OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 21 July 1993

The Council met at half-past Two o'clock

PRESENT

THE PRESIDENT

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

THE ATTORNEY GENERAL

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

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

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

THE HONOURABLE RONALD JOSEPH ARCULLI, O.B.E., J.P.

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

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

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

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

DR THE HONOURABLE LEONG CHE-HUNG, O.B.E., J.P.

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, O.B.E., J.P.

THE HONOURABLE ALBERT CHAN WAI-YIP

THE HONOURABLE VINCENT CHENG HOI-CHUEN, J.P.

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, O.B.E., J.P.

DR THE HONOURABLE LAM KUI-CHUN

DR THE HONOURABLE CONRAD LAM KUI-SHING, J.P.

THE HONOURABLE LAU CHIN-SHEK

THE HONOURABLE EMILY LAU WAI-HING

THE HONOURABLE LEE WING-TAT

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

THE HONOURABLE FRED LI WAH-MING

THE HONOURABLE MAN SAI-CHEONG

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, J.P.

THE HONOURABLE ZACHARY WONG WAI-YIN

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

THE HONOURABLE CHRISTINE LOH KUNG-WAI

THE HONOURABLE ROGER LUK KOON-HOO

THE HONOURABLE ANNA WU HUNG-YUK

THE HONOURABLE JAMES TIEN PEI-CHUN, O.B.E., J.P.

IN ATTENDANCE

MR MICHAEL LEUNG MAN-KIN, C.B.E., J.P.
SECRETARY FOR EDUCATION AND MANPOWER

MR YEUNG KAI-YIN, C.B.E., J.P.
SECRETARY FOR TRANSPORT

MR MICHAEL SUEN MING-YEUNG, J.P.
SECRETARY FOR HOME AFFAIRS

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

MR RONALD JAMES BLAKE, J.P.
SECRETARY FOR WORKS

MR JAMES SO YIU-CHO, O.B.E., J.P.
SECRETARY FOR RECREATION AND CULTURE

MR ANTHONY GORDON EASON, J.P.
SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS

MR GORDON SIU KWING-CHUE, J.P.
SECRETARY FOR ECONOMIC SERVICES

MR DONALD TSANG YAM-KUEN, O.B.E., J.P.
SECRETARY FOR THE TREASURY

MR MICHAEL DAVID CARTLAND, J.P.
SECRETARY FOR FINANCIAL SERVICES

MRS REGINA IP LAU SUK-YEE, J.P.
SECRETARY FOR TRADE AND INDUSTRY

THE CLERK TO THE LEGISLATIVE COUNCIL
MR CLETUS LAU KWOK-HONG

THE DEPUTY CLERK TO THE LEGISLATIVE COUNCIL
MR PATRICK CHAN NIM-TAK

Papers

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

Subject

Subsidiary Legislation *L.N. No.*

Designation of Libraries (Regional Council Area) Order 1993 ..... 273/93

Designation of Libraries (Regional Council Area) (No. 2) Order 1993 ..... 274/93

Immigration (Places of Detention) (Amendment) Order 1993 ..... 275/93

Immigration (Places of Detention) (Amendment) (No. 2) Order 1993 ..... 276/93

Immigration (Treatment of Detainees) (Amendment) Order 1993 ..... 277/93

Immigration (Treatment of Detainees) (Amendment) (No. 2) Order 1993 ..... 278/93

Protection of Women and Juveniles (Places of Refuge) (Amendment) Order 1993 ..... 279/93

Employees Retraining Ordinance (Amendment of Schedule 2) (No. 5) Notice 1993 ..... 280/93

Protection of Women and Juveniles (Amendment) Ordinance 1993 (25 of 1993) (Commencement) Notice 1993 ..... 281/93

Sessional Papers 1992-93

No. 94 — J.E. Joseph Trust Fund Report for the period 1 April 1992 to 31 March 1993

No. 95 — Kadoorie Agricultural Aid Loan Fund Report for the period 1 April 1992 to 31 March 1993

No. 96 — Sir Robert Black Trust Fund Annual Report for the year 1 April 1992 to 31 March 1993

No. 97 — Pneumoconiosis Compensation Fund Board Annual Report 1992

No. 98 — The Fifth Annual Report of The Commissioner for Administrative Complaints Hong Kong June 1993

No. 99 — Report of the Public Accounts Committee on Report No. 20 of the Director of Audit on the Results of Value for Money Audits (PAC Report No. 20)

No. 100— Hong Kong Provisional Airport Authority Annual Report 1992-93

No. 101— The Statement of Accounts for the Customs and Excise Service Welfare Fund for the year 1992-93

No. 102— Report on the Administration of the Immigration Service Welfare Fund from 1 April 1992 to 31 March 1993 prepared by the Director of Immigration

No. 103— Hong Kong Trade Development Council Annual Report and Account 1992-93

No. 104— School Medical Service Board Annual Report for the year ended 31 March 1993

Addresses

Report of the Public Accounts Committee on Report No. 20 of the Director of Audit on the Results of Value for Money Audits (PAC Report No. 20)

MR PETER WONG: Mr President, I table today Report No. 20 of the Public Accounts Committee which has been compiled following the Committee's investigations into matters raised in the Director of Audit's Report No. 20 on the results of value for money audits completed between October 1992 and February 1993.

On behalf of the Committee, I would like to pay tribute to our former Chairman and honourable colleague, the late Mr Stephen CHEONG. Stephen

had served as a member of the Public Accounts Committee since 1981 and he was appointed Chairman of the Committee in the current legislative term in November 1991. Members of our Committee value in particular the guidance and leadership he provided to the Committee as Chairman. His leadership, wisdom and commitment to serve Hong Kong will always be remembered with affection. I am privileged to be appointed his successor, and would like to thank my fellow members for their contribution to the work of the Committee in producing the current PAC Report.

Returning to the Director of Audit's Report No. 20, our Committee has been encouraged by the positive attitude adopted by the Administration towards the Director's recommendations in his Report. We noted that the Controlling Officers responded to the Director's recommendations promptly, and had on the whole been co-operative and open-minded towards the suggestions made by the Director. Of course, this is no reason for complacency; rather, we believe that the Committee, the Audit Department and the Administration should continue to work together closely in the quest for further improvements in cost-effectiveness and efficiency of our public services.

The Director of Audit in his Report No. 20 raised a total of seven issues. In considering the Director of Audit's Report, we noted that the Government had already implemented the recommendation of the Director of Audit on the matter concerning the non-charging of interest on loans to profit-making schools in the Bought Place Scheme. Hence, we did not consider it necessary to investigate further into that particular matter. It is therefore the investigation of the other matters raised in the Director's Report which constitutes the bulk of the PAC Report tabled today.

The Director of Audit also raised in his Report the issue concerning the *ex gratia* compensation for the clearance of the Kowloon Walled City. As at today, our Committee has held two public hearings on the issue, but we have yet to conclude our investigations on it. Hence we have said very little on this subject in the Report tabled today. Instead, we shall report back to this Council our conclusions and recommendations once we have finalized our deliberations on this issue.

Mr President, allow me to emphasize that our function as a Committee is not vindictive or punitive. Our job is to examine with the Administration issues raised in the Director of Audit's Report, to draw lessons from what has been done and to arrive at recommendations for the more efficient use of public funds in future.

Finally, I wish to reiterate that the Committee and the Audit Department will continue to closely monitor the performance of the Government with a view to achieving further improvements in cost-effectiveness and efficiency of our public services. I trust that the recommendations in our Report will be accepted by the Administration.

Hong Kong Provisional Airport Authority Annual Report 1992-93

FINANCIAL SECRETARY: Mr President, in accordance with section 10 of the Provisional Airport Authority Ordinance, the annual report and audited accounts of the Provisional Airport Authority for the year ended 31 March 1993 are tabled today.

The past year has witnessed a period of significant progress in the development of the new airport. I should like to highlight some of the key developments:

— The HK$9 billion site preparation contract to produce the 1 248-hectare airport platform was awarded in late November 1992. This marked an important milestone in the implementation of the airport project. The contract has been awarded on a lump sum fixed price basis and was well within the Authority's budget. So far, some 197 hectares of new land has been formed and progress is well on target;

— To implement its commercial strategy for the main airport support services which are to be privately owned and operated, the Authority has called for, and received, expressions of interest for air cargo, aviation fuel, aircraft maintenance and aircraft catering services;

— Detailed design of the passenger terminal building is well in hand, with the aim of producing a terminal that is both efficient and user-friendly;

— Four consultancies have been awarded for the design of the infrastructure on the platform. These cover the design of utilities, airfield tunnels, drainage and irrigation systems; and

— Detailed project control procedures have been implemented to link engineering and construction activity closely to the Authority's project control budget in order to facilitate close monitoring of costs by the Authority.

This significant progress could not have been achieved without the strenuous efforts of the Board and of the management team. Under the guidance of the Board, this team, with approximately 580 full-time staff, has applied their skill, expertise and ingenuity to the work with commendable dedication.

If all goes well, and agreement is soon reached with China on the airport financing plan, the construction of the terminal building could begin in mid-1994 when sufficient land will have been reclaimed under the site

preparation contract. Meanwhile, planning for the external financing of the Authority will continue.

This report should be the last one issued by this provisional body. The drafting of the Bill to establish a permanent statutory body is now at an advanced stage. We aim to introduce the Bill to this Council in the early part of the next Legislative Session.

Oral answers to questions

Public housing estate management

1. MRS ELSIE TU asked: *Will the Administration inform this Council what efforts are being made to improve the management of public housing estates by stamping out malpractices such as using premises for non-residential purposes, unauthorized occupation and subletting in order to make more flats available to really needy families?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, the Housing Authority recovers as many rental units as possible where the tenants no longer have a need for them. The tenancy agreements between the Authority and its tenants enable action to be taken against any abuse or malpractice, such as non-residential use, unauthorized occupation and subletting.

In the Housing Department's experience, tenancy abuses are not widespread. In newly completed estates, the problem is almost non-existent since the housing need of the tenants has only just been verified. As regards older estates, some irregularities do exist however. Activities such as private tuition, piano lessons and child care services are tolerated provided the unit continues to be used for residential purposes and no nuisance is caused. Non-occupation or subletting is a more serious matter which can result in the termination of a tenancy.

Irregularities are detected as part of day-to-day estate management work, including regular checks on electricity consumption, daily patrols, random home visits, door-to-door rent collection and routine annual flat inspections. They are also uncovered through reports by tenants and information collected from Mutual Aid Committees, resident associations and various other sources. Defaulting tenants will be asked to restore their flat to its proper use through persuasion or, if necessary, the issue of verbal or written warnings. If all these efforts fail, the tenants will be served a notice-to-quit. And in the past three years, 682 such cases have been processed.

The Housing Authority has always taken a serious view of tenancy abuses. A detection team has recently been formed to carry out surprise checks on flats, sometimes outside office hours. This approach will be reviewed later this year to see whether the operation should be expanded and if so how. The Authority is mindful of the need to keep a close watch on the situation and has stepped up tenancy enforcement in all estates. It needs however to strike a careful balance between essential enforcement and checking up on its tenants to the point that might be regarded as harassment.

MRS ELSIE TU: *Mr President, tenants visiting my ward office repeatedly report that many flats in older estates have for 10 years or more been empty, used for storage or illegally occupied. Does this detection team only conduct an external inspection of the older estates and has any action been taken against managers who tolerate these irregularities on their estates?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, the detection team has recently been formed. It is formed centrally in the Housing Authority and it is carrying out checks on estates. Therefore I think it can be regarded as outside the management of the individual estates that we are referring to.

As far as the second part of that question is concerned, I am not at this point in time aware of it having been established that any Housing Manager has been guilty of neglect of his duties in this way. But should such a case be established, then I am sure that he would be subject to some form of disciplinary action.

MR FRED LI (in Cantonese): *Mr President, may I know the composition of the recently formed detection team and is it given statutory powers to enter premises for inspection purposes?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, I cannot give the Honourable Member exact details as regards the composition of the team, but I will provide it in writing. (Annex I) As far as the question of authority to enter is concerned, I believe that this team would operate on the basis of the statutory authority of the Housing Authority provided under the Ordinance.

DR TANG SIU-TONG (in Cantonese): *Mr President, may I ask the Secretary if selling books or organizing tutorial classes or interest groups in a Member's office in public housing estates is in breach of the tenancy provisions?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: In my main reply, Mr President, I used the word "tolerated". I believe that if one wanted to be absolutely determined to, as it were, wipe out every human activity that is not actually covered under the term "residence or domestic use", then it would be possible for the Housing Authority to close down all such activities. But I believe that a reasonable level of tolerance of one's neighbour's activity is necessary in estates like this.

MR FREDERICK FUNG (in Cantonese): *Mr President, I believe sending out such an inspection team is just one of the methods available. But of course the best way is, as mentioned in the third paragraph of the Secretary's reply, reports by tenants. Has the Secretary considered whether it will be more effective if an "informer system" is introduced to encourage tenants to make reports and lodge complaints which will be treated in strict confidence?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, I think I have already said in my main reply that irregularities are also uncovered through reports by tenants and information collected from Mutual Aid Committees and resident associations and various other sources. I think it is apparent from that neighbours and tenants are able to report and are indeed prepared to report.

MR FREDERICK FUNG (in Cantonese): *Mr President, I believe that due to the problem of translation, the Secretary's answer did not address to what I had asked. I should like to put it again. The "informer system" I referred to is a system rather than informers lodging complaints as they wish. In fact this system will be somewhat like the informer system of the police whereby an informer will be rewarded for making a report.*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, I do not know whether it is a personal attitude here, but the idea of my neighbour creeping around my flat and reporting to the manager of my estate as to what I am doing fills me with a degree of abhorrence. But I believe that it is the sort of idea which perhaps I should offer to the Housing Authority to consider.

MR LEE WING-TAT (in Cantonese): *Mr President, the Secretary said in his reply that the Housing Department had served 682 notices on illegally occupied or vacant flats in the past three years. This figure is very small indeed. In fact there are two reasons for the majority of flats being left vacant. First, some of the tenants have already migrated, and second, some of them have acquired their own flats. Will the Administration consider tracking down the tenants who no longer need these flats through the records of the Immigration Department and*

Buildings and Lands Department, and confirm them by way of correspondence to tenants or inspection?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, so long as we are expecting the Housing Authority to lead us gently down the path towards a police state, I am sure that, again, this kind of idea can be considered. But I believe that there will be constraints under the Immigration Ordinance as to what sort of information can be provided to other authorities in this way.

Scaffolding on construction sites

2. MRS SELINA CHOW asked: *In view of recent accidents involving collapse of scaffolding on construction sites which have caused serious injuries, will the Government inform this Council whether such accidents are on the increase; and what measures are taken by the Government to ensure that such structures are safe?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, it is our experience that accidents involving collapse of scaffolding on construction sites which have caused serious injuries or fatalities seldom occurred. From 1990 to end of June 1993, the Labour Department has recorded two fatalities caused by the collapse of bamboo scaffolds. As regards injuries, the statistics are subsumed under different headings in the records of the Labour Department such as "fall of persons" and "fall of objects". No statistics specifically related to collapse of scaffolds are therefore available to indicate the number of such accidents or to determine whether they are on the increase.

The safety of scaffolds is regulated under Part VA "Scaffolds, Working Platforms and Ladders and so on" of the Construction Sites (Safety) Regulations of the Factories and Industrial Undertakings Ordinance (Cap. 59). For example, all scaffolds should be made of strong and sound materials, free from defect, and properly maintained. The Regulations also require the scaffolds to be fixed, secured and regularly inspected to prevent accidents.

The Labour Department is responsible for enforcement action against unsafe scaffolds. In addition to regular inspections, a special inspection and enforcement campaign on scaffolds was conducted during April to June this year. Later in the year, a similar operation will be mounted. Prosecution action will be taken out against those who breach the law.

On the education and publicity front, seminars and training courses to enable employers and employees to identify unsafe acts or conditions working with scaffolding have been and will continue to be organized by the Labour Department and the Occupational Safety and Health Council. An Announcement

of Public Interest stressing the importance of scaffold safety is under preparation and will be broadcast soon. A press release is normally issued after a typhoon or inclement weather to remind contractors to ensure that their scaffolds are in safe working conditions. In addition, a code of practice on bamboo scaffold is under preparation to assist the industry to comply with the requirements and will be published shortly.

MRS SELINA CHOW: *Mr President, what is being done to ensure that new recruits into the construction industry are properly trained in the erection of scaffolding, with particular regard to safety?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, as I mentioned in the last paragraph of my reply, the education and publicity includes training requirements of the Labour Department and the construction industry. In particular, the Construction Industry Training Authority has organized courses to ensure that training on safety in scaffolding erection work is intensively undertaken by all those who learn the trade.

MRS SELINA CHOW: *Mr President, the last paragraph of the answer refers to training courses to enable employers and employees to identify unsafe acts or conditions. My question relates to the training of new recruits into the industry who are actually engaged in the erection of scaffolding.*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, can I defer to the Secretary for Works on this particular question?

SECRETARY FOR WORKS: Mr President, I can give a few statistics. The Construction Industry Training Authority has for many years been running courses. And, of course, while they are training new recruits, they also run top-up courses for existing workers to come back and receive training. In the period between 1978 and 1993 there were 273 such courses for scaffold training purposes. During the year 1991 the number trained was 24; 1991-92 there were 13 persons; 1992-93 there were 33 persons; 1993-94 there are 30 such persons. These courses comprise a one-year full-time course at the Construction Industry Training Authority's School together with two years' on-the-job training.

MR MOSES CHENG: *Mr President, would the Administration inform this Council as to how many prosecutions have been taken against parties responsible for unsafe scaffolds in the last three years and how many of these prosecutions have been successful?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, over the last three years we have taken out 181 summonses for offences involving scaffolds. I do not have the breakdown on the number of successful prosecutions, but I will find out and give a written answer. (Annex II)

MR EDWARD HO: *Mr President, with regard to the third paragraph of the answer, given the large number of construction sites in Hong Kong, how regularly are inspections conducted to ensure scaffolds are safe?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, under the Regulations, the contractor is responsible for ensuring that an inspection is done every month. And also immediately after a typhoon or bad weather the contractor is required to inspect the scaffolding in question.

MR MARTIN BARROW: *Mr President, the Secretary has informed us that a code of practice on bamboo scaffolding is under preparation. Could he tell us about the safety of other forms of scaffolding; are they used much; and is there a significant cost difference for the contractor?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, could I defer to the Secretary for Works as regards details about the operation of the trade in terms of different scaffolding?

SECRETARY FOR WORKS: Mr President, there is a cost differential between the different types of scaffolding. But I can say that each type of scaffolding is chosen more for its suitability for its intended purpose rather than on purely cost grounds. With regard to the checking of scaffolds and the code of practice for scaffolds, all scaffolds have to meet satisfactory design standards whether they be the proprietary type of scaffolding or otherwise. And also of course there is the normal supervision on site during the erection process of scaffolds. Whereas a bamboo scaffold depends very much on the ability of the individual scaffolder for its erection, the more proprietary based type of scaffold is less dependent upon individual expertise and much more dependent upon the system itself.

MR TAM YIU-CHUNG (in Cantonese): *Mr President, the construction association had asked the Government to enact laws to provide for the use of double-row scaffolding and safety mesh on construction sites because double-row scaffolding was safer and that there was already such a provision for construction sites in the mainland. May I ask the Administration when a decision on this can be reached?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, the Labour Department is now encouraging contractors to use double-row scaffolding. By and large the construction industry is using double-row bamboo scaffolding more frequently at some stage of building construction. We expect the industry to continue to expand the use of double-row bamboo scaffolding in the months ahead. In reply to the particular question, we are considering the possibility and the feasibility of legislating for the requirement for double-row scaffolding.

MR LAU CHIN-SHEK (in Cantonese): *Mr President, the Secretary for Education and Manpower mentioned repeatedly in the second and third paragraphs of his reply that there had been regular inspections and special enforcement actions. May I ask if there are specific requirements in respect of the qualification of scaffold inspectors or the inspection procedures? If so, may I ask what kind of professional qualification is required?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, the Regulations require that the person has to be a competent person to inspect and make sure that the scaffolding is safe. A competent person in this case means a person in the trade with sufficient experience in the safety and construction of scaffolds. And in practice, these standards are applied fairly consistently throughout the trade both by the practitioners themselves and through the training courses organized by the Construction Industry Training Authority.

Water control zone at Victoria Harbour

3. MR JAMES TIEN asked: *The final target date for extending the Water Pollution Control Ordinance to all Hong Kong's territorial waters is expected to be 1995 and the last Water Control Zone to be declared would be Victoria Harbour. This would affect the major industrial areas of San Po Kong, Kwun Tong, Kwai Chung and Tsuen Wan East. In view of the urgent relocation needs for the industries affected, for example, textiles, dyeing and finishing, metal plating, electronics and food industry, will the Government inform this Council:*

(a) how the Government would assist in their relocation to enable them to continue their operations in Hong Kong; and

(b) where and when the Government can provide land for their relocation?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, Victoria Harbour will be declared a water control zone under the Water Pollution Control Ordinance in phases from late 1994 to 1997. Phase I

will cover the main industrial areas of Kwun Tong, Tsuen Wan and Kwai Chung. There should not be a general need for factories in these areas to relocate to comply with the Ordinance. The effluent standards included in the Technical Memorandum and issued under the Ordinance in January 1991 were the result of substantial revision after consultation with industry in 1990. In most cases, compliance can be achieved by simply adopting cleaner production practices (which include simple measures such as waste reduction and segregation, chemical substitution and water conservation), replacing obsolete production processes, and in a few cases, building communal treatment facilities.

For the heavy water industries, particularly the bleachers and dyers, the option of relocating to a site with the necessary supporting infrastructure might reduce to some extent the need for measures to be taken to ensure compliance with the Ordinance on their existing sites. With this in view, about 12 hectares of land will be earmarked in the Special Industries Area to be developed in Tuen Mun Area 38. Reclamation and servicing works are scheduled to commence next year for completion in 1998. The site will be reserved for the textile, bleaching, dyeing and finishing industries to serve both new undertakings as well as existing establishments which may wish to move there. The Administration does not intend to initate or organize relocation arrangements, however. It will be for operators to decide whether to relocate themselves.

MR JAMES TIEN: *Mr President, for heavy water industries such as bleachers and dyers, the Secretary replied that about 12 hectares of reclaimed land in Tuen Mun Area 38 will be completed by 1998. That time schedule will mean that these relocated industries cannot be in operation until the year 2000 or 2001, assuming in general it takes three to four years to design, build, equip and start up a large-scale factory. Will the Secretary please inform us whether any other piece of land in Hong Kong is available sooner for this purpose, and if not, whether the Government is willing to delay declaring Victoria Harbour a water control zone by 1997 to ensure there is not a time gap for the relocation of these industries?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, there are several parts to that question. The first part, Area 38 unfortunately cannot be provided before late 1998. Earlier development of the Special Industries Area is constrained not only by the site formation work but also by the provision of supporting infrastructure including water and sewerage systems and road network, bearing in mind the need to resolve possible objections to the works under the Foreshore and Seabed Reclamation Ordinance and the Roads (Works, Use and Compensation) Ordinance.

Apart from Tuen Mun Area 38, there are also some 40 hectares of formed but unsold industrial land available in the territory. However, these are not suitable for the heavy water industries since normal industrial use requires only 250-500 cu m of water per hectare per day whereas bleachers and dyers require up to 3 000 cu m per hectare per day, so that the Special Industries Area in Tuen Mun is probably the only option within Hong Kong for the relocation of these industries.

As regards the question of compliance *in situ*, that is, where industrial operations exist at the moment, I should like to point out that statistics that we have indicate that compliance by upgrading the manufacturing processes is possible. Statistics from the Environmental Protection Department indicate that there has in fact been an increase in the number of bleaching and dyeing factories, as well as food and chemical manufacturers, in established zones with over 90% of them complying with the discharge standards. This indicates that the Water Control Zone Programme has not actually generated a need for industry to relocate. The recent Consultancy on Support to Industry on Environmental Matters also confirms that local industries' relocation out of Hong Kong is largely driven by problems associated with labour shortage, high labour costs and high rents in Hong Kong, rather than by environmental requirements.

As far as delaying the introduction of the water control zones is concerned, I think the answer to this must be that it should be avoided at all costs since the original forecasts were that the water control zones would actually be introduced in 1991, so that industry by and large has already had a lengthy grace period.

MR HENRY TANG: *Mr President, I support in principle the cleaning up of our environment. In the last paragraph of his reply, the Secretary mentioned that the Administration will not initiate or organize relocation arrangements for bleachers, dyers and finishers to a Special Industries Area to be developed in Tuen Mun Area 38. I can envisage that there will be some bleachers, dyers and finishers who will not have the financial capabilities to comply with the new effluent standards in situ nor move to Tuen Mun Area 38 due to the very high cost of moving their equipment. How will the Government handle this situation as a large number of workers may have their employment threatened?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, I have, I think, said on a number of occasions in this Council that as far as cleaning up the environment goes there are difficult choices for the community to make, and I think the Honourable Member's question has just indicated how difficult some of these choices will be. However, I think that we have already compromised on the timing of the introduction of water control zones long enough. And I think that there may be ways of assisting industry in situations like this, and indeed the recent consultancy, conducted by the

Director-General of Industry, on measures to assist industries affected by environmental standards and legislation will, I am sure, throw considerable light on questions of this kind.

MR PETER WONG: *Mr President, I welcome the firm way the Secretary has resisted any pressure to delay declaring the last water control zones. Will the Secretary confirm that in respect of the Special Industries Area there will be no relaxation of pollution standards for discharges?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, I am most happy to confirm.

REV FUNG CHI-WOOD (in Cantonese): *Mr President, the Secretary has mentioned at the outset of his reply that Victoria Harbour will be declared a water control zone in phases from 1994 to 1997. But at the meeting of the Environmental Affairs Panel on 1 July this year, the Deputy Secretary for Planning, Environment and Lands Mr COOPER said that Victoria Harbour would be declared a water control zone between 1994 and 1995. Can Mr EASON clarify when, according to the Administration's plan, Victoria Harbour will be declared a water control zone?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, as I have said, the last water control zone will be declared in phases. Phase I in late 1994 will include Tsuen Wan East, Kwai Chung and Kwun Tong. Phase II in 1995-96 will cover the remainder of Kowloon. Phase III in 1996-97 will cover the rest of Hong Kong Island.

Objectionable film posters

4. MR ERIC LI asked (in Cantonese): *In view of the rampant posting of objectionable film posters which may give young people a wrong idea about violence and sex, will the Government inform this Council:*

(a) of the number of cases referred to the Obscene Articles Tribunal for poster classification in the past three years, the number of those posters which had been classified as indecent and obscene; and the number of such cases which were submitted as a result of complaints from the public;

(b) of the number of successful prosecutions in respect of those posters alleged to be in violation of regulations in the past year, and the number of such cases which had been the subject of complaints lodged by the public; and

(c) of the general time span between the lodging of a complaint and the filing of prosecution?

SECRETARY FOR RECREATION AND CULTURE: Mr President, I am confining my answer to film posters only as this is the specific area referred to in the question.

The information sought by the Honourable Eric LI is as follows:

(a) The number of film posters that were submitted to the Obscene Articles Tribunal for classification from January 1991 to June 1993 is 72. Of these, 18 were submitted by the Television Entertainment Licensing Authority, of which five were brought to TELA's notice from public complaints; another five were submitted by the police and 49 by film distributors. One of these 72 posters was classified as obscene, that is Class III, and 56 were classified as indecent, that is Class II. The remainder were classified as Class I. The obscene poster was submitted by a film distributor in relation to a Category III film.

(b) We have taken out five prosecutions against indecent film posters last year. There were three convictions involving two posters, which resulted in one film distributor being fined $20,000, and two theatre operators being fined $10,000 and $20,000 respectively. Another three cases are still pending court hearings. None of these five cases originate from public complaints.

(c) The average time taken between the lodging of a complaint and the filing of a prosecution is roughly about six weeks.

MR ERIC LI (in Cantonese): *Mr President, this is a question that would involve the subjective judgement of the community at large. The rampant posting of objectionable film posters is glaring, yet the Administration only received five complaints in the past three years, and the successful prosecution rate as a result was nil. However, the Hong Kong Association for Democracy and People's Livelihood, a district organization, alone received over 60 complaints in three months. Will the Administration inform this Council whether there is any reasonable explanation for such a small number of public complaints? Are there in fact any convenient and effective complaints avenues for the public to express their dissatisfaction to the Administration directly?*

SECRETARY FOR RECREATION AND CULTURE: Mr President, I think the avenue for public complaint is generally known. Anyone who would like to lodge a complaint on any film posters or, for that matter, any printed articles can approach the office of TELA. I think the small number of public

complaints that are drawn to TELA's attention in the past years is perhaps mainly due to the feeling the public has that it would not be productive for them to draw the complaints to TELA's attention. But I think we will certainly be doing more publicity to advise the public of their right to draw the complaint to TELA's attention. I would like to emphasize that with or without complaints TELA will continue to maintain vigilance over obscene or indecent film posters appearing in public.

MR ROGER LUK (in Cantonese): *Mr President, in order to attract more viewers, some film distributors post indecent posters to promote Class III films irrespective of the fines imposed which they treat them merely as "operating costs". Will the Administration inform this Council whether the maximum fine as a deterrent will be reviewed?*

SECRETARY FOR RECREATION AND CULTURE: Mr President, under the existing law the maximum penalty for exhibiting an indecent film poster is $200,000 and 12 months imprisonment, whilst the maximum penalty for exhibiting an obscene film poster is $1 million and imprisonment for three years. I think these penalties are already high enough to maintain a deterrent effect.

MR JAMES TO (in Cantonese): *Mr President, the problem of obscene posters is probably one with enforcement rather than penalty. For posters that are likely to offend and which are posted outside banks or shops during weekends and Sundays and where the persons posting them cannot be caught at the scene, may I ask if the Administration will send these posters for classification? Had anyone been arrested for posting posters that were later classified as indecent or obscene? If no, is this a problem with the enforcement procedure?*

SECRETARY FOR RECREATION AND CULTURE: Mr President, perhaps it would be relevant for me to give a brief account of the normal enforcement procedure. TELA has a team of inspectors to go round looking at posters that appear in public places. Whenever they notice any posters that are likely to offend they would take pictures of those posters and then refer them to the Obscene Articles Tribunal for classification. On the posters being classified, if they were considered to be either obscene or indecent by the OAT, then the case would be referred to the police for follow-up investigation and prosecution to be taken. So there are clear procedures on which enforcement action is to be taken. Unfortunately, I would like to say that we cannot cover all the public areas 24 hours a day mainly because TELA does not have unlimited resources, and I think this is a question of resources rather than the enforcement procedure itself.

MR HOWARD YOUNG (in Cantonese): *Mr President, under the existing system, some film distributors have to send their films to TELA for classification to find out if they are obscene or indecent. The posters in fact come under the films. Can the authorities concerned require the film distributors to submit posters at the same time when films are being submitted for classification? If the posters are not classified as Class III, it can serve as some sort of a protection for the film distributors for they can be assured that no prosecution will be brought against them later.*

SECRETARY FOR RECREATION AND CULTURE: Mr President, under the present law there is no power to enable TELA to require film distributors and film owners to submit film posters for pre-censorship. Under existing law the system of submission is a voluntary one. But TELA does write to film distributors regularly to advise them that it would be in their interests to submit film posters at the same time when films are being submitted for classification and censorship, and most of the responsible film distributors do take this advice. But there are always some who feel that because the law does not prescribe compulsory submission they could ignore it.

PRESIDENT: Mr TO, did you have a follow-up question on the basis that your question, you thought, was not answered?

MR JAMES TO (in Cantonese): *Mr President, I would like to follow up the answer given by the Secretary just now. He says that there is no problem with the enforcement procedure. If a poster submitted to the Obscene Articles Tribunal by TELA is classified as "indecent" or "obscene", the case will then be referred to the police. In the circumstances, will the Administration expect the police to return to the same spot and wait for someone to put up the poster again? How was enforcement actually carried out? Are there really no ways to arrest the person who posts the poster on the spot, or is there a problem with the whole enforcement procedure?*

SECRETARY FOR RECREATION AND CULTURE: Mr President, by the time the case is referred to the police, a copy of the poster will already have been available and passed to the police. So the police would be able to trace the originator or owner of that poster to make investigation and take out prosecution action if warranted.

Pleadings in Chinese

5. MR MARTIN LEE asked: *Will the Government inform this Council under what circumstances a court would not accept pleadings in Chinese and what steps would be taken by the Government to rectify such a situation?*

ATTORNEY GENERAL: Mr President, section 5 of the Official Languages Ordinance provides that proceedings in the Court of Appeal, the High Court and the District Court shall be conducted in the English Language. There is no definition of the word "proceedings" but it is generally accepted that pleadings are included.

Before the High Court case of *Gammon Building Construction Limited v Cho Hing Yiu* in September 1988, it had been standard practice for pleadings to be in the English Language. In that case, the judge held that the court had wide powers to permit in appropriate circumstances pleadings to be in Chinese. In delivering his judgment, the judge made it clear that he was not encouraging the departure from the normal use of English. I should also add that in that case once the documents had been filed, they had to be translated into English.

I am not aware of other High Court cases in which pleadings in Chinese have been accepted and it is still the practice for pleadings in the Court of Appeal, the High Court and the District Court to be in English. Any departure from that practice would raise practical difficulties.

Mr President, it would not be appropriate for me to speculate upon the circumstances under which the court would or would not exercise its powers to permit pleadings in the Chinese Language.

The Administration is currently considering in conjunction with the Judiciary how section 5 of the Official Languages Ordinance could be amended to permit greater use of Chinese in the courts. This is a matter requiring careful examination because it raises many practical issues. Questions that need to be addressed include:

(i) would pleadings, indictments and notices need to be in both English and Chinese? Such a requirement, if imposed, may be unnecessarily onerous;

(ii) if the court is to decide which language to use in the proceedings, at what stage of the proceedings should the court make that decision?

(iii) can proceedings be conducted and oral evidence be received in one language whilst documentary evidence be received in another? If not, requiring documentary evidence filed with the court to be translated into the language chosen by the court for the proceedings may pose practical problems, particularly in civil cases in which the documentary evidence can be voluminous;

(iv) should notes of proceedings be required to be kept in the language in which the proceedings are conducted? Should this have a bearing on the language used for stating cases and hearing appeals?

Mr President, getting satisfactory answers to these and other questions would point the way to permitting greater use of Chinese in the courts.

MR MARTIN LEE: *Mr President, pending the outcome of the study as to how section 5 of the Official Languages Ordinance could be amended, which may take a long, long time, will the Government inform this Council how litigants in person — who come to legislators by way of complaint very regularly — could file pleadings in Chinese in the Court of Appeal, the High Court or the District Court which do not accept such pleadings and which do not provide any translation service to such litigants? Or should we refer them all to the Attorney General?*

ATTORNEY GENERAL: Mr President, as I made clear in my answer, it is a matter for the discretion of the courts to decide whether or not to permit pleadings to be in Chinese. Mr LEE has adverted to a real practical problem and one that we, in the Administration, are very conscious of, and I would like to think that the solution would not be a very, very long time in coming. Could I add, Mr President, that there is currently a working party in the Judiciary looking at the greater use of Chinese in the District Court including the question of whether pleadings should be in Chinese. That working party is due shortly to report to the Chief Justice. Mr LEE has raised a valid concern, one that concerns all of us in the Administration concerned with the administration of justice and practitioners, and I will certainly convey his concerns to the Chief Justice.

MR SIMON IP: *Mr President, the Attorney General's reply says that the Administration is discussing with the Judiciary the question of the use of Chinese in the courts. Does the Administration have any long-term policy objectives in relation to the use of Chinese in the courts? If so, what are they and how will they be implemented?*

ATTORNEY GENERAL: Mr President, the Administration is fully alive to the need to promote a greater use of Chinese in all our courts. It is a vast subject requiring not only consideration of many practical issues but raising also significant questions concerning resources, human resources as well as other resources. But I repeat that the Administration is fully alive to the need to promote the greater use of Chinese in the courts and we are embarked on, among other things, the consideration with the Judiciary of how we should be looking to amend section 5 of the Official Languages Ordinance.

MS ANNA WU: *Mr President, regarding section 5 of the Official Languages Ordinance, can the Attorney General explain if he has reviewed that section as to whether it is in compliance with the Bill of Rights on any grounds stated in the Bill including non-discrimination and due process?*

ATTORNEY GENERAL: Mr President, I do not want to be drawn into questions of whether or not a particular section of our law is or is not in conformity with the Bill of Rights. I repeat that we are considering with the Judiciary ways of amending section 5 to promote greater use of Chinese in courts. I have heard the concerns that have underlain the questions here this afternoon and repeat that I would certainly not wish to see this process being drawn out for a very long time.

MR MAN SAI-CHEONG (in Cantonese): *Mr President, the Basic Law provides that in addition to the Chinese language, English may also be used by the judiciary of the future Hong Kong Special Administrative Region. Since the Basic Law will be effective in less than four years, does the Administration not agree that it is high time that the relevant policy was formulated to accept litigation papers in Chinese in courts? If it is not possible to do it now, could the Administration inform this Council when it can start doing so?*

ATTORNEY GENERAL: Mr President, I repeat that I have heard the concerns that have lain behind the questions this afternoon, questions all thus far from practitioners. I repeat that we are embarked on consideration of section 5 of the Official Languages Ordinance and I would not wish that to be a drawn out process.

MISS EMILY LAU: *Mr President, may I ask a question as a non-practitioner? Given the slow pace of the development in the use of Chinese in the courts, can I ask the Attorney General to predict, to look into his crystal ball, in four years' time when Hong Kong becomes the SAR of China, whether we will be able to use the Chinese language in courts especially in the High Court?*

ATTORNEY GENERAL: Mr President, we are moving steadily in that direction.

MR JAMES TO (in Cantonese): *Mr President, if I ask the Attorney General a question on the Court of Appeal, the High Court or the District Court, I believe he will just repeat the answer he has given a while ago. So my question is: apart from the courts mentioned, is the use of Chinese allowed, especially in filing pleadings in courts such as the Lands Tribunal and the tribunal which I am most*

concerned about, that is the tribunal to be established in future to handle disputes arising from the management of buildings?

ATTORNEY GENERAL: At present, Mr President, under section 5 of the Official Languages Ordinance either of the official languages, that is English or Chinese, may be used as the court thinks fit in the Magistrate's Court, Coroner's enquiries, the Juvenile Tribunal, the Labour Tribunal, the Small Claims Tribunal and the Immigration Tribunal. In the Small Claims Tribunal and the Labour Tribunal, Chinese is habitually used. It is used before special magistrates when that is appropriate having regard to the parties. Magistrates are increasingly using Chinese in their courts.

MR JAMES TO: *Mr President, I was asking about the Lands Tribunal.*

ATTORNEY GENERAL: Mr President, that is, I think, not a tribunal listed in section 5 of the Official Languages Ordinance. But could I check that and let Mr TO have a written reply? (Annex III)

Stay of proceedings for alleged delay

6. DR HUANG CHEN-YA asked: *In March this year, the Supreme Court ordered a permanent stay of proceedings against a defendant on grounds of delays in the investigation and the preparation of committal proceedings (High Court Criminal Case 122 of 1992). Furthermore, the Court accepted the defendant's claim that he was suffering from serious deterioration of his intellectual functions. Will the Government inform this Council:*

(a) why there were delays in handling this case by the department concerned and whether the delays were totally justified; if not, who should be held responsible;

(b) with regard to the defendant's claim of serious intellectual deterioration, whether the expert witnesses called by the Crown were adequately briefed before testifying on the medical condition of the defendant and whether the medical evidence produced by the defendant's experts were thoroughly examined;

(c) what procedures exist within the department concerned to prepare for hearings of complex cases, including the commissioning of expert witnesses, the collection and examination of expert evidence and whether the necessary expertise is available to handle such cases; and

(d) what steps will be taken to strengthen the capability of the department in the handling of similar cases in the future, in order to prevent stays of proceedings being ordered on grounds of delays and lack of expert evidence?

ATTORNEY GENERAL: Mr President, before answering the specific questions, it may be helpful to Members if I were to set out the background to the case to which the Honourable Member refers. However, I must make it clear that charges have been laid against other defendants and the prosecution is continuing against them. Therefore, I am constrained as to what I can say about the case.

The defendant in the case referred to was charged with 13 counts of conspiracy to commit offences against the Theft Ordinance, and one count of conspiracy to defraud the Commissioner of Banking. These charges, which involved a bank, covered the period between December 1983 and November 1985.

In early 1985 problems in the bank came to the attention of the then Commissioner of Banking, who conducted an investigation into irregularities into some of the bank's transactions. The Commissioner referred the case to my Chambers in January 1986. The Independent Commission Against Corruption commenced an investigation that month. However, of paramount and overriding importance was the interests of depositors and shareholders, who would suffer if it became known prematurely that there was an investigation in progress. Thus the investigation was covert and, of necessity, slower than if it had been undertaken openly.

