally conclude the scheme of control agreement, we still

must persuade the investors to sign it. If the terms are not reasonable, they won't sign the new agreement.

If the new schemes of control agreements are unattractive to investors, two things may happen. Firstly, the quality of service will fall, affecting living standards and the development of commerce and industry. The employment of the 30 000-plus people who work in the public utility companies will also be affected. The other possibility is that the responsibility for providing capital will fall on the shoulders of the Government, so that the Government's financial burden will be further aggravated and taxes will have to be increased. I believe that we would not want to see either of these happen.

Of course, the services provided by the public utility companies are needed by every citizen. In their everyday life, the public hopes to have good service and reasonable rates of charge. If the public utility companies are permitted to increase rates and charges unjustifiably, life will be hard for the citizens. During the past 10 years, bus fare increased at a rate which was 50% higher than the rate of inflation. That greatly added to the citizens' everyday expenses. Also, the quality of service of the bus companies still leaves room for improvement.

There is also concern over those public utility companies which are not a party to any scheme of control agreement. For instance, MTR and the Water Supplies Department during the past 10 years raised their charges at a rate that exceeded the rate of inflation. Now that the rate of inflation is being sustained at such a high level, public utility charges should be more closely monitored by the Government.

The Government's responsibility is to do a good job balancing the interests of investors and consumers, making sure on the one hand that consumers will receive reliable high-quality service without having to pay unreasonable charges, and, on the other, that investors are encouraged to continue investing so as to improve service and replace old equipment. Investors will also be allowed to make reasonable profits so that their companies will be financially sound and able to repay loans on time.

I support the spirit of the Honourable LAU Chin-shek's motion. Although he is an old friend of mine, I do not agree with his proposal about consultation. This is because the proposal will be very difficult to implement and may lead to social unrest and confrontation because of differences of opinion. Such unrest and

confrontation will definitely have a huge impact on investors, causing them to stop investing. This will ultimately be bad for the Hong Kong public and for Hong Kong's economy. In fact, ours is a very competent government. Asking that the Government should "seriously take account of the views of this Council and the public" is issuing a clear enough instruction. Let us not forget that a consultative body cannot solve problems. Many Members have criticized the two bus companies today. But we do have a Transport Advisory Committee. Rather, it is the two power companies and the telephone company that have done better despite the absence of official advisory bodies.

I think that, during the talks on the new schemes of control agreements, the Government should seriously consider the views of the this Council and of the public, including the views of the citizens and the investors, and then conclude with the public utility companies schemes of control of agreements that are the most realistic and which yet safeguard the overall economic interests of Hong Kong.

With these remarks, I support the Honourable Stephen CHEONG's motion for amendment.

MR TIK CHI-YUEN (in Cantonese): Mr Deputy President, the meeting today is about to enter its sixth hour. The look in the eyes of Members present is conveying the hope that I be brief. I will do my best to meet this hope.

During today's meeting, I find that there is one common ground and one contended ground. The common ground is that the existing schemes of profit control for the public utility companies must be reviewed. The contended ground is which is better, "consult" or "seriously take account of the views of"? Many Members have already expressed valuable views concerning the schemes of profit control in respect of public utilities. I should like to quote the Honourable LAU Chin-shek: "At the centre of the question of the schemes of profit control is ineffectual government regulation and lack of adequate safeguards for the public."

I think that supervision of the public utility companies may proceed in two ways. The first is supervision by the Government. The second is supervision by the public. The Government should play the main role in supervision; it is the Government's responsibility. Supervision by the public is as yet without a legal basis.

I would like to stress public participation here. There are three reasons. The first is the rights and interests of consumers. The Honourable MAN Sai-cheong has just said a great deal about the rights and interests of consumers. The Honourable NG Ming-yum, too, has said that we should consult the public. I agree with the way he puts it, that there are experts among the public. However, we do not agree that we must consult the public because there are experts among them. Experts, among the public or in the service of the Government, cannot represent everybody. Every citizen, as a consumer, knows best what he needs and asks for. He therefore has the most right to describe his situation and express his views. I hope that the Honourable Edward CHEN will also agree with me on this.

The second reason for participation by the public is that the interests of the public and those of the franchised companies may be brought into balance in this way. Some Members have said that, if we ask the public whether price increases are good, they are certain to say no. This kind of consultation is therefore meaningless. However, from a different angle, if one asks some franchised companies whether higher rates are good, they are certain to say yes. Should we, then, ask them? Under the existing system, the requests of the franchised companies are fully considered through consultation, while the general public does not have an opportunity to express their views. Therefore, under the existing system, the interests of the companies are receiving more attention, while the interests of the public are being overlooked. This being the case, participation by the public can bring the two kinds of interests into balance.

Thirdly, participation by the public can increase the transparency of government operations which will be one step towards the administration of Hong Kong by Hong Kong people. Participation in the form of being notified is out of date. A greater degree of transparency of government operations can heighten the degree of the public's approval of government policy.

During today's discussion, relatively few Members mentioned the conditions of the public utility companies including principally the two railway companies, namely, KCR and MTR. If you ask any one citizen in the New Territories East, "Are you happy with the services of KCR?", you will get a very direct and very clear answer in the negative: "The services are poor; the fares are excessive." Even if these companies are not lawless, they are close to being able to do whatever they want. I am very glad to hear the Honourable LAU Chin-shek say that he hoped some day to raise the matter of monitoring of the two railway companies for discussion. I hope that I shall

be able to work with him in following up on this. I am in support of the Honourable LAU Chin-shek's motion. The reason for this is that he has put forth a very important principle, that is, consulting the public and letting the public have an opportunity to participate. As members of Meeting Point, we are very much in agreement with this. Some Members say that difficulties may arise from consultation. I think, however, that that is a matter of technicality. The Honourable Fred LI, the Honourable CHEUNG Man-kwong and others who spoke before me have made a lot of specific suggestions.

Mr Deputy President, with these remarks, I support the motion and request the Government to seriously consult the public and seriously take account of the views expressed by Members today concerning profit control schemes. Thank you.

MR JAMES TO (in Cantonese): Mr Deputy President, in our debate today, many Members have put forth their different views. Now I will endeavour to put forth mine.

In his speech proposing the motion for amendment, the Honourable Stephen CHEONG asked us to read between the lines. Accordingly, I took a copy of his speech and read it word by word. Now I should like to raise a few points for discussion with him. Firstly, the Honourable Stephen CHEONG said that his motion for amendment imported a fuller expression of the requirements of the situation and it could be practically implemented. After making a comparison, I find that the Honourable LAU Chin-shek's motion can be better implemented for the reason that his method of implementation is to let the Government consult the public. If it is to be a matter of "seriously taking account of" then I fail to see how it will be "implemented" or how "seriously taking account of" will be carried out, since it is something invisible and intangible.

Secondly, the Honourable Stephen CHEONG said that he agreed with the spirit of the Honourable LAU Chin-shek's motion. I am very glad that he agrees with the spirit of the motion. But the spirit of the motion, as I understand it, is that there is to be public consultation first and seriously taking account of the views later. I shall be very glad if the Honourable Stephen CHEONG will also agree with such a spirit.

Thirdly, the Honourable Stephen CHEONG mentioned that the majority of Members of this Council, various pressure groups and the business sector said long ago that they would take the same stand and ask the Government to form an organization to monitor and review the schemes of control agreements. I am very much in agreement.

I hope that the Government will do so.

Fourthly, the Honourable Stephen CHEONG said that his motion was more effective in pooling public views for maximum benefit. However, I still feel that the Honourable LAU Chin-shek's motion is more effective in that respect.

Fifthly, the Honourable Stephen CHEONG said that his motion for amendment made a demand that covered even wider ground. I do not know if such a demand is more comprehensive. Does a demand to take account of the views of the public cover wider ground than a demand to hold public consultation? I feel that, by comparison, the Honourable LAU Chin-shek's motion for public consultation first and taking account of views later is more comprehensive.

Sixthly, the Honourable Stephen CHEONG mentioned that, according to the Financial Secretary, the OMELCO Panel on Economic Services and Public Utilities could sufficiently reflect the views of the public. He also expressed the belief that all those who had taken part in advisory committees should know clearly how the Government carried out public consultation. However, I notice that, in July or August, the Panel produced a paper signed by the Honourable Stephen CHEONG, which asked the Government to hold more consultation and to wait instead of jumping to conclusions. It also expressed the hope that the Executive Council would not make any decision precipitously. Can I see from this whether the Government really respects the views of this Council?

There is one further point. The Honourable Stephen CHEONG said that the Government already explained that it had held public consultation and so we could not expect any substantive effects today. Firstly, I think that such an attitude is quite negative. It is like saying: the Government has already said that consultation has been held; so how can there be any result now? I do not agree. Also, I would like to ask the Honourable Stephen CHEONG if he agrees that the Government has already held public consultation. If he agrees, then, may I ask him whether, as convener of the OMELCO Economic Services and Public Utilities Panel, he has ever asked the Government what the result of the consultation has been and whether it has been acted upon? He is also our convener today. I hope that he will lead us and be able to follow up on the result of the consultation in this particular area.

The Honourable Stephen CHEONG also said that, if his motion for amendment was passed, it would be easier for the Government to account itself to the public. In

my opinion, however, holding consultation first will make it easier for the Government to account itself to the public, for the reason that consultation is definitely a way to enable the public to obtain information. Also, he said that, if his motion was passed, this Council would be better able to perform its due functions. This sets me thinking. Is the Honourable Stephen CHEONG worried that, if public consultation is held, this Council will be unable to perform its functions? After consultation is held, the Council has yet to make a judgment. For instance, the period of consultation on our Organized Crime Bill is about over, but this Council, after the consultation process, is as able as ever to perform its due functions. There is no contradiction between the two.

The Honourable Stephen CHEONG mentioned yet another point which relates to enhancement of this Council's monitoring role in respect of the schemes of control agreements. I am very glad that this Council will be able to play a stronger monitoring role in respect of the schemes of control agreements. However, what I would take issue with is the assertion that this very point presupposes that we have agreed to the role of the schemes of control agreements. I do not know if the Honourable Stephen CHEONG is worried that after consultation, open competition and operation would become the order of the day, displacing the schemes of control agreements altogether.