Charges were eventually laid against the defendant in October 1988. A return date was fixed for a committal hearing in January 1990. However, the defendant then made various applications for judicial review in the High Court, which led to appeals to the Court of Appeal and thence to the Privy Council. As a result of the defendant's applications and appeals (all of which were ultimately unsuccessful), the committal for trial was delayed for over two years until April 1992. An indictment was filed later that month and the trial was eventually set for April this year 1993.

In January 1993 the defendant made an application before the trial judge for a stay of proceedings on the basis that a trial would constitute an abuse of process and that there had been a deprivation of his right to a trial without undue delay under the Bill of Rights. The defendant claimed that during the delay he had developed dementia, and as a result he would not be able to make full answer and defence to the charges. This application was vigorously opposed by the prosecution.

I turn now to the specific questions raised, the answers being as follows:

In answer to paragraph,

(a) The judge found that there were delays from the time when the irregularities in the bank's transactions came to the attention of the Commissioner of Banking until the date when the trial was scheduled to begin, including the period between the bank's position first coming to the attention of the Commissioner of Banking in early 1985 and his reporting of the possible criminal aspects his subsequent investigation had uncovered to my Chambers in January 1986; a delay due to the slow progress of the initial part of the investigation; and a delay caused by the unsuccessful attempt to extradite a co-defendant. The judge found that the defendant's mental condition had severely deteriorated over the years so that the defendant could not have a fair trial.

Mr President, it is important to bear in mind that the judge ordered a stay of proceedings after looking at the whole case in the round, and not on the ground of delay alone.

As to whether the delays were justified, that was the question at issue before the judge and on which he has made his decision after hearing evidence and arguments from both sides. It would not be proper for me to comment on the judge's decision and his reasons for it.

(b) The expert medical witnesses called by the Crown were fully knowledgeable of the case. The prosecution had a number of experts who examined the defendant before the trial to assess his physical and mental condition. While preparing for the trial, they had full access to the reports of the defendant's medical experts. In the hearing of the defendant's stay of proceedings application, the Crown's experts were examined and cross-examined; they gave their evidence in a professional, objective and competent manner. The defendant's experts were examined and vigorously cross-examined. There was a full airing of the evidence relating to the defendant's condition.

(c) The Commercial Crimes Unit of the Prosecutions Division of my Chambers deals with complex commercial crime cases. In appropriate cases, experts are retained to assist the investigation and prosecution of those cases. Often these experts include experienced forensic accountants. When medical advice is required, the Hospital Authority is asked to recommend suitable experts, either in Hong Kong or overseas. In summary, suitable experts are available to the prosecution and are used when needed.

(d) As I said earlier, the stay of proceedings was ordered in respect of the defendant after the judge had considered the whole case in the round, and not on the ground of delay alone. Nowhere in his judgment has the judge referred to any lack of expert medical evidence called by the Crown.

The Commercial Crimes Unit in the Prosecutions Division was established in response to a need to have experienced and competent lawyers dedicated to prosecute complex commercial cases. The Unit is staffed by lawyers with the necessary experience and competence, and I am satisfied that it is well equipped to deal with major cases that come within its area of responsibility. The Director of Public Prosecutions and I are fully alive to the need to ensure that cases are dealt with expeditiously, to avoid the risk of a prosecution being halted by reason of delay.

DR HUANG CHEN-YA (in Cantonese): *Mr President, the defence claimed on the strength of the brain scan and psychological tests conducted that the defendant had developed dementia which was so serious that he could not attend court hearings. However, different conclusions can be drawn from these results, and the tests conducted by the defence are self-contradictory in many respects too. Will the Attorney General inform this Council why the Administration did not call a radiologist with knowledge in brain scan or a neurology expert who is capable of giving advice on different forms of dementia to appear as witness in court? Why did the Administration not arrange its own tests and furthermore why was it incapable of challenging the defence? Does the Administration simply not know how to call such experts or is it deliberate that it got the wrong experts so as to lose the case? Mr President, if someone gets Michael CHANG to play a game of football, he is bound to lose even though he is a sports star?*

PRESIDENT: I think the first point to make is that under Standing Orders no question shall reflect on the decision of a court of law, that point having been made, as the Attorney General has already indicated in his reply.

ATTORNEY GENERAL: Mr President, the prosecution called a number of expert medical witnesses, among whom is the medical superintendent of the Castle Peak Hospital who is a psychiatrist, consultant neurosurgeon and senior clinical psychologist. The prosecution also had taken advice from two medical experts in the United Kingdom, one a heart specialist and the other a kidney specialist. In the event, the prosecution did not call these latter two experts because at the hearing the defendant's physical condition was not ultimately an issue. The prosecution had, I am perfectly satisfied, a full range of medical experts and they had full access, as I have said, to the defendant's own medical

reports. There was a full hearing before the judge lasting some 20 days and it is not, I think, for me to comment further on the judge's finding.

MR SIMON IP: *Mr President, since the judge found that there was delay — I presume unjustified delay — has the Administration conducted an enquiry to ascertain which government officials were responsible and whether any disciplinary or other action has been taken against them?*

ATTORNEY GENERAL: Mr President, I set out quite extensively the background to explain the chronology and the sequence of events to show why delay occurred. The decisions that were taken at the time were taken properly in the proper execution of duties, and I do not believe that any question of disciplinary proceedings arises.

Written answers to questions

Prevocational schools

7. MR TIK CHI-YUEN asked (in Chinese): *Will the Government inform this Council:*

(a) whether there are plans for an overall review of the courses and facilities in prevocational schools to meet the actual needs of our society;

(b) the reason for maintaining the ratio of graduate teachers to non-graduate teachers at 1:1 for prevocational schools, when a ratio of 7:3 has generally been adopted for secondary grammar schools; and

(c) of any specific measures taken to resolve the problem of floating classes in prevocational schools as soon as possible?

SECRETARY FOR EDUCATION AND MANPOWER: Mr President,

(a) The Education Department regularly reviews and updates the courses offered in different types of schools, including prevocational schools, to ensure that they can meet the changing needs of our society. Since 1986, the syllabuses of seven practical and technical subjects offered in prevocational schools have been revised, and four new subject syllabuses have been developed. Currently, three subject syllabuses are being reviewed.

In 1991-92, the Curriculum Development Council reviewed the curricula at all levels from kindergarten to the sixth form and produced draft guidelines on the curricula for different types of schools, including prevocational schools, for public consultation. No suggestions were received for changing the existing proportion of practical and technical content in the curriculum offered by prevocational schools.

As regards facilities, prevocational schools are provided with a wide range of special rooms and workshops to meet the needs of their practice-oriented curriculum. In order to ensure that facilities in older schools are, as far as possible, upgraded to the latest standard of provision, as recommended in ECR5, we shall embark in 1994-95 (subject to resources being available) on the first phase of a programme to upgrade older schools; 12 prevocational schools will be included in this first phase.

In view of the above developments, there is no plan for an overall review of the courses and facilities in prevocational schools.

(b) The 1:1 ratio of graduate teachers to non-graduate teachers was proposed in June 1987 by the Working Party on the Restructuring of Prevocational Schools which comprised representatives of the Hong Kong Prevocational Schools Council and staff of the Education Department. The calculation was based on the number of periods in the timetable allocated to subjects taught by non-graduate technical teachers. The proposal was supported by all council members and subsequently approved by the Government.

The Education Department is now reviewing the staffing structure in prevocational schools in the light of the expansion of senior secondary and sixth form places in these schools.

(c) Because of the nature of their curriculum, prevocational schools have more special rooms/workshops than grammar schools, and their students spend much of the school day in these rooms. The operation of floating classes therefore makes efficient use of school space with no loss of educational effectiveness.

Weak water pressure at New Territories villages

8. MR WONG WAI-YIN asked (in Chinese): *Will the Government inform this Council of the villages in the New Territories which are experiencing the problem of inadequate hydraulic pressure in their tap water supply and the specific measures being taken to improve such situation?*

SECRETARY FOR WORKS: Mr President, at present, a total of some 624 villages have been provided with mains water supply. Over the last six months, complaints about weak hydraulic pressure have been received from 17 New Territories villages, details are summarized in the Appendix. The majority of the 17 villages where weak water pressure has been reported are located at the extremities and the problem is primarily caused by rapid development over the recent years resulting in the existing supply systems being overloaded.

Remedial measures in the form of replacing or duplicating the existing water mains, or switching to a different supply source as appropriate are being or will be carried out to improve the situation.

Appendix

Weak water pressure in NT villages

District		*Villages complaining about weak water pressure*	*Nos. of written complaints received in the past 6 months*
Tsuen Wan and Tuen Mun	1.	Sham Tseng San Tsuen	41
	2.	Sheung Kwai Chung Tsuen	1
Yuen Long	3.	Tai Kong Po Tsuen, Kam Tin	2
	4.	Pak Wai Tsuen, Kam Tin	1
		Pat Heung:	
	5.	Yuen Kong San Tsuen	a few
	6.	Yuen Kong Tsuen	
	7.	Ma On Kong	
	8.	Ho Pui	
	9.	Leung Uk Tsuen	
	10.	Wong Toi Shan San Tsuen	
	11.	Lui Kung Tin, Shek Kong	
	12.	Sheung Tsuen, Shek Kong	
Tai Po	13.	Tai Wo San Wai Tsuen	a few
Sha Tin	14.	Kwei Tei New Village (part)	a few
	15.	Heung Fan Liu Tsuen	a few
Sai Kung	16.	Lueng Mei Village (part)	1
	17.	Luk Mei Village	1

Complaints against Correctional Services Department

9. MR JAMES TO asked (in Chinese): *Will the Government inform this Council of the number of complaints against the Correctional Services Department in each of the past five years, including the following details:*

(a) the nature of the complaints; and

(b) the results of the investigation into the complaints (for example, the number of cases substantiated which resulted in disciplinary action or conviction, and the number of cases dismissed due to lack of sufficient evidence or other reasons)?

SECRETARY FOR SECURITY: Mr President, the number of complaints received against the Correctional Services Department in each of the past five years was 145 in 1988, 190 in 1989, 197 in 1990, 167 in 1991 and 166 in 1992.

A breakdown of the complaints by type, and the investigation results are given at Appendix A. At Appendix B is a summary of the action taken in the substantiated cases.

Appendix A

Classification of complaints received and results of investigation during the years 1988-1992

	1988	*1989*	*1990*	*1991*	*1992*
Use of unnecessary force	66(6)	60(5)	75(7)	58(4)	42(4)
Victimization/threat	8	29(1)	20(2)	9	19(2)
Maltreatment	16	10	8(1)	7(1)	2(1)
Mismanagement	15(2)	28(1)	21	23(1)	28(2)
Mishandling of staff	10	14(1)	36	21	16(2)
Medical treatment	0	3	3	5	2(1)
Misconduct of staff	16(3)	25(3)	20(2)	21(2)	36(1)
Disciplinary action	2	10	9	14	11
Use of abusive language	11	11(1)	4	9	7
Others	1	0	1	0	3
Total:	145(13)	190(12)	197(12)	167(8)	166(14)

Note: Figure in ( ) denote cases found substantiated after investigation.

Appendix B

Outcome of disciplinary proceedings against officers in substantiated cases for the years 1988-1992

(a) Disciplinary action taken against staff in substantiated cases for the years 1988-1992

	1988	*1989*	*1990*	*1991*	*1992*
Warning	7	6	7	6	10
Disciplinary proceedings	6	6	5	2	4
Total	13	12	12	8	14

(b) Result of disciplinary proceedings taken against staff in substantiated cases from 1988-1992

	1988	*1989*	*1990*	*1991*	*1992*
Severe reprimand	1	1	3	0	0
Fine	0	0	0	0	0
Severe reprimand and fine	1	1	1	2	1
Case dismissed	4	4	1	0	1
Case not completed	0	0	0	0	1*
Outcome of hearing pending	0	0	0	0	1

* Staff resigned before conclusion of the contemplated disciplinary proceedings.

Chinese Government's understanding of Legislative Council operation

10. DR CONRAD LAM asked (in Chinese): *In view of recent criticisms which the Chinese Ministry of Foreign Affairs levelled at the British Government alleging its connivance in allowing the Legislative Council Panel on Constitutional Development to impede the progress of the Sino-British talks by discussing the Governor's political reform proposals, will the Government inform this Council what specific and effective measures can be taken to enhance the Chinese Government's understanding of the operation of the Legislative Council and the political system in Hong Kong so as to promote and improve the relations among China, Britain and Hong Kong?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President, the Government has and would continue to take every available opportunity, through both formal and informal channels, to explain to Chinese government officials the operation of the Legislative Council and the political system in Hong Kong.

Government fees and charges

11. MR TAM YIU-CHUNG asked (in Chinese): *Will the Government inform this Council:*

(a) which fees and charges in respect of government and public services have been increased since 1 April this year; and

(b) which fees and charges in respect of government and public services are about to be increased?

SECRETARY FOR THE TREASURY: Mr President,

(a) A list of government fees and charges which have been increased since 1 April 1993 is at Appendix I.

(b) There are more than 5 200 fees currently charged by the Government. These fees are normally set at levels sufficient to cover the costs of the services provided. They are therefore subject to annual revision to ensure that their real value is maintained. Introduction of revised fees is carefully phased during the course of the year in order to reduce the impact on the public.

Appendix I

Government fees and charges which have been increased since 1 April 1993

Fees charged by department	*Description*	*Implementation date*
Agriculture and Fisheries Department	Rental of temporary wholesale market	April 1993
Buildings and Lands Department	Copying of land records and miscellaneous fees	April to June 1993
Civil Engineering Department	Laboratory testing fees	June 1993

Fees charged by department	*Description*	*Implementation date*
Census and Statistics Department	Fees for providing trade statistics and miscellaneous services	June 1993
Education Department	Hiring charges for accommodation in schools	April 1993
City and New Territories Administration	Hiring charges for community halls and facilities	July 1993
Immigration Department	Re-entry permit, and miscellaneous fees	June 1993
Industry Department	Fees for Hong Kong Laboratory Accreditation Scheme	April 1993
Trade Department	Textile licences and miscellaneous fees	June 1993

Contracting out of refuse collection services

12. MR MARTIN BARROW asked: *Will the Government inform this Council whether it will consider contracting out garbage and related waste collection and, if not, the reasons?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, the collection of refuse is the statutory responsibility of the Regional and Urban Councils.

On 1 May this year, the Regional Council started a pilot scheme in the Tai Po district on the contracting out of waste collection services. The scheme will be evaluated at the end of this year to consider whether it should be extended to other districts. The collection of animal carcasses has been contracted out since July 1991.

The Urban Council is currently studying the feasibility of contracting out refuse collection.

Immigration anchorage off Tuen Mun

13. MR HOWARD YOUNG asked: *Will the Government inform this Council of:*

(a) the progress of the plan to establish an immigration anchorage off Tuen Mun for small craft;

(b) the resources required to implement the plan; and

(c) the expected reduction in the volume of shipping in the Ma Wan Channel when the anchorage comes into operation?

SECRETARY FOR SECURITY: Mr President,

(a) Plans to establish an immigration anchorage off Tuen Mun are now far advanced. We hope to be able to provide the resources for it to come into operation next year.

(b) The resources required are about $1 million capital expenditure, and $4 million for yearly recurrent expenditure.

(c) We estimate that there will be a 39% reduction in vessel movements in the Ma Wan Channel when the anchorage comes into operation. This approximately equals 220 vessel movements through the channel.

Summer time system

14. MRS PEGGY LAM asked (in Chinese): *Will the Government inform this Council:*

(a) of the date when Hong Kong ceased to enforce summer time and the reasons therefor; and

(b) as China is still practising summer time, whether the system will be resumed in the territory to facilitate contacts between China and Hong Kong and to save energy; if not, what the reasons are?

SECRETARY FOR HOME AFFAIRS: Mr President, the Hong Kong Time Service has since 1972 been based on Co-ordinated Universal Time which forms the basis for civil time and time signals all over the world. However, common usage and Hong Kong Ordinance still refer to Greenwich Mean Time (GMT). Hong Kong standard time is GMT+8.

The system of summer time, that is, adopting GMT+9 in summer was first introduced in the 1940s. Since then lobbies campaigning for the abolition of summer time had been formed from time to time. The main arguments put forward were that:

(a) it was troublesome to adjust clocks twice per year;

(b) some people preferred the extra hour of daylight in the morning;

(c) there would be some difficulties in adjusting airline schedules; and

(d) population living in crowded conditions would prefer earlier sunset.

In January 1977, the Executive Council decided that GMT+8 instead of GMT+9 should be adopted in the summer commencing from April 1977 for a trial period to give the public direct experience of it. Towards the end of the summer, the Government carried out a review to find out which time system the public preferred. This showed that the majority preferred GMT+8 throughout the year. A resolution was then passed in the Legislative Council in December 1977 setting GMT+8 as the standard Hong Kong time throughout the year.

GMT+9 was briefly introduced again from May to October 1979 during the oil crisis.

Following China's introduction of summer time in April 1986 as a daylight saving measure, a four-month consultation exercise was conducted in 1988 to see if the public had changed its mind on this matter. Views were widely sought from district boards, government departments, other interested parties and members of the public. Again, the results showed a clear majority for the retention of GMT+8 throughout the year. A decision was, therefore, taken to maintain the *status quo.*

Since then, there has been no public demand to review this practice.

Qualifications of auditors for listed companies

15. MR CHIM PUI-CHUNG asked (in Chinese): *As certain local and small accounting firms are considered by the Securities and Futures Commission (SFC) and the Stock Exchange of Hong Kong (SEHK) as unsuitable or ineligible to act as auditors for listed companies, will the Government inform this Council:*

(a) how the SFC and SEHK would appraise the eligibility of accountants and identify those who are qualified to act as auditors for listed companies;

(b) how many accounting firms have been appraised as unsuitable for the task in the past two years and what the reasons are; and

(c) whether there is any mechanism to ensure that the relevant qualifications are assessed in a fair, reasonable and unbiased manner?

SECRETARY FOR FINANCIAL SERVICES: Mr President, provisions governing the qualifications of auditors are set out under section 140 of the Companies Ordinance. The Stock Exchange of Hong Kong Limited (SEHK) does not have any additional provisions under the Listing Rules in respect of the qualifications of auditors of listed companies incorporated in Hong Kong. For listed companies incorporated outside Hong Kong, the Listing Rules provide, *inter alia*, that the annual accounts must be audited by a person, firm or company either qualified under the Professional Accountants Ordinance or acceptable to the Exchange as having an international name and reputation and which is a member of a recognized body of accountants.

Section 29 of the Professional Accountants Ordinance provides that a professional accountant holding a practising certificate shall be deemed to be eligible for appointment as an auditor of a company within the meaning of the Companies Ordinance or as an auditor of accounts for the purpose of any other Ordinance.

The Government is not aware of any instances in the past two years in which any small and local accounting firms have been considered unsuitable to act as auditors for listed companies. Furthermore, the Hong Kong Society of Accountants has not received any expression of views from the Securities and Futures Commission (SFC) or SEHK concerning its member accountants, nor has it received any complaints from its member accountants for having been so considered by the SFC or SEHK.

The eligibility of accountants to act as auditors for listed companies is provided for under the Companies Ordinance and the Listing Rules. There is no further mechanism of assessing the qualifications of such accountants.

Safety facilities in private homes for the aged

16. DR LEONG CHE-HUNG asked: *In view of the fire which broke out in a private home for the aged on 24 June 1993, killing two elderly persons and causing a number of casualties, will the Administration inform this Council whether, and if so what, measures will be taken expeditiously to enhance the safety facilities in these homes prior to the enactment of the legislation for the control of their operation?*

SECRETARY FOR HEALTH AND WELFARE: Mr President, the incident quoted in the question was alleged to be a case of arson, now under investigation by the police. It was not, as stated in the question, a case of "fire breaking out". However, the Administration has always been alert to the need for fire safety in residential homes accommodating people with poor mobility.

In May 1993, the Social Welfare Department issued to all operators of residential homes including private care homes for elderly persons a letter reminding them to observe fire prevention measures. This will be re-issued from time to time. Subsequent to the fire bomb attack on a private home on 24 June 1993, staff of the Social Welfare Department have paid special visits to private homes to urge the operators to attend to, among other things, safety measures. So far, about 90% of 392 private homes have been visited. From the preliminary survey, currently carried out, and subsequent visits, the Fire Services Department will advise operators on enhanced fire safety measures, as appropriate.

Environmental impact assessment for construction works on north Lantau

17. MR PETER WONG asked: *Will the Administration inform this Council:*

(a) whether a research project will be commissioned to assess the environmental impact of construction works on north Lantau on marine ecology, with particular reference to the Chinese white dolphins; and

(b) pending the outcome of any such assessment, whether consideration will be given to introduce any interim measures to protect this particular species from possible damage?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, the potential environmental impact on marine ecology of the new airport construction works was assessed in the New Airport Master Plan Environmental Impact Assessment (EIA). This EIA was completed in December 1991 and recommended off-site ecological mitigation measures, such as mangrove replanting and transplanting seagrass.

A supplementary EIA focusing on the proposed removal of the Sha Lo Wan headland has also been carried out which, with particular regard to the Chinese white dolphin, recommended the following mitigation measures:

(a) pressure wave transmissions from blasting should be minimized by containing explosions in the drill holes;

(b) small non-lethal "seal bombs" should be used to drive marine fauna from the construction area prior to blasting; and

(c) blasting operations should cease if dolphins or other mammal species are observed in the area.

Those responsible for other construction works on north Lantau are also required to conduct EIA studies; and any additional mitigation measures recommended by these studies will be implemented as far as practicable. In this connexion, a consultancy study arising from the proposed submarine outfall at Siu Ho Wan at north Lantau has led to a focused study on the potential impact of the outfall on the Chinese white dolphin. The study report recognized that, while the animal is believed to frequent the Pearl River Delta where suspended solids are no less than those recorded off north Lantau, only limited information is available on the particular species. No firm conclusions could therefore be drawn concerning the likely effect of the sewage outfall on the mammal. As a result, a three-year research project to monitor the presence of the Chinese white dolphin and its reaction to construction works in north Lantau more thoroughly is being considered.

Taxi drivers' malpractices

18. MR WONG WAI-YIN asked (in Chinese): *Will the Government inform this Council whether it is aware that in Tsim Sha Tsui as well as the hotel areas in Central and Wan Chai, some taxi drivers are reported to be selecting passengers after 11 pm; if so, how serious the situation is and what measures are in place to stop the taxi drivers from doing so?*

SECRETARY FOR TRANSPORT: Mr President, the Government is aware of public concern over malpractices committed by taxi drivers, including their refusal to be hired and their soliciting of passengers.

Under the Road Traffic (Public Service Vehicles) Regulations (Cap. 374), it is an offence for a taxi driver to solicit passengers or to refuse to be hired. These offences carry a maximum fine of $5,000 and imprisonment of six months.

Statistics kept by the Transport Complaints Unit to whom most complaints on public transport are directed showed that in 1992 a total of 549 complaints were made against taxi drivers for refusing hire or soliciting passengers. Of these, 138 (about 25%) were related to taxis operating in Tsim Sha Tsui, Central and Wan Chai. For the first six months of 1993, the corresponding figures were 301 and 71 (about 24%) respectively. A further breakdown of these statistics by time of the day is not available.

Complaints about taxi malpractices are vigorously acted upon by the police. In 1992, a total of 321 prosecutions were instituted against taxi drivers for refusing to be hired and/or for soliciting passengers. In the first six months of 1993, the number of prosecutions for these two offences was 433 representing a 130% increase over the last six months of 1992. In addition to intensifying prosecutions, plainclothes police patrols are being deployed, especially in areas where such offences are known to be frequently committed as an added deterrent. The Transport Department, moreover, has been urging taxi associations not to engage in such malpractices at the department's regular conferences with the trade. The department will also be mounting greater publicity to encourage members of the public to report taxi malpractices.

Tin Shui Wai secondary school places

19. DR TANG SIU-TONG asked (in Chinese): *Many secondary school students who have recently moved to Tin Shui Wai in Yuen Long are unable to find secondary school places in the district. They have to make long journeys everyday to and from their schools outside the district. Such journeys are tiring, costly and time-consuming. Will the Government inform this Council:*

(a) whether there is a shortage of secondary school places in the district to accommodate these students; if so, whether there are plans to meet the shortfall in school places in the district; and

(b) if not, whether there are vacancies in secondary schools that remain unfilled and why there are such vacancies; what kind of assistance can be provided to enable students to find school places in the district as soon as possible?

SECRETARY FOR EDUCATION AND MANPOWER: Mr President,

(a) In Yuen Long district, where Tin Shui Wai is situated, there are already sufficient secondary school places to accommodate students who have recently moved to the district.

(b) Vacancies arise in schools as a result of students moving house, changing schools or emigrating. The Education Department is aware that a small number of secondary school students who have moved to Tin Shui Wai towards the end of the school year have not been able to transfer immediately to a school in the district, because of practical difficulties in transferring students towards the end of the school year.

Parents of students who wish to seek admission to schools in Yuen Long can approach the District Education Office. The office provides detailed information on schools (for example, their facilities and the curriculum offered) in the district to help parents select schools which they would like their children to enter. They can then apply direct to the schools of their choice. In the case of students who have recently moved to Tin Shui Wai, and who have difficulty in finding a school place in Yuen Long, the office can help to arrange interviews for them with schools in the district with a view to securing a transfer by September.

Language streaming policy in secondary schools

20. MR SIMON IP asked: *In order to cater for the language streaming policy in secondary schools in September 1994 and its effect on teachers who use English Language as the medium of instruction, will the Administration inform this Council whether it will:*

(a) provide training courses for serving teachers to improve their proficiency in English to enable them to teach effectively; and

(b) stipulate minimum English language standard as an entry requirement for new recruits?

SECRETARY FOR EDUCATION AND MANPOWER: Mr President,

(a) The Institute of Language in Education is planning a series of courses for secondary school teachers who are using or will use English as the medium of instruction. The 16-week full-time course will aim to improve teachers' proficiency in English language, and their skills in using English to teach other subjects.

Eighty-one teachers will attend the first such course scheduled for February 1994. Thereafter, two courses will be organized each academic year, with a total target intake of 200 teachers a year.

(b) The Education Regulations already stipulate minimum English Language requirements for teachers, as I stated in my reply to a question on 14 July 1993. Whether more stringent language requirements should be stipulated for new teachers is one of the issues on which advice from the Advisory Committee on Teacher Education and Qualifications is awaited.

Statement

Nationality issues concerning Hong Kong

CHIEF SECRETARY: Mr President, I should like to make a statement on the recent parliamentary debates on nationality matters affecting Hong Kong.

In the last two weeks, Parliament has discussed three nationality matters relating to Hong Kong:

- the Hong Kong (British Nationality) Amendment Order 1993;

- the British Nationality (Hong Kong) (Selection Scheme) (Amendment) Order 1993; and

- the nationality arrangements for non-Chinese ethnic minorities in Hong Kong.

BN(O) Order

The first Order concerned the BN(O) phased registration scheme. Members of this Council had expressed strong concern on behalf of the community about the early phasing out of the BDTC passport. I am pleased that the Home Secretary has taken account of this concern, and the persuasive representations of Members of this Council, by deciding to make what is, I think, a unique exception to longstanding and worldwide British passport practice of not allowing people to hold two passports by allowing Hong Kong BDTC passports to be held in addition to BN(O) passports. BDTC passports will, of course, expire on 30 June 1997 as stipulated under the Joint Declaration.

The draft Hong Kong (British Nationality) (Amendment) Order 1993 was put to the House of Commons on 13 July and the House of Lords on 15 July. Both Houses approved this Order. The phased BN(O) application programme is now underway. The first cut-off date for registration, for 22-26 year olds, will come at the end of October this year.

BN(S) Order

Parliament has also endorsed the draft British Nationality (Hong Kong) (Selection Scheme) (Amendment) Order 1993. This Order provides for applications for British citizenship to be made in a second tranche under the British Nationality Scheme, beginning at the start of the next year.

This Order amends the method for allocating the quota among groups, and provides the Governor with flexibility to reallocate the quota if any particular group is undersubscribed. It also makes some minor amendments to the points system. A copy of the Hansard of the debates on these two Orders will be made available to Members of this Council as soon as possible.

In the last two weeks, both the House of Commons and the House of Lords have also debated whether full British citizenship should be granted to members of the ethnic minorities in Hong Kong. The strong support of this Council and of the Hong Kong Government for the case of the ethnic minorities was cited specifically and repeatedly during the course of these debates. It is, I believe, well known in London that this issue is a matter of widespread concern in Hong Kong, a concern that is shared and endorsed by the Governor and the Administration, by the Executive Council and by Members of this Council.

In replying to these debates, Ministers emphasized that members of the ethnic minorities would not in fact become stateless as their British nationality would continue through BN(O) status or through status as BOCs. And their right of abode in Hong Kong was guaranteed under the Joint Declaration. Ministers did not therefore agree that members of the ethnic minorities should be provided with full British citizenship. Ministers did not consider that more could or should be done. But Ministers did take the opportunity to repeat that if, against all expectations, members of the non-Chinese ethnic minorities in Hong Kong were to come under pressure to leave Hong Kong and had nowhere else to go, the Government of the day would be expected to consider, with considerable and particular sympathy, their case for admission to the United Kingdom.

However, Members will no doubt know that the House of Lords was not in fact satisfied by these assurances provided by Ministers and voted in favour of a motion calling upon Her Majesty's Government to give "full nationality to members of the non-Chinese ethnic minorities in Hong Kong". I should like to pay tribute to the powerful speech made by the Senior Member of the Executive Council during that debate, which doubtless had an important effect.

I am also able to tell Members that in response to the widespread concern in the community, the Executive Council yesterday discussed the question of the ethnic minorities. Following that discussion, the non-government Members of the Executive Council have decided to write to the Home Secretary, urging him to look at the issue once more. The Governor has also once again pressed the case that has previously been put by the Hong Kong Government, the Executive Council and the Legislative Council. He has written again to Ministers saying that the hopes Hong Kong's views will be fully taken into account.

Honourable Members have also equired in recent days whether the assurance given to the ethnic minorities applied to other British nationals in Hong Kong. Ministers have said in recent parliamentary debates that the specific assurance they were repeating — and which I have quoted above — was made in the context of the ethnic minorities. But let me also remind Honourable Members of the assurances given by the then Foreign Secretary, Sir Geoffrey HOWE, to the Foreign Affairs Select Committee in June 1989 in the context of what was referred to as "the worst case scenario". Sir Geoffrey said that if, against all our expectations,"..... the worst were to happen, plainly the special responsibility of the United Kingdom for the people of Hong Kong would be

inescapable and part of that responsibility would be a responsibility to mobilize the widest possible international help." [I am quoting from the Minutes of Evidence to the Foreign Affairs Select Committee, 14 June 1989, Col. 365]. While we do not expect such a scenario to occur, should it do so, that assurance stands and remains the policy of the British Government.

Finally, I would like to mention one further nationality issue of great concern in the community and in particular to the small number of individuals affected; namely the wives and widows of ex-servicemen. We have repeatedly pressed the Home Office to consider exercising flexibility vis-a-vis this group as far as the qualifying period for naturalization or registration is concerned. The numbers are small; and plainly the individuals concerned are getting older and it would not be reasonable to expect them to spend a long period in the United Kingdom in order to qualify for full British citizenship. So we very much hope they can be considered as a very special case. We shall go on pressing for this as hard as we can. This issue was also raised in the Executive Council yesterday and has been taken up by the Governor with London.

All the matters I have outlined above are, I know, of great concern to Members of this Council and to our community. On some of them, the representations of Members of this Council — to which I pay warm tribute — supported by the Administration and by the Executive Council, have been successful in achieving our objectives. On others they have not, thus far, borne fruit. But I want to emphasize to Honourable Members that we do understand their concerns, we understand the concerns of the community and we shall go on representing them as strongly as we can to Her Majesty's Government.

PRESIDENT: Yes, Miss LAU, a short point of elucidation.

MISS EMILY LAU: *Thank you, Mr President, Indeed, this is a point of elucidation and I hope the Chief Secretary can help. It is about the assurance that was given to Hong Kong people — first of all in 1985 by the then Foreign Office Minister Baroness YOUNG, which was repeated in January 1986 by the then Home Secretary David WADDINGTON — that in future, mainly after 1997, if any British national should come under pressure to leave Hong Kong and have nowhere else to go the Government of the day would consider sympathetically the business of letting them into Britain on a case by case basis. But now it seems that in the past two weeks Ministers have told the House of Commons that this undertaking is only restricted to 7 000 ethnic minorities. And Baroness DUNN publicly said that the undertaking in 1985 and 1986 was a package together with the BN(O) passport, which, Mr President, I am sure you also remember. But now the Chief Secretary is trying to draw our attention to the undertaking or statement by Sir Geoffrey HOWE in July 1989 which talked about an international community's responsibility. So, Mr President, I am thoroughly confused. I want to know: (a) what is the British Government's*

position; and (b) more importantly, what is the Hong Kong Government's understanding of the 1985-86 undertaking?

CHIEF SECRETARY: Mr President, as Miss LAU has pointed out, the British Government has commented that the assurances which were given in 1985 and 1986 were, in their view, given in the context of the assurances to the ethnic minorities. That is the view of the British Government as recently stated. I would, however, draw attention to the wording of the statement made by Sir Geoffrey HOWE, a senior Cabinet Minister, in a formal hearing of the Foreign Affairs Select Committee in which he said, and I repeat the words,

> "If the worst were to happen, plainly the special responsibility of the United Kingdom for the people of Hong Kong would be inescapable and part of that responsibility would be the responsibility to mobilize the widest possible international help."

Mr President, there is no doubt about the terms of that assurance. We believe it stands and remains the policy of the British Government.

MR MARTIN BARROW: *Mr President, would the Chief Secretary clarify the Hong Kong Government's thinking on proposing a possible amendment to the British Nationality Act 1990, which would include the ethnic minorities through more additional quota, and does he agree that such a minor amendment could hardly be described as a major and complete overhaul of the nationality laws as claimed by the Home Office on 16 July?*

CHIEF SECRETARY: Mr President, we have indeed looked into that possibility and have put the suggestion forward. We are told, on the basis of best legal advice, that to make such an amendment would be against the original spirit of the British Nationality Act, that the case of the ethnic minorities would not fit naturally into the conditions which should apply in the case of that Act, and it would require a major amendment to the purpose of the Act in Parliament.

MR MARTIN BARROW: *Mr President, could the Chief Secretary advise the nature of the legal opinion and what the source of that legal opinion was?*

CHIEF SECRETARY: Mr President, I will let the Honourable Member know the answer to that in writing. (Annex IV)

MR JIMMY McGREGOR: *Mr President, I am happy to learn from the Chief Secretary that something may be done for the ex-POW widows and wives. It is long overdue if I may say so. But during these discussions and exchanges can*

the Chief Secretary say whether the British Government recognizes that the BDTC and the BN(O) passports, though allegedly passports, are not passports in the true sense conferring nationality and citizenship but are rather travel documents in the context of Hong Kong citizens? Does the British Government recognize and concede to that fact?

CHIEF SECRETARY: Mr President, the fundamental issue that was of course raised when the original BTDC and BN(O) passports were introduced was that they moved away from the concept of linking passports to the right of abode. This point was debated at great length in the House of Commons and indeed in this Council. I think there can be no doubt about the situation in the view of Her Majesty's Government.

MR HOWARD YOUNG: *Mr President, in the Chief Secretary's statement, it is mentioned that the Senior Member of the Executive Council is going to write on behalf of the Executive Council and the Governor will also write on behalf of the Hong Kong Government in support of full British nationality for the ethnic minorities. I would like to know whether when the Governor writes he will also include in the submission his personal conviction and support for this despite the fact that he might have had different views before he came to Hong Kong as a member of the British Cabinet when that was discussed some time ago?*

PRESIDENT: Are you able to answer that, Chief Secretary?

CHIEF SECRETARY: Mr President, from my personal discussions with the Governor on this subject I can give Mr YOUNG that assurance.

MISS CHRISTINE LOH: *Mr President, I am not entirely sure that the Chief Secretary has fully answered Miss LAU's question. I think the second part of her question was: What exactly is the Hong Kong Government's position? In quoting us Sir Geoffrey HOWE's statement to the Foreign Affairs Select Committee, the Chief Secretary only gave us part of the answer to the British obligation. What, in the Hong Kong Government's view, is the other part?*

CHIEF SECRETARY: Mr President, it is not for me to put words in the mouths of Ministers of Her Majesty's Government. Our position on the subject is clear. We have expressed it this afternoon. I have repeated the words which have been said in formal proceedings of the House of Commons. I can do no further than to draw Members' attention to those statements.

PRESIDENT: Questions are meant to be the exception rather than the rule in this context. Motions.

Motions:

FACTORIES AND INDUSTRIAL UNDERTAKINGS ORDINANCE

THE SECRETARY FOR EDUCATION AND MANPOWER moved the following motion:

> "That the Factories and Industrial Undertakings (Lifting Appliances and Lifting Gear) (Amendment) Regulation 1993, made by the Commissioner for Labour on 8 July 1993, be approved."

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

Section 7(1) of the Factories and Industrial Undertakings Ordinance empowers the Commissioner for Labour to make regulations to ensure the safety and health of people in industrial undertakings including construction sites. The Factories and Industrial Undertakings (Lifting Appliances and Lifting Gear) (Amendment) Regulation 1993 (Amendment Regulation) was made by the Commissioner for Labour on 8 July 1993. In accordance with section 7(3) of the principal Ordinance, I now move that the Amendment Regulation be approved by this Council.

Lifting appliances and lifting gear used in industrial undertakings are governed by the Factories and Industrial Undertakings (Lifting Appliances and Lifting Gear) Regulation except for those used on construction sites. These are governed by the Construction Sites (Safety) Regulation. The main object of the Amendment Regulation is to impose more stringent regulatory measures over the safe use of lifting appliances and lifting gear. The major requirements are:

(a) lifting appliances must be examined annually by competent examiners;

(b) an automatic safe load indicator must be installed on a crane;

(c) persons operating cranes must be 18 years or older and must possess a valid certificate issued by the Construction Industry Training Authority or by any other person specified by the Commissioner for Labour; and

(d) a competent examiner for lifting appliances and lifting gear must be a professional engineer registered under the Engineer Registration Ordinance in a relevant discipline specified by the Commissioner.

Amendments to the Construction Sites (Safety) Regulation of the Factories and Industrial Undertakings Ordinance are required as relevant provisions of the Regulation will be subsumed under the Amendment Regulation of the same Ordinance. This will make the control regulations more straightforward. At the same time, the definition of "competent examiner" in the Construction Sites (Safety) Regulation will be amended to be in line with the Amendment Regulation.

As contractors may need time to comply with the proposed provisions on employment of qualified crane operators and the installation of safe overload indicator, we propose that the amendments should come into effect on three different dates. The requirement of a crane operator to possess a valid certificate issued by the Construction Industry Training Authority under section 11 of the Amendment Regulation should come into effect one year after approval by this Council to allow time to train up sufficient numbers of qualified operators. The requirement of an automatic safe load indicator to be fitted on cranes under section 9 should come into operation six months after approval by this Council. This period should be sufficient for installation. For other provisions, we propose to bring them into effect immediately after this Council has given its approval. We expect that contractors should not encounter difficulties in complying with these provisions.

Mr President, I beg to move.

Question on the motion proposed.

MR TAM YIU-CHUNG (in Cantonese): Mr President, two skilled workers were killed in a tower crane accident on the Tsing Ma Bridge construction site in April this year when they were conducting tests of the machinery. Then another 12 workers were killed in a passenger hoist accident on a North Point construction site in June. Where there are well over a hundred accidents involving lifting appliances and lifting gear each year, the two mentioned above have been the latest and the most serious. The frequency and seriousness of lifting appliances and lifting gear accidents are indeed shocking and saddening.

On the basis of lessons learnt from the incidents above, the regulation tabled to this Council for amendment today will have implication in two areas. Firstly, provisions in relation to lifting appliances and lifting gear under the Construction Sites (Safety) Regulation of the Factories and Industrial Undertakings Ordinance will be subsumed under the Factories and Industrial Undertakings (Lifting Appliances and Lifting Gear) (Amendment) Regulation 1993. Under this arrangement, lifting appliances and lifting gear used by industrial undertakings of the non-construction type must comply with the requirements currently applied on the same machinery in construction sites. This is meant to subject the machinery to stricter and more detailed control. I support these particular requirements.

The second implication is that the use and installation of lifting appliances will be subject to further and stricter regulation. Since the new Factories and Industrial Undertakings (Lifting Appliances and Lifting Gear) (Amendment) Regulation will incorporate provisions relevant to lifting appliances under the Construction Sites (Safety) Regulation, lifting appliances on construction sites will also be subject to stricter control. These requirements include: (1) lifting appliances (for passengers and goods) must be examined annually by competent examiners; (2) any examiner must be a registered professional engineer; (3) an automatic safe load indicator must be installed on a crane (for goods); and (4) persons operating cranes must be 18 years or older and must possess a valid certificate. While these requirements make certain progress to which I must express my welcome, I feel that deficiencies still exist in a number of areas.

Firstly, there is not any requirement on the safe installation and safe use of lifting appliances carrying passengers. Secondly, the new regulation provides only for the qualification requirement of examiners responsible for annual overhaul and post-installation and post-modification examinations, without specifying the qualification of "qualified persons" who must conduct weekly examination of the lifting appliances and lifting gear. I think that stricter requirements should be introduced for "qualified persons", and specific guidelines should be issued for examination of lifting appliances and lifting gear, so that the weekly examinations could be specifically focused to discover defects in time. Thirdly, the new regulation makes no clear definition of the purview of the examiner whose role in safety management is therefore very vague. Therefore, I think that any development of the new regulation in future should aim at further intensification and spelling out of the specifics.

The current amendment to the regulation is no more than a patchwork which is achieved at the exhorbitant price of the lives of many workers. I hope the Administration will relinquish its passive attitude of the past and actively review its existing policy and legislation in relation to industrial safety, with a view to formulating a long-term, comprehensive, specific and effective set of policies and laws. I think that while protection accorded by requirements on the machinery and the other facilities concerned is important, institutionalized protection is equally important. For the former would be an exercise in futility without the latter backing it up. I believe the status of workers in the process of safety management should be raised by allowing them a greater say and more participation in the process. Professionals engaged in safety control should also be given greater powers to prevent the emergence of unsafe working procedures and working environments.

Not long ago, I received a substantial opinion paper on industrial safety which is prepared by a group of factory inspectors. I believe the Government must have known every detail of this paper. I hope that the Government will make positive response to this paper, thus leading to more discussions.

With these remarks, Mr President, I support the amendment.

MR RONALD ARCULLI: Mr President, I beg your indulgence. I was not expecting to be called.

PRESIDENT: You wish to speak, Mr ARCULLI, on the motion?

MR RONALD ARCULLI: Mr President, with your permission, may I decline to comment on the motion.

MR LAU CHIN-SHEK (in Cantonese): Mr President, I had raised several questions with the Government in relation to the present amendment proposal. And now having received the Administration's response, I believe I can put it very clearly that my overall comment on the proposed amendment is that "it has barely scratched the surface"!

As we all know, many serious industrial accidents happened on construction sites and quite many of them involved lifting appliances and lifting gear. Therefore the labour sector has been for many years suggesting that control be introduced on the use of lifting appliances, that operators must sit for qualification examination, that examiners must receive proper training and that cranes must be installed with an overload indicator. Unfortunately, the Government has been denying that legislative control is insufficent and for many years has been reluctant to step up legislation in this respect. The incidence of serious industrial accidents involving lifting appliances has been frequent as a result of such reluctance on the part of the Government. And 35 workers were killed and over a thousand others injured over the last three years. The situation is indeed very very serious.

According to the proposed amendment to the regulation, lifting appliances must be installed with a safe load indicator. Although one can say that this is better than none at all, why do we not require that more effective devices such as "overload alarms" and "automatic overload cut-off systems" be installed? But the Administration's reply to my question above had me caught between tears and laughter. The reply said nothing other than that the Government has set up a working group specifically to examine the safety of heavy machinery on construction sites, including goods cranes and passenger hoists. I have to ask: Why was consideration not given to the abovementioned suggestions already made by the labour sector for a number of years during the drafting of this amendment?

According to the proposal before the Council now, a crane must be installed with an automatic safe load indicator. But it is very probable that the operator will be held liable should an accident happen as a result of overloading

in future. However, similar to the case of overloading of trucks where very often the offence might not have been intended by the operator or driver, it was rather the contractor or foreman, trying to catch up with the work schedule, who coerced the operator into continuing to operate the machinery with the full knowledge that it might overload. The result of requiring compulsory installation of a safe load indicator without a similar requirement for an automatic overload cut-off system is, just as some workers have pointed out, making the operator a scapegoat!

Moreover, I am also disappointed with the proposed amendment which seeks to provide only for the qualification of operators and examiners, without a similar provision as to the qualification of those responsible for the installation, repair and maintenance of such machinery. It is because problems quite often originated from the installation and maintenance processes of such machinery. I hope that the Government will review this issue as soon as possible and then come up with an amendment proposal.

Finally, as regards the ongoing government study of the safe use of heavy machinery on construction sites, including goods cranes and passenger hoists, I hope the Administration will account clearly to this Council and the public the scope of this study (for example, what machinery), its focus and the timetable, and complete the study as quickly as possible to improve safety at work.

With these remarks, Mr President, I urge my colleagues to support this motion albeit the current amendment is still not to my satisfaction. Thank you.

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, may I thank the Members who have spoken for their support. I agree entirely that more needs to be done and we must not be complacent about industrial safety.

I should stress that the regulations to be amended are one of many measures we are taking over the next few months and years to improve industrial safety. We are updating and revising these improvements all the time in the light of technological changes and requirements of the trade. I should like to say that we will be amending regulations later this year to raise the maximum penalties for breach of industrial safety regulations. And, indeed, the working group under the Secretary for Works will be looking into more detailed controls over heavy machinery, starting with industrial machinery as well as passenger hoists.

I agree entirely with Mr TAM's point that the workers' involvement is essential and we are doing our very best to promote safety committees involving workers in all construction sites as a matter of government policy.

I would like to assure Mr LAU that while nothing is perfect we are doing our very best. And we are moving in the right direction and we hope we will go on doing more and reviewing these changes as and when the circumstances require any improvement.

Thank you, Mr President.

Question on the motion put and agreed to.

PNEUMOCONIOSIS (COMPENSATION) ORDINANCE

THE SECRETARY FOR EDUCATION AND MANPOWER moved the following motion:

> "That the resolution made and passed by the Legislative Council on 3 December 1980 as amended be further amended in paragraphs (a) and (c) by repealing "0.02 per cent" and substituting "0.3%"."

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

Experience in the administration of the Pneumoconiosis (Compensation) Ordinance over the years has revealed a number of inadequacies which require improvement. Members will recall that under the Pneumoconiosis (Compensation) (Amendment) Bill 1993 which this Council passed on 7 July this year, substantial changes have been made to the Ordinance to provide improved benefits to pneumoconiotics. The most significant improvements are to introduce monthly compensation payments payable until a pneumoconiotic's death and to allow pneumoconiotics who have previously received a lump sum compensation to receive monthly payments if they suffer additional incapacity.

It is estimated that some 2 000 pneumoconiotics who were diagnosed during 1981 to 1993 would be able to benefit under the new scheme. Another 150 new cases are expected each year.

The balance of the Pneumoconiosis Compensation Fund stood at $112 million at the end of March this year. However, it is expected that the fund would have an accumulated deficit of about $70 million by 1994 if the current rate of levy of 0.02% on the value of construction works which exceeds $1 million and of quarry products remains unchanged. Therefore, after consultation with the Fund Board, we propose to increase the rate of levy on the construction and quarrying industries by phases, initially to 0.3% in 1993 so that there will be sufficient funds for the Fund Board to meet its long-term commitments. A second phase of increase will be required sometime next year.

Section 36(3) of the Pneumoconiosis (Compensation) Ordinance provides that the resolution to vary the rate of levy shall come into effect 30 days after its publication in the Gazette, which would be on 22 August 1993. The revised rate will apply to all construction contracts the tenders for which are submitted on or after that date.

Mr President, I beg to move.

Question on the motion proposed, put and agreed to.

CROSS-HARBOUR TUNNEL ORDINANCE

THE SECRETARY FOR TRANSPORT moved the following motion:

> "That the Cross-Harbour Tunnel (Amendment) Bylaw 1993, made by the Cross-Harbour Tunnel Company, Limited on 5 July 1993, be approved."

He said: Mr President, I move the motion standing in my name on the Order Paper, which seeks approval for amendments to the Cross-Harbour Tunnel Bylaws.

The Cross-Harbour Tunnel (Amendment) Ordinance 1993 was enacted on 30 June 1993. This enables the Cross-Harbour Tunnel Company Limited to install automatic toll collection equipment, as approved by the Commissioner for Transport, and to make bylaws to regulate the use of such facilities. The amendments to the bylaws now before this Council are necessary for the day-to-day operation of the autotoll system. They cover such matters as the issue of electronic toll passes, access to and passage through autotoll booths, and signage We have examined the by-laws, and I commend them to Honourable Members for approval in accordance with section 62(2) of the Cross-Harbour Tunnel Ordinance.

Question on the motion proposed, put and agreed to.

IMPORT AND EXPORT ORDINANCE

THE SECRETARY FOR TRADE AND INDUSTRY moved the following motion:

> "That the Import and Export (Registration) (Amendment) Regulation 1993, made by the Governor in Council on 29 June 1993, be approved."

She said: Mr President, I move the motion standing in my name on the Order Paper. The purpose of this resolution is to reduce the Ad Valorem Levy, known for short as AVL, on imports specified in the Import and Export (Registration) Regulations under the Import and Export Ordinance.

At present, trade declarations have to be lodged for all imports and exports with the exception of exempted items. A levy at 0.05% of the value of the goods concerned is charged, except for food imports in respect of which a flat rate of $5 per declaration is charged. The revenue generated by the AVL on imports and exports is used to cover the cost of compiling trade statistics and other trade-related activities. With the substantial growth of our external trade in recent years, particularly imports relative to domestic exports, the Government proposes to reduce the AVL on imports from 0.05% of the value of the goods to 0.035%. The AVL on food imports will be kept at the flat rate of $5 per declaration.

The reduction of the AVL on non-food imports, intended to be effective from 1 October 1993, should be welcomed by our traders as well as manufacturers who rely on imported raw materials and components for their production. The savings to importers are estimated to be some $90 million in 1993-94 and in excess of $1 billion over a period of five years.

The proposal would also have the effect of reducing the Government's subvention to the Trade Development Council (TDC), which has historically been calculated by reference to the net AVL collected by the Government. The proposed reduction will not create any difficulties for the TDC given its success in generating its own income. For example, in 1992-93, the TDC's self-generated income accounted for 63% of its recurrent expenditure as compared with 44% in 1989-90. Even with the reduction in government subvention as from 1994-95, the TDC will continue to have enough funds to pursue its key objectives of diversifying markets, further developing existing markets and upgrading the image of Hong Kong products. The proposed reduction of the AVL on imports and the consequential reduction of the subvention to the TDC as from 1994-95 is fully supported by the TDC as a move that will benefit trade and industry.

Mr President, I beg to move.

Question on the motion proposed.

DR HUANG CHEN-YA (in Cantonese): Mr President, the Administration proposes today to reduce the ad valorem levy (AVL) on imports, the main reason being that the Trade Development Council (TDC), with its sound financial standing, no longer needs too much subsidy from the Administration. In the past, the AVL on imports collected by the Administration was used to subsidize the TDC.

We are of course glad to see the TDC getting gradually self-sufficient, but should our Administration therefore give up the $1 billion of revenue in the next five years and incur an annual additional expenditure of $17 million? Does the Administration really have so much money that it is getting disgusted with it and is pushing it away? Indeed, the amount involved is not much. Reducing the

AVL by 0.015% will have only a negligible effect on commodity prices in general. The effect on the general public and the actual advantage to importers will both be very small as well. But if there is no reduction, such an amount of money will be very useful in helping our industries. In the past two years, this Council has been asking the Administration to provide more support to our industries so that they can develop high technology and high value-added products. Such a development will not only help our manufacturing industries to contribute more to our economic growth, it will also create more job opportunities within the industries. If we maintain the original rate of AVL, there will be $1 billion in five years' time for supporting our industries and helping with the work in research and development, experiments in turning technologies into commercially available products, the setting up of sample factories and databank for researchers, and the employment of technological researchers. Without such a sum of money, this Council's proposal of assisting our industries will become "mere words" and we will be unable to put it into action. Therefore, the United Democrats of Hong Kong (UDHK) do not support the reduction of the AVL, and propose instead that the amount of money involved be used to subsidize industrial developments instead of subsidizing the TDC.

We intended to move an amendment motion to the effect of our proposal just mentioned, but have found that the Regulation has not specified the use of the AVL. The relevant policy is not based on the Regulation but a verbal undertaking made by the Administration some 20 years ago. Therefore, we cannot strive for a change in policy by way of moving a motion. But if every Member in this Council makes it clear that they want the Administration to spend this sum of money on supporting our industries, I believe that the Administration will accept our opinion. It has been argued that the money comes from the importers and it will therefore be unfair to spend it on supporting the industries. But this is not true, because many products made in Hong Kong have to depend on imported materials. So assisting our industrial development will give rise to more imports. Besides, to the weaving and garment industries which have paid relatively more AVL than others due to their imported materials, two critical problems are confronting them, namely, environmental pollution and rapid response. So it will be fair if the AVL can be used on these two aspects, because that will be helping the industrial and commercial sectors that need to import the relevant materials. Moreover, maintaining the original AVL rate will bring an additional annual revenue of $210 million. Such a sum can be used to subsidize our industries without any need to lower the expenditure on other welfare items.

For the reasons given above, the UDHK call for Members to oppose the reduction in AVL and to ask the Administration to use such levy on subsidizing and strengthening our industries such that more job opportunities can be created.

SECRETARY FOR TRADE AND INDUSTRY: Mr President, I have listened carefully to Dr HUANG Chen-ya's suggestion that the AVL on imports should remain at 0.05% and that the Government should make use of the savings in expenditure resulting from the difference between the existing and new subventions to the Trade Development Council to provide additional funding for industrial support.

In making this proposal, Dr HUANG has perhaps not fully appreciated the substantial benefits traders and manufacturers will derive from a reduction in the AVL on imports. As I said earlier, this reduction will result in savings of over $90 million to importers in 1993-94. With imports growing at an average annual rate of 20% in the past five years, this reduction is estimated to create savings to importers of over $1 billion over a period of five years. This is no small amount.

I have also had very much in mind the fact that, when the AVL on declarations of imports and exports was introduced in 1966, some concern was expressed by the business community about the burden to the trade imposed by the AVL. The then Director of Commerce and Industry undertook to keep the situation under review, in consultation with the representatives of the business community. This is what the Government has done. The proposed reduction of the AVL on imports is supported by representatives of the business community, as can be seen from statements welcoming the proposed reduction made by the Hong Kong General Chamber of Commerce, the Chinese Manufacturers' Association, the Federation of Hong Kong Industries and the Chinese General Chamber of Commerce. This Council's support of the proposed reduction will help to lighten the burden to the trade.

I should stress also that although additional funding for industrial support will not come directly from the revenue generated by the AVL on imports, reduction in the subvention to the Trade Development Council will create room, within the Government's overall public expenditure guideline, for additional funding, probably rather similar to the difference between the existing and new subventions, to be provided for industrial support. On the basis of the past pattern of subventions to the Trade Development Council, the amount thus becoming available for industrial support is estimated to amount to approximately $180 million in 1994-95. This would represent a substantial increase of government expenditure on industrial support, given that the Industry Department and the Hong Kong Productivity Council, the two major agencies responsible for supporting industry, together received approximately $250 million in 1993-94. We are working out a mechanism to ensure that the funds available will be spent on worthwhile projects for industrial support on the advice of the Industry and Technology Development Council, and will be seeking this Council's approval of the appropriate funding mechanism.

Approval of the reduction of the AVL on imports will therefore serve a multitude of purposes: it will generate substantial savings not only to importers but also to manufacturers who rely on imported raw materials and components

for their manufactured products; it will benefit the re-export trade and the reduction of the subvention to the Trade Development Council, calculated by reference to the net AVL collected by the Government, will enable a substantial additional amount to be made available to the industrial support programme. It would also enable the Trade Development Council's annual subvention to be rationalized, in the light of its sound financial position and its increasing ability to generate its own income. The proposed reduction of the AVL on imports is welcomed by the Trade Development Council, representatives of the business community and our industry leaders. It is indeed in the interests of our business community and our industrial sector, which has been pressing for an additional secure source of funding for industrial support for some time, for the proposed reduction of the AVL on imports to be implemented as soon as possible.

With these words, Mr President, I commend the motion to reduce the AVL on imports to this Council.

Question on the motion put.

Voice vote taken.

PRESIDENT: Council will proceed to a division.

PRESIDENT: Would Members please proceed to vote?

PRESIDENT: Do Members have any queries? if not, the results will now be displayed.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Mr HUI Yin-fat, Mr NGAI Shiu-kit, Mr PANG Chun-hoi, Mr TAM Yiu-chung, Mr Andrew WONG, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mr Martin BARROW, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Dr LEONG Che-hung, Mr Jimmy McGREGOR, Mrs Elsie TU, Mr Peter WONG, Mr Vincent CHENG, Mr Moses CHENG, Mr Marvin CHEUNG, Mr CHIM Pui-chung, Mr Simon IP, Mr Eric LI, Mr Fred LI, Mr Steven POON, Mr Henry TANG, Mr TIK Chi-yuen, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, Mr WONG Wai-yin, Dr TANG Siu-tong, Miss Christine LOH and Ms Anna WU voted for the motion.

Mr Martin LEE, Mr SZETO Wah, Mr Albert CHAN, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Dr Conrad LAM, Mr LAU Chin-shek, Mr LEE Wing-tat,

Mr MAN Sai-cheong, Mr James TO and Dr YEUNG Sum voted against the motion.

Miss Emily LAU abstained.

THE PRESIDENT announced that there were 38 votes in favour of the motion and 14 votes against it. He therefore declared that the motion was carried.

INTERPRETATION AND GENERAL CLAUSES ORDINANCE

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

"That -

(1) with effect from 1 August 1993 -

(a) the functions exercisable by the Director of Buildings and Lands by virtue of the enactments specified in column 2 of Schedule 1 in relation to the provisions specified in column 3 of that Schedule be transferred to the Director of Buildings;

(b) the enactments specified in column 2 of Schedule 1 be amended in the provisions specified in column 3 of that Schedule by repealing "Director of Buildings and Lands" wherever it occurs and substituting "Director of Buildings";

(c) the functions exercisable by the Director of Buildings and Lands by virtue of the enactments specified in column 2 of Schedule 2 in relation to the provisions specified in column 3 of that Schedule be transferred to the Director of Lands;

(d) the enactments specified in column 2 of Schedule 2 be amended in the provisions specified in column 3 of that Schedule by repealing "Director of Buildings and Lands" wherever it occurs and substituting "Director of Lands";

(e) the functions exercisable by the Director of Buildings and Lands by virtue of the enactments specified in column 2 of Schedule 3 in relation to the provisions specified in column 3 of that Schedule be transferred to the Director of Buildings and the Director of Lands;

(f) the enactments specified in column 2 of Schedule 3 be amended in the provisions specified in column 3 of that Schedule by repealing "Director of Buildings and Lands" wherever it occurs and substituting "Director of Buildings or the Director of Lands";

(g) the functions exercisable by the Director of Buildings and Lands by virtue of the enactment specified in column 2 of Schedule 4 in relation to the provisions specified in column 3 of that Schedule be transferred to the Director of Architectural Services;

(h) the enactment specified in column 2 of Schedule 4 be amended in the provisions specified in column 3 of that Schedule by repealing "Director of Buildings and Lands" wherever it occurs and substituting "Director of Architectural Services";

(i) the enactments specified in column 2 of Schedule 5 be amended in the provisions specified in column 3 of that Schedule by repealing "Buildings and Lands Department" and substituting "Buildings Department";

(j) the enactments specified in column 2 of Schedule 6 be amended in the provisions specified in column 3 of that Schedule by repealing "Buildings and Lands Department" and substituting "Lands Department";

(k) the Schedule to the Lands Tribunal Rules (Cap. 17 sub. leg.) be amended -

(i) in Form 7 by repealing "屋宇地政署署長" and substituting "屋宇署署長";

(ii) in Forms 3, 4, 5, 8, 9 and 11 by repealing "屋宇地政署署長" wherever it occurs and substituting "地政總署署長";

(l) the Schedule to the Legal Officers Ordinance (Cap. 87) be amended by repealing the heading "Buildings and Lands Department" and substituting "Lands Department";

(m) the Mass Transit Railway (Land Resumption and Related Provisions) Ordinance (Cap. 276) be amended -

(i) in section 2, in the definition of "Director" by repealing ""Director of Buildings and Lands"" and substituting ""Director of Buildings" or "Director of Lands"";

(ii) in sections 6(5)(a), 12(1), (2)(a), (5) and (6) and 14(4) and (5) by repealing "Director" and substituting "Director of Buildings or the Director of Lands";

(n) section 20(g) of the Hong Kong Airport (Control of Obstructions) Ordinance (Cap. 301) be amended by repealing "either" and substituting "any";

(o) section 6(1) and (2) of the Demolished Buildings (Re-development of Sites) Ordinance (Cap. 337) be amended by repealing "Director" and substituting "Director of Lands or any officer authorized by him";

(p) the Temporary Control of Density of Building Development (Kowloon and New Kowloon) Ordinance (Cap. 404) be amended -

(i) in section 2(1), in the definition of "Building Authority" by repealing "Director of Buildings and Lands" and substituting "Director of Buildings";

(ii) in section 2(2), by repealing "Buildings and Lands Department" and substituting "Buildings Department";

(2) with retrospective effect from 11 April 1986 -

(a) the functions exercisable by the Director of Buildings and Lands by virtue of the enactment specified in column 2 of Schedule 7 in relation to the provision specified in column 3 of that Schedule be transferred to the Director of Building Development;

(b) the enactment specified in column 2 of Schedule 7 be amended in the provision specified in column 3 of that Schedule by repealing "Director of Buildings and Lands" and substituting "Director of Building Development".

SCHEDULE 1

FUNCTIONS OF DIRECTOR OF BUILDINGS AND LANDS TRANSFERRED TO DIRECTOR OF BUILDINGS

Item	Enactment	Provision
1.	Lands Tribunal Rules (Cap. 17 sub. leg.)	Schedule, Form 7.
2.	Buildings Ordinance (Cap. 123)	Section 2(1), definition of "Building Authority". Section 2(2). Section 18(1)(ii) and (3). Second Schedule, section 114(10).
3.	Public Health and Municipal Services Ordinance (Cap. 132)	Third Schedule, entry relating to section 105. Sixth Schedule, entry relating to section 105.
4.	Places of Public Entertainment Ordinance (Cap. 172)	Section 2 definition of "Building Authority".
5.	Child Care Centres Regulations (Cap. 243 sub. leg.)	Regulation 23(1)(b) and (2). Regulation 24(2)(b).
6.	Education Ordinance (Cap. 279)	Section 12(3) and (5)(c).
7.	Education Regulations (Cap. 279 sub. leg.)	Regulation 14.
8.	Hong Kong Airport (Control of Obstructions) Ordinance (Cap. 301)	Section 5. Section 7(1). Section 13. Section 14(1).

Item	Enactment	Provision
		Section 15(1), (2)(c)(ii) and (8).
		Section 16(1), (3), (6), (8) and (9).
		Section 17.
9.	Hong Kong Airport (Control of Obstructions) (Lighting) (Consolidation) Order (Cap. 301 sub. leg.)	Paragraph 2.
10.	Demolished Buildings (Re-development of Sites) Ordinance (Cap. 337)	Section 2(1), definition of "Director".
11.	Chinese Permanent Cemeteries Ordinance (Cap. 1112)	Section 3(2)(a)(ii).

SCHEDULE 2

FUNCTIONS OF DIRECTOR OF BUILDINGS AND LANDS TRANSFERRED TO DIRECTOR OF LANDS

Item	Enactment	Provision
1.	Landlord and Tenant (Consolidation) Ordinance (Cap. 7)	Section 50(6)(1)(ii).
2.	Lands Tribunal Rules (Cap. 17 sub. leg.)	Rule 44(1)(b).
		Schedule, Forms 3, 4, 5, 8, 9 and 11.
3.	Crown Land Ordinance (Cap. 28)	Schedule.
4.	Crown Land Regulations (Cap. 28 sub. leg.)	Regulation 6(1).

Item	Enactment	Provision
5.	Crown Leases Ordinance (Cap. 40)	Section 2, definition of "Director".
6.	New Territories Ordinance (Cap. 97)	Section 7(3).
7.	Duplicate Permits and Licences (New Territories) Rules (Cap. 97 sub. leg.)	Rule 2.
8.	Telecommunication Ordinance (Cap. 106)	Section 14(1)(a) and (3)(b).
9.	Rating Ordinance (Cap. 116)	Section 28(2B).
10.	Stamp Duty Ordinance (Cap. 117)	Section 46.
11.	Crown Lease (Pok Fu Lam) Ordinance (Cap. 118)	Section 2, definition of "Director".
12.	Buildings Ordinance (Application to the New Territories) Ordinance (Cap. 121)	Section 2(1), definition of "Director".
13.	Crown lands Resumption Ordinance (Cap. 124)	Section 2, definition of "Authority".
14.	Crown Rent and Premium (Apportionment) Ordinance (Cap. 125)	Section 2 - (a) definition of "determined Crown rent"; (b) definition of "determined annual instalment of premium". Section 4.

Item	Enactment	Provision
		Section 5.
		Section 6.
		Section 7.
		Section 10(1), (2) and (3)(a).
		Section 12.
		Section 13.
		Section 14.
		Section 14A(2).
		Section 18.
		Section 19(1), (2)(a), (3) and (4).
		Section 20.
		Section 21(1) and (2).
		Section 22.
		Section 23(1), (2) and (4)(a).
		Section 24.
		Section 26.
15.	Crown Rights (Re-entry and Vesting Remedies) Ordinance (Cap. 126)	Section 2 -
		(a) definition of "determined annual instalment of premium";
		(b) definition of "determined Crown rent".
		Section 7(3).
16.	Foreshore and Sea-bed (Reclamations) Ordinance (Cap. 127)	Section 2, definition of "Director".

Item	Enactment	Provision
17.	Land Acquisition (Possessory Title) Ordinance (Cap. 130)	Section 2, definition of "Director".
18.	Public Health and Municipal Services Ordinance (Cap. 132)	Section 27(6)(b).
		Third Schedule, entries relating to - (a) section 104(3); (b) section 106(3) and (4); (c) section 111B; (d) section 111C; (e) section 114.
		Sixth Schedule, entry relating to section 111D.
19.	Advertisements By-laws (Cap. 132 sub. leg.)	By-law 1(1).
20.	Sanitation and Conservancy (Regional Council) By-laws (Cap. 132 sub. leg.)	By-law 2(2).
21.	New Territories Leases (Extension) Ordinance (Cap. 150)	Section 9(4).
22.	Legal Practitioners Ordinance (Cap. 159)	Section 74(1)(c).
23.	Solicitors' Practice Rules (Cap. 159 sub. leg.)	Rule 1A, definition of "completed development", paragraph (b).
		Rule 5C(2) and (3).

Item	Enactment	Provision
24.	Air Armament Practice Ordinance (Cap. 194)	Second Schedule.
25.	Defences (Firing Areas) Ordinance (Cap. 196)	Second Schedule.
26.	Country Parks Ordinance (Cap. 208)	Section 16(7)(a) and (b). Section 25(b).
27.	Eastern Harbour Crossing Ordinance (Cap. 215)	Section 19(2).
28.	Oil Pollution (Land Use and Requisition) Ordinance (Cap. 247)	Section 7(2) and (3).
29.	Mass Transit Railway (Land Resumption and Related Provisions) Ordinance (Cap. 276)	Section 2, definition of "Director" (where the expression "Director of Buildings and Lands" first occurs). Section 3(1), (2), (3) and (4). Section 4(5). Section 6(8). Section 10(2).
30.	Mining Ordinance (Cap. 285)	Section 7. Section 9(a) and (c). Section 22. Section 23. Section 24(1) and (2). Section 26.

Item	Enactment	Provision
		Section 31(1) and (3).
		Section 65(1).
		Section 66(1), (2), (3), (4), (5) and (8).
31.	Hong Kong Airport (Control of Obstructions) Ordinance (Cap. 301)	Section 23(1), (2) and (3).
		Section 24.
		Section 25(2).
32.	Partition Ordinance (Cap. 352)	Section 1A, definition of "Director".
33.	Road Tunnels (Government) Ordinance (Cap. 368)	Section 2, definition of "Director".
34.	Kowloon-Canton Railway Corporation Ordinance (Cap. 372)	Section 2(1), definition of "plan", paragraph (a).
		Section 7(7).
		Fifth Schedule -
		(a) paragraph 1;
		(b) paragraph 3(c);
		(c) paragraph 5;
		(d) paragraph 11(1);
		(e) paragraph 15;
		(f) paragraph 16;
		(g) paragraph 18(1)(a).
35.	Road Traffic Ordinance (Cap. 374)	Section 123(3) and (4).
		Section 124(1) and (2).

Item	Enactment	Provision
36.	The Chinese University of Hong Kong Ordinance (Cap. 1109)	Schedule 2, Part I, paragraph 2.
37.	Registrar General (Establishment) (Transfer of Functions and Repeal) Ordinance (8 of 1993)	Section 32.

SCHEDULE 3

FUNCTIONS OF DIRECTOR OF BUILDINGS AND LANDS TRANSFERRED TO DIRECTOR OF BUILDINGS AND DIRECTOR OF LANDS

Item	Enactment	Provision
1.	Lands Tribunal Rules (Cap. 17 sub. leg.)	Rule 41(2) and (3).
2.	Mass Transit Railway (Land Resumption and Related Provisions) Ordinance (Cap. 276)	Section 2, definition of "authorized officer". Section 29(1).
3.	Hong Kong Airport (Control of Obstructions) Ordinance (Cap. 301)	Section 18(2). Section 20(g).

SCHEDULE 4

FUNCTIONS OF DIRECTOR OF BUILDINGS AND LANDS TRANSFERRED TO DIRECTOR OF ARCHITECTURAL SERVICES

Item	Enactment	Provision
1.	Public Market (Urban Council) By-laws (Cap. 132 sub. leg.)	By-law 7(2)(a) and (b) and (3).

SCHEDULE 5

"BUILDINGS AND LANDS DEPARTMENT" AMENDED TO "BUILDINGS DEPARTMENT"

Item	Enactment	Provision
1.	Buildings Ordinance (Cap. 123)	Section 18(1)(b)(ii) and (3). Fourth Schedule, item 2.
2.	Education Ordinance (Cap. 279)	Section 12(3) and (5)(c).
3.	Hong Kong Airport (Control of Obstructions) (Consolidation) Order (Cap. 301 sub. leg.)	Paragraph 2, definition of "plans approved by the Building Authority".
4.	Demolished Buildings (Re-development of Sites) Ordinance (Cap. 337)	Section 2(2).

SCHEDULE 6

"BUILDINGS AND LANDS DEPARTMENT" AMENDED TO "LANDS DEPARTMENT"

Item	Enactment	Provision
1.	Crown Land Regulations (Cap. 28 sub. leg.)	Regulation 6(1).
2.	Telecommunication Ordinance (Cap. 106)	Section 14(1)(a) and (3)(b).
3.	Legal Practitioners Ordinance (Cap. 159)	Section 20(5)(ii).
4.	Trainee Solicitors Rules (Cap. 159 sub. leg.)	Rule 9(4)(g)(ii). Rule 20(1)(b).

SCHEDULE 7

FUNCTIONS OF DIRECTOR OF BUILDINGS AND LANDS
TRANSFERRED TO
DIRECTOR OF BUILDING DEVELOPMENT

Item	Enactment	Provision
1.	Metrication Amendments (Places of Public Entertainment Regulations) Order (Cap. 214 sub. leg.)"	Paragraph 6.

He said: Mr President, I move the motion standing in my name on the Order Paper under the Interpretation and General Clauses Ordinance. This motion seeks to effect the reorganization of the Buildings and Lands Department by a resolution of this Council under section 54A of the Ordinance. The resolution proposes to transfer the statutory functions currently vested in the Director of Buildings and Lands to the Director of Buildings or the Director of Lands, and amend references to the Buildings and Lands Department to the Buildings Department or the Lands Department, as appropriate. The reorganization is proposed to take effect from 1 August 1993.

The existing Buildings and Lands Department is made up of four offices, namely, the Buildings Ordinance Office, the Lands Administration Office, the Survey and Mapping Office and the Legal Advisory and Conveyancing Office. Under the reorganization proposal, the Department will be split into a Buildings Department and a Lands Department. The Buildings Department will take over the existing functions of the Buildings Ordinance Office but will place greater emphasis on the problems of safety and maintenance of private buildings. The Lands Department will continue the land administration, land survey and mapping, and government conveyancing functions currently undertaken by the Lands Administration Office, the Survey and Mapping Office and the Legal Advisory and Conveyancing Office respectively. There will be no basic changes in the system of land administration and building control. The two new Departments will be directly under the policy responsibility of the Planning, Environment and Lands Branch.

The reorganization seeks to make the Buildings Ordinance Office a separate and independent Buildings Department, thus enabling it to cope with new demands in the field of private building control. Previously the emphasis of the Buildings Ordinance Office's work was on the processing of building plans and the certification of new buildings. More recently, it has shifted more resources to the inspection of safety of the existing buildings, control and enforcement action against unauthorized building works and building management. The establishment of the Buildings Department will give it a

more distinct separate identity and greater accountability to the public, as well as enhance its performance. The reorganization will also facilitate more direct interaction between the Planning, Environment and Lands Branch and the two new departments on policy and resource allocation matters.

The reorganization will be achieved mainly through redistribution and adjustment of posts. The reorganization and the necessary changes in establishment were approved by the Finance Committee on 16 July 1993.

Thank you, Mr President.

Question on the motion proposed, put and agreed to.

First Reading of Bills

COMMISSIONER FOR ADMINISTRATIVE COMPLAINTS (AMENDMENT) BILL 1993

FOREIGN CORPORATIONS BILL

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

Second Reading of Bills

COMMISSIONER FOR ADMINISTRATIVE COMPLAINTS (AMENDMENT) BILL 1993

THE CHIEF SECRETARY moved the Second Reading of: "A Bill to amend the Commissioner for Administrative Complaints Ordinance."

He said: Mr President, I move that the Commissioner for Administrative Complaints (Amendment) Bill 1993 be read for a Second time.

The purpose of the Bill is to give effect to the proposed changes to the COMAC redress system. They include direct access to the Commissioner, extension of COMAC's jurisdiction to major statutory bodies, and allowing COMAC to publicize investigation reports. These proposals have been put forward as a result of a comprehensive review of the COMAC redress system.

Because of COMAC's very important role as a safeguard against maladministration of the Government and public authorities, it had been our intention to review the operation of the COMAC Office, including its jurisdiction, after the system had operated for a reasonable period of time. As Members will be aware COMAC has now been in existence since 1989.

A comprehensive review was thus carried out in mid-1992. A consultative document was made available to solicit public views on the system. A Legislative Council ad hoc group was also set up under the convenorship of the Honourable Fred LI to oversee the review.

The Government has studied very carefully the comments made by members of the public, the ad hoc group and the Commissioner. The Bill, now before Members, reflects the outcome of the review and I would like to discuss the three key recommendations in turn.

(I) Direct access

The first is direct access. At present, a complaint to the Commissioner has to route through and be referred by a non-official Legislative Council Member. During the consultation exercise there was a strong public wish to abolish the referral system so as to simplify the complaints procedures.

In the light of the public view expressed, the Administration has decided to change the system to enable the public to take their complaints directly to the Commissioner. This will make the COMAC Office more convenient to members of the public. Nevertheless, it will not prevent Legislative Council Members from referring cases to COMAC, so long as it is with the consent of the complainant.

(II) Extension of COMAC's jurisdiction to major statutory bodies

On the extension of COMAC's jurisdiction, it is the Government's policy to extend COMAC's remit to major statutory bodies gradually, having regard to the functions of the body and the extent of dealings with the public.

Priority is being given to include under COMAC's jurisdiction those statutory bodies which provide an essential service to the community. Taking into account public views and recommendations by the ad hoc group, we propose to include, at this stage, six public bodies under COMAC's jurisdiction. They are the Mass Transit Railway Corporation, the Kowloon-Canton Railway Corporation, the Securities and Futures Commission, the Urban Council, the Regional Council and the Housing Authority.

All of these bodies except the municipal councils have agreed to the proposed inclusion. The Urban Council and Regional Council have expressed opposition to the proposal. Some Urban Council and Regional Council Councillors are of the view that the municipal councils are primarily concerned with policy issues which fall outside COMAC's remit, that ample appeal channels already exist for the public to take their grievances to the Councils, and that as largely elected bodies, the Councils are already fully accountable to the public who could express their dissatisfaction, should they so wish, at the ballot box.

We do not agree with the municipal councils' views:

Firstly, the Urban Council and the Regional Council provide essential municipal services to the public and their activities have direct and significant impact on the daily livelihood of the public. For them to be exempted from COMAC's independent monitoring would clearly be against the wishes and interests of the public.

Secondly, although the Urban Services Department and the Regional Services Department are subject to COMAC's jurisdiction, it is not logical that the parent bodies should be excluded. To have an effective system, it is important that not only the executive agencies of the Councils are included, but also the principal bodies. This is to ensure that COMAC's recommendations involving the Councils could be effectively pursued.

Thirdly, elected members' accountability to their constituents should not be confused with the provision of an independent redress system.

Voting elected members out of office cannot in itself help the aggrieved individual. COMAC can help the complainant seek proper and immediate redress through his investigations and recommendations made to the Council.

Finally, I would emphasize that there is no question of the independence of the municipal councils being compromised. The functions and autonomy of the municipal councils are provided for and governed by their respective Ordinances.

The Administration strongly believe that the municipal councils should be added to the list of organizations subject to COMAC's monitoring. To do so can only enhance public confidence in the Councils. As regards other major statutory bodies, they will be brought in gradually.

(III) Publication of investigation reports

The third key change to the system is that COMAC will be empowered to publish case reports which he considers may be of public interest. This will help promote public awareness of and confidence in the COMAC system, and will certainly provide a useful check for the departments and public bodies. The proposal is in line with similar practice in other countries such as the United Kingdom and Canada. To protect privacy of the complainants, the names of both the complainants and the officers will be omitted but the names of the departments could be disclosed.

I am sure the public will welcome the above proposals as a positive step taken by the Government to enhance the image and effectiveness of the COMAC redress system.

Mr President, I beg to move.

Bill referred to the house Committee pursuant to Standing Order 42(3A).

FOREIGN CORPORATIONS BILL

THE SECRETARY FOR FINANCIAL SERVICES moved the Second Reading of: "A Bill to provide for the corporate status in Hong Kong of bodies established or formerly established under the laws of certain territories outside Hong Kong."

He said: Mr President, I move the Second Reading of the Foreign Corporations Bill.

The objective of the Bill is to allay concern over the corporate status in Hong Kong of a body established under the laws of a foreign territory which is not recognized by the United Kingdom as a state. This is a short and straightforward Bill, and is modelled closely on the 1991 United Kingdom Foreign Corporations Act.

The United Kingdom Act represented a response to concern in the United Kingdom over the uncertainty of the status of corporations incorporated in territories not recognized by the United Kingdom as states. This issue was one of particular importance to those United Kingdom parties which had entered, or intended to enter, into contractual relationships with these corporations. The Act provided that the question of corporate status would be determined as if the relevant territory were a recognized state. It is a solution to a problem in the field of international commerce, and has nothing to do with recognition of states itself which is a matter of foreign relations.

Until the enactment of the United Kingdom Act, the law was uncertain as to whether the legal personality of a corporation incorporated in a state not recognized by the United Kingdom could be accepted. The Act has enabled the legal capacity of such corporations to be accepted. Under the Act, the question which the courts and others have to consider is whether there is a corporation established by laws which are applied by a settled court system in the territory in question.

In Hong Kong, similar concern about the legal capacity of corporations from territories not recognized by the United Kingdom has also been expressed, particularly by the legal profession. The introduction of the Bill is intended to allay such concern and to give primacy to commercial reality. Given the

unpredictability of the international climate, the Bill will play a useful role of ensuring stability and continuity in Hong Kong's trading and commercial relations with other territories.

Clause 2(1) provides that where a question arises as to whether a body established under the laws of a territory not recognized by the United Kingdom as a state, and it appears that the laws of that territory are at that time applied by a settled court system in that territory, then the question of whether the body should be regarded as having legal personality as a body corporate under Hong Kong law and other material questions shall be determined as if that territory were a recognized state.

Clause 2(3) provides that any act done before the commencement of the Ordinance is regarded as valid if it would have been valid pursuant to the provisions of the Ordinance. This clause validates acts undertaken on the basis that a corporate body from a non-state had legal personality under Hong Kong laws. To that extent, the Bill has retrospective effect. The retrospective element, however, is no more than necessary. It is directed, first, at those corporate bodies which may have entered into or incurred legal obligations and may subsequently seek to maintain that those obligations do not bind them because at the time they had no legal personality as corporations under the laws of Hong Kong. Secondly, it will remove the risk that those who have dealt with such bodies may claim that such bodies had no legal personality in the eyes of our law and that therefore obligations entered into with them need not be honoured.

Mr President, I wish to emphasize that, as in the case of the United Kingdom Act, the Bill does no more than clarify the status of foreign corporations in the light of commercial realities. It does not have any bearing on the recognition of states which is clearly and absolutely a matter of foreign policy for the British Government. What the Bill will do is reassure and encourage companies in the commercial and financial world.

Bill referred to the House Committee pursuant to Standing Order 42(3A).

EMPLOYEES' COMPENSATION (AMENDMENT) BILL 1993

Resumption of debate on Second Reading which was moved on 26 May 1993

Question on Second Reading proposed.