Finally, my conclusion is that, after I have made a comparison between the motions of my two colleagues, I find that there are many specious and logically confusing points. I have made a positive comparison between the two motions to find out how they are different. My findings are as follows: Firstly, public consultation lays emphasis on the democratic process, that is, the public's participation in the process of government, particularly in respect of the impact of the public utility services on the living standards of the public. Secondly, public consultation lays emphasis on the Government and Legislative Council initiatives, that is, initiatives to hold consultations. It is of great importance to a government system that places stress upon democratization and accountability to the people. Thirdly, public consultation can enhance the Council's role as a participant in the Government's decision process and strengthen this Council's position; this will militate against China's non-recognition of this Council. Fourthly, public consultation can systematically bring the views of the public to light and prevent the Executive Council from unilaterally defining "seriously taking account of". Fifthly, it is a matter of historical experience that the Government never really met the requirement of "seriously taking account of the views of the public." Even in the process of consultation and

discussion, the Government is often intent on concealing what relevant progress has been made, including the progress that has been this time. Things were basically already decided several days ago. The public, told to express their views, does not know what to do. Sixthly, similarly, without public consultation, this Council cannot effectively reflect the views of professional groups and academics. The schemes of control agreements are very complicated matters. They must be systematically and publicly debated before the views of the community and of the professionals can be collated.

In addition, I would like to respond to two points mentioned by the Honourable Andrew WONG. The first point is about confidentiality and constitutionality. In fact, the original motion and the motion for amendment must both address this point. If we have no access to what the Government considers to be confidential information or commercial secrets, we still will be unable to express our views. Thus, the question of respect or disregard for our views does not arise. At the same time, if there is fear that the majority opinion of this Council may put the Government under pressure, then it may be better not to hold public consultation at all. Therefore, I think that there is no basis for the Honourable Andrew WONG's view that the Honourable Stephen CHEONG's motion for amendment can solve what he calls the problem of constitutionality. Secondly, the experience of OMELCO panels tells us that the panels have been doing consultation of one sort or another. For instance, the Economic Services and Public Utilities Panel has been doing this in the course of its routine operation. If the Honourable Andrew WONG thinks that there will be a question of constitutionality involved, then there may also be a question of constitutionality in what is being done now. Another point relates to technicality. Technicalities are very complex; not everybody understands them. In my view, the question of constitutionality is already complex enough as it is. It is very abstract. When I consult my kaifongs, I find it very difficult to explain it to them. Still, I consult them. The consultation papers on traffic and transport are complex enough; they contain so many statistics. Still, consultation is held. Furthermore, the White Bill on Organized Crime is going through its first-phase consultation now and, later, the gazetted Bill will go through further consultation. They, too, are complex matters. One must realize that Hong Kong is a diversified community. We have the Consumer Council; we have academics; we have many private concerned groups. In this connection, I very much agree with the Honourable NG Ming-yum, who has said that, although there are really many private experts, they cannot express their views as experts because the Government withholds information from them.

Furthermore, I would like to refute the Honourable Steven POON's so-called theory of falling electricity rates. Firstly, the reason why China Light and Power has not increased electricity rates rapidly in the past is that coal was substituted for petroleum. The price of coal has been relatively stable in recent years, with the indirect result that electricity rates have not gone up. Actually, however, China Light and Power's profit growth over the past 10 years has been spectacular, though much of its profit has been appropriated into a so-called development fund. Its profit was \$500 million in 1981 but \$2.3 billion last year, a 36% (annual) rate of increase. This year's profit of \$2.8 billion shows that China Light and Power has made a considerable profit. Particularly because the favourable effect of substituting coal for petroleum has already worn off, rates and profits are expected to increase rapidly in the days to come. Yet the Honourable Steven POON calls that good performance.

8.00 pm

DEPUTY PRESIDENT: I am sorry to interrupt you, Mr TO. It is now 8 o'clock and under Standing Order 8(2) the Council should adjourn.

ATTORNEY GENERAL: With your consent, Mr Deputy President, I move that Standing Order 8(2) should be suspended so as to allow the Council's business this afternoon to be concluded.

Question proposed, put and agreed to.

MR JAMES TO (in Cantonese): However, I feel that in fact no explanation has been given for the relationship between good performance and the absence of a scheme of control. I hope that I will continue to learn about such things from the Honourable Steven POON, so that I may express views on the basis of a fuller understanding of the situation. On the other hand, I do see the achievements of the public utility companies, as the Honourable Steven POON calls them. In fact, many of the achievements were based on high prices paid by the public over many years. The public shares credit for them. Another point is that there may be many fundamental reasons why other companies lose money while the public utility companies make a lot of money. Other companies are losing money not because there are no schemes of control agreements for them. Now I know that the Honourable Steven POON is no longer a

director of China Light and Power. Even if I thought he was a director, I still treated him as an independent. However, I find in his argument that people will stop investing in the public utility companies unless they are protected an element of threat which also smacks of confrontation. Some people say that there is confrontation even within this Council. If there is confrontation between the public and the public utility companies, everybody will be worried. Finally, concerning this decision with China Light and Power, the Executive Council already gave a basic indication. I do not know when it was given. I hope that it was given before my colleagues here, such as the Honourable Andrew WONG, the Honourable HUI Yin-fat and the Honourable Selina CHOW, joined the Executive Council. If such is really the case, I would very much like to know what their views are. I hope that the system of collective responsibility will bind them. But I have today heard the views at least of the Honourable HUI Yin-fat and the Honourable Andrew WONG. I have not yet heard the views of the Honourable Selina CHOW. I hope that she will, after me, tell her colleagues her views. In a nutshell, without information provided, there can be no views expressed. No matter how much one respects those who express no views, if one just goes ahead and makes a decision, would it not then be too simple a process? This has been so in the past. I hope that it will not remain so in the future!

Mr Deputy President, with these remarks, I support the Honourable LAU Chin-shek's motion.

MR STEPHEN CHEONG: Mr Deputy President, may I seek your permission to make a point of clarification on Mr James TO's interpretation of my speech.

DEPUTY PRESIDENT: Under Standing Order 28(2), I have the discretion to permit a Member to speak again to explain some part of his speech which has been misunderstood. But when speaking, the speaker shall not introduce new matter. Clearly it would not be right to permit this to be used as an avenue for a second speech and Members must not be quick to think they have been misunderstood. But do make your point of clarification on the basis that in your view some part of your speech has been misunderstood.

MR STEPHEN CHEONG (in Cantonese): Thank you, Mr Deputy President. Just now I did not interrupt the Honourable James TO because I did not wish to upset his delivery. I wish to clarify one point only. I did not mention that my motion could pool more ideas. I did say the spirit of my amendment motion could make us pool our ideas

together. Thank you.

DR SAMUEL WONG (in Cantonese): Mr Deputy President, it will not do if wage earners do not get their wages; the same applies to any public or private corporation where continued operation hinges on the profitability of the business. "Why should one busy oneself, if not for money?" With money and profit being the order of the day and everybody pursuing his own gain, I would suggest that the Government, upon entering into agreement with public corporations, should take into account both the interests of the public and the investors.

I fully agree with Mr G L CREW, managing director of the Hong Kong Telephone Company Limited, that this Council is under the obligation to strike a balance between the interests of the public, shareholders, consumers, employees of the public corporations and the environment protection groups. Such being the case, it will be all the more imperative for the Government to consult this Council on any franchise arrangements before they are made with the public utility or public transport companies. Given the present profit control schemes and franchise agreements, I would say that there is no ground for me to worry as to whether shareholders will get a reasonable return -- though it all depends on how the word "reasonable" is defined. No businessman, I should say, would hate the idea of maximizing profits; so the best that can be done is to identify an arrangement which will be fair to all.

Mr Deputy President, I share the anxiety of the investors as to the possible disadvantages they may face in making public these financial arrangements, having regard to the confidentiality of some of their business transactions. But at present the profit control scheme has turned somewhat into a scheme of profit guarantee; franchised companies may well be tempted to care only about expanding their fixed assets to augment the base in order to strive for more profits. Moreover, because of profit guarantee, overseas consortia or banks will be most ready to offer loans to these companies for further expansion. The profit control scheme has, in a way, become the licence for public utility and public transport companies to make a good fortune. In view of this, I would suggest that:

Firstly, a high level independent supervisory committee be set up within the existing administrative framework to oversee and examine the operation and composition of public franchised companies;

Secondly, an advisory committee on profit control of public utility companies be established with the object of reviewing the present scheme of profit control and franchise arrangements;

Thirdly, an upper and a lower limit to the permitted rate of return be imposed with, say, the upper limit being set at 15% of the capital value of the investment and the lower limit 10%. Any income exceeding the upper limit of permitted return will go to a development fund, which will be drawn on to make up for shortfalls should the company's net annual return (after tax) fall below the lower limit. In other words, the interests of shareholders are safeguarded within a range of return between the upper and the lower limits whose difference in percentage will be determined by the Government having regard to current social and economic conditions, rate of inflation and so on. The two limits may also serve as general reference or flexible guidelines upon which the Government will base in processing fare or tariff adjustment applications by public transport or public utility companies;

Fourthly, with regard to energy conservation which at first glance may seem to affect the business of the two power companies, the proposal, if put in another perspective, will enable the two companies to have sufficient power generating capacity to cope with the rising demand for electricity in the industrial and commercial sectors despite production being maintained at the present levels. So construction of new power plants can be deferred. As to the possible arrangements, financial or otherwise, to encourage the two companies to promote energy conservation, I would say that this should be one of the responsibilities of the advisory committee which I proposed to set up a moment ago.

Mr Deputy President, for all these years, the Government has failed to exercise adequate control over the pricing of public utility and public transport services. This, coupled with the unreasonable scheme of profit control, may be one of the reasons for our present runaway inflation.

As the Chief Secretary, Sir David FORD, has put it, the Government should, by all means, avoid the risk of falling into an abyss of isolation where the necessary support essential to an effective administration is found wanting. Given that the Government has to take care of the sometimes conflicting interests of the investors and the public, I would think that the best arrangement would be to set up an independent advisory profit control committee to take over this responsibility and to examine the whole matter with a view to balancing the interests between the two.

Most of the Members of this Council have been returned by elections. This, I would say, should be an adequate expression of the spirit of our representative system of government. In my view, the spirit and substance of the Honourable LAU Chin-shek's motion is acceptable; but the Honourable Stephen CHEONG's amended motion is more readily implementable. I am inclined to support Mr CHEONG's amendment. Thank you, Mr Deputy President.

DR YEUNG SUM (in Cantonese): Mr Deputy President, today I would like to urge honourable colleagues of this Council to support the motion moved by Mr LAU Chin-shek. Also, I would urge honourable colleagues to discard any partisan notion or sentiment and to look at Mr LAU's motion from a rational and balanced point of view.

Some Members contended that many problems would arise if Mr LAU's motion was supported. Mr Andrew WONG argued that from the point of view of political science, if Mr LAU's motion was to be supported, that is to say, prior to the conclusion of a scheme of control agreement or the grant of a franchise, the Government should first consult the public, then the Legislative Council would become too powerful. This would impair the present constitutional arrangement of an executive-led government and a constitutional crisis might ensue. I would like to point out that according to the present constitutional and Basic Law arrangements, whether pre-1997 or post-1997, Hong Kong's constitution provides for an executive-led government. All Bills are to be initiated by the executive departments. There are basically limits to the powers of the Legislative Council. Moreover, Mr LAU is only urging the Government to first consult the public before deciding on the grant of franchises or the conclusion of schemes of control agreements. He has not said that any decision is to be made by the Legislative Council. His motion is clear and concise and he also understands the constitutional arrangements for Hong Kong before and after 1997. In his policy address, the Governor has said that there should be a good co-operative partnership between the Government and the Executive Council. I do hope that this is the case. But if the Government is to reach an agreement with China Light and Power behind the back of and without consulting the Legislative Council, how can it be said that there is a good co-operative partnership?

On consulting public opinion, Prof Felice LIEH MAK submitted some very strong views. She said that there would be many shortcomings if there were to be public consultation. Mr Frederick FUNG also said he did not understand why we had to debate

these two motions. If we are not trying to mediate differences at the sacrifice of principle, we must draw a clear line of distinction between the two. Firstly, Mr LAU has not indicated that the Government must openly consult the public and fully take account of public opinion. Secondly, he has not specified the procedure and the mechanism for consultation by the Government. Hence, I would like to make it very clear that to take full account of public opinion and to consult public opinion are basically very different in terms of procedure and mechanism. It is hoped that we are not just trying to smooth things over when we consider these two different motions. Some colleagues have made the point that it is not possible to divulge anything in the course of negotiation. This is a fact but let us look at Mr LAU's motion. He is only requesting the Government to consult the public before making a decision. If the Government understands public opinion first before reaching a decision, then such decision on the scheme will be more in line with the demand of the people. If public opinion is first consulted before a decision is made, would this strengthen public confidence in the operation and efficiency of the Government? Please do not forget that during this transitional period, it is vital that the Government should have the support of public opinion. What in fact is Mr LAU urging for as the subject of public consultation? He is referring to the franchises and profit control schemes for public utilities. Many colleagues have stated that public utilities are the daily concerns of the people. It is essential that the public and Members of this Council should monitor these utilities. Some have mentioned the technicalities involved in a public consultation exercise. It has come as a surprise to find that many Members believe in the power of the Government. This might be due to our Chinese culture which tells us always to believe in the Government. But the cultural revolution has taught us a lesson and that is that people should believe in themselves and not wholly in the Government. On public consultation, it has been argued that there is no expert among the public to discuss the schemes of control. Are there any experts in the Government? Is it to be believed that during public consultation, nobody among our population has the expertise and/or the qualification to discuss and review the operation of the public utilities? I believe the answer is in the negative. Some have contended that to consult public opinion is an indication of confrontation. I am surprised at such a view. When the Soviet Union and Eastern European countries are on the road to opening-up, and while Hong Kong is proceeding towards democracy, and the Government is also saying that it will openly consult the public and that there should be a co-operative partnership with the Legislative Council, I am amazed to find some Members suggesting that consultation would lead to confrontation. We are not arguing for the spirit of socialism. We are requesting that there should be market competition for those franchised companies

which hold a monopoly. We are talking of market competition under capitalism and competition is a major factor for Hong Kong's success. Some Members have said that all directly elected Members should support the motion of Mr LAU because as their platform they have made such promises. But I hope that the appointed Members can also express their opinion from their heart. As the last-term appointed Members of this Council and having regard to Hong Kong being now on the road to democracy, they should try to make the Government more accountable to the people. This should be the basic attitude of Legislative Councillors.

Mr Deputy President, I fully support the original motion of Mr LAU.

MR HOWARD YOUNG (in Cantonese): Mr Deputy President, control of public utilities which is the subject of today's debate could be said to be a much-talked-about subject notwithstanding Mr LAU's motion and Mr CHEONG's amendment before this Council today.

But it is most regrettable that in today's debate some inappropriate analyses, conclusions and subjective views have been variously put forth, drawn or submitted. Some Members used terms such as "monopoly", "protection", and "profiteering". But from the objective point of view of a merchant, I would say that in assessing whether profit is reasonable or not we should look at it from a comparative and scientific angle. Hong Kong is a capitalist cosmopolitan city whose business is trade. I believe that if a comparison is to be made between Hong Kong's big companies, big enterprises and small businesses, a 10%-plus profit should not be regarded as "profiteering" or "multiple profits". If you ask me what are "multiple profits", I would say that those big real estate companies which have reaped huge profits through speculation in properties, or those hawkers who are not required to pay any licence fees or tax. Their returns on an investment well exceed those of public utilities we discuss today. I therefore feel that when we discuss the present motion, we should view it in the actual context of Hong Kong.

Mr Peter WONG has just pointed out that profit figures published by major listed companies are readily available for scrutiny. If their profits are compared with their sales or investment, a profit of 10%-plus is not amazing at all. The figures can also be compared with overseas companies. I am from the tourist industry. Members of the industry have to travel around the world and we have visited many places. If we compare public utilities in Hong Kong with those of neighbouring or developed countries, we, Hong Kong people are already very fortunate without ourselves realizing it. I had waited for a bus in a very developed country as the United States

for over an hour but to no avail. I had used electricity and telephone services in some Southeast Asian countries. Their charges are higher than that in Hong Kong but the services provided are worse than Hong Kong. Of course, when we discuss public utilities, we cannot just say that if the service is good and the price reasonable, then there is no need for monitoring. For the award of a special status, no matter whether it be a monopoly or not, a certain extent of control is necessary.

Under the present schemes of control, I feel that there are areas for improvement. For example, in a panel meeting a few days ago, Mr LAU Chin-shek raised a question as to who should be liable if there is negligence on the part of the public utility companies and losses are caused to consumers. And is the loss going to be passed on to the consumers? This point has not been mentioned today. According to my understanding, under the present scheme, damages might be passed on to the consumers. This is one of the shortcomings under the present scheme. To my understanding, if a company has incurred losses proved to be due to its own negligence, the shareholders of the company should be held liable and not the consumers. Another point that some other Members have raised is whether the development fund of the companies can be used as a fund for guaranteeing profit. Although the Government has given a reply that according to past records there are some well-operated companies such as China Light and Power (we have mentioned this Company several times but they have not made an appearance today), I still feel that there is need for systematization by means of legislation. Even though this has not been done in the past, we should prevent a lapse in future.

The third area where I would like to see some improvement is that, as Dr Samuel WONG has said, there should be an "upper limit" as well as a "lower limit" for profits. The efficiency and indexes of public utility companies should also be assessed. In other words, if a company's "upper limit" is set to earn a certain percentage rate of return and through public consultation as proposed by Mr LAU Chin-shek it is found that the services provided by the company have not met the basic requirements of the public, a discount factor should be applied to the profits as a kind of penalty; if the company provides good services, I think a reasonable profit should be an appropriate reward.

Mr Deputy President, I find that many colleagues are addressing the difference of wording of the motion and the amended motion. I feel that this is like "playing with words". I do not find that the two motions are confrontational. In fact, I find that Mr CHEONG's motion already imports the meaning of Mr LAU's motion. Mr LAU

has proposed that "public opinion should be consulted" while Mr CHEONG has proposed that this should be "seriously taken account of". If there is no consultation, how can views be taken account of? I am agreeable to Mr LAU's proposed consultation of the public but I feel that it is insufficient just to consult. There should be some more action. The results from consultation should be fully taken account of. During the break, I talked with Mr Frederick FUNG. We both regret that there is no appropriate procedure for the merging of the two motions whose spirits are similar. I think that there should first be consultation and then the results should be fully taken account of. Two days ago in the panel meeting, I heard Mr CHEONG strongly criticize the Government for not monitoring public utilities vigorously. I therefore did not agree with Mr Martin LEE's query with regard to Mr CHEONG's amended motion and Mr LEE's viewpoint that today's debate is a battle between two camps. This is my attitude towards the motion and the amended motion. I support the spirit behind the two motions. I also consider Mr CHEONG's motion already covers the motion of Mr LAU. In reply to Mr FUNG, Mr LAU has already explained that he does not have any ulterior political motive in moving the motion, nor is he encouraging the Government to interfere into private enterprises. I will therefore wait to see whether the amended motion will be accepted and then vote for whichever motion that will be left to this Council to vote on. So when voting on Mr CHEONG's motion starts, I intend to abstain because although I find it more comprehensive in spirit, yet because today's debate is seen as a battle between two camps and even as politically motivated with some suggesting that if one supports Mr CHEONG, one is opposing the spirit of Mr LAU's motion. This would twist the original intention of the two. I have therefore decided to abstain from voting on Mr CHEONG's amended motion because I do not see any reason in voting against it. Thereafter, at the second round of voting, I will vote for whichever motion that has been left to vote on. Many people say that there are the United Democrats and other parties in this Council. The other parties say that there is no need for concerted action and individual independence should be maintained. I am going to keep my independence and not to be take instructions from any one else. I wonder if the United Democrats are also so open-minded. Thank you.

MR ALLEN LEE (in Cantonese): Mr Deputy President and honourable colleagues of this Council, I at first did not intend to speak in this debate. But after listening to the varied views expressed by my colleagues, I feel that as a Member of the Executive Council it is necessary for me to explain the schemes of control.

First of all, I will give a historical account of the schemes of control. As

Mr Stephen CHEONG has earlier mentioned, I do not know if Members are aware that the schemes of control were treated as classified material by the Hong Kong Government nine years ago. The contents of the schemes of control agreements signed between the Government and the companies concerned were not to be made known to the public. Mr CHEONG and I, like those Members who are now sitting at the back of this Chamber, were then both new to the Council. But we were both quite concerned with the increase of charges by China Light and Power and Hong Kong Electric. We therefore studied the schemes in detail. During a Legislative Council meeting, we proposed to debate this particular matter. As Members all know, most Members of the Council then were officials and there were only a few appointed Members. When I proposed this matter for debate, people asked me why I was so daring as to challenge the Government. I felt that as appointed, though non-veteran, Members of the Council, it was necessary for us to account ourselves to the public. At the time of the debate, Mr CHEONG was out of town on a business trip to Europe. He made repeated long-distance calls to me and asked me if I had already prepared my speech. I read over to him my speech during each of our telephone conversations and he said he wanted to add his own views and that is to ask the Government to reveal the schemes of control to the public. Since then, as Members are aware, the document containing the relevant information is no longer classified. Now everybody can have access to that document. We were concerned with the increase of electricity charges, not only because we were manufacturers but also because we had concern for the public. Since then, I have become acquainted with Mr Steven POON. He was working for China Light and Power and Mr CHEONG and I had a meeting with the directors of that company. Mr POON said a moment ago that China Light and Power and Hong Kong Electric had not increased charges for over eight years. This was not due to the efforts on the part of Mr CHEONG and myself. I felt that the companies concerned had the public interest in mind and therefore made an important decision to invest in coal-fired generating plants. Hence, they had no need to increase charges for over eight years. This was the result of their success in company administration.