MR RONALD ARCULLI: Mr President, the background and the salient features of the Bill were clearly explained by the Secretary for Education and Manpower at the Second Reading of the Bill on 26 May 1993. In brief, the Bill seeks to raise the maximum level of compensation for permanent total disability and death, improve the schedule for assessment of permanent incapacity,

provide for direct claims to be made against an insurer, and streamline existing procedures.

Before I report on the deliberations of the Bills Committee, let me start by expressing my appreciation of the Administration's co-operation in responding so efficiently to members' requests, as well as members' active involvement in putting forth the various concerns which have facilitated discussions.

Members of the Bills Committee supported unanimously the improvements proposed in the Bill, which should go some way in securing a better compensation package for the employees. Some members however have grave reservations about the estimated consequential increase in insurance premium, which is said to be as high as 40% compared to the 1991 total premium, or 32% compared to the 1992 total premium. We have tried to ascertain whether the increase in premium is justified based on previous compensation claims. Statistics provided by the Administration on the employees' compensation cases in the past two years indicate that there was no significant change in the pattern of claims: 79% of them involved no permanent incapacity, while 19% suffered 1-5% permanent incapacity, with less than 0.3% total incapacity or fatal cases. Members have been informed that premium rates would have to take into account future liabilities, that about 65% of the premium insurance have to be spent on reinsurance, payment of commission, and administrative expenses, and that the insurance industry had operated at a loss in 1991. Members also accept that they should not interfere in the internal operations of the insurance industry, and reckon that the actual premium for each insurance policy would be subject to negotiations between the insurer and the employers. It is nevertheless the sincere wish of members that the insurance industry would exercise restraint and would not set the insurance premium at an unreasonably high level. In this regard, the Administration has undertaken to reflect members' concern to the insurance trade.

The Bills Committee has discussed with the Administration the possibility of under-declarations of the number of employees actually employed by some employers in taking out insurance policies. This may have contributed to the estimated high level of premium rates. Members urged the Administration to take steps to ensure that the insurance policies covered the total number of employees, for instance, by checking the number of employees against the insurance policies during factory inspections. In response, the Administration has agreed to look into ways to enforce the provisions requiring all employees to be insured.

Members have sought clarification on why the levels of compensation proposed in the Bill should take effect on 1 January 1994. The Administration advised that, according to established practice, the levels of compensation are adjusted once every two years, with the last revision on 1 January 1992. Besides, the insurance industry had indicated that there would be operational difficulties if the level of compensation were revised in the middle of the year.

Members have considered the suggestion of a phased implementation of the levels of compensation to reduce the cost impact. The suggestion did not gain the support of members as it would affect the benefits of employees and dependants of deceased employees covered by the Bill.

On the provision concerning insurer's liability under the proposed section 42, members have been advised by the Administration that there were cases in the past where injured employees were unable to draw compensation as a result of some exclusion clauses in the insurance policies, and the provision was intended to rectify such situations. Members find it acceptable that there should be greater protection to the injured employees in securing compensation claims. However, members consider it unfair to the insurer if the provision would have retrospective effect. The Administration has now agreed that the provision should only apply to insurance policies issued after the commencement of the section, and that the section would commence on 1 January 1994. Appropriate amendments will be introduced by the Secretary for Education and Manpower at the Committee stage.

With these remarks, Mr President, and subject to the amendments to be moved at the Committee stage, I support the Bill.

MR NGAI SIU-KIT (in Cantonese): Mr President, the present Bill under debate before this Council concerning employees' compensation has an impact that reaches far beyond this Chamber to the millions of employees of Hong Kong. Our economy and the community's concept about industrial safety will also be impacted upon by this proposed amendment.

According to the Administration's proposed amendment, the maximum level of compensation for permanent total incapacity and death in the course and arising out of work will be scrapped and substituted by a computing formula which uses a monthly pay of $15,000 as the uppermost benchmark figure for the calculation of compensation. As a result, the highest compensation awarded, whether it be in the case of permanent total incapacity or even death, will be more than doubled as compared with the maximum amount before.

Such proposed amendment, derived from the review conducted every two years as stipulated by the Ordinance, will enable an employee with a monthly pay of over $6,452 to receive a higher compensation in case of accident. I am supportive of an appropriate increase in compensation, but I must stress that there has to be a limit. Limitless compensation will surely be alluring to employees. Such kind of compensation is poison coated with sweet that will impose an open-ended liability on society, aggravate the conflict between employers and employees and may cast a shadow upon our harmonious labour relations. The reasonable allocation of the resources of our society will also be affected to a certain extent.

According to an assessment by a firm of actuary consultants, the amendment, if passed, will incur an additional compensation commitment of $175 million in 1994. On the basis of this figure, the Accident Insurance Association of Hong Kong has estimated that an increase of $500 million in insurance premium will be required. I have no way of telling whether or not such an amount of increase is reasonable, because only the insurance industry has the information for analyzing and assessing the equilibrium point between the premium and the compensation. But what is sure is that the increase will be shouldered by and will obviously be a burden to employers. Generally speaking, that will also increase indirectly the cost of production.

Mr President, I am not against giving employees the protection that they are entitled to. If increasing the compensation can give employees a reasonable protection that can enable them to work without worries, it will surely be a benefit to employers as well. So why not do something that can benefit others and oneself? But a large increase in insurance premium or even a limitless growth in the amount of compensation will only raise the cost of production, thus setting in motion a vicious cycle that will make inflation even worse and have an adverse effect on our overall economic development. Eventually, it will be disadvantageous to both employers and employees. We must consider seriously before adopting such a change in policy that will only bring difficulties but no advantages.

In fact, raising the employees' compensation is only a remedial measure. I am not saying that an adjustment in compensation is unnecessary, but the problem lies really in prevention of accidents. The Administration should allocate more resources to the promotion of occupational safety, especially industrial safety. This is the proper way to tackle the problem, and not pinpointing who should be held responsible and finding remedies and assistance every time when an accident broke out.

The amendment also proposes that an injured employee may institute proceedings directly against his employer's insurer to claim compensation, and need not sue his employer first. Such an amendment is appropriate because it simplifies the procedure of claiming compensation and clarifies on whom such claims should be filed.

Mr President, I would like to point out incidentally that the Administration has the responsibility to strike a balance between this policy under consideration and the welfare of society, and consider formulating a mechanism which can provide appropriate guidelines to and exercise appropriate monitoring on the insurance industry. Only by so doing can it be ensured that employers are paying a reasonable premium and injured employees will be able to receive the compensation they are entitled to.

Mr President, I so make my submission. With reservations, I support the amendment.

MR TAM YIU-CHUNG (in Cantonese): Mr President, when the Bills Committee on Employees' Compensation (Amendment) Bill 1993 met, most of our discussions were focused not on the Bill itself but rather on the Bill's proposal to raise the maximum level of compensation for permanent disability and death and the consequential increase in insurance premium. It was pointed out by the Hong Kong Federation of Insurers that, if the proposal was accepted, the premium would increase by 40% as compared to that in 1991. And the Government estimated that the increase would be 32% over 1992. The ratio between the premium and labour costs will thus go up from the original 0.9% or so to 1.4%. That is why the employers felt quite strongly during the deliberation of the Bill.

Moreover, during the deliberation of the Bill, we find that the operating expenses of the employees' compensation insurance account for as high as 65% of the premium. The operating expenses include reinsurance cost, payment of commission and administrative expenses. That is to say, only 35% of the premium are left for compensation payment. This reveals the relatively high operating costs of the employees' compensation scheme. In other words, the efficiency of such a compensation mechanism is rather low. In comparison to similar schemes in countries, whose operating expenses account for only 10% of the premium, ours are obviously very high. Nevertheless, the Government said that it is difficult to assess whether the scale of increase in premium and the operating cost is justified whereas the Insurance Officer also expressed the view that it is inappropriate to apply administrative means to intervene the setting of premium by the insurance industry. Under such circumstances, why should we not set up a centralized mechanism for employees' compensation under government control?

Experiences from many nations and regions show that operating cost drops drastically when insurance mechanism turns from privately operated into publicly operated. Take Taiwan for an example, when the labour insurance scheme was first introduced, private insurance companies were the insurers. But nowadays, the government-operated Labour Insurance Bureau has replaced the private insurance companies. This indicates that employees' compensation has become a prevailing trend. From the economic point of view, centralization, institutionalization and standardization can help to save administrative expenses and commission payment. And such a scheme is non-profit making. As a result, the operating cost can be reduced substantially to make the compensation mechanism cost-effective. Suffice it to say that a centralized and government-operated employees' compensation mechanism is not only economically justified but also a valid option to both employees and employers. The labour sector has been striving for the establishment of a central employees' compensation scheme for years. Today, we find it more opportune to set up such a mechanism. I, therefore, urge the Government to consider setting up the mechanism expeditiously.

Mr President, I support the amendments to the Bill.

MR LAU CHIN-SHEK (in Cantonese): Mr President, the proposals contained in this Bill would undoubtedly make certain improvements on the present compensation system for employees who sustain injuries or who die in the course of employment. More welcoming though, the Bill proposes the removal of the prescribed maximum level of compensation made in cases resulting in death or incapacity.

However, this does not mean that with the passage of the Bill, the employees' compensation system in Hong Kong will have become sound enough. The opposite is true. Many other amendments proposed by the labour sector over the years have still not been accepted by the Government. My opinion is that it is absolutely imperative to overhaul the employees' compensation system. Improvements should be made to extend the scope of protection, increase the amount of compensation, streamline the compensation procedures and introduce a centrally operated compensation system. Today I wish to elaborate in detail the issue of a centrally operated compensation system.

Under the existing legislation, employers are required to provide insurance coverage for their employees, but they take out insurance policies in different insurance companies. This is unlike the practice adopted by countries like Australia and Canada where one central body co-ordinates and processes insurance policies taken out by employers for their employees, takes care of the management of the fund, investment as well as the compensation made to employees. The diversified type of insurance system implemented in Hong Kong is replete with drawbacks and there are three areas which people find most unacceptable, namely, that under the present system, some employees are still unable to get any compensation to which they are entitled; there is a relatively great discrepancy between the actual amount of compensation and the level of insurance premium; and the current insurance arrangements almost do nothing at all with regard to the improvement of industrial safety.

First of all, since existing insurance matters are dealt with on a diversified basis, there are cases where the employers do not take out any policy for their employees, where they simply do not provide enough insurance coverage, or where some insurance companies in question are not well run, and may even close down. All these will result in the possible failure on the part of the employees to get any compensation. It is therefore obvious that the current system is plagued with serious problems.

Secondly, there is the discrepancy between the actual amount of compensation and the level of insurance premium. In 1992, the total insurance premium in respect of employees' compensation amounted to $1,500 million, out of which no more than $600 million was paid as compensation. That is to say, the amount actually received by the insurance companies was $900 million (proceeds from this will be further increased in future), which was spent mainly on re-insurance, commission and administrative costs. If a centrally operated insurance system is adopted, I believe it is possible to reduce expenses such as those on re-insurance and commission, which largely account for the

$900 million. By doing so, not only will insurance premium be reduced, but the net proceeds thus obtained can be used to improve industrial safety. This can indeed serve several purposes.

Thirdly, under the present insurance system, this type of insurance is dealt with by the private sector. In general, insurance companies only think about doing more business. Therefore, in issuing policies or determining the amount of insurance premium, they would not necessarily take into account the past industrial safety records of a certain industry or a certain employer. In fact, past experiences clearly indicate that the current insurance system is of no use whatsoever to the improvement of industrial safety. If the insurance system is replaced by one which is operated by a centralized body, it will be possible to impose effectively a higher amount of insurance premium on industries and employers who have poor records of industrial safety, with the aim of urging them to improve industrial safety.

I understand that the Government is considering setting up a central insurance bureau to co-ordinate matters concerning insurance and compensation. I think in view of the aforesaid arguments I clearly put forward just now, a decision should be made expeditiously to set up a centrally operated insurance system so that the employees' compensation system could be improved.

Two weeks ago, when I met the Governor to discuss industrial safety, I did also mention to him the proposal of introducing a centrally operated compensation system. At that time the Governor cited the central compensation fund in Australia, which is suffering losses, to express his reservation about such an idea. However, as far as I understand, the employees' compensation system in Australia covers a very extensive area. Where an employee suffers from working pressure, he or she can apply for compensation. Under such circumstances, huge sums of compensation are incurred. I believe that nothing of this sort will ever happen in Hong Kong.

Honourable colleagues, it is a misfortune for employees to sustain injuries, to suffer from incapacity or even to lose their life during their employment. To those unfortunate employees, should we not end the abuses which are abound in all aspects of our compensation system, is that not something equivalent to "striking one when one is down"?

Mr President, with these remarks, I urge the Government to take early actions to improve the employees' compensation system as a whole. Thank you.

MR TIK CHI-YUEN (in Cantonese): Mr President, the Employees' Compensation (Amendment) Bill 1993 proposes to remove the maximum statutory limit on the amount of compensation payable and replace the practice with the one setting a maximum limit for monthly earnings in the calculation of compensation. There has been a call for such an amendment for a long time

because the setting of the maximum limit on the amount of compensation payable will deprive workers suffering from occupational disease or injury of their entitled compensation. And the amendments now before us can plug this loophole. For this reason, Members from Meeting Point will vote for this proposal.

Hong Kong workers can have some protection under the aforesaid Bill and the other two Compensation Ordinances. Furthermore, workers can also invoke the common law to claim compensation. Yet, as there are a considerable number of loopholes in the compensation procedures under the existing Ordinances, in addition to poor management and unsound policy, Meeting Point thinks that, as a long-term measure, the Government should take all factors into consideration and establish a central compensation fund for employees suffering from occupational disease or injury. We propose that the central compensation fund be established by the Government through legislation. The Government should also be responsible for management and the compensation fund committee be empowered to manage the fund. Apart from meeting the compensation for employees suffering from occupational disease or injury, the fund can be used to finance, among others, occupational health education and rehabilitation services. We also propose that the source of the fund should come from all businesses operating in Hong Kong. The existing policy of making it compulsory for employers to take out policy for their employees should thus be replaced. Meeting Point thinks that the establishment of the central compensation fund for employees suffering from occupational disease or injury will have the following advantages:

(1) Occupational rehabilitation can be included in the protection scheme;

(2) Apart from the availability of special protection and services, assistance may also be given to occupational patients when they are under treatment or when they temporarily lose their working capacity; and

(3) The poor management and loopholes under the current unsound compensation policy would be a thing in the past. Employees suffering from occupational injury or disease would in consequence receive more effective protection.

In this connection, although Members from Meeting Point will support the Bill today, we propose that the Government should immediately consider the following two measures:

(1) The Government should carry out further remedial studies in respect of the existing deficiencies in the Employees' Compensation Ordinances, such as the limited scope of application and the lack of protection for outworkers, some of the temporary workers and the

self-employed as well as the narrow coverage of the Compensation Ordinance and so forth; and

(2) The Government should establish a central compensation fund for employees suffering from occupational disease and injury so that such workers can be fully protected.

Mr President, these are my remarks.

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, I am grateful to Members for their support of this Bill. I would like to thank Mr ARCULLI and other members of the Bills Committee for their careful and expeditious examination of this Bill. I am aware that some Members are concerned about the effect of the proposals on the insurance industry and the cost impact on employers.

To address the concern of the insurance industry that sufficient lead time be allowed for the industry to adjust to the increased liabilities arising from the provisions of the Bill, I shall move an amendment to clause 1(2) of the Bill making it clear that such provisions shall come into effect on 1 January 1994. These provisions include clauses 2 and 3 which improve the maximum levels of compensation; clause 11 which revises the section relating to insurers' liability and clause 20 which amends the first schedule for assessment of loss or incapacity.

I shall also move another amendment to add a new clause 10A so that the Director of Health may take proceedings directly against an insurer once the Bill is passed as it does not affect and insurer's liability.

In response to Members' suggestion, clause 11 will be amended to stipulate that the proposed section 42 relating to insurer's liability will not apply to policies issued before the commencement of the section. This ensures that insurers will not need to bear additional liability while not able to cover their position by increasing insurance premium under existing insurance policies.

Consequential amendments are also proposed by adding an additional section under clause 19 to take care of the transition period before the revised section 42 comes into effect on 1 January 1944.

Regarding Members' concern over premium increase arising from the increase in maximum levels of compensation, we shall reflect Members' views to the insurance trade.

Members may wish to note that under the existing Insurance Companies Ordinance the Insurance Authority is debarred from requiring an insurer to amend the premium payable in respect of any policy or class of policies. This is

in line with the worldwide trend that the insurance regulator will not intervene in the fixing of premium.

I fully understand Members' concern about the cost implications of labour legislation. When introducing a new piece of legislation or amendment legislation, it is our established practice to balance carefully the interests of employers and employees. I can assure Members that we will continue to follow this practice in future. Through active consultation with employers, employees and the industry concerned, we have achieved and should continue to achieve a balanced view.

Some Members pointed out that some employers tended not to declare the full number of their employees in their insurance policies in order to pay lower premium. Members of the Bills Committee felt that this might account for the high level of premium proposed by the insurance industry. We shall certainly look into the issue to ensure that employees are properly insured by their employers.

Finally, regarding several Members' suggestion to set up a central bureau for employees' compensation, we are looking into the feasibility of the proposal. It should be noted that the insurance industry has suffered considerable losses in this type of business in recent years. Any increase in employees' compensation benefits must be funded by a corresponding increase in insurance premium. This is the case irrespective of whether the system is run by a government agency or the private sector. I note some Members' view that a centrally operated employees' compensation system should provide better protection to employees injured at work and to dependants of deceased employees. However, government or quasi-government agencies may not necessarily provide insurance cover more efficiently and economically than the private sector. The subject will require very careful examination.

Thank you, Mr President.

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

Bill read the Second time.

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

WESTERN HARBOUR CROSSING BILL

Resumption of debate on Second Reading which was moved on 30 June 1993

Question on Second Reading proposed.

MR SIMON IP: Mr President, I wish to declare an interest as a partner of Johnson, Stokes and Master, the legal advisers to the franchisee, and I seek your confirmation that I may vote on this Bill.

PRESIDENT: Thank you.

MR MARVIN CHEUNG: Mr President, I wish to advise that the KPMG Peat Marwick, of whom I am a partner, have provided advice to the consortium bidding for the Western Harbour Crossing franchise. And I wish to declare an interest in this connection.

PRESIDENT: Thank you.

MRS MIRIAM LAU: Mr President, the Western Harbour Crossing Bill, introduced into the Legislative Council on 30 June 1993, provides for the award to the Western Harbour Tunnel Company Limited of the franchise to build and operate the Western Harbour Crossing. The Bill, once enacted, will enable the Company to commence construction on 2 August 1993. The Administration has indicated their strong wish to have the Bill enacted within the current legislative Session because the validity period of the tender will expire after 31 August 1993. Should there be no enabling Ordinance by that date, the validity period will have to be extended with the result that completion of the Western Harbour Crossing will be delayed and the project cost will be increased.

A Bills Committee, of which I am the chairman, was set up to study the Bill. Because of the tight timetable, the Bills Committee held altogether 11 meetings in the course of less than two weeks to discuss the major issues which involve both principles and policies. A Technical Subgroup was also set up and have met several times to examine the Bill on a clause by clause basis.

The Bills Committee also met with representatives of the Company with a view to better understanding the Company's stand on the matter. From the outset, the Company made it plain that if the essential elements of the franchise as proposed in the Bill were altered, it would have no interest in taking on the project. The Administration also pointed out that the proposed franchise came about after seven months of tough negotiation and warned that any amendment thereto may result in the Company withdrawing. Notwithstanding such warnings, members still identified areas of concern and painstakingly explored various ways and means to improve the proposed franchise, balancing the Company's viability on the one hand and the interests of the users on the other.

Let me briefly go into the areas of major concern to members. The first one is the internal rate of return (IRR) sought by the Company. The average IRR on equity expected by the Company, which was pre-tax and inclusive of

inflation, was 16.5% over the franchise period. Following negotiations, the Company had agreed to a band of IRR instead of a fixed rate, which band extends from 15% to 18%. This is considered to be reasonable having regard to the risks the Company has to bear compared to other investment opprtunity, the IRR sought on equity for previous tunnel franchises and similar projects in the Asia Pacific Region. The expected rate of return takes into account inflation, risk of the investment, profit required on the funds invested, and timing of the return.

Members also noted that the table on the Estimated Net Revenue, which sets out the minimum, upper and maximum levels of revenue (in other words, the "tramline" concept), falls outside the Bill. Instead it was only contained in the Project Agreement. The Project Agreement is defined in the Bill as including any subsequent agreement amending, supplementing or novating that agreement. Whilst it is appreciated that certain technical details in the Project Agreement may have to be changed by mutual agreement later on, members expressed their worry that the table on Estimated Net Revenue, on which future toll increases are guided, could be changed by the Administration and the Company in the future without reference to the Legislative Council. Furthermore, if the table is only contained in the Project Agreement, which is not a readily available document, members of the public would have difficulty following how the toll adjustment mechanism works. Members recommend that the table should be incorporated as part of the Bill. This would not only give certainty to the "tramlines" but also enhance transparency. The Administration and the Company have agreed to such change and a Committee stage amendment will be moved by me to effect the inclusion of this table under a new schedule 5 to the Bill.

The second area which members have examined in detail is the Toll Adjustment mechanism. Members note that provisions are included in the Bill to give effect to a new toll adjustment formula and mechanism, which allow the Company to increase the toll every four years during the whole franchise period provided the Company operates within the tramlines of 15% to 18%.

If in any year the actual net revenue is below the minimum level expected (15%), the Company may advance a toll increase or have additional toll increases when all the six toll increases have been used. If the actual net revenue is higher than the upper level expected (18%), the excess over 18% will be shared evenly between the Government and the franchisee. When the return exceeds 19%, the whole of the excess will be placed in a Toll Stability Fund which will be used to defer future toll increases. The majority of the members of the Bills Committee accept the toll adjustment mechanism subject to the introduction of some measures for the Legislative Council to monitor the operating cost budget and revenue accounts of the Company. I shall go into these measures in more detail in the latter part of my speech.

The third area of controversy is the opening tolls. Members were concerned that the opening tolls of $30 in 1997 money for private cars and $55

for public double-decked buses may be excessive. Members queried why it was not possible to set the opening tolls at a lower level by adopting various means which include refinancing of bank loans on completion of construction with a view to obtaining lower interest rates, or by the Government injecting capital into the project thus reducing the amount of loan required, or by borrowing from the Government instead of from other financial institutions to get lower interest rate. The Administration explained that the opening tolls must generate sufficient revenue for the Company to repay its debt in the initial years. Tolls lower than those proposed in the Bill would not be acceptable to either the Company or its lending banks. As regards the suggestions for the Government to inject capital into the project or the Government to act as lender, the Administration considered that the suggestions deviated fundamentally from the agreement reached with the Company.

Some members suggested that the Government should build the Western Harbour Crossing as a government tunnel. The Administration did not favour such a suggestion on the following grounds:

(a) Firstly, the cost (including the opportunity cost) would have to be met from the reserves;

(b) Secondly, a decision by the Government to finance this project from public funds would send a wrong message to the private sector, and may deter the privatization of other infrastructural projects (for example, the Lantau Fixed Crossing, the Country Park Section of Route 3 and so on); and

(c) Thirdly, the Government would have to forgo the community benefit that could be gained if the money had been used for other purposes.

The opening tolls are worked out on the basis of a number of assumptions which included, *inter alia*, traffic volumes. The Company has adopted a set of traffic forecast different from that of the Administration. Some members are of the view that the Company's projection of traffic volume is too conservative and that if the Administration's more optimistic forecast is used, the opening tolls can be reduced without affecting the Company's ability to service its debts. As the forecasts are only estimates and no one can guarantee their accuracy at this stage, a suggestion was put forth by members that the proposed opening tolls be accepted on condition that any revenue received in the first three years by the Company in excess of 16.5%, which is the level of the average IRR requested by the Company, will be put into the Toll Stability Fund. The Administration and the Company agree with this proposal. An amendment to allow the Fund to receive money arising from such arrangement will be made to the Bill. A statement confirming the agreed arrangement will be made by the Secretary for Transport in this Second Reading debate of the Bill; and a new provision will be incorporated in the Project Agreement committing the Company to such an arrangement.

The last but definitely not the least important area which members have expressed concern is the lack of monitoring by the legislature, particularly in respect of the right to veto future toll increases. Under the new toll adjustment mechanism, a toll increase is allowed whenever the level of the IRR falls short of 15%. Although the Bill and the Project Agreement provide for a comprehensive set of checks and balances to be exercised by the Administration, members feel that it lacks sufficient transparency and public accountability called for in a franchise.

Apart from the inclusion of the Estimated Net Revenue as a schedule to the Bill which will enable Members to monitor the minimum, upper and maximum net revenue in respect of any one year of operation, members feel that the opportunity to scrutinize the operating cost budget of the Company and examine the justifications for any application for a toll increase should also be extended to the Legislative Council. The Administration, after consulting the Company, agrees that the Secretary for Transport will table the agreed operating cost budget in the Legislative Council wherever possible before the summer recess. The Secretary will also table the accounts of the Toll Stability Fund, normally not later than 31 December each year. Where there is an application for a toll increase, the Secretary will brief the Transport Panel and make a statement in the Legislative Council explaining the merits or otherwise of the application, at the same time tabling a statement of net revenue of the Company for scrutiny by Members. This will enable Members to discuss and debate the proposed toll increase so that Members' views can be made known to the Administration before the Secretary decides whether he is satisfied with the Company's net revenue statement and whether or not he agrees with the toll increase application. I trust that the Secretary will in his speech later on confirm that all these arrangements will be effected. Suitable Committee stage amendments will be moved to the timing for the submission of the statement of net revenue by the Company to accommodate this additional monitoring process by the Legislative Council.

Mr President, the Western Harbour Crossing is an important part of our transport infrastructure. When completed, the crossing will serve as a much needed relief to the existing cross harbour tunnels and will help to meet Hong Kong's long-term traffic demand.

Mr President, I wish to take this opportunity to thank my colleagues and the Administration for their patience, perseverance and hard work in examining the Bill and their positive attitude in resolving differences on important issues of principle. Without their concerted efforts and good sense, the scrutiny of the Bill could not have been completed within such a short span of time.

With these remarks, Mr President, I commend the Western Harbour Crossing Bill to Honourable Members.

MRS SELINA CHOW (in Cantonese): Mr President, it is beyond doubt that Hong Kong badly needs the construction of the Western Harbour Crossing. From the viewpoint of relieving the traffic of the Central and Western District on Hong Kong Island, easing the traffic congestion of Kowloon and Hong Kong as a whole in order to lessen the impact on the economy due to traffic congestion, or considering the overall co-ordination of the New Airport Core Projects, all point to the fact that the construction of the Western Harbour Crossing is both urgent and necessary.

The Government's decision to opt for commercial operation by inviting tenders is worth supporting since it would allow the employment of the community's resources in a diversified manner as well as the enhancement of the building of the community's infrastructure so as to cope with the traffic and transport needs arising from the rapid economic developments in Hong Kong. Mr ARCULLI will explain in detail the views and position of the Liberal Party on the privatization of the infrastructural development in this respect.

The discussion process on the Western Harbour Crossing Bill this time has been tough because of the extremely tight schedule. The Government only received one bid from one consortium. In the absence of competition and other choices, many people would query whether the agreement reached between the Government and the consortium is really in the public's interests, whether the agreement is fair to the people, whether the toll increase mechanism is reasonable and whether the Legislative Council should agree to forego the right to have a say with regard to future toll increase by way of subsidiary legislation.

Having conducted thorough studies and discussions on the above issue, Liberal Party members think that the Hong Kong Government can learn a lesson from this episode and that the Government should handle the matter better next time when it comes to similar negotiations and formulation of an agreement in the future. Mr Steven POON will expound the Liberal Party's views on that front.

The Liberal Party thinks that the overriding consideration, when we look at the Bill, is whether the Government's decision to award the franchise of the construction of the Western Harbour Crossing to a private operator should, after all, be supported. If this decision is supported, Members should assess whether this commercial agreement is justified from the viewpoint of the people as the consumers. Of course, we must fight for the most beneficial terms for the consumers. Yet we must also take into account whether the consortium will accept the revised terms. It would be irresponsible on our part to put up a show of authority out of wishful thinking, to amend the agreement unilaterally and insist on its implementation, in full knowledge that it will lead to the dire consequence of an abortion of the Western Harbour Crossing project. We must realize that the legislative procedures this time are different from those under normal circumstances. Normally, the Government has to follow a government policy, after its having gone through the legislative procedures in this Council. However, this time if the piece of legislation endorsed in this Council is not

accepted by the consortium, it is definitely legitimate for the consortium to withdraw.

In fact, in their reply to questions raised by members of the Bills Committee, representatives of the consortium told the Bills Committee categorically that the consortium would not make any changes with regard to the opening toll of $30, the average return rate of 16.5% and the toll increase mechanism which is set up on a one-off basis. Their stand leaves no room for compromise

Some Members say that the setting up of the toll increase mechanism on a one-off basis is like decapitating the Legislative Council. That statement is basically misleading. The Legislative Council is debating whether the mechanism is reasonable or not. This precisely demonstrates that the Legislative Council has the power to decide whether to accept the long-term steady toll increase formula or otherwise. And the mechanism lays down the criteria for toll increase once and for all. It serves to prevent any party, be it the Legislative Council, the Government or the consortium, from tampering with the toll increase mechanism at will during the franchise period.

The original Bill stipulates that the consortium is required to submit the annual operating account as a supporting document for each toll increase to the Government for scrutiny. However, the Liberal Party thinks that the power of scrutiny should rest with the Legislative Council. Therefore, the Liberal Party submitted a request to the Secretary for Transport for adding new procedures so as to enhance the transparency of the whole process. Our request is that the consortium has to submit its annual operating account to this Council for scrutiny, and the Government must brief this Council before it comes to the decision of whether or not to accept the consortium's toll increase proposal. The Government had also agreed to such a change. We think that the introduction of such a procedure and the Legislative Council's basic power of setting up ad hoc committees at anytime and under any circumstances are sufficient to ensure what course of action that this Council could take, where necessary, in the public's interest.

The Liberal Party concludes that an opening toll of $30 is excessive and that conclusion is arrived at having regard to the public sentiment and Member's views as well as the different projections made by various parties on the traffic volume after the tunnel comes into operation. Nevertheless, the effects to be achieved by our proposal are extremely different from those brought about by the amendment proposed by the United Democrats of Hong Kong.

We all think that the projected traffic volumes prepared by the consortium are too conservative. Yet, if we change the opening toll to $25 today, it will not be acceptable to the consortium and the agreement will be abortive. This kind of cure is like" the operation is successful, yet the patient is dead". This is getting us nowhere except putting up a show, is it not?

However, if the amendment proposed by the Liberal Party is supported and approved, the consortium will not withdraw, and if the traffic volume by then is the same as what estimated by this Council, the users will have real benefits because the accumulation of the Toll Stability Fund can postpone the date for toll increase after the tunnel has come into operation. This is definitely advantageous to the citizens.

It is very obvious which proposal can solve the problem and is more forward-looking, is it not?

MR HUI YIN-FAT (in Cantonese): Mr President, judging from the perspectives of the opening toll level, the rate of return and the automatic toll adjustment mechanism, I find the Western Harbour Crossing franchise contract absolutely unreasonable. I even fear that once a precedent is set, people would have to pay higher costs for public services. In view of the fact that the decision reached by the Council today would inevitably give rise to far-reaching consequences in every aspect, I consider that it is not desirable for the Council to endorse the Bill rashly despite the urge and pressure from the Government, the consortium and the Chinese side.

As we are aware, the reason for the Government being placed in a disadvantageous position when bargaining with the successful tenderer is that the two consortia, which originally bid for the tender separately, joint hands with each other at the final stage. Due to time constraint and in the absence of other alternatives, the Government has to reach an agreement with the consortium regardless of the consequences. It can be said that the Government has exposed its bottom line early during the course of negotiation, thus committing a very serious mistake insofar as negotiation techniques are concerned.

The Western Harbour Crossing is an integral part of the overall transport network of Hong Kong, especially the Western District. Had the Government not been hesitant in the previous years, the project would have been constructed separately without having anything to do with the new airport. Now as the Government has to complete the new airport before the reversion of sovereignty in 1997, it appears that there is the so-called "urgency" in the Western Harbour Crossing project. It should be borne in mind that the completion of the project before the reversion of sovereignty is not the only important factor which Hong Kong people have to take into consideration. In order words, time constraint is not an objective factor which resulted in the Government being placed in a disadvantageous position in the negotiation. In fact, if there is really such an urgency, the Government may well take the approach of the Tsing Ma bridge. I hope the Administration would clarify the reasons for handling these two projects differently.

It happens that the tendering exercise for the Western Harbour Crossing project was conducted at a time when the Sino-British relation was at the lowest ebb. To the investors, the lack of progress in the new airport negotiation meant

uncertainty in the territory's future. Their unwillingness to bid for the tender is understandable. However, since the Chinese side is more concerned about the economic interests of Hong Kong than the Hong Kong Government, the Chinese side cannot but give the green light to the relevant infrastructure projects (though the financial arrangements for the new airport are still outstanding). In other words, the investment environment is entirely different now. If the Government re-conducts the tendering exercise, I believe a lot of consortia would be attracted to take part in it. The question is whether the Government has such confidence and courage.

Mr President, although two amendments relating mainly to the toll and the toll adjustment mechanism have been proposed, I still find (the franchise contract) unsatisfactory. First, as regards the proposed amendment raised by Mr Steven POON, I am of the view that it is only an expedient arrangement or decision made to accommodate the difference in traffic volumes in the early stage of operation forecast by the Government and the consortium. Strictly speaking, it only serves to provide the hard-line Government and consortium with an "honourable way out", and is not in line with or even far from the principle of fairness. That is why my core advisers and I find this proposed amendment unacceptable.

I find the proposed amendment raised by Mr Albert CHAN fairer and more reasonable. However, as this amendment has not obtained the consent of the Government and the consortium, even if it was endorsed by this Council, it was of no help to this matter. As regards the proposal to fund the project at the expense of the Government, I am of the opinion that it is against my long-held principles because it has been my worry that large infrastructure projects might affect the Government's commitment to social services. Now, there are even less reasons for me to support the Government to fund the project at its own expense.

Mr President, after careful thoughts, I still consider that retendering is the most desirable option. If colleagues in this Council do not have the guts to take the risk, then in the absence of better options, I cannot but support Mr Albert CHAN's proposed amendment.

Mr President, these are my remarks.

MR RONALD ARCULLI: Mr President, one aspect of the Western Harbour Crossing Bill deserves particular focus and that is the BOT method chosen by the Administration to try to secure the Western Harbour Tunnel for Hong Kong. BOT, as we all know, is shorthand for build, operate and transfer.

After the Administration called for bids and months of negotiations with one consortium, it resulted in an agreement for the granting of the franchise, subject to the passing of the Bill we have before us today and to the terms of a project agreement to be entered into by the Government and the consortium.

From the outset this project had all the makings of a political jamboree, and true to form the public and the media was not to be disappointed.

Mr President, as we all know, the tunnel franchise is for 30 years costing about $7.5 billion but without one cent from the public purse. In other words the private sector is "going it alone", if I may use an in-phrase, because both the equity and financing is provided by the consortium and the banking industry respectively. The bank loan of some $5.1 billion has a payback period of about 15 years from the first drawdown. Neither the consortium nor the banks will be given any guarantee. Contrary to some belief, the consortium and the banking syndicates will not be given any guarantees that they will not lose any money. The only bit of comfort the consortium has is that, if net revenues fall so that the IRR drops below 15%, the consortium may accelerate a toll increase.

Whatever the Government's obligations may be under the Memorandum of Understanding, I have yet to hear any of my honourable colleagues say that we do not need or want the Western Harbour Tunnel and this includes my colleague, the Honourable HUI Yin-fat who we missed at the Bills Committee because his views would certainly have contributed to our deliberation. If we all agree that we want the tunnel, the question is should Hong Kong privatize projects such as this tunnel because indeed there are similar projects in the pipeline.

Mr President, the United Democrats seem to favour privatization subject to their opinion on what is a reasonable IRR. For this tunnel, they seem to be saying that the IRR should be "tram tracked", if I may use that phrase, between 14% and 18%. Meeting Point, on the other hand, takes a much more strident or robust approach for they say the IRR should be 10%. Meeting Point goes on to say the public has no benefits at all under this franchise agreement. It seems that the United Democrats want to be the dealmakers whilst Meeting Point wants public funds to subsidize the Western Harbour Tunnel users. The Liberal Party, Mr President, on the other hand, does not want to be either although I dare say we have the talent to be dealmakers. What we do want is a fair deal for the public but we also want badly needed infrastructure projects to be built as quickly as possible without any subsidy from public funds. Mr President, I believe that between now and 2001 Hong Kong needs Route 3, Route 16 and the Central Kowloon Route. Whilst details have yet to be worked out I believe we are talking about somewhere in the order of $33 billion in money of the day terms. If we add all these to the present tunnel cost of, say, $6 billion we are talking about some $40 billion. The Secretary for Transport drew our attention to the economic disbenefits of using public funds. In short, something has to give. We must resist, however tempting it is, to subsidize projects in areas of the sort that we are talking about.

Mr President, the bank loan of $5.1 billion is to be secured to the satisfaction of the Government prior to the signing of the project agreement. The loan has a 15 year maturity as I have already said so. But what I have not said is that it is on a non-recourse basis, that is, no guarantee of payment either

by the Government or by the consortium. Would any banking syndicate agree to repayment that has not only just market risks but to be further complicated by the political climate that changes from time to time within this Chamber? Mr President, I do not want to leave Members of this Council under the impression that the financial and banking markets fear or have no respect for this Council. That is clearly not so and they have so stated. If they were so concerned they would not be part of the syndicate but what they do expect is a good chance of getting their money back. We at the Liberal Party believe that that is reasonable. The issue is really quite plain today. Is the BOT approach for the benefit of the public and in the overall interest of Hong Kong? We have no reservations that it is for this tunnel project.

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

MRS PEGGY LAM (in Cantonese): Mr President, as one of the Airport Core Programme projects of the new airport at Chek Lap Kok, the Western Harbour Crossing is an important works project for Hong Kong in the period straddling 1997.

As we all know, the crossing is an important trunk link between west Kowloon and the Hong Kong Island. On the one hand, it has to dovetail with the development of the new airport, offer travellers access to and from the airport, while on the other, as part of the transport network between Kowloon and the Island, the crossing will help resolve the serious congestion of the cross-harbour tunnel at Hung Hom. And in the longer term, the Western Harbour Crossing will haul into motion the development of the whole west Kowloon.

Given its very substantial economic and functional value, I believe no one will object to the construction of the Western Harbour Crossing, nor delay the progress of its works intentionally. And we all earnestly hope that the crossing will be completed on schedule.

The Legislative Council and the Government have had a lot of arguments over the the Western Harbour Crossing franchise during the last two weeks. Both sides however are, as a matter of fact, concerned with what kind of financial formula would be reasonable and what kind of toll arrangements would be in the best interest of the public. I think that the franchise agreement for the crossing should cater to the interests of the public and the investors. That the public's interest must be protected is because the construction of the Western Harbour Crossing has a substantial bearing on the development of society as a whole and is closely related to the people's livelihood. Similarly, investments by businessmen will have a significant bearing on the territory's prosperity and the stabilization of the local economy. In order to attract investors, the legitimate interests of the investors also have to be catered to.

There has been criticism that the rate of return for the Western Harbour Crossing is much too high. But given that the project requires a long

construction period and substantial investments and is exposed to relatively higher risks, many investors would prefer investing in Southeast Asia or China rather than in high risk items of low return. The fact that the invitation for tenders for the Western Harbour Crossing project received cold response from investors precisely reflects the situation. Therefore, it is understandable that the franchise agreement for the crossing should set a more reasonable but acceptable rate of return.

Now if we set the rate of return for the first three years below 16.5%, as proposed by the Liberal Party, it should be acceptable because a lowest rate may not yield sufficient income for the consortium to service its $5 billion bank loans, thus stifling its interest in participating in the project. However, if we should set too high a rate of return, there would be excessive profits, thus jeopardizing the interest of the public.

As regards tunnel tolls, we would naturally feel that the Western Harbour Crossing toll is much too high if we compare its $30 at 1997 dollar with the current $10 charged by the other two tunnels. But I believe the existing two tunnels will most likely raise their tolls within the next few years. Besides it is still in line with the principles of a free economy when there are three tunnels each charging a different level of toll. The motorist will have the choice of a cheaper but slower option or a faster option by taking the Western Harbour Crossing for a higher toll.

I understand very well the wish of the honourable colleagues of this Council to monitor the profit of the Western Harbour Crossing consortium through the exercise of the power to approve or reject any toll increase application, in order to protect the interest of the consumers. There is already such a mechanism whereby the consortium can increase its toll only when its return fails to reach 15% to 18%. Besides, the increase of charges by many public utilities, at present, including Mass Transit Railway Corporation, Kowloon-Canton Railway Corporation, China Light and Power Company Limited and Hong Kong China Gas Company Limited, are in fact beyond the control of the Legislative Council.