As for the present decision by the Executive Council, in principle the scheme of control agreement with China Light and Power is for 15 years. When we in the Executive Council considered this matter, we had taken into account the Hong Kong economy, politics, social development and the public interest. We had given the matter consideration before we reached this decision. It was not an instance of collaboration between the Government and the merchant houses nor was it an instance of "protecting British interests" as one Member has put it. I believe that the Member might not have realized that the investor that holds the majority stake in China Light and Power is Exxon, a United States company. These companies are also listed in Hong

Kong and are Hong Kong companies. If this is labelled "collaboration between the Government and the merchant houses", I feel that the wording is too strong and might mislead the public. Hong Kong is now in a special political environment which cannot be found in any other countries or places. We have to face the 1997 issue. Undeniably, to investors, the 1997 issue has cast a "shadow" over the investment scene. Under this "shadow", an investor will have to ask itself how much risk it is prepared to take and how much profit to expect. What will Hong Kong become after 1997? Will it be worth making substantial investments? We need to take long and careful deliberation over these issues. For those who make such huge investments, can we say that they have no confidence in Hong Kong? But this is the truth. When deliberating on the scheme of control for China Light and Power, the Executive Council, in coming to the present decision, could be said to have discharged this function honourably and can face and account itself to this Council and the public. I am of the view that this Council should undertake a comprehensive study into all these questions. The views of this Council are very important. But so are the views of the public. But if people think that the Executive Council in making its decision to permit the power companies and the two bus companies to increase their charges or to over invest is apt to do it in a very hasty manner, then people have viewed the Executive Council in a wrong light. As an Executive Councillor taking the floor in this Chamber, I would have been ashamed to face this Council if I had done something wrong to the people. I would have felt that I had been unworthy of appointment by the Governor to the Executive Council.

Lastly, I would like to talk about the performances of the two power companies and the two bus companies. Today we are debating the schemes of control for these companies. Please note that the performances of the two power companies in the past few years should be commended, judging from world standards. It is not easy to maintain the same rate of charges for eight years. They have contributed a lot to the economic development of Hong Kong. If one has been to Mainland China, one will have realized how painful it could be without electricity. If one opens a factory, one will have known how painful it could be without electricity. The Hong Kong public are enjoying the services of these two power companies and instances of power failures are rare -- a first class by world standards. I am not arguing the case for the two companies but this is something that the people of Hong Kong are seeing.

As for the two bus companies, we have heard many criticisms of the services provided by the China Motor Bus Company. The Executive Council is very concerned with this and has paid much attention to the future role the two bus companies will

play in the transport infrastructure of Hong Kong. I believe that we will have to re-consider their applications and the schemes of control every two years. Anyway, as Legislative Council Members, we should exert our best efforts to work for the people of Hong Kong. Whether it be the two power companies or the two bus companies, if there is anything wrong with them, we should express our opinion. Not only should we express our views but we should also bring pressure to bear to ensure improvement. Of course, nothing is perfect but I feel that if we have tried our best, then we can account ourselves to the people here.

MRS SELINA CHOW (in Cantonese): Mr Deputy President, first of all I would say that I do not know whether I should feel amused or bemused having heard so many people describe today's debate as a struggle between different camps or factions in this Council. I am not the spokesman of the Co-operative Research Centre; but as a member of the centre I would consider such a reference a compliment. To regard the Co-operative Research Centre as an opposing party to the United Democrats might have been, I would say, an overestimation of the influence of the centre. Not to mention that we do not have such an intention, but even if we have, it will be beyond our ability to do so. In response to the Honourable James TO's query as to my position on the motion -- Mr TO has been very concerned about me; he specifically mentioned my name in his speech -- I would like to tell him that I speak not because of his urging; long before he mentioned my name I had already registered to speak on this motion. But in any case I would like to thank him for his concern and care.

I have listened very carefully to every Member's speech and come to notice that most of us seemed to have forgotten one very fundamental point, namely, we should confine our remarks to the motion of the debate and under no circumstance should we digress from it. A while ago the Honourable Frederick FUNG raised one very important question as to whether the Honourable LAU Chin-shek's motion amounted to an interference in the commercial business between the Government and the public utility or public transport companies. To put the question in another way, Mr FUNG would like to know whether Mr LAU intended to interfere in the negotiations between the Government and the public corporations on schemes of control and franchise agreements. But unfortunately he was not given an answer. The Honourable LAU Chin-shek failed to address this very fundamental point in his speech. Though he avoided giving a definite answer, the wording of his motion spoke volumes for this intention. In unequivocal terms Mr LAU urges the Government to consult the public on profit control schemes and franchise agreements with public utility and public transport companies

before entering into such schemes and renewing such franchise agreements with the companies. In other words, the Honourable LAU Chin-shek made his intention clear that he would like this Council to urge the Government to consult the public before any agreement of this nature is reached. This is completely different from consulting the public on profit control schemes and franchise agreements or on the monitoring of such schemes to ensure that they are in the interest of the public.

As a matter of fact, I fully support public consultation. This is the obligation of every Legislative Council Member regardless of the way in which he or she was returned to this Council. I am ready to support this motion, be it couched in terms like "consult" or "seriously take account of the views of". I also agree with some Members as to their suggestion of introducing a mechanism to facilitate this Council's monitoring of public utility companies. Yet I find it hard to accept a consultation exercise every time before a control scheme or a franchise agreement is entered into. To make public negotiations between the Government and the public utility companies would be tantamount to stripping the Government of its rights and obligations in negotiating for the public; and any attempt to shift these responsibilities to a public forum is simply not practicable. Should that be the case, I believe no government would be able to discharge effectively its duties as the people's representative in commercial negotiations with public or private companies. It is with this conviction that I support the Honourable Stephen CHEONG's amendment. I also hope that my words will allay the anxiety of some of my colleagues, the Honourable Howard YOUNG in particular, as to the possible misinterpretation of their votes. Mr YOUNG has indicated that he would abstain from voting in order to show his independent identity as a member of the Co-operative Research Centre. But may I urge Mr YOUNG, and other Members also, to cast a vote which they think will truly reflect their position on the motion?

MR ERIC LI (in Cantonese): Mr Deputy President, I am glad to have the opportunity to discuss this matter here. I would like to briefly point out that right from the formation of public utility and public transport companies, many members of the public have voiced their opinions in regard to the operation of these companies. Some of these are voiced within the constitutional framework, such as in the various committees of this Council. But most of these are expressed outside the constitutional framework. Because Hong Kong is a place with advanced information technology and there is freedom of speech, voices within or outside the constitutional framework are fully reflected by the mass media. The Government and Legislative

Council Members cannot say that they have never heard of such voices. For a responsible government, it would have given much attention to these voices. No matter whether these public utility companies and the Government are willing or not, they are all the time subject to joint monitoring by the people, the mass media and the Legislative Council. Voices of dissatisfaction with individual public utility companies or corporations have never ceased. This issue hinges on whether the Government has paid sufficient regard to opinions already expressed and whether it has any intention to strengthen monitoring. The solution to this problem does not lie in incorporating the voices outside the constitutional framework into the said framework through a consultation procedure. Still less does it lie in listening to those voices that are louder. The result is clear. There are over 10 public corporations but several million users. I believe that in presentday society nobody would on his own initiative seek to increase the profits of these companies. I am not insulting the intelligence of the people but I have the firm belief that Hong Kong people are clever in dealing with matters of personal concern.

Originally, I did not intend to speak on this issue because I felt that we could not solve this problem by just holding a debate. Prior to debate, we should look at what we actually have done in this Council and whether we have done our part. We have an Economic Services and Public Utilities Panel but it has never called for an overall review during the present term of this Council, nor has it made a request for another monitoring channel. If these proposals had been submitted, I would have given my full support. But since we have not even done this in the Legislative Council, it would be quite useless even if we voice our views 100 times. At first I did not intend to speak. Then I wished to participate in the debate. It was before Mr Frederick FUNG spoke and made his analysis. I am glad to hear what Mr FUNG has said. Before his speech, I personally felt that this debate was chaotic. I fully support the argument that there should be an overall review on policy and there should be a regular review, say, every 10 years. I also agree that there should be a strengthening of monitoring or that there should be a representative body to do the monitoring. This is the wish of the people and I find that such an approach is correct, regardless of whether there is consultation or not. After explanation of his motion by Mr LAU himself, I still find that its connotation is way above existing policy and has intruded into the operation of the companies concerned, as pointed out by Mrs Selina CHOW. If there are regular public consultation exercises which would interfere with business activities, I tend to agree with Mrs Miriam LAU that there will virtually be many practical difficulties. I therefore find it difficult to support Mr LAU Chin-shek's motion. I am not prejudiced in favour of any party or

motion. I only feel that I cannot support Mr LAU's motion and therefore I speak out. I would support the motion as amended by Mr Stephen CHEONG.

I feel that people who have elected representatives to the Legislative Council cherish the hope that where it is practical under the circumstances they will themselves perform and regulate their external business activities and not to consult Members of this Council on the same matter at every turn, such as the signing of agreements. I support Mr Stephen CHEONG's amended motion as the first step and I hope that the second step which is to hold open consultation on the regular overall review on policy and to strengthen monitoring can be started soon. These proposals should be followed up on by the Economic Services and Public Utilities Panel. This will be beneficial to the people who will have then tasted the fruit of having participated in the election. I hope that the Legislative Council can be given a chance to win the confidence of people through a diligent effort on its part.

With these remarks, I support Mr Stephen CHEONG's amendment.

MR SZETO WAH (in Cantonese): Mr Deputy President, I have applied for leave from the hospital to attend this meeting to vote on this motion because I do not want to see some people treating the Hong Kong public as "fools". They are trying to damage people's rights and interests by means of a stroke of legerdemain. I therefore have to rise from my sick bed, attend this debate and cast my vote.

Mr Stephen CHEONG's amendment motion uses the words "seriously take account of" to replace the original "consult" in Mr LAU Chin-shek's motion. Do not underestimate the replacement of the original word. I feel that the words "seriously take account of" are the eyes of a dead fish while the word "consult" is "real pearl". But if "seriously take account of" are used to replace "consult", it will mean that the eye of a fish is used to pass off as a pearl. What does it mean by "seriously take account of"? It means that negotiation can be conducted behind closed doors and dealings be made under the table. "Seriously take account of" is to be performed by the Government. If the Government says that it has seriously taken account of the views then that will be final and it can ignore all other views in total disregard of the public interest. This could be a totally opaque process and could be one in total contempt of this Council and the public.

On 9 August this year, Mr Stephen CHEONG, as the then convenor of the OMELCO Economic Services and Public Utilities Panel, wrote a letter to Mrs Anson CHAN, the Secretary for Economic Services. He pointed out that it would be beneficial to

consult the public and the Legislative Council during the period of negotiation in respect of provisions relating to certain companies and that before any final decision was reached by the Executive Council, there should be an opportunity for the Legislative Council to express its opinion. In this letter, the word "consult" was expressly used in black and white. Why is it that today, three months later, Mr Stephen CHEONG has changed his mind and avoiding the use of the word "consult" he has preferred to use the words "seriously take account of"? Things would not happen for no reason at all. I would very much like to know the cause of Mr CHEONG's change.

According to a press report, Mrs Selina CHOW and Mr Edward HO who have just joined the Executive Council have said that the scheme of control agreement reached between the Government and China Light and Power is acceptable. They have been in office for less than half a month and have attended no more than two meetings. Have they "seriously taken account of" all views? If not, why have they considered it to be acceptable? If they think they have already "seriously taken account of" all views, could they really have done it in less than half a month? If they treat this as having already "seriously taken account of", would it not be like child play or joking?

Mr LAU's original motion proposes to "consult". It is a completely different matter and a completely different process. Documents will have to be made public and there will be a prescribed period for consultation whereby people are encouraged to express their views. This Council will then have to hold a debate or a public hearing. The companies will be subject to examination. Views collected through the consultation process will have to be measured against the Government's future decision to see if there is any discrepancy. This will be a test of whose interest the Government is according the position of foremost priority. What is there to "seriously take account of" if there is no consultation and no views collected? It will be only self-opinionated or dogmatic consideration and not "seriously take account of". If the word "seriously" cannot be dispensed with, it will be only in the sense of "seriously dictatorial". If open consultation is to be feared, what point will there be in talking about democracy and openness? As the name implies, public utilities are closely related to people's daily activities. Why then can this Council and the public not be consulted in this regard? A moment ago, a Member queried the open-mindedness of the United Democrats of Hong Kong. The United Democrats are open-minded so much so that they will listen to the views of the six million people of Hong Kong. Their open-mindedness is not limited to listening to part of the views of this Council. I hope that Members of this Council should use this as the criterion to measure open-mindedness.

Mr Deputy President, I am of the view that Members of this Council who have an interest in any of the public utilities subject to schemes of control should abstain from voting on this motion. If an interested Member has a public conscience he should be wary of suspicion and abstain. Some have mentioned confrontation. If it is for the interest of the public, we must go ahead and do it and care nothing about confrontation.

Mr Deputy President, I support Mr LAU Chin-shek's motion and oppose Mr Stephen CHEONG's amendment.

MRS RITA FAN (in Cantonese): Mr Deputy President, thank you very much for giving me the chance to speak. Initially, I did not intend to speak today. Before I came here today, I just wanted to listen to my colleagues' valuable opinions so that I could increase my knowledge. But now I would like to rise to say a few words.

First of all, I agree to what the Honourable Allen LEE said. Being an Executive Council Member, I considered the case of China Light and Power Company Limited with great care and came to the final decision that China Light and Power, in principle, should continue its operation because this will do good to Hong Kong's economic development, social stability and the public. We should not forget Hong Kong's long-term needs and interests just because of some current problems and political consideration. I also agree to the Honourable Stephen CHEONG's amendment, that is, to seriously take account of the views of the Legislative Council and the public. I think it would be too categorical to assert that the Hong Kong Government and the Executive Council do not know the views of the public and the Legislative Council. Even though I have not been given any papers, I understand very well that I, as a consumer, am no different from other consumers. Therefore, it will be appropriate to collect and "seriously take account of" public views but I doubt whether a territory wide referendum or other methods will be the best ways to take account of public views.

Apart from making clear my standpoint, I have risen to speak because the Honourable SZETO Wah, whom I respect most, queried how some of our colleagues could have arrived at a decision just within half a month. I do not know how they arrived at the decision. Given that there are so many people here and everyone has his or her own reasons, it is unlikely that we can arrive at a decision within a short time. This Council is a democratic Council and there should be the spirit of democracy here.

The spirit of democracy means to respect different views. We should not stick labels on people. Nor should we be afraid to be labelled. If we believe something is right, we should go ahead and do it. I fully agree to what Mr SZETO said: "Even though there are tens of thousands of people, here undaunted I go". If I have done something wrong, I will step forward and accept the responsibility. But we should not suspect others' motives and wonder aloud behind their back what they are up to. Why cannot things be dealt with in an open and above board manner? Why cannot we step forward to speak? Why do we put such "assumed or presumed" blames on others? I do hope that we will not do this and that I, for one, will not do this because this will mean disrespect for democracy and other colleagues. I do hope that all of us in this Council are working in the interest of the people of Hong Kong but not according to our personal likes or dislikes or in our own interest. Even though we have different views, it is a healthy phenomenon. But it is not necessary to suspect others' motives or eschew what we think we should do to avoid suspicion.

SECRETARY FOR ECONOMIC SERVICES: Mr Deputy President, I have listened very carefully to the views which have been expressed by Members. I should like to respond to some of these in greater detail, but before I do so I should like to say at the outset that the Administration fully accepts the need to take account of the views of this Council and of the public and indeed does so.

All Scheme of Control Agreements have been published in English and Chinese since 1982. The public and Members of this Council are free to comment on them at any time. During the lifetime of an agreement there are many opportunities to obtain and consider public feedback through OMELCO Members, district boards, the Consumer Council, the media and other representative bodies. My colleague, the Secretary for Transport, will elaborate more fully on the ways in which the views of the public help to guide the planning and provision of transport services.

In seeking to monitor the operations of utility companies, it is important that the companies remain directly accountable to their own consumers, for we believe that this is the best way of ensuring that they keep up to scratch. Most utility companies already have well-established and efficient procedures for handling complaints. At the request of the Government the two power companies, the Hong Kong Telephone Company and the public transport operators have agreed to strengthen their channels of communication with consumers by establishing Consumer Liaison Committees. The feedback from these committees will undoubtedly provide a further valuable insight

into public perceptions of the services in question.

A number of Members have expressed the view that it would be desirable to set up an advisory body to oversee the monitoring of franchise and scheme of control agreements with the public utilities. Mr Deputy President, the Government is always ready to look into ways of strengthening our monitoring procedures. But the Government cannot abdicate its responsibilities under the agreements to ensure continuing reliable service to consumers, nor should it. Further I personally foresee on a practical basis considerable difficulty in establishing a cost-effective body capable of effectively monitoring all of the very wide range and complexity of services now covered by franchises and scheme of control agreements.

We will nevertheless consider Members' suggestion carefully to see whether our current network of advisory bodies needs to be strengthened in this aspect.

It may be helpful if I now say a few words about our general philosophy with regard to the role of franchises and scheme of control agreements in the provision of services to the public. In principle the Government believes that where the private sector can provide services it should be allowed to do so with the minimum of interference. As the Financial Secretary said last week we also believe strongly in encouraging competition in the delivery of public services. Experience shows that where market forces are permitted to determine the scale and quality of services and the price at which they are made available, the public almost always benefit by being offered a wider range of services at lowest prices.

But there are situations in which market forces alone cannot guarantee that an adequate level of service at a reasonable cost is available to everyone who needs it. This is where the granting of monopoly rights or franchises can be an important tool in the achievement of policy objectives by imposing upon the franchisee obligations which he must fulfil in exchange for an exclusive right to provide the service in question. Typically such obligations will include:

- a requirement to meet the full demand for the service even those sectors which may not be economically viable;
- the need to meet certain minimum standards of operational efficiency; and
- the requirement to obtain government approval for the price charged to

consumers.

Each SCA and/or franchise arrangement is tailored to suit the particular circumstances of the company concerned and is subject to regular review.

Today's motion refers to both "franchises" and "profit control schemes" but it is important that the distinction between the two is clearly understood. When the Government awards a franchise to a particular company it grants to it an exclusive right to provide a particular service for a fixed number of years subject to the company fulfilling the sort of obligations I have just described. In this way the Government seeks to safeguard the interests of consumers.

Sometimes the terms of that franchise will embody a scheme of control (or profit control scheme) but this is by no means always the case. For example the ferry companies have franchises but no scheme of control, whereas the two bus companies are subject to schemes of control as part of their franchises.

The power companies, on the other hand, do not enjoy an exclusive franchise -- there is nothing to prevent a competitor setting up a business to generate electricity anywhere in Hong Kong. In practice however, economies of scale, land constraints and the substantial up front investments involved are likely to militate against a proliferation of power companies. As the two existing power companies enjoy de facto monopolies in the geographical areas which they serve, the Government has entered into scheme of control agreements with them in order to ensure that a proper balance is struck between the interests of consumers and shareholders and that there is an agreed basis for determining maximum profit levels.

The Government takes seriously its responsibilities to monitor the activities of public utilities. It does so through careful scrutiny of the financing plans which must be submitted by the company, through regulation of profits and approval of tariffs. But in administering such agreements, the Government must have regard to consumer interests in the widest sense. Too often, there is a misconception that the interest of the consumers lies solely in the maintenance of low fares and tariffs. But this cannot be the only criterion by which to assess the effectiveness of such agreements. It makes no sense at all to force the providers of public services to keep prices below what is necessary to cover their costs and pay a reasonable return to their shareholders. As experience overseas has shown, over zealous regulation and intervention in the setting of prices can have disastrous results. In the face

of declining returns shareholders become increasingly unwilling to invest in necessary plant and equipment, service standards drop and the consumer loses out.

As a government we must take a long-term view of community interests. If we want to see the private sector continuing to play its current major role in the provision of public services then we must recognize that such companies must be allowed to earn reasonable profits in order to be able to attract the continuing investment from shareholders necessary to ensure that high standards of service are maintained. Declining private investments inevitably means that the burden of keeping essential public services operating falls increasingly on the taxpayer to the detriment of social and infrastructural programmes.

One of the essential features of franchises and scheme of control agreements is that they are granted for a fixed term at the end of which the Government reviews very carefully whether circumstances still warrant the continuation of such rights and if so on what terms. In carrying out this review, we take very seriously the views of this Council and the public.

I should now like to deal more specifically with the power companies. The Administration has just completed a round of negotiations with the China Light and Power Company on the terms under which its scheme of control agreement should be renewed. These negotiations were protracted and tough: both sides had their concerns and perspectives and a balance had to be struck. I refute categorically the allegations by one Member that the Administration sought to protect the interest of a British company at the expense of consumers' interests. Neither I nor my staff who were involved in the long and hard negotiation deserve this aspersion on our integrity. Furthermore, as Mr Allen LEE has pointed out it is factually incorrect to describe CLP as a colonial British company. CLP's power generating plants in fact are 60% owned by Exxon, an American company whilst China Light and Power is of course a publicly listed local company. I would stress also that the scheme of control agreements with the power companies are entered into by them on a purely voluntary basis. Without them the Government would have no right to involve itself in the business plans of the companies or to approve their tariff level.