Overly suppressing the rate of return will undermine the businessmen's interest in investment, to the detriment of the economic development of the territory in the long term.

Moreover, businessmen will have no funds to invest in newer equipment if they find their public utility investments offer little return as a result of stringent restriction on their profits. A good example is the confused state and technological backwardness of the British telecommunications industry before the introduction of reforms.

Considering the overall interest of Hong Kong, the Western Harbour Crossing should be constructed as soon as possible to stabilize the territory's economic development, to dovetail with the operation of the Chek Lap Kok

airport and to protect the interest of Hong Kong people. Although the franchise agreement of the crossing has attracted controversies arising out of different opinions from various sectors with one suggesting that the crossing be constructed and operated by the Government, and another suggesting that another round of tenders should be invited, I believe all of these suggestions would be to Hong Kong's disadvantage in addition to causing confusion. We must consider the realistic situation of Hong Kong, take into account the opinions of the public and the investors and strike a balance between their interests. An early commencement of the construction of the Western Harbour Crossing — I believe we must do so — is the effective way to protect the overall prosperity and stability of Hong Kong.

Mr President, I so submit.

MR LAU WAH-SUM (in Cantonese): Mr President, during our deliberations on the Airport Core Programme projects, many Members suggested that the Government should let private consortia participate in more of these projects. They argued that this would lighten the Government's financial burden and the projects could be completed on schedule. Resources would not be wasted as well. Members who made the suggestion were presumably all aware that, if private consortia were to be attracted to participate in large infrastructure projects, they had to be given reasonable profit expectations, and there had to be a suitable mechanism for safeguarding reasonable levels of profit.

When the Western Harbour Crossing (WHC) Bill was First read, many thought that the tunnel toll of $30 per crossing for private cars and its internal rate of return (IRR) of between 15% and 18%, which would come into effect upon the completion of the tunnel, were set too high. The Secretary for Transport has since given us detailed explanations; in addition, he has held many meetings with us. He has also arranged for experts from two financial companies to come to this Council to brief Members specifically on the figures and the projections. I am now of the opinion that the package is acceptable.

For the past 20 years or so, I have been involved in financing arrangements for large construction projects. I know that such arrangements call for very detailed computation. Figures are run through the computer again and again, to arrive at different projections with regard to the lower and upper-limit investment figures, the upper-limit financing figure at each level of interest rate, and the levels of tolls that will yield reasonable IRR levels. The consortium will then decide which level of IRR it expects. Finally, there will be a report. If one the figures is altered, the entire exercise must be repeated.

The first point that I want to discuss is IRR. We have studied and re-studied a variety of methods for arriving at IRR. IRR is now set at 16.5%, with, I believe, a maximum margin of error of one to 1.5 percentage points. In other words, if the consortium's best-case scenario materializes, its maximum IRR will average between 17.5% and 18%. However, to obtain this maximum

IRR, it must accept the entire package, which also includes all kinds of risk factors, such as inflation, possible cost over-runs (which will be borne by the consortium), possible delays (it is allowed only four years for the completion of the project), and possible difficulties in arranging financing. I am sure that the particular IRR is not at all too high in the eyes of international investors. Some people think that the lower-limit net returns should be lowered at 14%. However, if the lower-limit IRR figure is capriciously lowered from 15% to 14%, then the average IRR over the 30-year period will be only 16%. Unless other terms are also revised, the consortium, I believe, will not accept the package and will very probably withdraw from the WHC project.

My second point concerns WHC's toll. Some people think that the toll per crossing for private cars should be lowered to $25. If so, then, according to calculations based on traffic flow projections for the opening years of WHC, the consortium will run up a debt exceeding bank loan ceiling. It is because bank loan, in this case, will be made for non-recourse debt. The banks will certainly refuse to provide any financing in excess of the loan ceiling. If the actual traffic flow figures turn out to be as low as the projections, then the consortium will resort to the toll adjustment mechanism and immediately raise the tunnel toll from $25 to $35. This is because any toll adjustment under the mechanism will be by a $10 increment. The public will then end up paying a higher toll; they may lose more in the end than what they may have gained initially. The Eastern Harbour Crossing (EHC) provides a case in point. After EHC was completed, traffic volume was at first far lighter than what the Government and the consortium had anticipated in their projections. EHC's traffic volume has since slowly moved up towards the projected level, but only after extensive promotion. If what happened to EHC should happen to WHC, then a lower opening toll for WHC might very well end up being revised upward.

I think that the compromise solution proposed by the Liberal Party is the best solution. Suppose that, in the first three years of its operation, WHC's net income exceeds the amount that corresponds to a 16.5% IRR, then the whole excess will be placed in a Toll Stability Fund, the purpose of which, as we know, is to ease the pressure for future toll increases. Such an arrangement will in fact be good for both the consortium and the public.

My third point concerns oversight. As we know, all large transport facilities have to be operated under the supervision of professional staffs. The Secretary for Transport should be the best overall supervisor. The reason for this is simple. He is supported by economists, transport experts, accountants and members of other professions. They will help him in checking and monitoring figures and other data. Members do not have such resources. They can supervise only by giving their views.

Mr President, we really cannot base WHC's tolls on the standards of the 1980s, if the consortium is to be able to bear the construction costs of the 1990s. We should not lose sight of the fact that the construction cost of WHC is several times higher than that of EHC. Also, we must not act capriciously to reduce the

income of the consortium and thereby cause it to run up a debt exceeding the bank loan ceiling, given that the debt will be non-recourse debt. We must never be hair-splitting in finding fault with this project which is to be carried out by private investors. Some people are using this project to curry favour with the public by playing with an eye to the gallery. Their doings will only seriously undermine the confidence of prospective investors in the other privatized airport core projects. A recent international investment study shows that investment has a higher risk factor in Hong Kong than it has in Bangkok. If we do anything to shake international investors' confidence in Hong Kong, then our good investment environment, which has taken us several decades to build, may be ruined overnight.

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

MR JIMMY McGREGOR: Mr President, I apologize to the interpreters since I have not given them a copy of my speech and I hope they can follow my Scots accent.

Because in my mind there has never been any doubt as to the need for a major new airport for Hong Kong at Chek Lap Kok and because I believe that the thousand and one planning, construction and financial requirements have been thoroughly researched and professionally put together, I have taken a consistent view towards the need to overcome the wide range of problems that have been presented to us. The Government has been faced with huge additional problems arising from political rather than construction or financial considerations. It is remarkable in these circumstances that this massive and exciting project is still more or less on schedule. That has only been achieved because, among other things, this Council, and in particular the Airport Subcommittee, has taken a helpful and constructive view and made decisions and recommendations which have allowed progress to continue. We have sometimes been pushed hard by the Government; sometimes we have been lobbied by those who have some interest in delaying decisions on financing and approval of tenders. Each time we have made the right decision and the whole project is proceeding satisfactorily. I think we have taken views and made decisions because we see clearly the great importance of the completion of the whole project which will set up our economy far into the next century. We have shown a vision and a maturity not always applied to matters discussed in this Council.

The Western Harbour Crossing is of crucial importance to the overall airport plan and to its successful introduction and operation. The proposal has been a political football for some time. The football has not been kicked about by two sides but taken home by one side and returned for play very near the end of the game. No matter. We have been given the opportunity of approving an essential link in the airport transport system. It is also by and large of great importance to the development of our overall transport system with much wider implications than the airport alone. We have been given a package which is

rather tightly bound, and we have been given a warning that it should not be unravelled or there will be dire consequences. Like all other Councillors, I do not like to be faced with a request to rubber-stamp an important contract of this kind. That is not our normal function. However, I have also to consider the much wider issue of the public interest. Is it in the public interest to seek changes in this contract that will negate it and send the Government back to the drawing board? The consortium has stated categorically that it will not change any of the material particulars in the contract. The banks, which back the consortium, would no doubt take a different view of the financial viability of the project if some of the essential elements in the present contract were changed with the effect of raising the level of risk. Do not forget that there are no other consortia waiting in line to make a bid should this one fail. Clearly, therefore, this is not a highly attractive project for international bankers. All the risk will be taken up by the private sector. There are no government guarantees. I come back, therefore, to my original question: are we to reject this package and therefore delay the completion of the entire project and increase its cost substantially? Is that in the interest of the public? Is it in the interest of Hong Kong? I find the answer must be that the public interest demands that these proposals shall be approved without major change. I do not consider the change agreed to by the consortium and by the Government to be fundamental in nature; indeed, the main change is cosmetic, although it looks helpful. I am sorry that this project and its Bill have been subject to political posturing which has nothing to do with the merits or demerits of the proposals themselves. Both sides of this House are guilty, as are others not here today.

Finally, I want to express my admiration for the way in which Mrs Miriam LAU handled the very difficult Bills Committee meetings, considering the Bill and the deal. She was everything a good chairman should be and her professionalism materially helped us to meet our deadline. Mr President, I support the Bill and I should say that so does Mr Vincent CHENG.

MR ALBERT CHAN (in Cantonese): Mr Ronald ARCULLI has just returned. I would like to commend him for his speech made a moment ago. His remarks about "doing it" or "not doing it" for the public probably provided some insight into his mind. He had reservations and obsessions about "doing it" or "not doing it." This was probably a Freudian slip. While the word in black and white was "Do," that is, doing it for the public, he was subconsciously saying "Don't." This probably gives an indication of where some of the problems lie.

Existentialist writer Albert CAMUS' writings are often devoted to showing up absurdities in our everyday life. His thoughts apply very well to this Council's present discussions on the Western Harbour Crossing. Some people think that scientific and professional stuff is the most rational and most objective stuff. They capriciously criticize the views of others as irrational. Little do they know that we are now all living in what may be called the "Absurd Age". The people of Hong Kong, including Members, are the pawns

of China and Britain. Existentialist writers show the dark side of life; they do so not to persuade us to accept reality as it is but to remind us that we must take a clear look at the world and take a positive approach to our own future. CAMUS encourages us to struggle to the end against irrational phenomena in society.

The tendering exercise of the Western Harbour Crossing began in March 1992. At first, the Wharf Group and the CITIC planned to participate in the bidding separately, each at the head of a consortium. However, before the bidding closed, they suddenly joined hands and together submitted what turned out to be the only qualified tender. The Government had originally planned to sign a provisional agreement with the successful bidder in early 1993, whereupon construction work could begin. However, the on-going Sino-British squabbles over the constitutional package and over the new airport's financial package held up the introduction of the Western Harbour Crossing Bill to this Council.

On 18 June 1993, China approved the award of the tunnel's franchise contract. Thereupon, the Government gazetted the Bill and demanded that the Legislative Council pass it intact during the two weeks before the end of the current legislative Session. This demand, as well as the Government's attitude, amply demonstrated some officials' contempt for this Council. We have to pass the complex Bill before a deadline. This is really the most absurd thing in the world. The Administration is making a fool of the Council. An additional fact is that the Bill contains policy arrangements significantly different from those for the other tunnels now existing. Mr YEUNG Kai-yin, Secretary for Transport, declared that the Government had already consulted this Council as well as the Airport Consultative Committee. In fact, there has been no consultation that can be so described. The only thing that happened was that government officials had provided some information on the tunnel project to this Council's subcommittee on the Financing of the Airport Core Programme in January last year. On that occasion, the officials stressed that the new Bill would be based on the model of the Tate's Cairn Tunnel Ordinance. But there are conspicuous differences between the present Bill and the Tate's Cairn Tunnel Ordinance.

In November 1992, the United Democrats of Hong Kong (UDHK) saw Secretary for Transport, Mr Michael LEUNG, by appointment and expressed to him our concern that the tunnel's toll might be on the high side. Mr LEUNG said that the Council surely would have a say over the tunnel's future toll increases and told us not to worry. But the operating franchise agreement that the Government has now reached with the consortium is totally different from any of the ideas that have so far been made public. How, then, can the Government contend that it has already consulted this Council? This Council was completely kept in the dark while negotiations were going on between the Government and the consortium. It was completely kept in the dark even about the operational details that were being provided to China. But now the Government has turned around and told us that the agreement was reached after

seven months of negotiations and should not be changed in any way. In fact, China, Britain and the Government of Hong Kong are pointing a gun at our heads and forcing us to pass the Bill.

The Secretary for Transport, Mr YEUNG Kai-yin, told the press that I was making a personal attack on him when I talked about "collusion" between the Government and the consortium. In the present case, the Government and the consortium are speaking in the same tone and they are jointly forcing us to accept the agreement that has been reached between them in secret. Besides, the Bill, as drafted, will deprive this Council of its power to monitor and to scrutinize future toll increases. If this is not a case of "collusion" between the Government and the consortium, that else is it? When Members pointed out that the Western Harbour Crossing might not be effective for easing the pressure of cross-harbour traffic if its toll was too high, the Government responded by saying that, unless the toll was set at $30, the consortium would have difficulty in recovering its costs and then it would withdraw from the deal. When Members said that the Council should have the power to scrutinize the toll increases, the Government responded by saying that the consortium would not agree to this. Mr YEUNG went so far as to say, "If there is control from the Legislative Council, there will be no investment."

The Government has based its policy completely on considerations from the consortium's point of view. It is simply too difficult for us to tell which is government policy and which is the consortium's policy. The Government must not treat Hong Kong as a business that should be operated commercially. Roads must not be regarded as sheer merchandise or commercial money-making tools. Of course, we appreciate that the Government probably has its unmentionable difficulties. One example of such difficulties is the absence of a second bidder. This, however, does not give the Government the licence to sacrifice the interests of the public for an agreement, such as the present one, on the Western Harbour Crossing. We want this tunnel. But we want one that will serve the interests of consumers, one that will help to ease the pressure of cross-harbour traffic.

I am very unhappy with the approach that the Government adopted in introducing the Bill to this Council. We are not trying to "make a fool of Mr YEUNG Kai-yin." Government officials have on several occasions used shocking words to denigrate this Council. I really wonder why. Members who express the views of the public are described as seeking to muster votes for the 1994-95 elections. Members who want to exercise their monitoring power are said to be doing something in a fit of pique. Government officials nowadays treat the Council as if ti never existed. In addition, they are speaking more and more like the Chinese. They even think that Members' doings are "irrational." They encourage consortia and investors to hold an antagonistic attitude towards this Council. When it fails to find enough justification for its policy, the Government then resorts to making absurd and abusive remarks.

During the discussion of the Bill, Members raised several important issues. The position of the United Democrats of Hong Kong (UDHK) is quite clear. We are in favour of the Government's adoption of the "build, operation and transfer" approach to construct the tunnel. If such an approach is used, the airport's core projects will be more attractive to private investors. Nor will this require sacrificing the interests of the public or giving up this Council's power to scrutinize future toll increases. The UDHK will accordingly move amendments to the Bill. The amendments cover three aspects: (1) lowering the internal rate of return (IRR), that is, the estimated net income, from 15% to 14%; (2) requiring the tabling of subsidiary legislation at this Council for any future toll increase; and (3) lowering the 1997 toll for private cars by 17% from $30 to $25. When I move these amendments, I will explain in detail why each change is needed.

In fact, Members from other parties at one time suggested similar changes. They said in public that the tunnel's opening toll should be $25. But then China took a public position in favour of the Bill. Thereupon, these Members quickly fell in line. One is really anguished to see such submission to might in disregard of the interests of the public.

MRS SELINA CHOW: Point of clarification, Mr President.

PRESIDENT: Mr CHAN, do you wish to give way?

MR ALBERT CHAN (in Cantonese): Mr President, I wish to finish my speech first. Mrs CHOW will have an opportunity to express her opinion later.

MRS SELINA CHOW: Mr President, I am not about to express any opinion.

PRESIDENT: Yes, but Mr Albert CHAN may refuse to give way or elucidate. He is prepared to elucidate after he has finished.

MR ALBERT CHAN (in Cantonese): The Liberal Party has now moved an amendment to the effect that if the tunnel's net income in any of its first three years exceeds the amount that corresponds to a 16.5% IRR, then all of the excess should go into a Toll Stability Fund. The basis for this amendment is that, in the opinion of the Liberal Party, the consortium's traffic flow projections for the tunnel may be too low.

The idea was quickly supported and accepted by the Government and by the consortium. Everybody with an observant eye can see that the amendment is just a trick, a symbolic gesture. It is just a face-saving way out for the Liberal

Party itself, for the Government and for the consortium. The Government said at the outset that the consortium would not accept any change in the Bill. But now the Government, as well as the consortium, has abruptly changed such a position. Clearly, they are self-contradictory.

Another, and the most important, fact is that the Liberal Party's amendment never touches upon the concern of many members of the public and many legislators, which is that the tunnel's opening toll is too high. The toll level must not be viewed in isolation. It definitely will affect the toll levels of other tunnels and the fare levels of other means of cross-harbour transportation. A wide gap between this tunnel's toll level and those of the other cross-harbour tunnels will render the tunnel ineffective for easing the pressure of cross-harbour traffic.

Mr President, this is the last sitting in the current legislative Session. Looking back, we see many absurdities that have happened in this Council. The Chinese call them the "kaleidoscopic faces of government." Even the most absurd things have happened. Hong Kong is now heading towards greater democracy; every political party is publicly calling for more democracy and more freedom. Yet some Members are voluntarily giving up their role of monitoring the Government and the consortium. Some Members are willing and even glad to accept decisions made for us by China and Britain. In addition, there are Members who say that they will run in the 1995 election though they regard the views of the public as irrational. And there are Members who say that they will protect the interests of the public though, at decision time, they are careful to consider the interests of the consortium at the expense of the rights of the public. They will force the public to pay unreasonable tunnel tolls in 1997.

Mr President, with regard to the Second and Third Readings of the Bill, the UDHK support in principle the "build, operation and transfer" approach to the tunnel. Therefore, during the Second Reading of the Bill, the UDHK will support it. However, if the UDHK's amendments are negatived at the committee stage, then the UDHK will vote against the Bill during its Third Reading.

Governor Chris PATTEN said at one time that government policy should be in line with the principle of "openness, fairness and acceptability to the people of Hong Kong." In the present case, public opinion is lop-sidedly in favour of this Council's right to scrutinize future toll increases, and public opinion is in favour of lower tunnel tolls. The Bill is completely in violation of the Governor's basic principle for his Administration. I suspect that senior government officials are completely disregarding Mr PATTEN's policy and acting at will to violate the principle enunciated by Mr PATTEN. If the Government has real respect for the promise of a governor who may be Hong Kong's last, then the three Policy Secretaries seated here today should support the UDHK's amendments during the voting on the Bill.

Mr President, the UDHK will not succumb to might. Nor will it be disheartened by the absurdities taking place inside this Council. We have no idea whether our amendments will have the support of other Members. If we lose this time, we will be waiting for 1995. When the time comes, the political complexion of the Council will probably be different. We will then amend the Western Harbour Crossing Ordinance.

PRESIDENT: Mrs Selina CHOW.

MRS SELINA CHOW: Mr President, I would like to ask Mr Albert CHAN, through you, if his allegation as to the Liberal Party having proposed a $25 opening toll for the Western Harbour Crossing is solidly founded. Where did he learn that; in which committee meeting did he hear that?

PRESIDENT: Are you prepared to supply the answer, Mr CHAN?

MR ALBERT CHAN (in Cantonese): Mr President, quite a number of newspapers had covered an interview with Mr Allen LEE, Chairman of the Liberal Party and had reported in clear terms that he proposed a $25 toll for private cars when the Western Harbour Crossing is put to use in 1997.

MRS SELINA CHOW: Mr President, did Mr CHAN himself verify whether the report was true or false because the fact of the matter is that that report was false.

PRESIDENT: I think we are going beyond elucidation. Yes, Mr POON?

MR STEVEN POON: Mr President, could I ask Mr CHAN to elaborate?

PRESIDENT: Yes, you can ask Mr CHAN to elucidate. Whether he wishes to or not is entirely up to him.

MR STEVEN POON (in Cantonese): The Liberal Party made a statement twice and I drafted the statement on both occasions. May I ask Mr CHAN whether we have ever mentioned that we would support an amendment to $25?

PRESIDENT: Mr CHAN, do you wish to elucidate?

MR ALBERT CHAN (in Cantonese): Mr President, if the speech made publicly to the press by Mr Allen LEE, Chairman of the Liberal Party, does not represent the view of the Party, he is welcome to clarify and refute what is said openly.

MRS SELINA CHOW: Mr President, I think Mr CHAN did not quite answer my question. I asked him whether he had verified with Mr LEE to see if Mr LEE had actually made that statement to the press. Did he or did he not so verify? It is because, as I said, that report was false.

PRESIDENT: It is entirely for Mr Chan to elucidate as he sees fit, and I think we draw the line there.

MR CHEUNG MAN-KWONG (in Cantonese): Mr President, with regard to the Western Harbour Crossing Bill, Mr Albert CHAN of the United Democrats of Hong Kong (UDHK) will be moving an important three-fold amendment. The amendment will seek changes in the tunnel's opening toll and in the consortium's internal rate of return (IRR), both of which are too high; and in the mechanism of automatic toll increases, which will give the boot to this Council and do away with the monitoring of this Council so that the consortium may make excessive profits and do whatever it wants for 30 years, during which this condition is not to change. As Mr CHAN will move the amendment later on, I will not elaborate.

My speech, therefore, will focus on — in Governor Chris PATTEN's words — the lessons to be drawn from this case. Indeed, the case reveals two most serious mistakes, which will affect Hong Kong's future political and economic environments. Since it is never too later to mend, we must remedy the mistakes immediately before they grow to crisis proportions.

The first mistake is the Legislative Council's being shunted aside by the Chinese and the British Governments and deprived of its functions, that of supervising the Government and that of keeping the different interests of society in balance. Here is an account of what happened in the decision process, from the beginning to the end. First, the Government and the consortium reached an agreement on the operating franchise. Then, the agreement was approved by China. Next, the Executive Council cleared the Western Harbour Crossing Bill. After that, the Bill was gazetted and tabled at this Council. The secret negotiations, involving the Chinese and the British Governments and the consortium, lasted for a total of seven months. This Council, as well as the general public, was completely kept in the dark. When the Bill was tabled at this Council, Members were allowed less than two weeks for discussion and revision. Meanwhile, the Chinese and the British Governments, the consortium and the banks worked together to put pressure on this Council to pass the Bill, noting that time was running out, that the consortium might withdraw from the

deal, that the banks might refuse financing, that the agreement between China and Britain must not be overturned, and so forth. Mr YEUNG Kai-yin said, "I am not pointing a gun at Members' heads." However, Mr President, in the tunnel case, I have the feeling that an invisible gun is backing us into a corner. Supporting the Bill will mean sacrificing the interests of the public and putting the public "on a butcher's block" for 30 years. Opposing the Bill will mean that there will be no Western Harbour Crossing, and this will affect the the airport project as a whole. We have no room for manoeuvre at all in trying to make any change affecting the consortium's substantive interests. Any change must have the joint approval of this Council, the Government, the consortium, the banks and China. Anybody with common sense can appreciate that it will be very difficult to negotiate these five hurdles.

Thus, though this Council's traditional power of amending the Bills continues to exist in name, it has been taken away in fact. The rights of the public are trampled upon and forgotten. This Council can no longer perform its functions of supervising the Government and of keeping the different interests of society in balance. We can foresee that the Western Harbour Crossing will become a model for other consortia wishing to evade supervision while making excessive profits. Behind the backs of the consortia, which will be congratulating themselves, we can foresee public revulsion and resentment. By and by, a social crisis will come to life. This means that class contradictions and social conflicts will be deepened, with adverse effects on social stability. That will not be good for Hong Kong.

The second mistake is the evolution of privatization into monopolization. Virtuous competition will give way to political patronage. Before the public can see the benefit of privatization, they will become its victim. Mr President, the Government's public works policy is to encourage privatization. Private entrepreneurship can provide social services and create wealth. Privatization also enables the Government to save its resources for the provision of services in which private entrepreneurs do not want to invest, such as education, health care and social welfare. Privatization in line with such important principles deserves support. Nor is there anything very much wrong with letting private entrepreneurs make a reasonable profit.

But the point is that reasonable profit is not tantamount to lawful profiteering. The opening toll of the tunnel will be $30, and its upper limit of its internal rate of return (IRR) on investment will be 18.5%. Even Mr YEUNG Kai-yin conceded that these were on the high side. Why then? Why let privatization lead to monopolization and profiteering instead of making it a force for lower tunnel tolls? Mr YEUNG's explanation is this: The consortium is not stupid. The Legislative Council's vetoing of higher tolls for the three tunnels and the revision of the telephone company's rate-raising plan have affected the confidence of investors. Mr YEUNG even went so far as to say, "If there is control from the Legislative Council, there will be no investment."

Mr President, these words, comming as they did from the mouth of a Policy Secretary, are really shocking. They are undoubtedly a public negation of a publicly elected body's functions and worth. The speaker sees the consortium but not the public. Everything is fine except that some in the Council have spoken up for the public, thereby scaring away the consortium, driving away the investors and affecting Hong Kong's investment environment.

Mr President, Mr YEUNG Kai-yin's words reversed the right order of things and reversed the right order of priorities. We have a case of "blaming the chickens instead of blaming the eagle," so to speak. As we all know, a major factor affecting Hong Kong's investment environment is the political uncertainty of 1997, plus the fact that the Chinese Government last year, in order to suppress the democratic process in Hong Kong and to force Hong Kong and Britain to withdraw the constitutional package, resorted to playing economic cards with the new airport, the franchises straddling 1997 and so forth, as chips. To this day, the operating franchise of Container Terminal 9 is still pending because it is tainted by British capital. These are the real reasons why investors' interest in investing and the investment environment have been affected.

It was precisely for these reasons that consortia balked at the franchise of the tunnel. What happened in the end was that only one consortium, which was made up mainly of China-owned capital, wanted to tender for it. There was only one bidder and time was running out. The bidding consortium, which had the full support of China, was in a very strong bargaining position. So it asked for the moon, and the Government capitulated. The so-called privatization thus turned into monopolization. The public gained nothing; they came to harm instead. What is even more worrisome is that, because China's approval is needed for all projects and operating franchises straddling 1997, consortia with China capital will enjoy an even greater advantage in tenders. It appears that, if any operating franchise is to be approved quickly and without a hitch, the franchisee must take China capital into partnership. In this way, because of patronage on top of monopoly, Hong Kong's free economy and virtuous competition will lose some of their lustre even if they do not totally stop to exist. Mr President, is this what we want? Is this the type of society that we are after? The fall of the first leaf announces the advent of autumn. The lesson of this case is food for serious thought.

Mr President, one can foresee that the UDHK's amendment will be defeated today. We will move the amendment despite knowing that it will fail. We want some justice to be done to the public, who wish to save every penny that they can. More importantly, we want some justice to be done to our democratic politics and our free economy. Hong Kong should be a peaceful, balanced and therefore just society. We do not want to see our precious traditions fade out before 1997. We do not want to see the Pearl of the Orient lose more of its lustre with each passing day.

Mr President, with these remarks, I support Mr Albert CHAN's amendment.

MR FREDERICK FUNG (in Cantonese): Mr President, we are discussing the Western Harbour Crossing Bill today. What we see on the surface is a debate on the tunnel's internal rate of return (IRR) and the right to monitor (the franchisee). Beneath the surface, a lot more than these two issues are in fact at stake.

First of all, let us talk about why the tunnel must be built by a consortium. Why can the Government not build the tunnel itself? Actually, from the outset, the Government has tied its own hands with two things. Firstly, the Government wanted to finish building the Chek Lap Kok airport before 1997. This meant that all related core projects must also be completed before 1997. Secondly, the Government wanted to implement the principle of privatization. Because of these two constraints, only one consortium tendered for the tunnel project. This severely limited the Government's bargaining power. To use an analogy, the Government tied its own hands before going to battle; it never stood a chance. The Bill provides for high opening tolls of $30 for private cars and $55 for double-deck buses respectively. It also provides for a mechanism of automatic toll increases which this Council will have no control. This is evidence that the Government bent over backwards to offer favourable terms to the consortium. The Association for Democracy and People's Livelihood (ADPL) and I find a lot of things suspicious in the project, where the IRR is high relative to the risk factor. Some people say that the consortium did not have to invest in this particular infrastructure project; it could invest the money elsewhere and obtain an IRR that might be even higher. But these people forget that there is one problem with investing the money elsewhere, which is that a higher IRR goes with a higher risk factor. The tunnel is almost a guaranteed money-maker. The Government can perhaps be forgiven for not building the project itself. But it cannot be forgiven for giving all kinds of favourable terms to the consortium. It has undoubtedly failed to take into account the interests of consumers, who are not only owners of private cars but also passengers of buses and mini-buses. It is allowing the consortium a high profit level, but the cross-harbour buses and mini-buses will pass the resultant higher costs to their passengers.

The ADPL and I disagree with the amendment moved by the Liberal Party. The Liberal Party's amendment is intended to put some restriction on the tunnel's operating profit during the first three years. But it will not change one iota in the tunnel's IRR of 16.5% as stipulated in the operating franchise awarded to the successful bidder. The Liberal Party's amendment will merely postpone by three years the day when consumers are to put themselves on the consortium's chopping block. Both the ADPL and I ask Members to think carefully about the implications of the Liberal Party's amendment. The amendment is good only in the sense that it is a little bit better than no amendment at all. The Liberal Party tells the public that its amendment will do them a lot of good. This will not happen. In fact, the amendment will merely serve as an escort for the Government and the consortium and protect the interests of the consortium. I hope everybody will think it over carefully. The United Democrats of Hong Kong want the tunnel's IRR to be set at 14%, and

they want all toll increases to be approved by way of subsidiary legislation. I feel that this will be the acceptable bottom line. If the consortium withdraws from the deal because of these changes, then the ADPL and I will ask the Government to build the tunnel at its own expense.

The Secretary for Transport said at one time that, if the Government was to build the tunnel itself, spending for other public purposes would certainly be affected. This is far from being totally true. The tunnel project is a case where the risk factor is low for the investor but a good IRR — 10% to 12% in our suggestion — is assured. I believe that such an investment by the Government will be worthwhile. Future income, as it becomes reliable, can be spent on other projects in our community. This will be better and more meaningful for Hong Kong, compared with the case where the private consortium will probably invest its profits elsewhere or overseas.

The second important point is that I hope everybody will consider the serious consequences if the Bill is passed. If the Bill is passed intact or with only minor changes, and if this Council is not to have any power to scrutinize the tunnel's toll increases, then what this Council will get in return for passing the Bill is the possibility of other consortia of private investors demanding similar terms, that is, a high IRR and a mechanism of automatic toll increases, before they will agree to invest in infrastructure projects in Hong Kong, as well as the possibility of the Government using privatization as the justification again for signing similar agreements under similarly compelling circumstances. What this Council will get in return for passing the Bill is a progressively diminished monitoring role for itself after elections are democratized with the introduction of universal suffrage. Members, too, will cease to play their due roles. The further democratization of the Council will then lose its inherent value and meaning. Even if all seats are returned by direct election, the Council will become a "toothless tiger," for there will be no business for it to mind. What monitoring role will it be able to play then? Its monitoring role will be even less in the future than it is now. Therefore, I hope that both appointed and elected Members, when considering the Bill, will think carefully about how the Bill and the proposed amendment will trample upon the democratic system and upon the Legislative Council's roles. I hope everybody will be able to see one point. Even if the voting result should really cause the consortium to withdraw from the deal, China and Britain, in my opinion, would be able to start new negotiations on the handling of the tunnel project. I always feel that, if the Council is not to have any supervisory or monitoring power in the end, the gradual democratization of the Council will be nothing but a lie.

These are my remarks.

MISS EMILY LAU (in Cantonese): Mr President, I speak to oppose the Western Harbour Crossing Bill because I cannot agree with the way in which the Government handled the whole issue. Moreover, I am furious at the Chinese Government's publicly telling the Council not to change the agreement between

China and Britain. I believe that the case, if it means that the Chinese and the British Governments and a large consortium are joining hands to bully this Council and disregard this Council's functions and powers, will cast a very big shadow on Hong Kong's constitutional development.

Mr President, in the present case, the Government's handling of the tendering procedures, its definition of the operating franchise, its policy on the profit control scheme and its denial of a supervisory role to the Council are all deplorable and disappointing. In fact, the problems began with the tendering exercise. At the time, the Government insisted on awarding the franchise contract by using the BOT method, that is to "build, operate and transfer". The Government also indicated at the same time that the tunnel's opening toll should be as low as possible and that any toll increase in the future must be arrived at according to a set formula. As a result, only one consortium tendered for the project. In this way, the Government created a potential monopoly even before the contract was awarded. Worse still, it willingly allowed the consortium to lead it by the nose. After quiet negotiations between the Government and the consortium, an agreement was reached. However, the Government warned that the terms of the agreement could not be altered.

Mr President, the main point in holding public tender is that competitive bidding by different consortia will lower construction cost and lead to a contract that is in the best interests of the public. This effect will not be achieved if only one consortium submits the tender. Suppose that such a thing happened, then should the Government not review and change the terms of the original tender, repackage the deal more attractively, and re-conduct the tendering exercise? Obviously, the Government failed to do so in this case. It accepted the only consortium that submitted the tender as the successful bidder. After negotiation, it accepted its unreasonable terms including a high tunnel toll, a mechanism of automatic toll increases and a high internal rate of return (IRR).

Though the Government knew that the Western Harbour Crossing Bill would eventually have to be passed by this Council, at no point in the process did the Government keep this Council informed. After the case became public, the Secretary for Transport said openly that, in the future, the Government would keep us better informed, seek our views when franchises were being tendered, try to ascertain if this Council would be agreeable to the specific policy objectives, and thereby reduce discord. The Government has learnt a lesson, and this is a good thing. But I cannot help but ask: When negotiating with the consortium, did the Government really not anticipate that the terms including a high tunnel toll, a mechanism of automatic toll increases and a high IRR would be opposed by many Members? Was it perhaps that the Government had already foreseen that many Members would take the overall situation into account and support this unreasonable agreement between it and the consortium?

Mr President, another thing greatly displeases me. This very complicated Bill was introduced to this Council three weeks before the summer recess. Moreover, the Government pointed out that the terms of the franchise must not

be changed and that the Bill must be passed before August. The Secretary for Transport has denied in public that a gun is being pointed at the heads of Members. But such is precisely the feeling that we are getting from what is being done. Mr President, what worries me even more is that, when tabling the bill on the 1994-95 elections, the Government will probably repeat the same trick and push the bill through this Council. I hope that the Government will realize that the use of such high-handed methods will only tarnish its reputation and hurt its image in the eyes of Members and of the public. I sincerely ask the Government to think carefully and act prudently.

Mr President, at some point during the deliberations on the Bill, the Secretary for Transport said, "If there is control from the Legislative Council, there will be no investment." I do not believe that the Government does not understand this Council's functions. However, when such words, which can be described as very irresponsible, come out so readily from the mouth of such a senior official, we have to question the kind of role that the Government is playing. Is it really protecting the interests of the public or those of the consortium? If these words — "if there is control from the Legislative Council, there will be no investment" — really represent the Government's attitude, then how can the indignant public ever be pacified? How can the Government ever have an effective defence against the allegation of "collusion between the Government and the consortium"?

Mr President, another thing that displeases me about the Bill has to do with the profit control scheme. The franchise of the tunnel goes against the trend of things that are happening to the existing franchises of public utilities. The renewed franchises of the China Motor Bus Company and CSL will come into effect in September. The Citybus Ltd will take over 26 routes from the China Motor Bus Company. The contract of the Citybus makes no provision for profit control. Therefore, we thought that the Government had come to the realization that the public was unhappy with the profit control scheme which never helped to improve the quality of services provided by public utility companies while safeguarding their profitability. So I do not understand why the Government wants to keep in this new Bill, which concerns a franchise, a scheme that is contrary to the interests of the public. Mr President, suppose that you are an investor, that you have invested $100 and that the Government assures you of a $16 to $18 profit each year. Will you still be careful to control costs and expenses? The Government and the consortium have now arrived at a formula that relates IRR to the total amount of investment. This formula will effectively safeguard the investors' profitability and assure them of their guarantee return. If the set IRR is not reached, a toll increase will be triggered automatically. Let me ask: How can such a profit control scheme really serve to protect the interests of the public? It is precisely for this reason that we think that we should not be arguing about whether the IRR should be 15% or 18% or whether the opening toll should be $25 or $30. We think that we should be focussing our attention on what negative impact this profit control scheme will have on the public. We should be striving actively for the elimination of all

profit control schemes. The formulae now used by the existing tunnels in calculating toll increases should also apply to this tunnel.

Mr President, I agree very much with Mr HUI Yin-fat, who said that, when tenders for the tunnel were first invited, some objective factors, for instance, the uncertain future of the airport talks and the poor Sino-British relations, made the project unattractive to investors. But, as we can see now, some of these factors have changed. Therefore, like Mr HUI, I would like to ask the Government why it will not consider re-tendering the project. If this is not possible, then can we ask the Government to consider using its own money to build this tunnel, on the MTR model?

Mr President, from the economic point of view, where special circumstances, as in the case of monopolies or near monopolies like underground railway, electric power and telephone, make it impossible to introduce the mechanism of free market competition, preferential consideration should be given to operating a Crown Corporation. One advantage of a Crown Corporation is that, though it will be under the supervision of a government department, it can be nearly as efficient as private enterprise. The MTRC is one example. Another advantage is that the profits of a Crown Corporation belong to the public. In contrast, there is often a lot of public resentment against franchised private companies that make a lot of money. From the investor's point of view, a franchise with a guaranteed IRR of 15% to 18% is much to be coveted. For instance, the IRR of the Exchange Fund, which the Government announced recently, is far below the 15% to 18% range, and the IRR of the Land Fund is even worse. Mr President, a popular saying advises that charity should begin at home. The Government must explain to us why a coveted thing is so readily given to a private consortium. Are there secrets to which we are not privy?

Mr President, the idea that the Government should build the tunnel at its own expense should of course be carefully studied. However, the Government's responsibility is to consider all options and choose the one that is in the best interests of the public. Mr President, I understand that, if we begin only now to consider the other options, this will hold up the project. But when the poor result of the tendering exercise became known last year, the Government did not begin immediately to study other options. Instead, it spent several months on secret negotiations with the consortium, only to arrive at an agreement that has shocked the public. I believe that, if anybody is to blame for the time lost, then the Government has a large share of the blame. In fact, several of the 10 or so airport core projects will probably be held up by political or other factors. Therefore, I think that the Government's case, that the tunnel must be completed before 1997 regardless of whether or not this will accommodate the interests of the public, is very wrong.

For the above reasons, Mr President, I will oppose the Bill as well as all amendments.

MR LEE WING-TAT (in Cantonese): Mr President, in this debate on the Western Harbour Crossing (WHC) Bill today, most of the Members have been focussing on the mechanism of toll increases and on the Legislative Council's relevant power. While these are important issues, I want to focus on an issue that, in my opinion, is even more important. It is: Why do we have to build WHC? To be more precise, what is the purpose of infrastructural road construction?

Mr President, the Government published a White Paper on transport policy in 1991. The paper laid down the principal transport policy for the future, that is, to provide a transport system which would enable the passenger and freight traffic flow to be maintained at reasonable levels, thus aiding economic development and coping with the public transport needs on social, commercial and recreational fronts. If WHC, after being built, fails to ease the pressure of cross-harbour traffic, then the Government will have gone back on the promise that it made to the general public in its White Paper on transport policy.

Mr President, the existing cross-harbour tunnels are now very congested. The daily traffic volume at the Cross Harbour Tunnel reached 120 000 vehicles in 1992, far in excess of the tunnel's designed capacity. This tunnel which is commonly known as the Hunghom Cross-Harbour Tunnel, sees bumper-to-bumper bumper traffic every hour of the day except for the period from 1 am to 7 am. As for the Eastern Harbour Crossing, its daily traffic volume rose from an average of 22 000 vehicles at the beginning to 70 000 vehicles in 1992, that is, an increase of 200% over a four-year period.

The Eastern Harbour Crossing is now extremely congested during the morning and afternoon rush hours. In 1997, its traffic volume is expected to reach 85 000 vehicles a day. The congestion will spread from rush hours to non-rush hours. Therefore, from the angle of transport needs, we can see that we do need an additional cross-harbour tunnel to ease the pressure of cross-harbour traffic. If we clearly see a pressing need for WHC, then we will want to build it quickly, regardless of whether any consortium will invest in its construction. Despite the fact that the Government is of the view that WHC can best be built by a consortium of private investors, still, if the terms on which the consortium will do so are not satisfactory, then there should be other and better ways to build the tunnel.

Mr President, it is quite doubtful that WHC will be able to serve the purpose of easing the pressure of cross-harbour traffic if its toll is to be $30 per crossing for private cars in 1997. There will be three cross-harbour tunnels in 1997. Which tunnel will a vehicle choose to use? The answer, I think, depends on three factors:

(1) The location of the tunnel;

(2) The toll differential; and

(3) How badly a motorist wants to cross the harbour.

Geographically, WHC will be close to Hong Kong Island West and Kowloon West. Its Kowloon end will be linked to the urban section of Route 3, that is, to the Western Kowloon Expressway. It will then be linked to Tsing Yi, to Tsing Ma Bridge and to the airport. It will also be linked to Tuen Mun and Yuen Long via Ting Kau Bridge. Therefore, the principal users of WHC will be the inhabitants of New Territories South (Tsuen Wan, Kwai Chung and Tsing Yi) and New Territories West (Tuen Mun and Yuen Long) to or from urban areas, and the tourists to or from the airport. From the geographical point of view, WHC will be an important facility for easing the pressure of cross-harbour traffic. Besides, WHC will be a six-lane tunnel with a daily maximum capacity for 180 000 vehicles. If its toll is set at a reasonable level, a lot of vehicles will surely be attracted to use it. Regrettably, the Government had not given serious consideration to the public's transport needs before it accepted the consortium's proposal to charge a toll of $30 per crossing for private cars in 1997.

The traffic flow at the Hunghom Cross-Harbour Tunnel will be maintained at 120 000 vehicles per day in 1997. The Eastern Harbour Crossing will become more congested at 85 000 vehicles per day. We will have the additional WHC, but its capacity utilization rate will be only 40% in 1997. And the other cross-harbour tunnels are expected to continue to be scenes of "major traffic snarls". I want to ask the Secretary for Transport, Mr YEUNG Kai-yin: What kind of traffic and transport policy is this? The Secretary often says that the public will always have a choice. His remarks betrays the fact that either he has long been in an ivory tower or he does not know anything about the reality, or perhaps he is simply not speaking in good conscience. Let me ask: Can the inhabitants of Sau Mau Ping or Tsz Wan Shan tell their bus drivers to use WHC? The inhabitants of New Territories East, Hong Kong Island East, Kowloon Central and Kowloon West will gain no benefit at all from the completion of WHC. They will still have to spend a lot of time on crossing the harbour. WHC will, after all, not serve its intended purpose of easing the pressure of cross-harbour traffic.

The Secretary for Transport also said that proposals for raising the tolls of the Cross Harbour Tunnel and the Eastern Harbour Crossing will still have to be approved by the Legislative Council. Yet it does not mean that the tolls of these two tunnels will not be raised in the future. In my own estimate, this Council will very probably be forced to rubber-stamp these tunnels' applications for toll increases. By 1997, the two tunnels will be very congested with daily traffic flow reaching 120 000 vehicles and 90 000 vehicles respectively.

Serious congestion may be used by the Government as an excuse to say that the pressure of traffic must be eased and this Council must approve toll increases or passage tax increases for the two tunnels. We can at first dismiss such a ground as invalid. But if congestion gets worse to the extent of paralysing traffic in Wanchai, Causeway Bay, Hung Hom and To Kwa Wan, so

that not even police vehicles, fire engines or ambulances can get through, will we then be able to reject the toll increase applications of the two tunnels? In fact, this is precisely the ground repeatedly cited by the former Secretary for Transport Mr Michael LEUNG for a toll increase for the Cross Harbour Tunnel in 1991-92. Who were to bear the responsibility for the injuries or deaths resulting from the immobility of ambulances, fire engines and police vehicles as a result of this Council's refusal of the toll increase applications of the two tunnels? This is why we say that the choice mentioned by the Secretary for Transport is indeed Hobson's choice. Under pressure, the Legislative Council will not be able to refuse the post-1997 toll increase applications of the two existing tunnels. No matter which tunnel members of the public may choose to use in 1997, they will have to pay a very high tunnel toll.

Mr President, Mrs Selina CHOW of the Liberal Party said a moment ago that, in her opinion, we would have only two choices. One would be to accept the proposal of China and the consortium; then we would have WHC. The other would be to alter the agreement and cause the consortium to withdraw from the deal; then we would have no WHC. I think that such an analysis is neither logical nor based on sufficient grounds. As I said earlier, from the point of view of transport needs, if it is really necessary to build a third cross-harbour tunnel, then the Government has the responsibility to build it regardless of whether private developers and consortia are interested in it.

Mr President, I heard many Members from the Liberal Party say today that there was no better alternative and there was no time for further debate. Is this really the case? I think that the most important reason why China, the Government and the consortium are so confidently intransigent in their position against any amendment is that China and the Government can foretell that they will garner enough votes in this Council to have their way. If 31 of the 60 seats in this Council had been returned by elections, the Government would not have rushed headlong into this agreement with the consortium. The Government would have known that the 31 elected Members were not rubber stamps but had the courage to oppose unreasonable policy and unreasonable agreement. China and the Government dared to sign an agreement with the consortium to protect the interests of the consortium and not the interests of the consumers because they knew very early on that the largest party in this Council — the Liberal Party — would not be opposed to the agreement. The Liberal Party would only use the method of "a little criticism, a lot of help" to convoy China, the Government and the consortium. If there had been 31 elected Members in this Council, the Government would surely have consulted and co-ordinated with this Council before reaching the final agreement with the consortium. For if it did not do so, the agreement would be vetoed by this Council.

Honourable Members, we do have a choice. We have the power to protect the public's rights and interests. The only problem is that some Members, from the Liberal Party, have already laid down their weapons in surrender. This being the case, how could we expect the Government and the consortium to make any concession?

Everybody, I believe, can recall that the United Democrats of Hong Kong (UDHK) objected to the proposal in relation to rates in last year's Budget. Following suit, the Co-operative Resources Centre — the predecessor of the Liberal Party — raised similar objections. What happened as a result? As a result, the Government dropped its proposal to raise property rates. If the Liberal Party now takes the same line in this Council as the other Members, we still can force more concessions out of the Government and the consortium in the interests of the general public.

The Bill will have very far-reaching repercussions. If we pass the Bill or the Liberal Party's amendment, there will be three adverse effects.

The first adverse effect is that China and the United Kingdom will be further convinced that the Legislative Council is but a rubber stamp which will make little opposing voice to the Government's proposals. Then, when negotiating over the constitutional package, the franchise of Route 3 (country park section) and the post-1997 operating franchise of Tsing Ma Bridge, China and the United Kingdom will use the same tactic. They will reach secret agreement first and then force the Legislative Council to accept it.

The second adverse effect is that the power of consortia in Hong Kong will grow while the power of the lowly citizens will diminish. As long as a number of consortia unite together to press a demand, no matter how unreasonable, as long as they can find spokesmen who will defend their interests in the Legislative Council, they will be able to force this Council to act in their interests.

The third adverse effect is that the interests of the public will be damaged permanently. The public will have no choice but to pay WHC's expensive toll. Honourable Members, we indeed have the courage and the power to forestall these three harms adverse effects.

Mr President, we have a heated debate on the WHC Bill today. All parties in this Council are speaking up. They include the Liberal Party, the UDHK, Meeting Point, the Association for Democracy and People's Livelihood, the Hong Kong Democratic Foundation and even what we call independents. The only missing speaker is Mr TAM Yiu-chung of the Democratic Alliance for the Betterment of Hong Kong (DAB). Does this mean that DAB sees a conflict between defending citizens' interests and defending the interests of China? Is DAB's low profile in the WHC case due to its fear to offend China? I hope that Mr TAM will speak up on behalf of DAB on an issue of concern to the public.

PRESIDENT: Mr LEE, you cannot impute motives to another Member, and in point of fact Mr TAM is going to speak.

MR LEE WING-TAT (in Cantonese): I apologize to Mr TAM Yiu-chung.

I hope that all Members will give careful thought to the various points of the UDHK's amendments and then make a choice between defending the interests of the consortium and defending the interests of the public.

MR STEVEN POON (in Cantonese): Mr President, I am very glad to have taken a lesson in philosophy here today. I have listened to a lot of existentialist theories and I hope that the public will comprehend them. The speaker did his best to play with an eye to the gallery, so to speak. And his speech failed to deal with the Western Harbour Crossing (WHC) in depth. As a matter of fact, Mr Albert CHAN avoids an important issue. What his amendment would amount to was either no WHC or one to be built by the Government, and no more participation in similar projects by consortia, with the result that the Government would have to divert to such projects the tens of billions of dollars originally earmarked for housing, health care and social services. But he did not tell the public about such a result. The Liberal Party is prudent and thoughtful. Let me make some analysis of the issues that are at stake in the debate on WHC. There are three major issues. The first is the Legislative Council's scrutiny power and veto power. I say "scrutiny power" and "veto power". I do not use the term "supervision", which is what people normally talk about but which has vague connotations. The second is whether WHC's average internal rate of return (IRR) of 16.5% is reasonable. The third is whether WHC's toll of $30 per crossing for private cars is too high.

Concerning the issue of this Council's scrutiny power and veto power, Mrs Selina CHOW has already clearly stated the Liberal Party's position, which is that this Council undoubtedly has scrutiny power and power of supervision. In fact, what this Council is doing about the Bill already shows that it does have such power. As to whether this Council should have the veto power every time a toll increase is proposed, the answer is that, if we accept the mechanism of toll increases provided for in the Bill, then it will be illogical to impose this Council's veto power upon this mechanism. Consortia will not invest in the absence of assurances that their investments will be recoverable, and banks will not provide financing in the absence of assurances that their loans will be recoverable.

On the question of whether WHC's average IRR of 16.5% is reasonable, we must take note of the make-up of the investment. Shareholders' equity in WHC will account for 31% of the total cost. The rest will be financing. IRR refers to the rate of profit on shareholders' equity, exclusive of the financing part of the investment. In other words, WHC's 16.5% IRR amounts to only 5% of the total cost of the project. Such IRR is by far the lowest among the privately operated public utilities. It is lower than that in the case of Kowloon-Canton Railway and is similar to that in the case of water supply. Besides, this 16.5% IRR will not materialize until the 30th year of the investment. So such IRR should not be regarded as unreasonable.

The third issue is whether the $30 tunnel toll is set at too high a level. The $30 fiture was arrived at by the consortium on the basis of its traffic flow projections. The consortium has made it very clear that, on the basis of their traffic flow projections, the tunnel toll must be set at $30 or the cash flow will not be enough for debt servicing. We of the Liberal Party feel that the consortium's traffic flow projections are perhaps on the conservative side. We have thought about (this was not announced in public) making the proposal to change the tunnel toll from $30 to $25. Such a proposed change was intended for an upward revision of the consortium's traffic flow projections which were too conservative. However, after careful thinking, we found that, if the actual traffic flow figures should turn out to be the same as the consortium's projections, then, according to the mechanism of toll increases, the tunnel toll would have to be immediately raised to $35, with the result that the public seeking a lower tunnel toll would end up with a higher one instead. We cannot guarantee now that such a situation will not arise. Besides, the consortium has made it clear that, on the basis of its traffic flow projections, a tunnel toll below $30 would not be enough to guarantee sufficient cash flow for debt servicing, and they would not accept anything less than $30.

It was under these circumstances that the Liberal Party came up with a better option. The essence of this option is: If the actual traffic flow figures turn out to be the same as the consortium's projections, then there will be enough cash flow for debt servicing. If the actual traffic flow figures turn out to be higher than the projections, then the consortium's extra income must be returned to the public by being placed in a Toll Stability Fund. This will guarantee sufficient cash flow for debt servicing on one hand and, on the other hand, make sure that the public's interests will be protected even in the event that the consortium's traffic flow projections should turn out to be inaccurate.

Mr President, I will be moving an amendment later on to stipulate that, if the consortium's net income during the first three years of WHC's operation exceeds the amount corresponding to the IRR at 16.5%, then the excess amount must be placed in the Fund for easing pressures for subsequent toll increases. My proposal is different from the Bill's relevant original provisions in that only if the actual net income exceeds the amount corresponding to an 18% IRR, must the excess amount be placed in the Fund. Therefore, the amendment will result in more money going into the Fund.

Since the Liberal Party first put forth this amendment proposal, several questions have been raised. I want to address them here. Firstly, why only three years? The Bill provides for a mechanism, under which WHC's opening toll is set in such a way that it can be raised only if the actual net income falls below the amount equivalent to a 10% IRR. Thus, in practical terms, the timing of a toll increase will depend on the actual traffic flow figures, and any future toll increase will not hinge on the accuracy of the traffic flow projections. But there will be no mechanism for a downward revision of the opening toll which is $30 per crossing for private cars. Our amendment will address this problem.

It will create a mechanism which would be in use for the first three years to prevent the consortium from profiting excessively from inaccurate projections.

Another question is: What is the point of the amendment since the 16.5% level will probably not be reached during the initial years of WHC's operation any way, because traffic volume will be light? It is very probable that those who asked this question are not fully aware of how IRR is arrived at. IRR is in fact the average rate for 30 years. The question of to what extent IRR will materialize in any particular year simply does not arise. Under the Bill's mechanism, a specific annual net income figure is set to correspond to a specific IRR figure. In the setting of the specific annual net income figures, consideration is already given to the fact that traffic volume will be light at first but become heavier as time passes.

Calculations show that, if it turns out that the actual traffic flow figures exceed the consortium's projections by, say, 10%, then, under my amendment, $300 million will be placed in the Fund during the first three years of WHC's operation. If it turns out that the actual traffic flow figures exceed the Government's projections by, say, 10%, then, under my amendment, the Fund will get $500 million. In the opinion of those who have criticized my amendment, is $500 million a tiny amount of money, too meagre an amount? The Liberal Party's effort to boost the Fund in the interests of the public should be supported.

I cannot agree with the amendment to be tabled by the United Democrats of Hong Kong (UDHK), because it will not solve the problem and we will not have a WHC as a result. The people of Hong Kong do not want to see and cannot accept such a result.

Mr President, what this Council should do is to find solutions for problems and not create more problems. Such is the central guiding thought of the Liberal Party. The UDHK's amendment fails to achieve this.

Mr President, we have learnt several lessons in the course of this Council's deliberations on the WHC Bill. I hope that the Government will use these lessons to improve the drafting and handling of future legislative bills of a similar kind. I have two comments to make in this regard.

First of all, I was amazed at the fact that the Government received only one bid, and I regret it. Since the consortium is the sole bidder, our bargaining power is greatly curtailed. The consortium holds all the cards at the negotiating table. The Government was not astute enough to think of making a fall-back plan. In fact, the Government should have made an exigency plan to deal with the possibility of there being only one bidder. I suggest that, in future tenders, if there is only one bidder, the Government should cancel the entire tender. The Government should then make a study to find out why there has been only one bidder, and, when the reasons are known, tenders should be invited again.

The Government must prevent one-bid situations from arising again. This is because it is desirable, as Chinese say, "to do comparison shopping".

The second problem that I want to raise is the lack of communications between the Government and the Legislative Council. Such a problem has resulted in the Government's reaching with the consortium an agreement that is not fully satisfactory to this Council.

The concept of a mechanism of automatic toll increases is unprecedented in Hong Kong. Nor has the IRR concept or the relevant formula ever been adopted before in Hong Kong's statutes. I believe that even some of the officials involved in the case do not have a clear idea about this concept and this formula. Without giving any prior briefing on the matter to this Council, the Government abruptly tabled the Bill and expected this Council and the public to fully digest, understand and accept the concept and the formula in 10 days. It was simply asking this Council to function as a rubber stamp. I am very unhappy with this.

The Government could have briefed this Council's traffic panel several months ago about the IRR concept, the relevant formula, the mechanism of automatic fee increases and so forth. Why did it not do so? It could have done so without violating the confidentiality of the commercial negotiation. Why did the Government not allow this Council and the public a longer time for discussion? I urge the Government to conduct a review of the matter.

Mr President, I will be moving an amendment later on. I hope that Members will find it very reasonable and capable of letting the people of Hong Kong have a WHC with reasonable toll levels. I hope that Honourable Members would support my amendment.

DR YEUNG SUM (in Cantonese): Mr President, Mr Steven POON said a moment ago that the Liberal Party handled the case with a prudent and problem-solving approach. I believe the people of Hong Kong know in their minds whether or not his amendment is intended as a face-saving way out for the consortium and for the Government.

I speak to oppose the Western Harbour Crossing Bill. Some Members perhaps hope that we will take the overall situation into account and make some concessions, that we will accept the reality, that we will accept the arrangements between the Government and the consortium. I wish to point out that sometimes even if we make some concessions, it may not be of help to the overall situation. If the Bill is passed without change, the Legislative Council, I believe, will lose a great deal of its power of supervision over the Government and its mechanism for protecting the interests of the public. The point in introducing directly elected elements in the Council is to let people elect their own representatives to supervise government's operations and to enact legislation that is consistent with the interests of the majority of the people. The Legislative Council is definitely

not an advisory body to the Administration; nor is it a rubber stamp. However, the Government's handling of the tunnel project has made me feel as though I were in the Legislative Council of the 1920s or 1930s. In those days, the Government privately made deals with consortia and went through the legislative procedures of tabling bills at the Council. And most Members in those days were representatives of interest groups.

Today, basically speaking, many Members are returned by direct election. Still, the Government has shunted this Council aside and privately reached an agreement with the consortium detrimental to the interests of the public. As it is a *fait accompli* and time is running out, the Council is forced to approve the agreement. In what it does, the Government negates the spirit of the Governor's promise made in his last year's policy address, the promise that the executive is accountable to the legislature. The Government has decided not to allow the public to monitor directly or through representatives the performance of franchised services that closely affect their interests. Such things should not happen in a civilized society. Therefore, the United Democrats of Hong Kong (UDHK) are very disappointed at the Government's handling of the franchise contract of the tunnel.

In a civilized society, it is only natural that the public should have the right to supervise public services, which affect their interests. In most advanced countries, public services are supervised by popularly elected legislatures or independent committees with members including representatives of public opinion. It is being said that the Council's stepping in and exercising supervision will scare away investing consortia, and the fear is that investors will then go to, and invest in, countries without elected governments or legislatures. But what are the facts? Everybody knows the answer without being told by me. In fact, for an investor, the most important political consideration is the presence or absence of political stability and not the presence or absence of the Legislative Council's control.

The Legislative Council in Hong Kong will never stop any consortium from earning a reasonable profit. The point is that, when the consortia are earning reasonable profits, we must study the impact of their investment plans on society as a whole. We must keep the interests of all sides in balance. Therefore, as a popularly elected legislature for overseeing the Government, the Council must not abandon its role in supervising public affairs and public services on behalf of the public. If it does, then not only will it be failing in its responsibility towards the public, but a precedent will be set for the many other franchised businesses to make similar requests. When that happens, every franchise will become a fortress and the public will have to pay submissively whatever amounts they may be asked to pay. Nor will this Council be able to step in and exercise supervision. I believe that none of us wants Hong Kong of the 21st century to be a city full of special privileges.

The Western Harbour Crossing is not merely a case of private investment. It is a very important public project affecting traffic conditions all over Hong Kong. To study the tunnel's toll-charging principles in terms of the consortium's internal financial position but not in terms of future inflation, traffic conditions and the public's ability to pay will be irresponsible. It will also be an act in disregard of public interests. The Government's agreement with the consortium this time will encourage consortia to ignore this Council. Such myopia is saddening and lamentable. The Government is now defending its position by arguing that it has already consulted this Council by telling us that the franchise of the tunnel would be handled on the Tate's Cairn Tunnel model. But the agreement on the tunnel differs completely from the Tate's Cairn Tunnel franchise in terms of tunnel toll, the IRR and toll-raising mechanism. Such consultation served to deceive; it was not real consultation.

Mr President, there will be more large public projects and more franchises coming up in Hong Kong. It is very important to make sure that these franchises will be awarded in a manner consistent with the interests of the public. The UDHK urge the Government, when making arrangements for the franchises, to consult the public as well as this Council and to do its best to handle matters with a high degree of transparency and to award the franchises on terms that are fair to the public.

We reiterate that this Council has the obligation and the duty to supervise the Government as well as public affairs closely affecting the interests of the people, be they affairs administered by the public sector or the private sector. Neither the Government nor consortia should evade the supervision that is exercised by this Council on behalf of the public. The Government's handling of the tunnel project not only shows its distrust of our supervisory function but also blocks all avenues through which the public can directly or indirectly monitor the tunnel. I do not want to see similar things happen again. If there is a mistake, it must be corrected. Now is the time to make the correction.

MR HOWARD YOUNG (in Cantonese): Mr President, after a stormy journey, the Western Harbour Crossing (WHC) Bill has reached its Third Reading in this Council today. Today's debate smacks of a lesson in politics and a lesson in economics. I used to feel that, as Members discussed WHC, they all had the feeling that they were probably not as good at financial management or financial management philosophy as financial consultants and economists. However, as a result of today's debate, I feel that many Members are not even as good at financial management or financial management philosophy as the street vendors or the owners of stalls at the Butterfly Estate market, whom we met this morning at this Council. I feel that we perhaps have to admit this ourselves.

Some Members say today that setting an 18% or 18.5% upper limit to the consortium's profitability is allowing excessive profit. I feel that this is a stunt intended to curry favour with the public. Let us ask those in Hong Kong who know anything about economics or financial management, including, as I just

said, street vendors, owners of stalls in markets and taxi drivers (who in fact are all small investors). If their profitability is to be limited and capped at 18%, if they must surrender their business to the Government after 30 years, and if they are allowed to raise prices only when profit targets are not met, will this be a case of excessive profit? I think that many taxi drivers in Hong Kong know that higher fares do not guarantee higher profitability; on the contrary, higher fares may lead to smaller business volumes and lower profit levels.

Mr Albert CHAN said a moment ago that the consortium, the Government and even China (for he did say just now) wanted us to pass the Bill *in toto* and without any change. This is not the Government, but the consortium which said that if a major change is made in the Bill under pressure from any quarter, the consortium will consider withdrawing from the deal. The consortium has said publicly, to us and even to reporters, that they will probably consider withdrawing from the deal, from participation in the project. It is under these circumstances that the Liberal Party moves an amendment to the Bill. Colleagues in the Liberal Party have given thought to the actual situation and come to the opinion that the amendment is the most feasible compromise for ensuring that WHC will be built on schedule.

A moment ago, before we began our debate, at the door of the Legislative Council I saw many residents from Hong Kong Island Central and West who wanted WHC to be completed on schedule, thus bringing an end to traffic congestion in Hong Kong West and at the existing cross-harbour tunnels. I myself am a resident of Hong Kong Island Central and West and I lived at one time in Hong Kong Island South. I believe that everybody wishing to proceed to Kowloon West, to the New Territories via Route 3 or even to Tsing Yi wants to see WHC completed and opened to traffic as early as possible. Therefore, I feel that today's debate is really about whether we want WHC and whether we should encourage the private sector to invest in it.

Some Members think that the consortium's vehicular traffic flow projections are too conservative. My colleagues from the Liberal Party agree that these projections may be too conservative. That is precisely why Mr Steven POON proposes a 16.5% upper limit on WHC's internal rate of return (IRR) during the first three years. In fact, I had a discussion yesterday with a Member from the UDHK who proposed from the outset that the opening toll of WHC should be set at $25 and who thought that the Government's projections were too conservative. He thought that the actual daily traffic flow figure was not 72 000 vehicles as projected by the consortium or 75 000 vehicles as projected by the Government, but probably 90 000 vehicles. Have we given any thought to how much money will go into the Toll Stability Fund according to Mr POON's amendment if the actual daily traffic flow is 70 000 vehicles during the beginning years of WHC? I estimate that the amount will be between $300 million and $400 million. This is not a small sum of money. How can one say that the amendment has no substance and no point? If the amount going into the fund is really $400 million, this will be equal to $4 per vehicle, assuming a daily traffic flow of 90 000 vehicles during the tunnel's first three years

operation. A higher traffic volume will actually be good for the public. The consortium will not stand to make excessive profit as some Members have expressed fear on that front.

Our amendment today also calls for the addition to the Bill of a profit schedule as laid down in the agreement on the project contract. The purpose of this is to make some important profit figures between the upper and the lower limits part of the Bill. This will strengthen this Council's power of supervision and scrutiny and prevent the figures from being changed frequently by agreement between the Government and the consortium. Some Members expressed the views a moment ago that if the Bill cannot be changed now, then they will try to amend the Ordinance itself in the new-look Legislative Council in 1995 or when 30 seats on this Council are returned by direct elections. I feel that the main point in adding such a schedule to the Bill is to ensure stability. The point is not to do something only to have it changed later. Here is an analogy. A man and a woman, after going steady, are now getting married. They definitely should not be thinking of divorce already at the time when they sign the marriage certificate at the Marriage Registry. I feel that adding the schedule to the Bill will enhance transparency and be conducive to this Council's supervision and scrutiny. We should not be cautioning today already that the Ordinance is going to be amended. If we do so, investors, I believe, will be deterred.

The economy is very important to Hong Kong, and so is investment. We must not make the mistake of equating investors with consortia and equating consortia with excessive profitability. I think that everybody who owns property in Hong Kong is an investor. Some investors are small businessmen. Some are taxi drivers who own the taxis that they drive. Some vendor in markets. They are in fact all investors. As we all know, every investor seeks a reasonable return on his investment. If he cannot do so, he will not invest. I feel that Members sometimes do not have a clear idea of what excessive profitability means. We do not have many economists among us in this Chamber. However, I know that many are in the teaching profession. They are teachers. So I hope that some of them know how to teach mathematics. If they understand simple arithmetic, they will be able to tell what the average profit rate will be during the first three years, between the upper limit of 16.5% and the lower limit of 15% on the basis of Mr Steven POON's proposed amendment. According to my calculation, it will be 15.75%. I wonder if there is a more accurate answer. The UDHK proposes that the lower limit be changed to 14% while the upper limit remains 18%. What will the average be in that case? It will be 16%, higher than the figure proposed by Mr POON for the first three years. Therefore, I think that, even if they cannot agree fully with the Liberal Party's proposal to cap WHC's profitability during the first three years, Members from the UDHK, who know mathematics, should at least refrain from opposing it. The proposed change in WHC's profitability during the first three years will in fact make a very important difference.

The absence of competition — there being only one bidding consortium — is the crux of the matter. It is hard to tell who should be held responsible for. Still, we all agree that the fact that there is only one bidder is the main problem. Why did this happen? Was it because, as some say, investors were afraid of the intervention of the Legislative Council? Is it true, as we have heard, that "if there is the intervention of the Legislative Council, there will be no investment"? Or is it because the Sino-British row is affecting investors' interests? Is it because some people, scared that the Legislative Council may alter existing agreements at will, have balked at investing? I feel that it is really very difficult to answer these questions. I dare not call anybody a man of guilt in history, so to speak, who is to blame for discouraging investors. I leave each of you to find the answer yourself. However, I feel that one thing is clear. If we do not pass the Bill today, and in consequence the Government has to pick up the pieces by holding a new tender or by deciding to build WHC itself, this will hold up the project for at least several months. The other day, a representative of the consortium, seated right in this chamber, told us that, if a new tender was to be held in autumn, the cost of the project would go up by $200 million. This is simple arithmetic. I know the answer. Suppose that the cost goes up by $200 million. Then, with the same traffic flow figures, this means it would cost about $0.80 more for each motorist using WHC. Will this be worth it? The delay will drive up the cost.

Such being the circumstances, I therefore feel that we can only ask: If there is only one bidder during a future tender, what will the Government do? Will the Government still go ahead and negotiate in secret? Will it try its best to find out if the investment environment can be improved to attract more bidders? When there are more bidders, there will be greater competition and this Council will be spared the kind of problem that it is facing today, that is, its hands are forced by the fact that, if it does not pass the Bill, there will be no WHC. If there is no WHC, then we will really have to say sorry to the residents of Hong Kong Island Central and West and the residents of Hong Kong Island South, and indeed to the people of New Territories West and the people of Kowloon West, who will also need such a tunnel.

I will still feel somewhat helpless even if the Bill is passed. However, I am glad that we are really able to amend it substantively. With regard to this amendment, I hope that those Members who think that the consortium's traffic flow projections are too low will turn out to be right. If they are right, the public will stand to gain by at least $300 million to $400 million or, in Mr Steven POON's estimate, $500 million. These are large amounts of money. In practical terms, the WHC's toll per crossing would lower by as much as $4. This will be contributive to our fight against inflation.

Mr President, I support the motion.

THE PRESIDENT'S DEPUTY, MRS ELSIE TU, took the Chair.

MR WONG WAI-YIN (in Cantonese): Madam deputy, the prolonged deliberations on the Western Harbour Crossing (WHC) Bill have been going on for more than one week. Despite heated arguments inside the Legislative Council and many opposing voices outside, the Bill has made it in the nick of time to its Second Reading at the last sitting in the current legislative year (which is today). I am moved to say, "Liberal Party, you have indeed rendered an unforgettable service."

Though the deliberations on the Bill have lasted for only less than two weeks, I think I am not exaggerating to say that they are "prolonged". This is because this Council has been deliberating on the Bill almost every day. I have also spent many a night attending meetings of the infrastructure policy panel of Meeting Point, to which I belong, to review the latest developments. Indeed, WHC has been preoccupying me day and night. Madam deputy, many times during the discussions, Meeting Point considered moving an amendment to the Bill, for instance, to set the internal rate of return (IRR) at a lower level and to let this Council step in as a mechanism for supervising tunnel roll increases. However, because of technical problems and in consideration of the fact that, if our amendment is passed by this Council but not accepted by the consortium, the consortium's withdrawal from the deal in the end will still put the burden on the Government to build WHC, Meeting Point has therefore decided instead to oppose the Bill and to ask the Government to spend its own money to build WHC.

Madam deputy, we believe that the Bill will pass without a hitch because it is supported by the Liberal Party and by most independent Members. Still, Meeting Point wants to reiterate some of its arguments here, in the hope that this will address the concerns expressed by some Members earlier on and in the hope that Members will think carefully again before they cast their votes. Mr Fred LI, my colleague of Meeting Point, will be speaking later on to offer Meeting Point's views about the amendments proposed separately by the Liberal Party and the United Democrats of Hong Kong.

Madam deputy, Meeting Point always thinks that a tunnel is just a road. It comes within the definition of infrastructure. It serves as an essential support for economic development and for the enhancement of the quality of life. In a civilized society, the Government must be responsible for the planning and construction of infrastructure. It cannot shirk its responsibility in this regard. Financial resources are needed to build infrastructure, which can come from a variety of sources. Privatization, or using private investment, is one way to finance infrastructure projects. If used probably, it will broaden the base of resources available for infrastructure projects and enable needed projects to be built in time to promote economic development and improve people's quality of life. Very obviously, however, using private investment is neither the only way nor the best way to build infrastructure projects. Whether a particular infrastructure project should be privatized must be analyzed in terms of cost-effectiveness and possible impact on consumer interests. It must not be presumed that privatization is the best or the only choice. This is precisely the

problem at the heart of the Government's decision on financing for WHC. The Government made its decision on the presumption that privatization was the only option for WHC.

If a consortium of private investors wishes to invest in any project, its purpose is of course to make money. An infrastructure project will be no exception. The consortium was totally acting within its right to set an internal rate of return (IRR) that it found to be "reasonable". Without such IRR, it would not invest in the project. From the consortium's angle, IRR is naturally the higher the merrier. But this must not be the Government's consideration, for the Government has a duty to protect the interests of consumers, the interests of the users of the facility. It appears that, after making its decision on the presumption that privatization was the only option for WHC, the Government has left itself with no other choice except accepting what the consortium, the sole bidder in this case, considers to be its "reasonable" terms. It is the citizens using the future WHC who will stand to lose.

Madam deputy, are there really no other options? The answer of course is no. Meeting Point suggested that the Government should build the project itself. Earlier on, many Members questioned this suggestion. But is the idea really not feasible? Well then, let us see what the advantages of the Government's financing will be! Suppose that WHC will cost a total of $6.5 billion, of which $2.5 billion will be invested in the initial stage, to be followed by $1 billion a year over the four-year construction period. As for tunnel toll, Meeting Point suggests that the opening toll in 1997 be set at $20 per crossing for private cars, and that the toll be raised to $30 in the year 2007 and to $40 in 2015. Even at such a low toll, the Government's first-year toll income will be $550 million. As time passes and as traffic volume increases steadily, the Government's annual toll income from the year 2015 onwards will be $1.75 billion. Over the same 30-year period, IRR will be 10.4% a year. This is a very attractive IRR for an infrastructure project.

At this point, I wish to comment on Mr Ronald ARCULLI's earlier reference to Meeting Point's acceptance of a 10% IRR. Our suggestion was not that the consortium should be asked to accept this 10% IRR. Our suggestion was that the Government should carry out the WHC project itself, in which case a 10% IRR would be worthwhile enough. We think that the Government's purpose in investing in the project should not be to make money but to ease the pressure of cross-harbour traffic. A 10% IRR will be enough to enable the Government to recover its cost.

Furthermore, from the point of view of consumers, WHC's toll in the case of government financing will be much lower than what is now being sought by the successful bidder, the consortium. For private cars, we suggested an opening toll of $20 per crossing, which is $10 lower than the $30 toll being sought by the consortium. In 2021, our proposed toll will be $65 lower than the $105 toll that the consortium will charge. We totally fail to see anything that, in the words of Financial Secretary Mr Hamish McLEOD, will be "very

unfortunate" if "taxpayers are to pay for the construction of this project". On the contrary, consumers will be paying lower tunnel tolls and the Government will have a reliable source of income each year. The Government will be able to spend this income on other public services. IRR in excess of 10% a year is higher than the 8% IRR of the Exchange Fund recorded last year. What is so unfortunate about this?

Secretary for Transport Mr YEUNG Kai-yin has stressed time and again, "If the Government is to use its own money for building WHC and other projects, then the Government will never have enough money. WHC will need $6 billion. Route 3 will need $12 billion. Route 16 will need $8 billion." he has also said, "If the WHC Bill is rejected and the Government then goes ahead with the construction of the tunnel itself, a very bad signal will go out. And no consortium will ever invest in Hong Kong's infrastructure projects again." Also, he has said, "Because of a display of temper, public works projects may not be able to attract private investors again." We are disappointed and displeased at these temperamental words from Mr YEUNG, which smack of intimidation. Actually, the crux of the matter is the interests of the public. What form of financing for an infrastructure project will be in the best interests of the public? We must not presume that "privatization wherever possible" will always be in the interests of the public. The focal point of the debate on the privatization of WHC is a good example to show the otherwise. One newspaper has put it well when it said that, at the time of the privatization of MTR, "If its IRR on day one had been set at a level between 15% and 18%, it was really unimaginable as to how high today's MTR fares would have been." I wish to draw Members' attention to the fact that MTR, which began operation in 1979, has not yet fully recovered its cost. Even if the airport railway project falls through, MTR's debts will not be totally paid off until 2000.

In fact, Mr YEUNG has identified the crux of the matter. He said, "Government spending growth will follow economic growth, at 5%." The Government's reserves now exceed $100 billion. So it is not a matter of lack of resources on the part of the Government for the WHC project. Besides, the $6 billion is not needed all at once. The money will be disbursed over a four-year period. The problem is the Government's rigid adherence to the financial principle that expenditure expansion should not exceed the growth of gross domestic product. This is why the Government refuses to invest in a worthwhile project where IRR will be in excess of 10%. If it is said that the Government must "tailor expenditure to revenue", then, I must say, the Government actually has failed to consider how to generate "revenue". The Government has not given serious thought to WHC which is a project worth investing in.

I want to give an example to show some of the negative impact of the Government's rigid adherence to the 5% upper limit for expenditure expansion. In the report submitted to the Legislative Council this year the Director of Audit discussed the case of Government Supplies Department on Oil Street in North Point. If the Government is prepared to spend $400 million to relocate

this facility, the site can be sold for $2 billion. But, according to the report of the Director of Audit, very regrettably, the Government, by "rigidly adhering" to the 5% expenditure expansion rate, has been unable to come up with the money for relocating the Government Supplies Department, with the result that a site worth $2 billion is not available for sale. Therefore, we wonder if this 5% constraint must be rigidly adhered to? Can the Government not do things more flexibly to accommodate the interests of the public? I believe that, if the Government frees itself of this 5% constraint and proceeds to build WHC on its own, none of the on-going infrastructure projects will be affected, nor will the interests of consumers.

In fact, IRR, as sought by private investors, varies as market conditions change. When there is a shortage of investment opportunities, investors will accept lower IRR. By the same token, future market conditions will determine if there will be private investors for the other infrastructure projects. A matter of crucial importance is that the Government should consider the interests of the general public even when there is no shortage of private investors. The Government should not repeat what it has done this time: When there is one consortium which is willing to invest, the Government jumped at the chance and introduced legislation to deprive consumers of their rights and make them pay high tunnel tolls, in order to enable the private investors to attain IRR that they consider to be "reasonable".

Lastly, I want to ask: If the Bill should be rejected by the Legislative Council, would this mean that WHC could not be built? The answer of course is in the negative! The reason is very simple. If the Government wants to build the tunnel on its own, it certainly could accept, for the consortium, the tenders from its contractors. The contractors are asking for only $5.66 billion or so, which is less than the $6.5 billion originally estimated by the Government. Besides, WHC, if it is built according to government specifications, the problem of sub-standard work will not arise at all. Therefore, if the Government wants to build WHC by itself, it would be perfectly able to complete the project on schedule as originally planned. There will not be the delays that some Members have suggested; WHC will be completed in mid-1997. Of course, the most important point is whether Members, during the vote later on, will have the courage to assume their responsibility and represent the interests of the general public by voting down the Bill and by urging the Government to build WHC by itself.

Madam deputy, I stress once more that, while the four Members from Meeting Point will vote against the Bill, this does not mean that we do not want WHC to be built. Instead, it is our hope that the Government will commit itself to the building of the tunnel, but do so in a manner with the interests of the public better served.

With these remarks, I oppose the motion.

DR TANG SIU-TONG (in Cantonese): Madam deputy, the construction and operation of the Western Harbour Crossing, intrinsically, is none other than a commercial decision. But many Members who earlier spoke elevated the subject to such dizzying heights as to mix it up with democracy, freedom, politics and the interests of China and Britain. Would this not be making a mountain out of a molehill?

On the face of it, the controversy aroused by the Western Harbour Crossing Bill appears to revolve around the question of the opening toll and the internal rate of return. But the crux of the matter is that this Council has thrown down the gauntlet to take on the power of monitoring public utilities. We are dissatisfied with the present state of affairs. In all fairness, it must be conceded that the consortium cannot be faulted for putting forth all sorts of harsh conditions having weighted their prospective investments against economic principles. It is because the consortium has to raise a $5.1 billion bank loan on top of a capital investment of $2.4 billion. Given the magnitude of the loan, obviously banks will be reluctant to bear the risk without a guarantee by the consortium ensuring that the investment will yield a reasonable return. But the "automatic toll increase mechanism" proposed by the consortium will turn the tolling regime into an "independent kingdom" contrary to the public interest. Indeed it must be noted that vesting in this Council the power to scrutinize any toll rise for the Western Harbour Crossing will not necessarily mean that this Council wishes to be a tiger to make life particularly difficult for the investors. This Council's purpose is to discourage public utilities from making excessive profits and try all means to make any rise in fees and charges fair and reasonable, thereby protecting the interest of the public.

Personally I am dissatisfied with the Government's approach in handling the Western Harbour Crossing Bill. Members are piqued at the Government's resorting to "highhanded" means, as well as advancing threats that "any monitoring would discourage the investment", in order to coerce this Council into accepting the Bill *in toto*, in utter contempt of the powers and responsibilities of this Council. Obviously, this wheeling and dealing between the Government and the consortium, without prior consultation with this Council, is probably a means by the Government to test this Council's sentiment for similar conditions in any other infrastructural and public utility investments in the future. If the Government could get away with it by using this stunt this time and the Bill passed this Council in its original form, we would be reduced to a rubber stamp which is unable to account to the public; it would also set a far reaching precedent for public utilities not to come under monitoring by this Council. Besides it would be unfair to investors of those public utilities which are currently still under monitoring.

It is very obvious that we need to seek alternatives given the pressing need for construction of the Western Harbour Crossing and a lack of sufficient government funds for the Government to go it alone. Maybe the Government has been prompted into making this "risky move" by force of circumstances. However, in order that a fully understanding of the crossing's methods of

operation be attained, I have to remind the Government here that the departments concerned and those members appointed by the Government to the board of the operating company must scrutinize with care and precision the formula for calculating the operation costs and financial expenses of the Western Harbour Crossing, such as terms and conditions of staff appointment, staffing level, salaries and fringe benefits and so on. This will prevent any irrational rise in operation costs which will then lead to a drop in the internal rate of return, hence pushing up the tunnel toll to an exhorbitant level in the future.

Madam deputy, I hope the Government has learnt a good lesson from this incident. The Government needs to consult this Council beforehand as regards any future arrangement involving the powers and responsibilities of this Council, for history of this kind should not be allowed to repeat itself.

Madam deputy, I so submit.

MR TAM YIU-CHUNG (in Cantonese): Madam deputy, the controversy over the franchise for the Western Harbour Crossing shows that the public in general worries that the level of tunnel toll will be out of control. Furthermore, this incident reveals that there is insufficient communication between the Government and the Legislative Council on the issue. In order to get a thorough understanding of the details of the franchise, the Democratic Alliance for the Betterment of Hong Kong (DAB) has written to the Secretary for Transport and the Western Harbour Tunnel Company Limited (the Company), seeking explanations and information. Meanwhile, we have also met with some very experienced financial experts to gather more information on the credit and risk analysis of major infrastructure projects straddling 1997.