Last Monday morning I and my colleagues in the Economic Services Branch briefed Members of the OMELCO Economic Services and Public Utilities Panel in detail on how the existing scheme of control agreement was administered and on the background to and outcome of the negotiations. I explained specifically why we felt that the

current scheme of control agreements has worked well:

-- During the course of the current and previous SCAs, the companies have invested over \$38 billion in asset and will spend a further \$17 billion in the next two years.

-- Tariff levels, which compare favourably with those charged in both Europe and the region, have only increased by 12% on average over the past 10 years compared to a 91% increase in the Consumer Price Index.

-- In real terms, the cost of electricity has fallen over 40% in 10 years.

-- Hong Kong's electricity supply is one of the most reliable in the region with very high levels of technical and thermal efficiency.

I also emphasized the vital importance of ensuring continued investment in the power supply industry given that demand continues to increase and that the current investment climate is not altogether favourable. Hong Kong's international credit rating was downgraded from A2 in 1989 and is now A3, the same as Malaysia, but below that of many of our competitors such as Thailand, Singapore and Korea.

Mr Deputy President, let me stress that the Administration had conducted these negotiations conscientiously and with the interests of consumers very much in the forefront of our mind. We were certainly aware of the public concerns relating to this particular SCA, many of which have been repeated during this debate. I would like to deal with these very briefly.

First, there is the concern that the return on investment permitted under the scheme is too high and that it is "guaranteed" irrespective of the actual performance of the company. As I pointed out to Panel Members on Monday although the current SCA provides for maximum levels of return of 13.5% on assets funded by borrowings and 15% on assets funded out of shareholders' equity, in practice due to various compulsory deductions for interest on loans and so on the actual return received by Exxon/CLP shareholders has averaged only 11% over the period of the current SCA. This level is somewhat below that of other public utilities which are not subject to regulatory control and we do not believe it to be excessive, particularly having regard to the fact that electricity related assets have life spans of 20 to 30 years, much longer than in most industries.

Another concern of which we were aware was that by linking the rate of permitted return to the average value of net fixed assets the SCA appears to reward over-investment. I believe this concern is misplaced for, under the terms of the agreements the companies are required to justify to Government in great detail the assumptions behind their demand forecasts and the development plans they consider necessary to meet that demand. These plans are very carefully scrutinized not only by government officials, but also by independent overseas consultants to ensure that the most cost-effective and economical generating plan is selected. Nevertheless, as a further safeguard the new SCA will incorporate amendment which help to ensure that assets are not replaced prematurely and that alternatives such as refurbishment to extend the life of assets are fully considered.

We also considered whether the basis of assessing profits should be changed but concluded that in the light of experience and actual performance, the present basis remained appropriate. An alternative such as price capping by reference to the Consumer Price Index as suggested by one Member would certainly not have resulted in a 40% reduction in the real cost of electricity.

Another area of public concern which we reflected to the companies was the environment, given that emissions from power generation are thought to be a major contributor to the so-called greenhouse gases which are linked to global warming. The power companies are subject to Government's environmental controls such as the Air Pollution Ordinance. As well as being subject to the provisions of this Ordinance the power companies must obtain a licence to operate. This licence generally imposes more stringent conditions on the companies than are imposed by the Ordinance, such as the need to adopt the best practical means to minimize emissions.

Under the terms of the new SCA they will also be required to propose strategies for reducing the peak levels of demand for power and restraining growth in demand by energy saving thereby putting off the need to bring new generating plant into operation.

Mr Deputy President, I have touched on only some of the issues covered during the negotiation with the companies. But I hope the examples I have given serve to illustrate that far from being inert as suggested by one Member the Administration has gone to considerable length to ensure that the concerns of the public and Members of this Council have been taken fully into account.

In so far as the Schemes of Control governing the power companies are concerned, I believe that the records speak for themselves. I seek neither to defend the companies nor to denigrate them. Of course any system can always be capable of improvements but we must be wary of introducing changes simply for changes' sake. As I have pointed out earlier, there is provision for regular reviews during the tenure of the agreement. The Administration will of course continue to give full weight to public comments and any changed social, financial or economic circumstances. We will not hesitate to make changes where these are clearly in the public interest.

Thank you, Mr Deputy President.

SECRETARY FOR TRANSPORT (in Cantonese): Mr Deputy President, to make it easier for Members to choose in an objective way between the motion and the amendment, I shall speak in Cantonese from my draft which is in English.

90% of our citizens rely on public transport. Of the 9.7 million public transport trips made each day, some 38% are on franchised services. Thus, while franchised services play an important role in our public transport system, they do not have a monopoly. In many areas, they have to face competition. As I have said many times in this Council, Hong Kong boasts a transport system with a wide range of choices at reasonable fares without government subsidy. For instance, the average fare for a 5-km bus trip is \$1.70; the average fare for a Hong Kong and Yaumatei Ferry cross-harbour trip is \$2.60 and only \$1.20 on the Star Ferry. These surely compare most favourably with fares charged in other major cities.

Because of the importance of public transport including those under franchises in people's daily lives, the Administration has always adopted a policy of active public involvement in monitoring these services. The Transport Advisory Committee (TAC) is a powerful watch-dog. The TAC has all along been closely monitoring the operation of local transport services, the quality of service and particularly fare increases. Ten years ago the TAC set up an independent Transport Complaints Unit which is directly responsible to it. This Unit collects views from the public, receives complaints and assists the TAC in tendering independent advice to the Administration. During the past three years, the number of complaints received by the Transport Complaints Unit has been declining from 5 300 to 4 400.

I should like to enumerate the reasons for franchised transport services. There are four.

First, it enables the Government to manage and co-ordinate effectively the operation of competing transport modes. Because of our population density and limited road space, we must make the best economic use of our transport infrastructure.

Second, it enables effective co-ordination to help avoid duplication or wasteful use of resources. This ensures a balanced network so that the needs of people in the remote areas such as Tuen Mun and Tin Shui Wai are as well served as those in the urban centres.

Third, economies of scale and cross-subsidization made possible by a franchise benefit the travelling public. This helps maintain a majority of socially desirable but loss-making routes and services. As a matter of fact, 55% of the routes need cross-subsidization from other routes.

Fourth, like other public utilities, a franchised transport service provides the investors with a stable environment to raise capital to enhance bus and ferry services to meet future demands. For this reason, I believe that the franchise system is useful and beneficial to a certain extent.

There are six franchised public transport companies governed by two Ordinances. These are the four bus companies which operate under the Public Bus Services Ordinance and the two ferry companies under the Ferry Services Ordinance. Only two of the six companies, that is China Motor Bus and Kowloon Motor Bus, are in addition governed by schemes of control.

The current monitoring system involves the public in many ways. All major transport proposals are put to the TAC for scrutiny and advice. In addition, the Transport Complaints Unit analyses and acts on public suggestions and feedback in helping the TAC to give effective advice.

Secondly, transport officials attend district board meetings regularly and consult members on a wide range of transport issues, including public transport fare structure, service development, and co-ordination between different modes.

Thirdly, in addition, as the regulator of public transport services, the Transport Department conducts studies on service adequacy and co-ordination, including surveys on customers' satisfaction and preference.

At the central level, the Administration meets with the OMELCO Transport Panel regularly and keeps Members closely informed of all major issues and developments on public transport. Their views are taken fully into account and results reported at subsequent meetings. And of course questions and debates raised in this Council provide further avenues for public views to be voiced and reflected.

Some Members may not fully appreciate the extent of public involvement in the planning of services. For example, each of the franchised companies must produce a five-year plan which is rolled forward annually. Details are discussed at district boards. Matters of direct concern to commuters are covered fully, down to such details as the location of bus stops and the frequency of services. These plans are not finalized until the relevant district boards have been consulted and their views taken fully into account. Where differences of opinion exist between a company and the district boards, a ruling is made by the Administration. Full weight is always given to the needs of the public when deciding on the final plan.

Here I should like to respond to the allegation made by some Members to the effect that in letting the bus companies expand their fleets in order to boost yearly return we have been over-indulgent towards them. As a matter of fact, this is a misconception. Of course, we cannot categorically rule out such a factor, but the Administration and the TAC are closely on the watchout against such a trend. During the past several years, we have indeed witnessed an expansion of the KMB fleet. The population of the New Territories has increased from 1.9 million to 2.4 million in the past four years. To provide services for the New Territories, KMB need to increase the number of routes from 185 to 280; two-thirds of the 95 added routes are to cater for the new towns. Besides, we have been regularly considering how to trim the size of KMB's present fleet. For example, we have been experimenting with a scheme for passengers to switch to connecting routes near the Shing Mun Tunnel. We have also been studying the feasibility of cancelling certain routes in Kowloon and the New Territories so as to trim the growth of the fleet. Of course, the district boards have objected to this; yet they would not want fare increases. This is self-contradicting. The Administration must strike a balance. Public interest will be an important factor in the equation.

A welcome development in recent months has been the establishment by some public transport operators of customer liaison machinery. Passenger liaison groups were set up by the KMB and the Hong Kong and Yaumatei Ferry Company in 1990. These have attracted active participation by District Board members. All other transport operators will introduce similar groups within the next few months, to foster closer liaison and better communication between the customers and the companies.

I should now like to say something about the profit control scheme applicable to the two bus companies. The need for schemes of control has been fully explained by the Secretary for Economic Services earlier. In terms of provision of transport, if passengers fail to get efficient service it will be a loss suffered by the public. The Administration therefore must strike a balance between the conflicting interests of the provider of transport services and the public. It must on the one hand ensure the level of service quality of each route while on the other hand ensure the continued confidence of investors to invest in these transport companies. It must not allow an erosion of service quality which would arise from an attempt by the carriers to economize. There we also seek to explain to the public the manner in which such schemes are operated. For example, in 1989 all the district boards were briefed on the considerations underlying the terms of CMB's and KMB's profit control schemes. We received very helpful and constructive suggestions. One suggestion on awarding new bus routes through competitive tender has been implemented recently. As we are aware, Citybus' new routes last August were awarded through competitive tender.

To return to the subject of bus companies, many speakers before me have said that there is need for a review of the profit control scheme. I would agree with this in principle. Personally, I am also dissatisfied with the operation of this scheme. Indeed a review is necessary. For instance, is there a need to clarify the matter of the development fund? Is there a need to reconsider the rate of return? I am sure this factor will be considered and reviewed. At the same time the Administration will conduct exchanges with this Council and the public.