The DAB has urged the Administration to consider fine-tuning the Bill in question in the overall interests of Hong Kong so as to enhance the acceptability of the toll level and control scheme of the Western Harbour Crossing. We have also proposed that firstly, the Hong Kong Government could amend the present "toll adjustment mechanism" in such a way that approval by the government department or the Legislative Council should be sought when the Company proposes a toll increase on grounds of its rate of return being below 15%, and secondly, once the Company repays all the outstanding loans, it should then be immediately subject to the existing and stringent regulatory scheme governing the Eastern Harbour Crossing and the Cross Harbour Tunnel.

Nevertheless, the DAB does not consider it the best option to finance this project from public funds. There are three reasons. First, government resources are limited. Public fund should be spent on some infrastructure projects which are urgently needed and crucial to people's livelihood, yet the rate of return is too low to attract any private investment (such as improvement to the transport link between Tuen Mun and urban areas). Second, to have the Western Harbour Crossing constructed and operated by the Government may

not necessarily achieve better results in cost effectiveness and efficiency than that by the private sector. Third, we should encourage more private investors to participate in our future infrastructure development. Should the Government spend over $7 billion to construct the Western Harbour Crossing, it may lead to a gradual expansion in the bureaucracy and such a development is detrimental to local economic development.

The DAB realizes that since the franchise and recoupment period of the Western Harbour Crossing straddle 1997, it is natural that, unforseeable factors taken into account, the consortium would have special financial considerations and arrangements when financing the project. Moreover, the completed tunnel will have to face competition from the Eastern Harbour Crossing and the Cross Harbour Tunnel which are at the moment under government control in respect of toll increases.

Madam deputy, the DAB holds that the arrangement agreed by the Hong Kong Government and the Company is by no means ideal. However, in view of the analysis mentioned just now and that the project is part of the new airport core project, which will bring a relief to the congested harbour crossing traffic, the DAB supports its construction with private investment so that the Western Harbour Crossing could be completed in an early date. Should the controversy over the toll increase and the regulatory framework drag on and thus turn the consortium away and Hong Kong cannot have a third harbour crossing in 1997 at the end of the day, I am afraid that Hong Kong people are going to pay higher price or to suffer greater loss. With no better options available, we are going to accept the amended Bill as proposed by Mrs Miriam LAU and Mr Steven POON very reluctantly.

Many large-scale infrastructure projects are going to be awarded in future. It is imperative for the Government to draw some lesson from this case for future reference. The Government should also ensure that the agreement on tolls and monitoring arrangement reached with the Company will not set a precedent for similar projects in future. Meanwhile, the Secretary for Transport should strengthen his monitoring over the Company after the passage of the Bill.

Madam deputy, these are my remarks.

MR ERIC LI (in Cantonese): Madam deputy, in handling the Western Harbour Crossing (WHC) Bill, we must not consider only the tunnel's internal rate of return (IRR) and its $30 toll. From the point of view of the long-term overall economic interests of Hong Kong, two other basic considerations are even more important. Firstly, must Hong Kong build WHC right away? Secondly, can the public afford to build WHC?

Plainly, the WHC project cannot be delayed if we are to control the construction cost and if we are to benefit sooner from our investments in other

important projects including the new airport and container terminal. True, WHC's toll as proposed by the consortium is on the high side. But it will still be within the means of motorists.

The rejection of the Bill, or a substantial revision of it, may enable Members to "put on a spirited act" for the public. On deeper thought, however, this will have serious repercussions.

The Government has worked hard at its publicity drive. It has gone all out to promote the new airport project internationally and to encourage foreign consortia to invest in several related projects. The Government has already announced that it will build the first project — Tsing Ma Bridge — all by itself, with taxpayers' money. The rejection of the Bill by this Council will send a very worrying signal to international investors. It will show up the Government as not meaning what it says, as failing to faithfully abide by the basic rules of public tender. It will then be difficult to attract foreign investors to bid for the remaining four core projects that are open to private participation. Some Members may think that taxpayers' money can always be used to finance projects which are, under the original plans, to be undertaken by private investors. But, if such substitution happens again and again, and if taxpayers' money is to be used to build all the remaining projects, then the Government will probably have to spend tens of billions of dollars. The only beneficiaries of such huge public spending will be the frequent users of WHC. The depleted reserves may have to be made good by tax increases or by a cutback on spending in other areas. It may not require a courageous man to make such a decision, but will the decision be fair to all members of the public?

I am an accountant by profession. I cannot deny that I am inclined towards prudent practices. A very high price may have to be paid if the Bill is rejected outright or rejected under the disguise of a revision. In contrast, the Bill, if passed, will carry a limited price tag. Weighing the pros and cons, I feel that I should fully support the immediate construction of the tunnel. If this results in my motive being impugned or means that motorists will have to pay a higher tunnel toll, so be it. On the other hand, the passage of the Bill, if it is passed, does not mean that we could not learn a lesson from the whole episode.

Firstly, the Government should make clearer rules for public tenders. The row mainly stems from the consortium's sudden request to circumvent the Legislative Council with regard to its decision-making on the tunnel's toll increases. I did contact some local consortia about this. They all commented, "So, such things are possible after all." Clearly, if franchises contain a mechanism that guarantees that fees can be raised, these consortia may be interested in bidding for them. Some of the consortia even indicated that they might accept a slightly lower IRR. In fact, IRR is relative to the risk factor. If the rules of the game for tenders are changed to reduce the risk factor for investors, investors' expected IRR can be lowered in return.

The Government secretively made an important change of principle in the rules of tenders. As a result, people became suspicious of the fairness of the entire tender process. I am of the view that, at the beginning, that is, seven months ago, when the Government first agreed to the idea, it should have immediately taken the proposal to the Executive Council for discussion. It should also have consulted the Legislative Council on the principle involved. When there was still time and before the announcement of the successful bid and before negotiations with China, the Government may even have considered making new rules of tender and holding a new public tender. This would have given other consortia an equal opportunity to tender bids. The winning bidder would be the one ready to accept the lowest IRR. But the Government did not follow such a procedure. That was a mistake. In fact, if there had been more bidders, the stronger competition under free market rules could have enabled a lower toll to be set for the tunnel, ultimately benefitting the public. Then, the Legislative Council might not have objected, even though the new mechanism of toll increases will probably diminish its power of political oversight. What actually happened was a case of "act first and seek approval afterwards". The purpose was merely to gain a little more time to enable the Government to complete the airport before 1997. The game has in fact turned into a major political gamble. The Government has only itself to blame for all the criticism that it is receiving.

Secondly, Members attach great importance to political oversight. They consider it to be a real and inviolable right. This is understandable. However, Honourable Members should not forget that some economic laws are closer to people's heart than politics. Some Members often say that, if there is no political oversight, the consortium will be able to raise tolls at whim and will do so unscrupulously. This is in fact not true. In practical terms, motorists wishing to cross the harbour will have many choices. There will at least be three cross-harbour tunnels. The Eastern Harbour Crossing's and the Cross Harbour Tunnel's tolls are subject to this Council's oversight. If this Council sticks to its position of exercising its power of oversight reasonably and thereby makes it impossible for these two tunnels to raise tolls at will, there will then be a gap between WHC's toll and the other tunnels' tolls. This gap will, through the natural force of economics, cause some motorists to choose to use the tunnels with the lowest tolls. In other words, the tolls of the other tunnels, by way of competition, will have a restraining effect on WHC's toll increases and make it impossible for WHC to raise its toll at will. Nor do I believe that there will be traffic snarls in the other cross harbour tunnels while nobody will use WHC, according to Mr LEE Wing-tat. In Hong Kong, time is money to many people. I do not believe that anybody will try to save $10 by not using WHC when there are traffic snarls in the other cross-harbour tunnels. Nor do I believe that the experienced operator of WHC, seeing that the other cross-harbour tunnels' business is so good, will not take some proper measures to get some of the business. In fact, I will be very surprised if this does not happen.

Mr President, I find that the Government should be criticized for "taking a risky move" in the WHC case. However, if Members of this Council should

raise the stakes now and make yet another gamble despite knowing that the public will more probably lose than win, this would be an unwise act, an act to gain personal political mileage at the expense of Hong Kong's long-term economic interests.

8.00 pm

PRESIDENT'S DEPUTY: It is now eight o'clock and under Standing Order 8(2) the Council should adjourn.

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

Question proposed, put and agreed to.

MR FRED LI (in Cantonese): Madam deputy, I have listened today to the speeches of many Members. Some talked about their being "wronged", about their helplessness that, though the Government made a wrong decision, their only choice is to support the Western Harbour Crossing (WHC) Bill, for otherwise there will be no WHC and if so, these will have serious repercussions.

Mr WONG Wai-yin said a moment ago in no uncertain terms that, in the opinion of Meeting Point, the Government absolutely had enough financial means to build the tunnel on its own. The Government certainly can at once take over the $5.6 billion project from the consortium that is the winning bidder. The Government at present has in its reserves $104 billion, which should be enough for building the tunnel. I do not intend to go over the same grounds covered by Mr WONG. I would like to put forth my views on the Government's role and on the amendments of the Liberal Party and the United Democrats of Hong Kong (UDHK).

To begin with, like many Members, we are quite displeased at the whole episode. Firstly, the Government is very high-handed. It said at the outset that no amendment would be accepted, that it would be very difficult to re-open negotiations with the consortium if there were an amendment, and that the consortium would not accept the amendment and would certainly withdraw from the deal. Such high principle and such high-handedness have left many subtle impressions on the hearts of Members, making them fear that, if they disagree even about some minor points, the consequences will be serious. This is unfair to Members.

Secondly, during its seven months of negotiations with the consortium, the Government must have obtained a lot of relevant data. Meanwhile, Members held 11 meetings. We did a lot of hard work and pooled our professional

knowledge before we could find out what kinds of data we would need. Then we asked the Government to provide us with the data. We would study the data before deciding what to do next. Every time we held a meeting, we asked for new data. Members were not Jack of all trades. And many Members were not available on a full-time basis. The 11 meetings, taking place within eight to 10 days, exhausted everybody. Members squeezed out their last drop of wisdom. The Government, of course, had the help of many experts and financial advisers. It also had the data obtained over a seven-month period. It easily disposed of the questions that we raised. This already put us at an unfair disadvantage.

Thirdly, the Government said that, if the Legislative Council exercised supervision, made an amendment or took an irrational decision, there would be serious repercussions, which would deter potential consortia from investing in future projects. Many Members bought this. They thought that one consequence might be the scrapping of the Route 3 project. Let me point out that every infrastructure project has its own unique background. Route 3 and WHC are totally different kinds of projects. The Route 3 project has a land development potential whereas WHC's income will come solely from tolls. The two projects are totally different in the eyes of consortia. I feel that they should not be measured by the same yardstick. We should not think that what we do now will create problems to future projects; nor should we think that we must not ask the Government to spend tens of billions of dollars. I feel that such thoughts are not objective enough.

Let us turn to the outcome of the negotiations. I remember clearly that it was on the morning of 13 July that Mr Steven POON suggested an amendment to set WHC's internal rate of return (IRR) for the first three years at 16.5% instead of 18%. He proposed that, if this IRR was exceeded, any excess would be placed on a Toll Stability Fund. He wanted the tunnel's profit for the first three years to be capped at the 16.5% level of IRR; he wanted any excess profit (which might be as much as $400 million) to go into the Toll Stability Fund. According to Mr POON, a heavy traffic volume would be good for the users of the tunnel, the heavier, the better. In less than four hours from the time his amendment was tabled, the Government and the consortium expressed full agreement with it. Therefore, I have great admiration for the Liberal Party, whose amendment won the full support of the Government and the consortium. Only 10 days earlier, the Government had said that nothing was to be amended or new negotiations would have to be opened with China. But then, after the amendment was suggested, it was soon approved by the two sides acting in concert. Why was the Liberal Party so "influential"? People really wonder.

Let us now look at the amendment. I have gathered some statistical information about the Eastern Harbour Crossing (EHC) for Honourable Members' reference. EHC became operational in September 1989. Its maximum designed capacity is 120 000 vehicles a day. At first, the average daily traffic volume was 22 809 vehicles. This increased to 32 147 vehicles in 1990, to 48 752 vehicles in 1991 and then to 68 262 vehicles in 1992. It can be

seen from this that not even half the projected maximum traffic volume had been reached during the first three years of its operation. Should EHC be operated by private company, it must have lost a lot of money. EHC's designed capacity is 120 000 vehicles a day. The actual traffic volume during its first three years grew slowly, from a little more than 20 000 vehicles a day to some 30 000 vehicles to some 40 000 vehicles a day. As of 30 June 1993, the latest figure was 85 630 vehicles a day. The traffic volume is getting closer to the target, but only four and a half years after the tunnel was first opened to traffic. In presenting the above figures, my purpose is to ask: Can the new cross-harbour tunnel attain a 16.5% IRR during its first three years' operation? Anybody wants to bet? That, I think, is basically not possible. There are many reasons why it is not possible: The competition from the two existing cross-harbour tunnels; the new road signs that will have yet to be put up; the habit of motorists and publicity. To propose a 16.5% IRR for WHC is to assume that it will be attainable at all times. However, we have to look at the above figures carefully and take into account that we have two other cross-harbour tunnels apart from WHC. Therefore, I believe that the consortium simply will not be able to attain the 16.5% IRR during the first three years of operation. It is no wonder that the consortium has readily agreed to the amendment simply because it will not affect its earnings. I think that, in the consortium's own plan, the traffic volume during the first three years of the tunnel's operation will simply not be enough to produce income equivalent to a 16.5% IRR. Therefore, the consortium will of course accept an IRR capped at 16.5% for the first three years. But the consortium will not accept an IRR capped at 16.5% for the sixth or the seventh year. Nor will it accept an overall IRR capped at 15%, which will affect its earnings. Therefore, the suggestion to cap the consortium's IRR during the first three years will make no real difference. The Government found it acceptable, so did the consortium. Agreement was readily reached.

Let us now look at the UDHK's amendment. The UDHK's suggestion is to set the tunnel's IRR at 14% to 18% instead of 15% to 18%. The suggested figures are not of much significance in terms of what we think the consortium's average IRR should be. The consortium will have a 26 year franchise and it wants its average IRR to be set at 16.5%. How much should the consortium's average IRR be within the 14% to 18% range suggested by the UDHK? Nobody can tell. The only significance of the UDHK's amendment is that, even if the consortium's profit falls to a level corresponding to a 14% IRR, no toll increase will be triggered sooner than scheduled. The UDHK's amendment will enable a toll increase to be introduced sooner if the 14% IRR is not attained. There will be a lowering of the lower limit of IRR. But the upper limit will remain unchanged; it will remain at 18%. Therefore, the amendment is not very meaningful. We totally fail to see how this will protect the consumer. Nor does the amendment say how much the average IRR should be. The UDHK proposed an introduction of some by-laws and called for supervision by Members. I agree that this is a good idea. But let me illustrate my point with an analogy. Suppose that we change the licence plate of a car but not change its engine. Can we say that it is a new car? No, we cannot. It will remain the same old car, with the same performance, same speed. Now we are going to have a

mechanism under which the tunnel's toll will be reviewed once every four years. Whether we set the tunnel's IRR at 15% to 18% or lower it to 14% to 18%, the mechanism of automatic toll review will remain in place. This Council's oversight will be meaningful only if this mechanism is removed. If it is not removed, this Council's oversight will not be real even if it exists in name. There will then be a conflict between the franchise and the Ordinance, and, if so, the consortium does reserve the right to sue the Government. We do not want to see such undersirable development.

Changing the tunnel's toll from $30 to $25 will make only a $5 difference. It is not a significant difference. And the consortium is allowed to introduce a toll increase in the following year and the year after that. Therefore, we have to abstain from voting on the UDHK's amendments.

Madam deputy, we of Meeting Point rarely take so clear-cut a position. *(Laughter)* On the Bill, we will stick to our position. *(Laughter)* We will vote against it.

MR ROGER LUK: Madam deputy, the Western Harbour Crossing Bill is a Hobson's choice to this Council. However, it does not mean that this Council should simply either take it or leave it. This Council has a duty to scrutinize the franchise arrangements for the construction and operation of the project to ensure the public interest is also fully taken care of. There would, of course, be trade-off and compromises at the end of the day, but we have to ensure that the interests of both sides are well balanced. This is what we have done.

It is unfortunate that we have only about one week to do the deliberation. In this light, the Bills Committee under the chairmanship of the Honourable Miriam LAU has done a good job within such a time constraint. In hindsight, however, could we have done even better? Could we have persuaded the consortium to accept a more substantial modification to the franchise which would give the consumers a much better deal while keeping the consortium's interest intact. It is, of course, difficult to ask the consortium to accept changes to the terms of the franchise already agreed with the Administration. It is, of course, also very difficult to explain to the public why this franchise should be different from the existing two harbour crossings. However, we would never have done this if we put party interests in the first place. I regret that the discussions of this Bill, both inside and outside this Chamber, were overcast by political motives. The standpoints of the political groups or parties were very clear at the very beginning. I trust the public will make its own judgement of their performances.

Hong Kong is fortunate to have keen private interest in infrastructural development. In this connection, bank financing is indispensable. During the deliberation of the Bill, a number of questions relating to the fundamentals of bank project financing were raised, but left unanswered. I shall not try to answer them here today. We must be aware, however, that banking is a

business of risk management. It would be imprudent for the banks to extend credit to projects which are not financially feasible, not technically viable and not professionally managed. As a side step, the opening toll of $30 for private cars in 1997 dollars is one of the controversial issues in this franchise. Probably, we have overlooked that the opening toll of $5 of the Hung Hum Crossing in 1972 is equivalent to $30 in 1993 dollar terms. Unfortunately, the choices before us this afternoon are only two: one is a substantially modified franchise which the consortium has indicated non-acceptance; one is the original franchise with a cosmetic trade-off. I regret that this Council has not been able to put forward a better deal to the public. There are good lessons to be learned by all of us and I hope that we have learned them well. Thank you.

THE PRESIDENT resumed the Chair.

MR CHIM PUI-CHUNG (in Cantonese): Mr President, I had not intended to speak. But two factors have prompted me to make use of my 10 minutes or so alloted time.

Firstly, in my school days, teachers called me a "chatterbox". Since I have a chance to speak now, why should I give it up?

Secondly, after listening to Members' diverse comments on the Western Harbour Crossing (WHC), I, too, want to use this opportunity to offer mine. I do not want my speech to affect Members' voting decision.

At the behest of Mr CHEUNG Man-kwong, who is seated next to me, I urge you all to join the Liberal Party, which, according to Mr Fred LI's comment a minute ago, is very efficient.

Mr President, concerning WHC, I would like to make an analysis from various angles.

Firstly, where the consortium is concerned, many Members remarked a minute ago that it is backed by China capital. This is almost the same as referring to the Chinese Government being behind the consortium. Actually, based on documentary evidence, the consortium is made up of CITIC (35%), Kerry Group (Shangri-la Group) (15%), Wharf (37%) and China Merchants (13%). In other words, Hong Kong, Singapore and Malaysian interests account for a total of 52%. This is clear enough from the documentary evidence. For me to dwell further on the fact is to insult Honourable Members' intelligence. The consortium is bound to look at economic gain. They would ask themselves such questions as what the business of the tunnel would be affected if several million people will leave Hong Kong in 1997 and how many people will remain in Hong Kong then. They will have to consider both the economic factors and the political factors. We must be fair and analyze the case on the assumption that "what is acceptable to ourselves will be acceptable to others". We must

understand the consortium's frame of mind. The Government has set WHC's average profit level at 16.5%, the middle point between 15% and 18%. But the Government has provided no real guarantee. It has merely allowed the consortium, if it can, to attain this profit level. If the tunnel's traffic volume turns out to be light, the consortium will have to raise the tunnel toll. But even raising the tunnel toll will not guarantee this 16.5% profit level. We must realize that the Government has made no promise that the tunnel will be Hong Kong's last cross-harbour tunnel. In fact, the Government has the right to build, and is likely to build, a fourth cross-harbour tunnel in the next 10 to 20 years. Should this be the case, WHC will face formidable competition. I can assure Members that I have no interest in any one of the four groups of the consortium. I have never had business dealings with them. And I am only making a factual analysis from a fair and objective angle.

Secondly, about the Government, it cannot be denied that the Government's handling of the WHC Bill is questionable. However, we must show the Government some understanding. The franchise had to be approved by the Sino-British Joint Liaison Group. This took several months. The Government indeed must be commended for having briefed this Council on the matter. Within a very short period, we held meetings that lasted for a total of over 20 hours. Staffs from the Transport Branch, as well as other government officials, lobbied until they had no voice left, so to speak. In politics, lobbying is absolutely normal. We cannot say that the Government is wrong to have lobbied us. The only problem is probably our approaching the same matter from a different standpoint. Therefore, it is absolutely understandable that the Government should have lobbied for Members' support for the Bill.

On the other hand, the Government should learn a lesson from the case so as to prevent similar things from recurring. In the present case, the Government is perhaps not totally to blame. Still, one question has emerged. Do we have a legislature-led or executive-led government? I said last Wednesday that this Council had no power to meddle or interfere with matters of diplomacy between China and the United Kingdom, but that it is our duty and within our power to handle pieces of legislation that must be enacted by this Council. I believe that all Members understand this point. In future, if any legislation needs enactment by this Council, it will be in the best interests of the public to have this Council notified in advance! Will this result in a legislature-led government? Personally, I do not feel so.

With regard to China, China is not likely to feel that it will lose face if the British Hong Kong Administration reaches an agreement with the Legislative Council on pieces of legislation that need to be enacted by the Legislative Council, before seeking the Chinese Government's blessing. Now, China and the United Kingdom have reached an agreement but this Council wants to veto it. This is bound to create confusion. Many Members have not dared to face this problem squarely. I think that we should face this problem squarely, for many of Hong Kong's statutes will have to be reviewed in the next four years or

after 1997. We should take a constructive approach and give our advice to the Chinese and the British governments.

Thirdly, about Members, many Members said angrily a moment ago, "the Government has betrayed Members". This is absolutely not the case. Honourable Members who are seated here absolutely have the power to make their own voting decisions. The question is: Do you have enough votes? If one does not have enough votes, then one cannot say that the others are wrong. This is simply a matter-of-fact competition. Now that the Government has succeeded in persuading the Liberal Party to support the Bill, the others, who do not have enough votes, will simply be lacking in political maturity if they resort to abusive language. Therefore, one should first do some soul-searching instead of saying that one has been deprived of one's right because that is not true. Mr President, this Council should review its role and representativeness. I believe that, if we make a reasonable decision and then vote according to our conscience, the public will support us in the end. We should also consider the fact that a legislator should not think that he will gain more support from the public if he votes against a Bill. We should never have this kind of mentality. We vote according to our conscience. If we do not have enough votes, we should not blame this on society or on others. Different Members here represent different interests. If one Member does not receive enough votes, let him not say that the others are not representative enough.

Which is better: public-run services or the private-run services? With regard to this question, the Government understands that the world is ever-changing. The British Government, for instance, partly privatized the national railway after Lady Magaret THATCHER came to power. What is wrong with the British Government's relieving itself of such a burden? The question is one of supervision and one of doing the rational and the right thing. Some Members say that the Government must take up the responsibility of building the tunnel. Personally, however, I think that the Government's decision in the present case is quite wise.

Lastly, I want to talk about the interests of the public. We must realize that Hong Kong is not without a cross-harbour tunnel now and that motorists will not be compelled to use the third tunnel after it is opened to traffic. In fact, there are now two cross-harbour tunnels. Mr Fred LI provided some useful information a moment ago. The Eastern Harbour Crossing's traffic volume has already reached 85 000 vehicles a day, and the Cross Harbour Tunnel's traffic volume will soon reach 120 000 vehicles a day. Assuming a total cross-harbour traffic volume of 210 000 vehicles a day, we can divide it by three to arrive at an average daily traffic volume figure of 70 000 vehicles per tunnel. Because Hong Kong is continuing to prosper, the figure is bound to go up in the future. The public can choose from the three tunnels. When the time comes, if one thinks that WHC is charging an unfair toll and is not doing one, economically speaking, any good, one can well decide not to use it. Therefore, in view of the availability of choice and the fact that tunnel users are free to make their own choice, I think that the consortium's tunnel toll mechanism is feasible. The

question is how the Government will supervise the operation of WHC so that its directors are not overpaid and the consortium's rate of return does not exceed 16.5%. To make the Government do so is our most important responsibility.

Mr President, WHC has become a political issue. I hope that the people of Hong Kong will not be misled by some Members' comments. They should stick to their positions and make their voting decisions according to their perceptions of the case and according to their conscience. The world never stops changing. In anything that we do, we should not be nostalgic about the past but look ahead into the future. I very much hope that everything in Hong Kong will move forward as history moves forward. As legislators, we should provide proper guidance to the public. We should not make them resentful of society or cause divisiveness among them. If we do, it will not be in the overall interests of the community.

Mr President, I of course want to see the tunnel completed and opened to traffic. I therefore support the Liberal Party's amendment.

MR JAMES TIEN (in Cantonese): Mr President, after listening for the last 13 minutes to Mr CHIM Pui-chung's machine gun-like delivery of his wisdom, I wonder if I should go on and deliver my own speech.

Mr President, as a representative of the Federation of Hong Kong Industries in this Council, I have consulted more than 40 members of the Federation's General Committee concerning the Western Harbour Crossing Bill. Most of them think that the tunnel should be built right away, the reason being that Hong Kong will need one more cross-harbour tunnel if it is to remain stable and economically prosperous during the coming decades. One more cross-harbour tunnel will be needed because the Eastern Harbour Crossing and the Hunghom Cross Harbour Tunnel are already congested. Some people may say that Members with business background will of course speak to protect the interests of the consortium. I must stress that the Federation has more than 1 000 members, most of them are owners of medium-sized or small factories who have nothing to do with the consortium. Many of the members use trucks, vans and private cars. In fact, they are all tunnel users or "victims." We have done some calculations. Drivers today are each paid a salary of about $10,000 a month. The average hourly pay is $50. Where the argument is about a mere $5 difference between a $30 toll and a $25 toll, we tunnel users in the business community will be glad to pay an extra $5 to avoid traffic jams that may mean missed money-making opportunities.

Mr President, Members from the United Democrats of Hong Kong (UDHK) use the term "profiteering" frequently. Members of the business community, too, are consumers. We of course hope that services will be cheap and good. If the tunnel toll is $25, that will be good. If it is $20, that will be better. If it is free, that will be the best. But would anybody want to invest under these circumstances? "Anybody" includes the Government and the

consortium. Many members of the public are very confused by the 15% to 18% internal rate of return (IRR). They have no idea what it means. For example, Members from the UDHK think that a 15% to 18% IRR is "excessive." I would ask the UDHK to let me have its reserves and invest them on their behalf. I can guarantee a 15% IRR over a 10-year period. My method is very simple. I will invest the money in the shares of the dozen companies that make up the Hang Seng Index. Over the past five years, these companies' average IRR was 20% to 25%. After investing and handing the UDHK the promised profit, I will still have a 5% profit to buy all Members a dinner. Let us look at the situation of the Hunghom Cross Harbour Tunnel when it was first opened to traffic in 1972. The tunnel toll then was $5, and its construction cost was $350 million. The cost of the Western Harbour Crossing will be $6.4 billion, and its toll will be $30. If the same proportion was observed, the Hunghom Cross Harbour Tunnel's $350 million construction cost would justify a toll of $1.50. I do not know whether it was the people of Hong Kong or the business community who were lucky. If there had been directly elected Members or members from the UDHK then, the Hunghom Cross Harbour Tunnel probably would not have been built. Do members of the public think that Hong Kong's two cross-harbour tunnels are good for Hong Kong's economy as a whole, that they have had positive effects? If the answer is yes, then should we make such a big issue of $5 as to prevent the Western Harbour Crossing from being built?

Take the $5, which is the difference after subtracting $25 from $30. It is the greatest issue of the debate. With inflation and in view of the fact that salaries will continue to rise because of labour shortage, how much will $5 buy in 1997? I think that $5 may be enough now to buy a cup of coffee in Sheung Shui. It is not enough to buy even a cup of coffee in Central. I believe that, when 1997 comes, there will be no more coffee at $5 a cup even in Sheung Shui. So, is $5 such a big deal? I think not.

Mr President, some (for instance, Meeting Point) argue that, if the consortium gives up on the tunnel project, the Government can build the tunnel at its our expense. Let us see what will happen. The Government will have to spend $7.5 billion on the project. How many other things can Government do with this money? I believe that Members from the UDHK or Meeting Point, if they pay attention to the grass roots, will agree that $7.5 billion can be used to build 500 secondary schools or 10 hospitals. Why do Members from the UDHK or Meeting Point, who care so much about people's livelihood, not pay more attention to hospitals and schools, which more closely affect the quality of life? Why do they suggest instead that the Government should spend $7.5 billion of taxpayers' money on building the Western Harbour Crossing? In their constituencies (I assume that most of the voters for the UDHK and Meeting Point are at the grass roots), how many people live in public housing estates but own private cars? How many of them will drive their private cars every day through the Western Harbour Crossing, which charges a $30 toll? Members from the UDHK and Meeting Point say that they represent the views of their constituencies. But then they also say that they are thinking of the interests of

the Hong Kong as a whole. But, as a member of the business community, I at least do not feel $5 to be a big benefit that I need to be won for me.

There is another point worth mentioning. It is the matter of there being only one bidder for the Western Harbour Crossing. I have asked Hong Kong's big developers and other private sector companies why they did not submit a tender. Two of the companies told me frankly that they were afraid that all future tunnel toll increases would require the approval of this Council. They were afraid that Legislative Council was going to have more and more directly elected Members and that these Members would oppose all fee increases regardless of whether the increases were reasonable. Of course, directly elected Members cannot be much blamed for doing so. If one party does not oppose a fee increase, another will. The latter will then win more votes in future elections. So everybody is compelled to oppose fee increases. This being so, I have some worry about the future economic development of Hong Kong. If a precedent is set, will it not deter private consortia from bidding for the other possible airport projects unless there is a lot of money to be made, since this Council's monitoring will result in the disappearance of safeguards for their investment?

Mr President, lastly, I hope that all Members will support the passage of the the Western Harbour Crossing Bill in the overall interests of Hong Kong. I will also support the amendments moved by the Liberal Party.

MR JAMES TO (in Cantonese): Mr President, I intend only to say a few words in response to some of the points raised by the Honourable Members.

A moment ago, Mrs Selina CHOW interrupted Mr Albert CHAN's speech to demand insistently when the Liberal Party ever said that it would support a $25 tunnel toll. I have spent some time at the ground floor of the Legislative Council building and done some simple research. I have found a newspaper cutting prepared by this Council. This kind of newspaper cutting is circulated to Members every day. Here is the cutting from the 10 July (Saturday) issue of the *Hong Kong Economic Journal*. The headline says, "Liberal Party Proposes $5 Reduction in Toll." I will now read the pertinent text: "In addition, Mr Allen LEE, the Chairman of the Liberal Party, said that, after a careful review of the figures supplied by the Government, he was of the opinion that a $25 opening toll would be more reasonable. If the Government refused to make this change on its own initiative, the Liberal Party would then consider moving an amendment." I have only found this newspaper cutting. Perhaps other newspapers have also carried reports on the matter. As Mr LEE has not spoken, perhaps he will care to correct the mistake in this newspaper report.

Secondly, Mr Steven POON said that, in the opinion of the Liberal Party, the consortium's traffic flow projections might be too low and that, if income exceeded the amount corresponding to a 16.5% internal rate of return (IRR), then all of the excess income should go into a fund. But he went on to express

his fear that, if the tunnel's toll was lowered from $30 to $25, insufficient income might lead to a subsequent toll increase. In Mr POON's opinion, the $30 toll was set because the consortium's traffic flow projections were too low. In that case, logic seems to tell me that, if the tunnel's toll can be set at $25, the estimated traffic volumes would be higher. How, then, will income be insufficient, making a subsequent toll increase necessary?

Mr Eric LI said a moment ago that some consortia (local consortia not participating in the tendering exercise) had asked him whether it was really possible for this Council not to exercise supervision. What he means to say, I think, is that, if a mechanism of automatic toll increases is approved, some consortia will not mind to have a lower IRR since the increases will not be subject to the control of this Council. However, I do not think consortia will be willing to retender for this project with a lower IRR simply because of the absence of control from this Council. I do not see the logic.

According to some Members, the public will have a choice, because there are two other cross-harbour tunnels. A moment ago, Mr CHIM Pui-chung said very imaginatively (and I agree with him) that, there might be a fourth or even a fifth cross-harbour tunnel in the future, for the Government had not said that there would be no more tunnels. But I wonder if there will really be a choice. Mr LEE Wing-tat mentioned the cross-harbour tunnel bus, whose passengers would have no choice because the bus routes would be fixed. Truck drivers, too, will consider distances and risks. For instance, drivers of trucks carrying liquefied petroleum gas or other dangerous goods will choose the least risky route. This also reminds me of the MTR surcharge for the morning rush hours. The MTRC, too, says that there is a choice, since one can choose to save $0.50 or $1.00 by getting up one hour earlier! But we are talking about infrastructure, which is needed for everyday use. Well then, will the public really have a choice?

Mr James TIEN a moment ago attacked the United Democrats of Hong Kong (UDHK) for describing a profit level of 15% to 18% as excessive. The UDHK's amendment calls for a profit level of 14% to 18%. Therefore, if a profit level of 15% to 18% is excessive, then we are suggesting that the lower limit be changed to 14%. But then, Meeting Point says that such a change will not be enough. The Association for Democracy and People's Livelihood, too, will also object. Therefore, I hope that everybody will take a dispassionate look at the package as a whole. Just now, Mr TIEN said that he represented the Federation of Hong Kong Industries and many members of the Federation were owners of small and medium-sized factories. Their trucks and private cars had to use the cross-harbour tunnels. So he claimed that they were the real major users of the tunnels. I cannot help but ask Mr TIEN whether, in his opinion, private car owners and rich people are supposed to use the tunnel and pay the $30 toll. What about the cross-harbour tunnel buses? Will many truck owners not pass their higher operating costs to consumers? Will this not fuel inflation? We must deal with these problems as well.

Lastly, I would like to comment on Mr CHIM Pui-chung's remark that many are using the issue to gain political capital. I would like to give a brief response. Politics is essentially a reflection of different opinions. In a parliament, different members stand for different interests. But whom do appointed Members stand for? Perhaps they stand for their own conscience. Mr CHIM represents the financial sector and I represent the Kowloon West constituency. We each represent the interests of different people. I cannot agree with the remark that I am making use of the issue to gain political capital for myself. Each speaks what is on his mind or speaks on behalf of his electorate. I have great respect for Mr NGAI Shiu-kit, who represents the industrial sector. I do have friends who are industrialists or manufacturers. Their views are really very similar to his. Therefore, I dare not say that he does not stand for something. He does stand for the views of some or most industrialists. I hope that we will collectively refrain from denigrating this Council as a whole by saying that so and so is just trying to gain political capital. In fact, everybody here is trying to make a case and everybody represents a particular sector of the public. There is one final point. Mr CHIM says that those who get the most votes are the winners and we have to respect such an outcome. I can say for myself that I will not submit to the voting result, the reason being that this Council is not fully elected. If it were elected by universal suffrage, I would submit to the voting result.

MR ALLEN LEE (in Cantonese): Mr President, I had not put my name down on the speakers' list for the Western Harbour Crossing Bill, but since Mr James TO of the UDHK has requested me to clarify whether the Liberal Party considers that the opening toll of the Western Harbour Crossing should be $25, I would now like to say a few words.

The Liberal Party has studied the various issues surrounding the Western Harbour Crossing, including the proposal of toll reduction. We have discussed whether an opening toll of $25 is feasible, and I think members of our Party can confirm that we have had such discussions. When we were discussing the feasibility of $25, one of our colleagues pointed out that the entire toll increase mechanism was closely related to the traffic throughput. So even if we have decided to reduce the toll to $25, if the consortium's estimate on traffic throughput is correct, the consortium's mechanism for toll increase will immediately be triggered and the amount of increase will be $10, which means that we will be getting an increase just because of the reduction we demanded. We have thought about who could ensure what the throughput would be, and found that we could not tell which one was correct, our Party, the consortium or the Administration, because no one could make that assurance.

Secondly, as Mr Fred LI said when referring to the Eastern Harbour Crossing, if the Western Harbour Crossing, like the Eastern Harbour Crossing, should have a daily throughput of only some 20 000 vehicles, the situation, I can tell you, will be really bad. So, although an opening toll of $30 sounds quite high and some people would like it to be $25, if the situation of the Western

Harbour Crossing should be like that of the Eastern Harbour Crossing, the eventual increase will render the toll much higher. Do we want to see such a situation?

We have tried to find a way that will be fair to the public using the Western Harbour Crossing and fair to the consortium while enabling the Crossing to maintain its operation. And we have asked ourselves whether Hong Kong needs a third cross harbour tunnel — the Western Harbour Crossing — and the answer is in the affirmative. Nevertheless, we should also consider what some Members have said, and that is whether there will really be such "rich pickings". According to Mr Fred LI, there should not be too much, which means that the daily throughput of 75 000 vehicles using the Western Harbour Crossing cannot be ensured. So after having considered various factors, we have come up with a mechanism which has taken into account the problem of traffic throughput. We do not know whether the consortium will get a huge profit after the commissioning of the Western Harbour Crossing and pocket the money. It is also difficult for us to come up with a formula that will surely be fair to the public. Is the opening toll of $25 the fairest? If the consortium cannot obtain the required profit, will the toll be immediately increased to $35? So after consideration, we have come up with the present proposed mechanism. It is not like what the *Hong Kong Economic Journal* has said, "The Liberal Party would like to revise the opening toll to $25." I would like to make this point clear to Mr James TO and the colleagues from the UDHK. We think that if our estimate on throughput is correct, then it will be fair not to allow the consortium to earn in excess of a 16.5% internal rate of return, especially when we consider that the Western Harbour Crossing will be used in the future for travelling to and from the new airport. However, to be fair to the consortium and to the public, we think that the opening toll of $30 is acceptable. But if the profit is in excess of the return rate mentioned above, the excessive amount will have to be transferred to the Toll Stability Fund. My colleagues have explained this point and I am not going to repeat it. My principal intention is to respond to the questions raised by Mr Fred LI and Mr James TO.

SECRETARY FOR TRANSPORT: Mr President,

Acknowledgments

I would like to thank Mrs Miriam LAU and her 30 colleagues who served on the Bills Committee for the time and effort they have devoted to examining this complex Bill, and for completing their work so expeditiously. To say that their task has not been easy may well be the understatement of the year. The Committee left no stone unturned and, in spite of the unremitting pressure to which they have subjected me and my colleagues over the past two weeks, let me say very clearly that we have nothing but admiration for the way in which the Committee went about its business.

I would also like to join Mr Jimmy McGREGOR and Mr Roger LUK in paying special tribute to Mrs Miriam LAU. I doubt if any member of the Bills Committee would disagree with me when I say that she has done a splendid job under very trying circumstances. Next, I would also like to thank those Honourable Members, many of them non-aligned and not on the Bills Committee, for taking time out of their extremely busy schedules to discuss the Bill with me and my colleagues during the many breakfast meetings we have had in the past four weeks. Although the Western Harbour Crossing may not be among their prime areas of interest, they nevertheless gave it the priority its intrinsic importance deserves. I am very grateful to those Honourable Members for their time, patience and support.

Main points

I will deal, first of all, with those proposals for Committee stage amendments which improve the transparency of the Bill while leaving the franchise intact, before commenting on those proposals for Committee stage amendments which would have the effect of altering the terms of the franchise. And since the Government's handling of this exercise has been under such heavy attack during this debate, I will then go on to deal with the way in which we have handled this exercise before finally discussing the Government's accountability to the Legislative Council in respect of this franchise.

Proposals for Committee stage amendments: Liberal Party

The amendments Mrs Miriam LAU proposes to move are mainly technical in nature, aimed at giving clearer meaning to the provisions of the Bill. In particular, I would mention the proposal to include as schedule 5 of the Bill the estimates of net revenue, which will act as trigger points both for future toll increases and for capping profits. Let me say for the record that its only purpose is to enhance the transparency of the franchise agreement. The proposal to amend clause 43(2) of the Bill will extend, to 31 October each year, the period in which the Secretary for Transport must inform the franchisee whether or not he agrees with its annual statement of net revenue and any application for a toll increase. This time extension will allow me to brief Honourable Members at the beginning of the new Session of this Council on the performance of the franchisee in the year just ended. If the franchisee should apply for a toll increase, this time extension will also give me an opportunity to explain my findings on whether the application meets the criteria laid down for toll adjustments, and to hear the views of Honourable Members, if need be, in open debate.

The amendment to clause 37(2) which Mr Steven POON proposes to move will allow the Toll Stability Fund to receive any revenues in excess of those required to satisfy a 16.5% internal rate of return, in the first three years after the tunnel opens. I can confirm that the project agreement has now been amended to bind the consortium to its pledge. As I have said before, the Government welcomes this proposal. If actual tunnel usage exceeds the

consortium's forecast, then the Toll Stability Fund will be put in funds in the early, critical years of operation and these funds could be used to defer toll increases. This will benefit all tunnel users.