I should like to explain fare increases. Many people would ask why the companies concerned are allowed to raise fares and charges. As we are aware, the companies employ staff who get paid salaries to meet their own expenses. Their salaries need to be increased too. They must not be exploited by imposing a freeze on their salaries. The two bus companies need very substantial manpower resources in order to operate. Buses need drivers and cleaners. They differ from the two power companies. It would be unfair to compare the bus companies with the power companies. Over 50% of the

increased fares during the recent years went to salary or wage increases. The fare increases by the China Motor Bus Company have been even steeper because there are fringe benefit and pension schemes to finance. This is an exception and will not set a precedent for similar steep increases in the future. It is certain that we will regularly and closely monitor the fare increases of the bus companies. It is also certain that we will consider the fare increase applications by taking the public interest into account. However, we regret that we cannot openly consult the public because certain commercial secrets of the companies concerned, which cannot be divulged, will come to light in the course of open consultation. However I am sure that the TAC possesses detailed information of the companies concerned which will enable it to exhaustively consider the applications for fare increases before submitting same to the Executive Council for a decision. In making the decision, I am sure the public interest will be the main factor that will be considered. Similarly, the extension of a franchise or the award of a new franchise also involves commercial interests of one sort or another, which cannot therefore become the subject for open consultation. As the Honourable Miriam LAU has said, it will be impossible and indeed impracticable for us to conduct open consultation at every turn as this will delay the decision-making process. But as spelt out by the Honourable Stephen CHEONG in his motion, we will certainly take full account of the views of this Council and the public in order to bring about further improvements to public transport services .

But we must again bear in mind that only two of the six franchised operators are governed by schemes of control, and that the six franchised operators carry only 38% of public transport passengers. Public transport is by no means a closed shop. Market forces encourage flexibility to promote efficiency and innovation. This has been demonstrated in recent years by the introduction of residential coach services and more green mini-bus routes to supplement the main bus services.

Further, in recent years, rail transport is rising rapidly in importance. Its market share has already increased from 0.7% in 1978 to 28% this year. It is likely to grow significantly in the years ahead. This provides powerful competition for the franchised operators.

The introduction of more healthy competition is also evident in the tendering of new bus routes. The first route from Central to MacDonnell Road was launched in August. We hope to introduce more such services to meet demand, including upmarket services for passengers who may otherwise use taxis or their own cars, to lessen

congestion on the roads.

Finally, as I mentioned earlier, at the last two meetings, the TAC discussed in detail the current machinery for public involvement in public transport services and endorsed the approach taken by the Administration.

In sum, Mr Deputy President, the Government has in place a detailed and well-organized system for public participation. I hope that in the next few years monitoring in this respect will be further stepped up in order to effectively bring into play market forces as well as competition so that the companies and transport operators will be able to enhance efficiency, put themselves on great alert, and improve their services. It is hoped that this will happen in the next few years. Thank you.

FINANCIAL SECRETARY: Mr Deputy President, I am in sympathy with the aims behind both of these motions. I believe it is common ground that wherever possible competition should prevail, and that through competition fair prices will be obtained. I think it is also common ground that for some services/facilities, Hong Kong has found franchises a most successful solution. Franchises are appropriate where the level of investment required, or other factors, indicate that free competition may not be obtainable, or may not be the best solution. In many other places outside Hong Kong, Government itself provides such services. In Hong Kong, by contrast, we have managed through franchises to obtain a reasonable compromise between on the one hand a monopoly or semi-monopoly situation and on the other hand some of the benefits of competition and a commercial approach.

It is entirely reasonable to ask -- as both motions effectively do -- that steps be taken to ensure that where franchises exist, and hence competition is less than free, prices are reasonable -- that is to say that undue advantage is not taken of any quasi-monopoly situation -- and to ensure that the service is satisfactory. As has been pointed out, a considerable diversity of arrangements exists -- franchises do not necessarily involve monopolies, nor do schemes of control necessarily accompany franchises, nor vice versa.

The question then is how much further intervention should be brought to bear by either the Legislative Council or the public, or both. This is where the distinction between "taking account of" public opinion (the amendment), and "consultation" (the

original motion) on franchises and schemes of control really comes in. I agree with Mr SZETO Wah that there is a significant difference between the two. Given the complexity of these arrangements, and given the secrecy of many of the facts involved, a formal requirement for detailed consultation does not seem to me a practical or sensible proposition. But "taking into account" the views of this Council and the public is entirely reasonable and indeed desirable.

I will not repeat the many cogent arguments put by Members earlier in this debate as to why the "taking into account" formula is more practical. But in conclusion, I would like to highlight what is at stake here. Private investment in the public utilities and transport companies is massive. The Secretary for Economic Services in her speech mentioned that actual and planned investment by the China Light and Power Company alone is in the region of \$55 billion -- or considerably more than the new Chek Lap Kok airport. Investors are sensitive to any increase in risk -- including risk of public controversy or changes in agreed terms -- or to public disclosure of commercial secrets. It is vital that we do nothing that might cause a deterioration in the investment climate, and as a result shift this massive requirement for funds from the private sector to the taxpayer.

We have to face the hard commercial facts -- investors will not invest if the terms are not reasonable, or if the investment climate is perceived to be antagonistic. Do we want our telephones, our electricity, our bus services to be provided by a government department? Clearly not. But that is what we risk if we go too far in injecting political pressures into these arrangements. This does not mean that we do not have the interests of the consumer at heart -- we do -- but the consumer's long-term interests require a careful, balanced assessment of the level of fares or charges which is adequate to cover costs, plus profit and reinvestment. Artificially low prices equal deteriorating service.

Mr Deputy President, I support the amendment moved by Mr CHEONG.

Question on Mr Stephen CHEONG's amendment put.

Voice votes taken.

DEPUTY PRESIDENT: I find it hard to assess the relative strength of the two voice votes and I would therefore proceed to a division. This procedure requires that the

division bell be rung for three minutes with the division to be held immediately afterwards. While we wait for the three minutes to elapse, I would invite Members to look at the card which is before them as to the voting system and procedure to make quite sure that everyone does vote and votes correctly. We are still in session; so I would ask Members to observe order please.

The three minutes have elapsed and I would call on the Clerk in a moment to switch on the voting system, after which Members will have 30 seconds to vote. Now please proceed.

MR JIMMY MCGREGOR: Mr Deputy President, how should I vote if I am for the amendment?

DEPUTY PRESIDENT: You would vote "yes" if you vote in favour of Mr Stephen CHEONG's amendment.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mr Stephen CHEONG, Mrs Selina CHOW, Mrs Rita FAN, Mr Andrew WONG, Mr LAU Wong-fat, Mr Ronald ARCULLI, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Mr Jimmy MCGREGOR, Mr Peter WONG, Mr Vincent CHENG, Mr Moses CHENG, Mr Marvin CHEUNG, Mr CHIM Pui-chung, Dr K C LAM, Mr Gilbert LEUNG, Mr Eric LI, Prof Felice LIEH MAK, Mr Henry TANG and Dr Samuel WONG voted for the amendment.

Mr Martin LEE, Mr TAM Yiu-chung, Mrs Elsie TU, Mr Albert CHAN, Prof Edward CHEN, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Michael HO, Dr C Y HUANG, Dr Conrad LAM, Mr LAU Chin-shek, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr MAN Sai-cheong, Mr NG Ming-yum, Mr TIK Chi-yuen, Mr James TO and Dr YEUNG Sum voted against the amendment.

Mr Frederick FUNG, Mr Timothy HA, Mr Steven POON, Dr Philip WONG and Mr Howard YOUNG abstained.

Mr Simon IP indicated his presence.

THE DEPUTY PRESIDENT announced that there were 25 votes for the amendment, 19 votes against it and five abstentions. He declared that the amendment was carried.

DEPUTY PRESIDENT: As Mr Stephen CHEONG's amendment has been agreed, we will now debate the motion as amended, that is, Mr LAU Chin-shek's motion as amended by Mr Stephen CHEONG's amendment. Does any Member who has spoken neither to Mr LAU Chin-shek's original motion nor to Mr Stephen CHEONG's amendment wish to speak?

DR CONRAD LAM (in Cantonese): Mr Deputy President, I am sure we all agree that a responsible government should respect public opinion. In particular, if public interests are directly affected, public consultation is a basic gesture of respect. One of the themes of today's debate is "to consult the public openly". If we are to take money from the public, should they be informed? Should they be respected? A Chinese saying has it that: "To take without asking is to steal". We should not excuse ourselves by saying that the public need not be consulted because only a small amount of money will be taken away.

Those directly elected Members who spoke in today's debate did not object to direct public consultation because they understand that if a government or a legislature is to win the support of the public, then the public should be respected. Among those Members who spoke, one mentioned "personal interests". It is a cause for regret that Members who voted had not been given the opportunity to state the number and value of shares they have in public utility companies. It has been argued that public utility companies would be the saviour to tide Hong Kong over the 1997 crisis. I am sure they will not be our saviour if the people of Hong Kong do not pay them. They will not live and die with Hong Kong but only with money.

Mr Deputy President, as regards being open and above board, since we have cheated nobody, why should we be afraid to consult the public if a good anvil really does not fear the hammer.

Mr Deputy President, I support Mr LAU Chin-shek's motion.

DEPUTY PRESIDENT: The only motion before the Council now, Dr LAM, as you know, is

the motion as amended by Mr Stephen CHEONG's motion. Mr LAU, do you wish to reply. You have the right of reply.

MR LAU CHIN-SHEK (in Cantonese): Mr Deputy President and honourable colleagues, I would like to convey my special thanks to Dr Conrad LAM because he said just about all that I had wanted to say.

Before I make my concluding speech, let me first answer a few questions. First of all, I would like to answer Mr Howard YOUNG's question. Taking issue with Members on what they had said about profiteering by public utility companies, Mr YOUNG contended that the 10-plus% permitted returns were reasonable. Mr Allen LEE also said that China Light and Power had not increased charges for eight years and that the company was considerate towards Hong Kong people. I have no intention to take issue with Mr LEE on this point. But to respond to Mr LEE and Mr YOUNG I would like to quote what Mr LEE said on a public occasion. Mr LEE in a forum on "protection of democracy" at Victoria Park in 1984 pointed out that the profit China Light and Power was then reaping had reached profiteering proportions because 15% of the fixed assets of the company was equivalent in value to 40% of the shareholders' equity. From the point of view of a businessman, 40% of the shareholders' equity is regarded as profiteering which, incidentally, is guaranteed. China Light and Power had indeed not increased charges for eight years but it still reaps huge profits annually.

Mrs Selina CHOW asked if my motion had interfered with business operation. Both Mr Howard YOUNG and Mr Frederick FUNG asked the same question. In fact my motion is in the same terms as that in which Mr Stephen CHEONG (representing the Economic Services and Public Utilities Panel) couched his letter of 9 August to the Secretary for Economic Services. Such being the base, could I ask whether Mr CHEONG's letter had also interfered with the negotiation between the commercial sector and the Government? We should review the profit control scheme. But if we object to any proposed hefty increases in permitted returns before the signing of any scheme of control agreements, will we be interfering with the negotiation between the Government and the commercial sector? Why had Mrs CHOW not directed this same query at Mr CHEONG? I do not know whether Mrs CHOW was a member of the Economic Services and Public Utilities Panel.

DEPUTY PRESIDENT: Mrs CHOW, is this on a point of elucidation?

MRS SELINA CHOW: I want to reply to Mr LAU that I was not a member of the panel.

MR LAU CHIN-SHEK (in Cantonese): In the letter of 9 August that Mr Stephen CHEONG submitted to the Secretary for Economic Services, it was stated that it would be of great help if the public and the Legislative Council would be consulted after the schemes of control agreements for some public utility companies had expired and when negotiations between the Government and the companies concerned got under way. He emphasized that it would be appropriate in all circumstances to let the Legislative Council express its opinion before the Executive Council made the final decision. Did Mr CHEONG get it all wrong in the letter? The Secretary for Economic Services has repeatedly stressed that public utility companies should be guaranteed a reasonable level of profit which will ensure development of services.

DEPUTY PRESIDENT: Mr CHEONG, do you want to intervene on a point of order or on a point of elucidation? We cannot have other interruptions please because we must observe Standing Orders.

MR STEPHEN CHEONG: It is on a point of elucidation, Mr Deputy President.

DEPUTY PRESIDENT: Do you want to give way to Mr CHEONG, Mr LAU?

MR LAU CHIN-SHEK: Yes.

MR STEPHEN CHEONG: I wrote the letter as convener of the panel with the concurrence of all panel members, not as a personal letter.

DEPUTY PRESIDENT: You are strictly elucidating your position, not a point made by Mr LAU Chin-shek, Mr CHEONG. Mr LAU, do continue.

MR LAU CHIN-SHEK (in Cantonese): The Secretary for Economic Services has repeatedly pointed out that public utility companies should be guaranteed a reasonable level of profit which will ensure continuation and development of services. We are not against reasonable returns but profiteering. Could I ask whether compensation for the blackouts due to the negligence of China Light and Power would be paid from its recurrent expenditure? If so, it will then, will it not, be the public who will bear all the cost of the company's negligence? Is this reasonable? The Secretary also said that she would listen to Member's views. But if no information is released, how can we fully express our views? As regards bus services, the Secretary for Transport emphasized that there were various forms of consultation within the district boards. May I know whether pricing was included in the consultation? Mr Deputy President and honourable colleagues, I do not support Mr Stephen CHEONG's amended motion because it will give the Government an "escape hatch", so that its haughty neglect and suppression of the views of this Council and the public can be covered up. As regards the monitoring of public utilities, Members from the United Democrats of Hong Kong are definitely reluctant to play the role of a "convoy ship" to protect the Government. We know clearly that the profit control scheme and the extension of franchises of public utilities are closely linked with the livelihood of the general public. The adjustment of public utility charges will directly affect the public. Public opinion in this regard is irreplaceable. Therefore, only through public consultation will the mechanism of democracy be woven into the legislature and the decision-making process. "To seriously take account of the views of the public" is just a rhetorical phrase. If there is no system of public consultation, the above phrase will just be hollow and meaningless. In fact, public consultation should definitely not be ruled out as it is a prerequisite to "seriously take account of the views of the public". Besides, the Government should not only seriously take account of the views of this Council and the public but also consult them before making any important decisions. We should absolutely not play with words and take advantage out of it. Nor should we dally with public opinion. Therefore, the United Democrats of Hong Kong are clearly against Mr CHEONG's amended motion.

The result of the voting on the amended motion has indicated that we have not been able to muster enough votes to defeat this unreasonable amendment. Yet it does not mean that the demand that the Government consult this Council and the public has not won the support of the general public. Recently the mass media's position is clearly in support of our proposal. Therefore, we will hold fast to our principles and strive to establish a democratic mechanism for public consultation. Almost all

directly elected Members supported this method because public opinion can then be respected. Today's debate is just our first step to fight for the right to monitor public utilities. We clearly see in this step of ours that the profit control scheme needs to be reviewed and we can at least question the Government about the defects of the scheme. Public utility companies can reap greater profit by continual expansion and the public has therefore to pay more. I am sure we will take the second and third steps in the future until the profit control scheme and the decision on extending franchise agreements are brought under the monitoring of this Council and the public. I am sure anybody who intends to stop this will fail in the end. We will not give up our plan simply because of one failure. On the contrary, we will keep fighting until the reasonable rights and interests of the public are guaranteed.

Mr Deputy President, on behalf of the United Democrats of Hong Kong, I would like to sum up and say that we are against this distorted and unreasonable amended motion. Thank you.

MR SZETO WAH (in Cantonese): Mr Deputy President, the result on the computer printout indicated that I did not exist (laughter). In fact, I voted against the amended motion. So the result is wrong.

DEPUTY PRESIDENT: Mr SZETO, unfortunately this is part of the apparatus for the electronic voting system. Once I have declared the result, it is not open to challenge. We will have to look into the system in case there are bugs that have not been found out. But I imagine on this occasion it would make no difference to the final result.

MR SZETO WAH (in Cantonese): Mr Deputy President, I know it would not make any difference to the result, but to me, it would. I have to make clear my standpoint.

DEPUTY PRESIDENT: Mr SZETO, your statement will be in Hansard.

MR MARTIN LEE: A point of order, Mr Deputy President.

DEPUTY PRESIDENT: Yes, Mr LEE.

MR MARTIN LEE: I wonder whether you, Mr Deputy President, should not make this final until Members have got this sheet in front of them because they just cannot tell if their names are properly included.

DEPUTY PRESIDENT: Mr LEE, under Standing Orders as they stand, once I declare the result that declaration is final. Now it may be that we shall have to look more fully into the system to see whether improvements can be achieved, and indeed Standing Orders amended. But as they stand, the results are final. But I take note of your point.

I now put the question to you and that is that the motion moved by Mr LAU Chin-shek as amended by Mr Stephen CHEONG's amendment be approved. For the avoidance of doubt and for the purpose of clarity, I will recapitulate the wording of that motion as amended. "That this Council urges the Government to seriously take account of the views of this Council and the public on profit control schemes and franchise agreements with public utility and public transport companies before entering into such schemes and renewing such franchise agreements with the companies."

Voice votes taken.

DEPUTY PRESIDENT: This calls for a division as I cannot say with certainty which way the vote went on the voice vote. Council will therefore proceed to a division; the division bell will ring for three minutes and the division will be held immediately afterwards.

DEPUTY PRESIDENT: Yes, Mrs FAN.

MRS RITA FAN: Mr Deputy President, could you, for the sake of clarity, kindly repeat the motion that we are voting on?

DEPUTY PRESIDENT: Yes. The motion is Mr LAU Chin-shek's motion as amended by Mr Stephen CHEONG's amendment and the wording of the motion now before this Council is: "That this Council urges the Government to seriously take account of the views of this Council and the public on profit control schemes and franchise agreements with public utility and public transport companies before entering into such schemes and renewing such franchise agreements with the companies."

DEPUTY PRESIDENT: Yes, Mr ARCULLI.

MR RONALD ARCULLI: Mr Deputy President, I wonder whether this might be the right occasion for you perhaps to take note and perhaps consider putting into practice what the Honourable Martin LEE suggested. It is because I notice that on the printout before us the Honourable Simon IP is recorded as being present. I don't know whether he voted. I am quite sure if he wanted to abstain he would have abstained rather than announced his presence to us. (Laughter)

DEPUTY PRESIDENT: I think we cannot have more of this type of comment on the system. The system is there and it is governed by Standing Orders.

When the three minutes have passed, I shall ask Members to operate the system. And I will, exceptionally in the light of the disquiet voiced by Members, not declare the result until the display is there for Members to see. That has its obvious dangers, but in the light of the disquiet expressed by Members and in the certain knowledge that Members will not take advantage of this slight change to the procedure, I will not declare the result until after Members have had time to look at the display.

MR MARTIN LEE: Mr Deputy President, could Mr SZETO Wah be allowed to operate the set of buttons in his next seat?

DEPUTY PRESIDENT: What I would suggest is that Mr SZETO Wah, as soon as the system is activated, presses the Present button and then presses the button for the way he wishes to vote and then tells me how he has voted in advance of the display so that we can be sure that there is no mistake on this occasion. Mr SZETO, it is up to you.

MR SZETO Wah: Yes.

DEPUTY PRESIDENT: The three minutes have now expired. I will ask the Clerk now to activate the system and Members have 30 seconds in which to report their presence and to vote.

DEPUTY PRESIDENT: Mr SZETO, do you wish to tell me how you have voted. It is entirely up to you. It is working then.

MR SZETO WAH (in Cantonese): My vote is just the same as the previous one. But just now when I pressed the "Present" button, the three indicators below the button did not light up.

DEPUTY PRESIDENT: The display is on the board and I will give Members a moment's pause before I declare the final result.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mr Stephen CHEONG, Mrs Selina CHOW, Mrs Rita FAN, Mr Andrew WONG, Mr Ronald ARCULLI, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Mr Jimmy MCGREGOR, Mr Peter WONG, Mr Vincent CHENG, Mr Moses CHENG, Mr Marvin CHEUNG, Mr CHIM Pui-chung, Mr Simon IP, Dr K C LAM, Mr Gilbert LEUNG, Mr Eric LI, Prof Felice LIEH MAK, Mr Henry TANG and Mr Howard YOUNG voted for the amended motion.

Mr Martin LEE, Mr SZETO Wah, Mr TAM Yiu-chung, Mr Albert CHAN, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Michael HO, Dr C Y HUANG, Dr Conrad LAM, Mr LAU Chin-shek, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr MAN Sai-cheong, Mr NG Ming-yum, Mr TIK Chi-yuen, Mr James TO and Dr YEUNG Sum voted against the amended motion.

Mrs Elsie TU, Prof Edward CHEN, Mr Frederick FUNG, Mr Timothy HA, Mr Steven POON and Dr Philip WONG abstained.

THE DEPUTY PRESIDENT announced that there were 25 votes for the motion, 18 votes against it and six abstentions. He declared that Mr LAU Chin-shek's motion as amended by Mr Stephen CHEONG's amendment was carried.

DEPUTY PRESIDENT: We did have one last item of business on the agenda and that was Mr Frederick FUNG's adjournment debate. I understand from Mr FUNG he does not wish to proceed this afternoon.

MR FREDERICK FUNG (in Cantonese): I wish to postpone it until next week.

DEPUTY PRESIDENT: Mr FUNG, I have taken note of your request.

Adjournment and next sitting

DEPUTY PRESIDENT: As there is no further business, in accordance with Standing Orders I now adjourn the Council until 2.30 pm on Wednesday 20 November.

Adjourned accordingly at thirteen minutes past Ten o'clock.

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