Mr President, all the amendments to be moved by Mrs LAU and Mr POON have the support of the Government and are acceptable to the consortium. I would urge Honourable Members to vote in favour of them.

Proposals for Committee stage amendments: UDHK

Mr President, I will now deal with the amendments which Mr Albert CHAN proposes to move. These would have the effect:

(a) firstly, of lowering the opening toll for private cars from $30 to $25, with proportionate reductions for other vehicles;

(b) secondly, of setting the minimum internal rate of return at 14% instead of 15%; and

(c) thirdly, of requiring toll increases to be approved by way of subsidiary legislation, which means that they would be subject to the final veto of this Council on each occasion.

Individually and collectively these amendments would materially alter the terms of the franchise. The consortium has made it clear that they would withdraw if the Bill were passed with these amendments. They have good reason for saying so.

During the negotiations, we debated long and hard with the consortium on whether the opening toll for private cars should be $30 or $25. The inescapable fact is that, on the basis of the consortium's traffic forecast, a $25 opening toll would not produce sufficient revenue even to service debt repayment in the early years of the franchise period. The consortium told us that they would accept an opening toll of $25 only if the Government were to guarantee them an actual traffic throughput that would be sufficient to give them a positive cash flow. This, clearly, we could not accept. It would have involved entering into a commitment to subsidize motorists should the consortium's traffic forecast prove to be right, and ours wrong. It then occurred to us that an opening toll of $25 could still work because it might kick start the toll adjustment mechanism, if necessary in the second year of operation. But this position is equally untenable because what the motorist would gain in the first year they would lose in subsequent years with a $35 toll. In the interest of toll stability, and given that the Western Harbour Crossing will offer a more efficient passage than the existing tunnels, we accepted in negotiation a $30 opening toll. If Honourable Members should now vote in favour of the amendment to reduce the opening toll to $25, it is quite clear the consortium would withdraw because we are not prepared either to guarantee traffic throughput or to risk a higher toll so soon after the opening of the tunnel.

The proposal to set the minimum rate of return at 14% instead of 15% may appear innocuous at first blush. But in effect it is asking the consortium to take the risk of earning a rate of return no higher than 14%. Mr CHIM Pui-chung is quite right. It can happen if actual usage should fall below the consortium's traffic forecast. And this the consortium is unwilling to accept. They take the view that the lowest rate of return they would be prepared to plan for their investment is 15%. I accept this view, because the aim to achieve a return ranging between 15% and 18% is consistent with what is being sought by other tunnel operators here in Hong Kong and elsewhere in the Asia Pacific Region.

Mr President, let us be very clear about Mr CHAN's final proposed amendment. If it is enacted it would ostensibly preserve the toll adjustment mechanism, but by giving the Legislative Council a veto over any toll increase approved by me it would have the effect of rendering the mechanism totally meaningless. The whole point about the toll adjustment mechanism is that it creates a clear, unmistakeable framework within which the annual estimates of net revenue give a clear meaning to the expression "reasonable return" over the franchise period, and the need for toll increases can be judged quite easily by comparing actual net revenue against these estimates. Without this degree of assurance, neither the consortium nor their supporting banks would be willing to invest.

Quite apart from the reasons I have given for rejecting each amendment to be proposed by Mr CHAN, I would ask Honourable Members to bear in mind their possible, longer-term consequences if passed into law. The immediate consequence following the consortium's withdrawal is that the project will be put at risk and will certainly not be ready when it is needed. Honourable Members will no doubt wish to consider carefully how much responsibility they will bear for the degree of congestion which will result at the existing harbour tunnels, if we do not get the Western Harbour Crossing built on time. Secondly, if the Government decides that retendering is unlikely to attract good bids, or actually failed on retendering to attract good bids, the project might well have to be financed from public funds. I would like to remind the Honourable WONG Wai-yin that it is not the amount of money we have in our reserves that matters. If we have to finance this project from public funds, then under our existing system for budgetary control we would have to defer or cancel at least $6 billion worth of public works that are already in the Public Works Programme. These would be projects which cannot or cannot easily be privatized, being schools, clinics, hospitals, sewerage improvement schemes, untollable highways, and so on. But that is only the tip of the iceberg. As community aspirations build up for more infrastructure, failure to attract private sector investment would add enormous spending pressure on the Public Works Programme, to the point where very painful choices will have to be made. I assure Honourable Members that this is a real possibility, and not a threat. In the field of transport alone, I can think of at least three BOT projects that could cost us $33 billion in money of the day to build, should we fail to attract private sector investment for them. They are the Country Park Section

of Route 3 (estimated at $15 billion), Route 16 (estimated at $6.6 billion) and the Central Kowloon Tunnel (estimated at $11.6 billion). And lest we forget, I would like to remind the Honourable Fred LI that Route 3 is no different from other BOT routes, because although we might be offering land — but we have not yet decided to do so — or development rights as part of a BOT package, we all know in this Council that land is so scarce a resource that the offering of any land or development rights is tantamount to spending money or forgoing revenue. Not only this, I can also think of a further $17 billion that the Government would have to forgo, were we to fail to sell the franchise for the Lantau Fixed Crossing. Against the background of these very real dangers, I can say that Mr CHAN's proposed amendments are totally unacceptable to the Government. The *ex-officio* Members will vote against them and I would urge other Honourable Members to do the same.

Accountability

Mr President, before I go on to deal with the accountability of the Government to the Legislative Council on this Bill, I should perhaps respond to a number of points made by Honourable Members in this debate about the handling of this Bill over the past few weeks. The Government stands accused of having placed itself in a disadvantageous position. There have been repeated references like: "We had already lost the war before we fought the first battle", and "the project should in any case be retendered because we were dealing with only one bidder". From that logic, certain Honourable Members have jumped to the conclusion that the deal is intrinsically bad, and, of course, it did not take a great deal of ratiocination for these Members to go on to say that the Government has been conniving with the consortium. Let me say, Mr President, that I can understand the frustration felt by many Honourable Members about this Bill. We all realize the importance of this project. We all understand that an urgent start is needed because it takes four years to be completed, and I for one in the Bills Committee have been exchanging blunt words for blunt words. But that is not to say that dealing with one consortium necessarily makes for a bad deal or that we were necessarily in a helpless position. I say this for two reasons: first, in inviting tenders, the Government is under no obligation to accept any bid, particularly if there is only one bid; and, secondly and more importantly, many Members have missed the point that we have accumulated within the Civil Service many years' experience in dealing with single tenders. We have in the past been dealing with single tenders under many circumstances, for example, where we were buying proprietary medicine, and for example, where we were going for a specific type of mainframe computer. We have had years of experience in dealing with single tenders, and I say this with recent experience as chairman of the Central Tender Board. So it does not necessarily follow that because we were dealing with one consortium, the deal would necessarily be bad or that we were conniving with the consortium at the expense of the public good. We have put forward this deal because we believe on balance that it is a good one. I say it is a good deal for seven reasons:

— first of all, the agreed internal rate of return that we have been talking about is not out of line with the internal rate of return being sought by other tunnel operators here and elsewhere, in spite of the fact that we were dealing with only one consortium;

— secondly, unlike other tunnel deals that we have secured in the past, we have managed to pass the cost of the approach roads amounting to some $700 million onto the consortium. The cost of these approach roads is not being borne by the Government at the expense of the taxpayer;

— thirdly, we have secured a guarantee from the shareholders that make up the consortium that they will complete the project at their expense;

— fourthly, should there be a cost overrun the same shareholders would pick up the tab, and the extra cost would not be passed on to motorists because we will not allow the extra cost to be added to the equity base for the purpose of calculating tolls;

— fifthly, as certain Honourable Members have already pointed out, the Government has issued no formal guarantees. Indeed, as some Honourable Members have pointed out, we have merely created a framework giving the consortium the opportunity that they may earn an internal rate of return given the circumstances they expect in their base case. This does not amount to a cast iron guarantee that they will make the profit they expect;

— sixthly, we have capped profits should the internal rate of return exceed 18%; and

— finally, for the first time we have made very sure that excess profits will be used for the benefit of the motoring public.

With these merits I commend this franchise and the Bill to Honourable Members and I would urge Honourable Members to think very carefully before they ask the Government to retender.

Mr President, certain Honourable Members have said that they have had difficulty in accepting this Bill in principle, either because they have not been consulted sufficiently or because they believe that the toll adjustment mechanism would deprive the Legislative Council of the right to monitor the performance of the franchisee.

Let me say once again that we had consulted the relevant ad hoc group of the Legislative Council and the Airport Consultative Committee before we called for tenders and entered into negotiations. That said, I would readily admit that we may not have consulted this Council as extensively or as sufficiently as the importance of this franchise justifies. With the benefit of hindsight, I would be prepared in future to consult the Transport Panel of this Council on our aims and objectives before we enter into negotiations for the next BOT exercise. This will at least ensure that the Council is aware of what we are trying to achieve and will have an opportunity to comment if any Honourable Member should think that we are setting the wrong objectives for ourselves. It will also ensure that the franchise Bill will not reach Honourable Members cold. All this said, I should perhaps draw a clear distinction between hearing Honourable Members' views on our aims and objectives, on the one hand, and being left to get on with negotiating the franchise, on the other. It is in the nature of many negotiations that it is not easy to come back to this Council while negotiations are in progress. Nevertheless, I have noted the wish of many Honourable Members not to be bounced in future and we will give careful thought to the consultative process before the next BOT franchise Bill is formulated.

I cannot agree with the argument, however, that the toll adjustment mechanism would deprive the Legislative Council of the right to monitor the performance of the franchisee. As I said previously, the whole point of the toll adjustment mechanism is that it replaces the present unsatisfactory arrangement — under which we have a vague reference in the law about a reasonable return on investment and it is left to the Executive and Legislative Councils to determine what is and what is not reasonable — with a clear, unmistakable framework in which reasonableness is quantified, and it is left to the Secretary for Transport to determine on the basis of the franchisee's audited accounts whether or not they are achieving the defined level of return. I submit, therefore, that the toll adjustment mechanism has nothing to do with the Legislative Council's interest in the performance of the franchisee.

It seems to me that what should be of interest to the Legislative Council is whether the monitoring of the franchisee's performance — a task appropriately vested in the Secretary for Transport — is being carried out in such a way as to safeguard the public interest. In other words, what should be important to this Council is the question of whether, in the exercise of his statutory duties the Secretary for Transport will have done enough to satisfy himself that the toll increase is justified or that it would be in the public interest to defer a toll increase even it were justified, by deploying the Toll Stability Fund

It follows from this that the Secretary for Transport should keep the Legislative Council informed of the plans and performance of the franchisee at various important milestones during the franchisee's financial year. Accordingly, I will arrange for the franchisee's plans — which are embodied in their three-year rolling projection of operational costs and net revenue and their annual operating cost budget — to be tabled in the Council in July each year,

accompanied by a statement. Next the franchisee is required to submit to me a statement of actual net revenue one month after the end of its financial year, that is to say, by 31 August. If the franchisee wishes to have a toll adjustment, its application must also reach me by the same date. Following careful examination, I will table the actual net revenue figures in October and make a statement on that occasion on both the figures and any application for a toll increase. Thereafter I would be happy to brief the Transport Panel on my findings, assessments and conclusions before deciding by 31 October whether the toll increase should be agreed or whether we should proceed to arbitration. It would, of course, be open to Honourable Members to decide whether or not my findings, assessments and conclusions should be debated.

A number of Honourable Members have argued that this degree of transparency and this willingness to keep the Legislative Council informed is perhaps not the same as giving the Legislative Council the right of final veto. Of course it is not, but I would like to remind those Honourable Members that my willingness to inform and to listen to this Council is not an empty gesture. We do not have to consult the Transport Panel on the fare increases of the two railway corporations. The fact that we do is based on our belief that consultation pays real dividends. For example, on the last occasion that fares were reviewed, the KCRC simplified the fare between Sha Tin and Fo Tan having regard to the views of the Sha Tin District Board, while the MTRC removed the peak hour surcharge along the Nathan Road Corridor having regard to the advice of the Transport Panel.

Conclusion

Mr President, to sum up, notwithstanding the fact that we had been dealing with one consortium, the franchise contained in the Western Harbour Crossing Bill is good for Hong Kong and fair to all concerned. The franchisee will build an essential $7.5 billion road tunnel at no cost to the taxpayer. The toll levels proposed, the rates of return expected by the franchisee and the toll adjustment mechanism are all reasonable, given the scale of investment required and the long payback period. And for the first time we have a mechanism for applying excess profits for the benefit of the motorist.

Mr President, with these remarks, I commend the Bill to Honourable Members. The *ex-officio* Members will support the amendments to be moved by Mrs Miriam LAU and Mr Steven POON, and vote against those to be moved by Mr Albert CHAN.

Question on the Second Reading of the Bill put.

Voice vote taken.

The President said he thought the "Ayes" had it.

MISS EMILY LAU: Mr President, I claim a division.

PRESIDENT: Council will proceed to a division.

PRESIDENT: Would Members please proceed to vote?

PRESIDENT: Do Members have any queries? If not, the results will be displayed.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Mr Martin LEE, Mr NGAI Shiu-kit, Mr PANG Chun-hoi, Mr SZETO Wah, Mr TAM Yiu-chung, Mr Andrew WONG, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mr Martin BARROW, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Mr Jimmy McGREGOR, Mrs Elsie TU, Mr Peter WONG, Mr Albert CHAN, Mr Vincent CHENG, Mr Moses CHENG, Mr Marvin CHEUNG, Mr CHEUNG Man-kwong, Mr CHIM Pui-chung, Rev FUNG Chi-wood, Mr Timothy HA, Mr Michael HO, Dr HUANG Chen-ya, Mr Simon IP, Dr LAM Kui-chun, Dr Conrad LAM, Mr LAU Chin-shek, Mr LEE Wing-tat, Mr Eric LI, Mr MAN Sai-cheong, Mr Steven POON, Mr James TO, Dr Samuel WONG, Dr Philip WONG, Dr YEUNG Sum, Mr Howard YOUNG, Dr TANG Siu-tong, Miss Christine LOH, Mr Roger LUK, Ms Anna WU and Mr James TIEN voted for the motion.

Mr HUI Yin-fat, Dr LEONG Che-hung, Mr Frederick FUNG, Miss Emily LAU, Mr Fred LI, Mr TIK Chi-yuen and Mr WONG Wai-yin voted against the motion.

THE PRESIDENT announced that there were 49 votes in favour of the motion and seven votes against it. He therefore declared that the motion on the Second Reading of the Bill was carried.

Bill read the Second time.

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

HONG KONG PRODUCTIVITY COUNCIL (AMENDMENT) BILL 1993

Resumption of debate on Second Reading which was moved on 30 June 1993

Question on Second Reading proposed.

MR JAMES TIEN: Mr President, I rise to support the Hong Kong Productivity (Amendment) Bill 1993.

The Bill seeks to, *inter alia*, remove the requirement for the Productivity Council to establish an executive committee so that the Council will be more flexible in determining its committee structure. This is necessary because the complexity of the Council's activities and organization has increased and a single executive committee is no longer effective for co-ordinating all the activities to which attention must be given.

As chairman of the Hong Kong Productivity Council, I commend the Amendment Bill to my honourable colleagues.

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

Bill read the Second time.

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

BUILDINGS (AMENDMENT) BILL 1993

Resumption of debate on Second Reading which was moved on 12 May 1993

Question on Second Reading proposed.

MR JAMES TO (in Cantonese): Mr President, the Buildings (Amendment) Bill 1993 is now read a Second time in this Council. The Bill sets forth the amendments to the definition of "building".

The Lands and Works Panel as well as the Community and New Territories Affairs Panel of the Legislative Council had, in the past two Legislative Sessions, discussed two or three times about issues concerning advertising signs, condenser units of air conditioning plants as well as large additional structures.

In the Panel meetings, all Members and I unanimously demanded the Government to introduce laws for the control of additional structures of large buildings. The reason is simply this: such additional structures are large in size and produce quite an effect. Some advertising signs are several storeys high, taller than certain low buildings. Moreover, no plans in respect of such additional structures have ever been submitted to the Government. In other words, it is impossible even for government departments to have effectively a clear idea about the history, dimensions and sizes of such structures, not to mention any control measures.

I originally intend to propose certain amendments to the Buildings (Amendment) Bill to enable the inclusion of advertising signs and building's large-scale additional structures in the definition of "Building" so as to facilitate government control. However, I know that in the absence of assistance from government departments and the lack of a prior assessment of necessary resources, such amendments, if passed, may throw the Government off its guard and put it in a difficult position. I am loath to see that after the enactment of the relevant amendments, government departments do not have, for example, the necessary financial and manpower support to put the amended Ordinance into effect. This is unfair to the government departments. Therefore, I hope the Government will respond positively to the requests made by all members of the Panels and conduct a review on the control measures. If so, next time when we amend the Buildings Ordinance, it is no longer necessary for us to force through an amendment with the inclusion of such definition, thus putting the Government in a difficult position.

I understand that the Government is determined to conduct a review, to seriously consider Members' views as well as to discuss this problem with us in the near future. Therefore, I withdraw all my proposed amendments to this Bill and look forward to hearing positive responses from the Government.

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, I am grateful to the Honourable Member for the positive approach he has taken on the matter of the definition of "building". The proposal in the Bill is intended only to incorporate expressly into the definition those structures which have already been declared by the Building Authority to be buildings by notice in the Gazette. Whether structures such as air conditioning plant and advertising signs should also be included in the definition is a complex matter and the implications, particularly as regards operational priorities and resources in the Buildings Ordinance Office, will require very careful assessment.

These issues will be considered and, I would suggest, should be reviewed with Members, possibly in the Lands and Works Panel, in the context of the next set of proposals to amend the Buildings Ordinance. This should occur within the first part of the next Legislative Session. In the meantime, Members will be aware that, under the existing legislation, the Building Authority has the

power to take action against structures, including air conditioning plant and advertising signs, which project from buildings and pose a threat to public safety. The Buildings Ordinance Office already deals with such situations when they come to attention either during building inspections or as a result of reports.

Thank you, Mr President.

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

Bill read the Second time.

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

SHIPPING AND PORT CONTROL (AMENDMENT) BILL 1993

Resumption of debate on Second Reading which was moved on 30 June 1993

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).

DUTIABLE COMMODITIES (AMENDMENT) (NO. 2) BILL 1992

Resumption of debate on Second Reading which was moved on 25 November 1992

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).

INLAND REVENUE (AMENDMENT) (NO. 3) BILL 1993

Resumption of debate on Second Reading which was moved on 21 April 1993

Question on Second Reading proposed.

MR MOSES CHENG: Mr President, the Bill before us is intended to close a profits tax loophole. Amendment is made to section 21A to provide that where a payment of royalties for intellectual property rights is derived from an associate, the full amount, rather than the present 10%, will be treated as assessable profits.

The Bills Committee has taken up with the Administration a number of suggestions received on the Bill and sought clarification on how the provisions will work in practice. In the light of the views expressed, the Administration has agreed to make some modifications to the proviso to the proposed section 21A, namely, to remove ambiguities regarding the interpretation of the ownership of intellectual property rights, and to relax the standard of proof, as cases may arise where the Commissioner for Inland Revenue is satisfied even if little or no evidence is provided by the taxpayer. These amendments will be moved by the Administration at the Committee stage. At members' request, the Administration has also agreed to issue a Practice Note soon after the enactment of the Bill concerning the provisions. The Practice Note will include the information required to satisfy the Commissioner that the 10% rate rather than 100% rate is applicable. It will also spell out that advance rulings will be given by the Commissioner. Members have urged the Administration to consult the professional bodies on the draft Practice Note and on any future amendments.

On the proposed definition of "associates", members had reservation about the use of the term "members of the partnership", as it is unclear as to what it refers to. The Administration advised that, broadly speaking, it is intended to include persons who perform partnership functions but may not be "partners" within the rules in partnership laws. The purpose is to prevent tax avoidance through a change of nomenclature. Members maintained that it would be very difficult for ordinary taxpayers and practitioners to tell with some degree of certainty the type of persons intended to be covered by the term. The Administration finally agreed to introduce amendment to section 21A(3) so that it will not have to rely on the use of the term "member" to achieve the objective.

As for the transitional provisions, the Bills Committee has obtained confirmation from the Administration that the situation will not arise where the sums are taxable under both the old and the new section 21A. Section 21B states that the old section 21A provisions shall apply to any sum received by or accrued to any person prior to 4 March 1993 as if the Amendment Ordinance had not been enacted. The old section 21A will therefore apply if the sums were accrued prior to 4 March 1993 and received on or after 4 March 1993, or

if the sums were accrued on or after 4 March 1993 but received in advance prior to 4 March 1993. Section 21B(1) specifically provides that it is "subject to section 21B(2)", hence there can be no question of applying the new provisions as well.

Members have also discussed with the Administration the suggestion that if an amount is fully assessable under section 21A, the payer should be entitled to a tax deduction in respect of that payment under section 16(1) of the Ordinance. The Administration is however concerned that such a guaranteed deduction would likely lead to abuse. Besides, the proposal will represent a fundamental change to the general rule in section 16(1) that deductions should only be allowed if they are related to the production of chargeable profits. Members were advised that the 100% rate will only apply where the relevant property was previously wholly or partly owned in Hong Kong. It would be unusual to find in such cases that the Hong Kong party making the royalty payments was not conducting a business here in respect of which the relevant payment would be deductible.

In concluding the deliberations, the Bills Committee is grateful for the many helpful suggestions put forward by the various organizations, and for the positive response from the Administration. I would also like to thank my colleagues for their contributions and support throughout.

With these remarks, Mr President, and subject to the amendments to be moved at the Committee stage, I support the Bill.

SECRETARY FOR THE TREASURY: Mr President, as explained by the Honourable Moses CHENG, the Inland Revenue (Amendment) (No. 3) Bill 1993 seeks to prevent the abuse of section 21A of the Inland Revenue Ordinance for tax avoidance purposes. This section currently provides that only 10% of certain payments, such as royalties for the use of intellectual property, are treated as assessable to profits tax. Some Hong Kong companies are exploiting this provision by entering into arrangements with overseas associates to reduce their profits tax liability. The Bill provides that where a relevant payment is paid or credited to an associate, the full amount (rather than the present 10%) will be treated as assessable profits.

Since the Bill was introduced into this Council, it has benefitted from the advice and suggestions of the Bills Committee chaired by the Honourable Moses CHENG. During the four formal meetings with the Committee, we were able to clarify a number of technical concerns over the proper application and operation of the new provisions. I will move the necessary Committee stage amendments later this evening.

Mr President, I commend this Bill to the Council, subject to the amendments which I shall move shortly.

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

Bill read the Second time.

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

EXCHANGES (SPECIAL LEVY) (AMENDMENT) BILL 1993

Resumption of debate on Second Reading which was moved on 7 July 1993

Question on Second Reading proposed.

MR CHIM PUI-CHUNG (in Cantonese): Mr President, the worldwide man-made stock crash in 1987 has left an indelible mark on our securities and futures markets. It was man-made because it was triggered by an international fund of tremendous financial clout which had schemed to rip off investors worldwide. Also, after the crash, there was no bad news about or untoward incident in any particular economy or financial system; so how could that have been a genuine crash? In Hong Kong, because there were no government officials who had sufficient financial expertise and who had the courage to take up responsibilities, a sum of $2 billion was raised from various parties to meet the obligations of the Hong Kong Futures Guarantee Corporation. We have to understand that this Corporation was only a limited liability company, and it was believed that it had already earned tens of millions of dollars from the clearing work done for the Futures Exchange before the 1987 crash. What was even more unfortunate was that the burden of this $2 billion was shifted to the investors on our stock market. Such an unreasonable and compulsory measure is finally to be removed by legislation today after six years of implementation. The lesson we have learned from the incident is that the laws in Hong Kong or the measures taken by the Administration are not necessarily reasonable and fair. I have made repeated appeals in this regard on behalf of our stock investors. But the results have always been that ordinary investors are just ordinary people, but the Administration is the Administration. There was also a court case following the incident. It was reported that a listed real estate company that had taken part in Hang Seng index futures trading had tried to set up a defence by invoking the Ordinance governing limited liability companies to refuse meeting the loss and other obligations that it had incurred from the dealings in futures. The Administration finally resorted to "hyper-technical" means to force this company to meet its obligations. The clout of the Administration seen through this case has really astounded us. I hope that the Administration can give a detailed explanation concerning this case in order to allay the worries of our investors.

Mr President, after the 1987 crash, unfair and unequitable incidents might have continued to happen in the financial sector and subjected the investors to

more risks. What is noteworthy is the issue of recovered warrants. According to the current regulations of the Unified Exchange, any financial institution with a capital of over $2 billion will be qualified to issue recovered warrants, even without any stocks in hand.

We think that such a practice has many shortcomings that deserve criticism:

Firstly, we emphasize that the financial market should be as fair and reasonable as possible, but now it has been confirmed that companies with a capital of over $2 billion will have privileges.

Secondly, the issuers of the recovered warrants have already set the price of the warrants at a premium at the time of issue, which means that they have already got a benefit from subsequent buyers of the warrants. However, when the warrants mature, the issuers may choose between giving stocks or money to the warrant holders. Such practice is more than unfair.

Thirdly, the issuers of recovered warrants are clearly exploiting the relevant laws to conduct a kind of secured short selling. Mr President, we understand that no Ordinance has currently provided for short selling in the stock market. In other words, short selling is unlawful. However, the issuers of recovered warrants are having the privilege to sell short.

Fourthly, although some would argue that if the stock market of Hong Kong is to compete with other sophisticated stock markets of the world and if Hong Kong is to continue as a financial centre, there should be a maximum diversification in the kinds of financial and securities products available for trading, my personal view is that some people within the trade is trying as much as they can to protect those with vested interests and to look for benefits.

Mr President, I want to take this opportunity offered by the happy removal of an unreasonable measure to caution the Administration that the larger the company or organization, especially international conglomerates, the more severe will be the adverse impact in the event of any problem arising. We should adopt a cautious approach.

Mr President, we hope that the Administration, in making secure Hong Kong's status as an international financial centre, can maintain the policy of positive non-intervention but yet offering assistance where necessary, and help local businessmen of different trades to keep abreast with the advancement of the world in a fair and reasonable manner, instead of using a high-handed method to eliminate the small-scale traders.

Mr President, with these remarks, I support the Bill.

SECRETARY FOR FINANCIAL SERVICES: Mr President, I am grateful to the Honourable Member for the support that he has expressed for this Bill. In response to some of the comments that he has made, let me recall, as I explained on 7 July when I introduced the Bill into this Council, that the aim is to provide for an orderly winding down of the Special Levy, and this, I understand, has the support of this Council.

Before I go further, let me dispose of the subject of derivative warrants just referred to by the Honourable Member. This matter is outside the scope of the Bill and there is no basis for comparison between the purposes for which the Special Levy was introduced and the circumstances relating to derivative warrants. Nevertheless, the Stock Exchange did consult the market in January this year on the regulation of derivative warrants. In the light of comments made by market participants, the Exchange and the Securities and Futures Commission are considering possible changes to the Listing Rules, and Mr CHIM's views will certainly be taken into account in that context.

Mr President, the Honourable Member has suggested that the introduction of the Lifeboat Loan was unreasonable and that the levy was unfair in its application. Let me recall that the Levy arose from the 1987 crash which affected the securities and futures market as a whole and also that the introduction of the loan had the support of market participants at the time as reflected by the fact that some brokers contributed to the loan facility. The Lifeboat Loan was considered the best, and probably the only, solution at that time to maintain the integrity of our markets in the face of a chaotic and potentially ruinous situation and to save them from an even greater disaster. The Lifeboat was accepted not only by the markets but also by this Council in enacting the necessary legislation. In any event, Mr President, the levy has now served its purpose and come to the end of its useful life and the 1987 incident from which it originated can now finally be regarded as a matter of history.

Mr President, it is the intention that the Levy be suspended after the portion of the Lifeboat Loan to be recovered from levy revenue has been fully repaid and provisions have been made for interest and other costs on the remaining balance. The current estimate is that we should arrive at that situation by mid to late August. It is therefore necessary to seek the enactment of this Bill today if a substantial and unnecessary surplus is to be avoided.

With these comments, Mr President, I commend the Bill to this Council.

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

Bill read the Second time.

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

Committee stage of Bills

Council went into Committee.

EMPLOYEES' COMPENSATION (AMENDMENT) BILL 1993

Clauses 2 to 10, 12 to 18 and 20 were agreed to.

Clauses 1, 11 and 19

SECRETARY FOR EDUCATION AND MANPOWER: Mr Chairman, I move that the clauses specified be amended as set out in the paper circulated to Members.

Proposed amendments

Clause 1

That clause 1 be amended, by deleting subclause (2) and substituting —

"(2) Sections 2, 3, 11 and 20 shall come into operation on 1 January 1994.".

Clause 11

That clause 11 be amended, in the proposed section 42, by deleting subsection (2) and substituting —

"(2) This section does not apply to a policy of insurance issued for the purposes of this Part that is issued before the commencement of this section.".

Clause 19

That clause 19 be amended, by adding after the proposed section 55(4) —

"(5) Despite the repeal of section 42 by section 11 of the Employees' Compensation (Amendment) Ordinance 1993 (of 1993), section 42 as it was before its repeal shall be deemed not to have been repealed in respect of policies of insurance issued before the commencement of section 11 of the Employees' Compensation (Amendment) Ordinance 1993 (of 1993).".

Question on the amendments proposed, put and agreed to.

Question on clauses 1, 11 and 19, as amended, proposed, put and agreed to.

New clause 10A Certain conditions in policy to be void

Clause read the First time and ordered to be set down for Second Reading pursuant to Standing Order 46(6).

SECRETARY FOR EDUCATION AND MANPOWER: Mr Chairman, I move that new clause 10A as set out in the paper circulated to Members be read the Second time.

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

Clause read the Second time.

SECRETARY FOR EDUCATION AND MANPOWER: Mr Chairman, I move that new clause 10A be added to the Bill.

Proposed addition

New clause 10A

That the Bill be amended, by adding —

"10A. Certain conditions in policy to be void

Section 42 is amended by repealing "by an employee under section 44" and substituting "under section 36LA or 44".".

Question on the addition of the new clause proposed, put and agreed to.

WESTERN HARBOUR CROSSING BILL

Clauses 1, 3 to 5, 7, 8, 12, 14, 15, 17, 19 to 21, 24 to 26, 29, 30, 33 to 36, 41, 44, 46 to 48, 50, 51, 53 to 56, 60, 62 to 65, 68, 69 and 71 were agreed to.

Clauses 2, 6, 9 to 11, 13, 16, 18, 22, 23, 27, 28, 31, 32, 38 to 40, 42, 43, 45, 49, 57 to 59, 61, 66, 67 and 70

MRS MIRIAM LAU (in Cantonese): Mr Chairman, I move that the clauses specified be amended as set out in the paper circulated to Members.

The purpose of the proposed amendment to clause 1 of the Bill is to introduce wording similar to the wording in clause 13 of the Bill so as to import a more specific interpretation of the term "專營期".

The proposed amendments to clauses 2 and 3 are meant to give a clearer explanation of the circumstances in which the Governor may exercise the powers conferred on the Governor in Council under this Ordinance, which are to be emergency circumstances. To replace the original word "urgency" with the word "emergency" will therefore more clearly reflect the true meaning of the provision.

The proposed amendment to clause 6(2) of the Bill will make it clearer that when the Governor in Council considers whether to reject or accept an arrangement to assign, subgrant, underlet or otherwise dispose of the rights under this Ordinance, it shall be for the Governor in Council to decide whether such a disposal arrangement is necessary or desirable.

The purpose of amending clause 9 is to replace the original terminology "帳目、簿冊" "憑單" and "收據" with terminology that will better fit the circumstances and also to provide an interpretation for the two terms "文件" and "紀錄" so that they will cover electronically generated documents or records. Furthermore, the term "amount" in the English text of the Bill is given as "數額" in the Chinese text. Here "amount" denotes money in quantitative terms. "Amount" appears a number of times in the Bill and is variously translated as "數額" and "款額", which makes for inconsistency. I am of the view that in this connection the advice of the Bilingual Law Advisory Committee (BLAC) should be followed. The word "amount", in so far as it denotes money in quantitative terms, should be uniformly translated as "款額". Clauses 27(2), 31(1)(d), 32(6), 45(2), 45(5), 49(6), 61(2) and 61(3) should be amended accordingly.

The proposed amendment to clause 10(b) is to make it clear that during the franchise period the Western Harbour Tunnel Company Limited shall also be deemed to be the owner of the Western Harbour Crossing.

There are two proposed amendments to clause 11. One proposes to replace the term "進行" in the clause with the term "建造及完成" so that it will be consistent with the terminology employed in clause 4(b). The other proposes to rearrange the word order so that the term "本條例" will, instead of following it, precede the term "工程項目協議". This is to avoid possible arguments in the future as to which one of the two shall prevail in the event of discrepancies being found.

The proposed amendments to clauses 13(a), 32(1)(i) and (ii) and 57 are technical amendments.

The purpose of the proposed amendment to clause 38(4) is to specifically state that the moneys constituting the Toll Stabilization Fund shall be deposited with an authorized institution registered or licensed under the Banking

Ordinance, and not in an interest bearing bank account as originally provided under the Bill, which is susceptible of a wide range of interpretations.

The proposed amendment to clause 42 is to enable the Table setting out the Estimated Net Revenue to be incorporated into the Bill as Schedule 5 to the Bill.

The purpose of the proposed amendment to clause 43 is to extend the time limit for the Secretary for Transport to inform the Company whether he is satisfied with the submitted Statement of Net Revenue in order to enable him to make a statement to the legislative Council upon the Council's resumption and to enable Members of the Council to raise questions on and debate the contents of the submission as well as any toll rise proposals.

Apart from the above clauses, I am proposing a number of amendments to the Chinese text of the Bill, the purpose of which is to make the clauses concerned reflect more accurately and clearly the meaning or connotation of the English text. The word "modification" in clause 18(1) of the Bill does not mean revisions of clause 15 or the Project Agreement; it means that in the event of clause 15 or the Project Agreement being invoked the wording thereof may not appropriately apply to the circumstances of the case and modifications may be required. Therefore the term "作出修改" should be amended to read "加以變通". The term "the higher of the...standards" in clause 18(2) of the English text of the Bill means that where appropriate the higher of the standards referred to in the said clause may apply; it does not mean that the higher standard chosen among a number of standards in appropriate circumstances will apply. Hence the original wording "最高標準或在恰當情況下的較高標準" should be replaced by "最高或(在恰當情況下)較高的標準". "Information" in clause 31(3) of the English text of the Bill refers to information relating to the organization of the Company, not other information relevant to the organization of the Company. Therefore the original wording "包括與公司的組織有關資料" should be deleted and replaced by "包括有關公司組織的資料". Furthermore, the wording "it appears to" in clauses 28, 58, 59 and 66 of the Bill should be translated as "覺得" according to the advice of the BLAC. It is because the term "認爲" has already been accepted by BLAC as the counterpart term for "in the opinion of" or "consider".

Mr Chairman, with these remarks, I beg to move.

Proposed amendments

Clause 2

That clause 2(1) be amended, in paragraph (b) of the definition of "franchise period" by deleting "appropriate having regard to" and substituting "determined in accordance with".

That clause 2(3) be amended, by deleting everything after "that" and substituting —

"the situation in which the power is to be exercised or the function performed is an emergency.".

Clause 6

That clause 6(2) be amended —

(a) by adding "the Governor in Council is satisfied that" after "where".

(b) by deleting "the Governor in Council is satisfied that -" and substituting "that -".

That clause 6(3) be amended —

(a) by deleting "有關的".

(b) by deleting "的公司" and substituting "身爲公司的人".

Clause 9

That clause 9 be amended —

(a) by renumbering it as clause 9(1).

(b) in subclause (1) -

(i) by deleting "books of account, vouchers, receipts" and substituting "accounting records";

(ii) by adding "or record" after "document" where it twice appears.

(c) by adding -

"(2) In this section, "document" (文件) or "record" (紀錄) includes a book, voucher, receipt or data material, or information which is recorded in a non-legible form but is capable of being reproduced in a legible form.".

That clause 9(a)(ii) be amended, by deleting "數額" and substituting "款額".

Clause 10

That clause 10(b) be amended, by deleting "beginning on the operating date," and substituting —

> "during the period beginning on the operating date and ending on the expiry of the franchise period or on the cessation of the rights and obligations of the company under section 60(1), whichever event first occurs,".

Clause 11

That clause 11 be amended —

(a) by deleting "and carry out" and substituting ", construct and complete".

(b) by deleting "the project agreement and this Ordinance" and substituting "this Ordinance and the project agreement".

Clause 13

That clause 13(a) be amended, by deleting "from" and substituting "beginning on".

Clause 16

That clause 16(1) be amended, by adding "明顯" after "該等欠妥之處" where it first appears.

That clause 16(2) be amended, by deleting "造成" and substituting "引起".

Clause 18

That clause 18(1) be amended, by deleting "作出修改" and substituting "加以變通".

That clause 18(2) be amended, by deleting "最高標準或在恰當情況下的較高標準" and substituting "最高或(在恰當情況下)較高的標準".

That clause 18(6) be amended, by deleting "承擔" and substituting "招致".

Clause 22

That clause 22(1)(a) be amended, by deleting "持續的設施" and substituting "持續的設施及方便".

Clause 23

That clause 23(3) be amended, by deleting "確信" where it twice appears and substituting "信納".

Clause 27

That clause 27(1) be amended, by deleting "這樣做".

That clause 27(2) be amended, by deleting "數額" where it twice appears and substituting "款額".

Clause 28

That clause 28(1)(a)(i) and (ii) be amended, by deleting "認爲" and substituting "覺得".

That clause 28(1)(b)(i) and (ii) be amended, by deleting "認爲" and substituting "覺得".

Clause 31

That clause 31(1)(d) be amended —

(a) by deleting "數額" and substituting "款額".

(b) by deleting "通行券" and substituting "隧道費代用券".

That clause 31(2) be amended, by adding "及方便" after "設施".

That clause 31(3) be amended, by deleting "(包括與公司的組織有關的資料)" and substituting "(包括有關公司組織的資料)".

Clause 32

That clause 32(1)(h) be amended, by deleting "通行券" and substituting "隧道費代用券".

That clause 32(1)(i)(ii) be amended, by deleting "tickets" wherever it appears and substituting "passes".

That clause 32(1)(i)(iii) be amended, by deleting "數額" where it twice appears and substituting "貸方下的款額".

That clause 32(6) be amended, by deleting "數額" and substituting "款額".

Clause 38

That clause 38(4) be amended, by adding after "Committee" where it secondly appears —

> "in any authorized institution registered or licensed under the Banking Ordinance (Cap. 155)".

Clause 39

That clause 39(2) be amended, by deleting "有關的顧問費" and substituting "須付予根據第(1)款聘請的人的費用,".

Clause 40

That clause 40(2) be amended, by deleting "該核數師可就該報表擬備報告書及須在報告書(如有報告書)的規限下核證該報表" and substituting —

> "該核數師須核證該報表，並可就該報表擬備報告，如有上述報告，核數師可在報告所述的保留下核證該報表".

Clause 42

That clause 42 be amended —

(a) in the definition of "maximum estimated net revenue" by deleting "or agreed under the project agreement" and substituting "column 4 of Schedule 5".

(b) in the definition of "minimum estimated net revenue" by deleting "or agreed under the project agreement" and substituting "column 2 of Schedule 5".

(c) in the definition of "upper estimated net revenue" by deleting "or agreed under the project agreement" and substituting "column 3 of Schedule 5".

Clause 43

That clause 43(1) be amended, by adding after "each year" —

> "or such longer period as the Secretary may, in his absolute discretion, allow in a particular case".

That clause 43(2) be amended —

(a) in paragraph (a) by deleting "60" and substituting "90".

(b) in paragraph (b) by deleting "30" and substituting "60".

Clause 45

That clause 45(2) be amended, by deleting "數額" and substituting "款額".

That clause 45(5)(b) be amended, by deleting "數額" where it twice appears and substituting "款額".

Clause 49

That clause 49(6) be amended, by deleting "款項" where it secondly appears and substituting "款額".

Clause 57

That clause 57 be amended —

(a) in paragraph (e) by adding "or" at the end.

(b) in paragraph (f) by deleting "; or" and substituting a comma.

(c) by deleting paragraph (g).

That clause 57(e) be amended, by deleting "任何保證人實際上違反保證協議的條文" and substituting "任何保證人對保證協議的任何條文作出重大違反,".

Clause 58

That clause 58(1) be amended, by deleting "認爲" and substituting "覺得".

That clause 58(5) be amended, by deleting "轉予" and substituting "轉給".

Clause 59

That clause 59(1)(b) be amended, by deleting "認爲" and substituting "覺得".

That clause 59(5) be amended, by deleting "在適合時" and substituting "(如屬適用的話)在".

That clause 59(5)(a) be amended, by deleting "認爲" where it twice appears and substituting "覺得".

That clause 59(5)(b) be amended, by deleting "規管" and substituting "規限".

Clause 61

That clause 61(2) be amended, by deleting "數額" where it twice appears and substituting "款額".

That clause 61(3) be amended, by deleting "數額" where it twice appears and substituting "款額".

Clause 66

That clause 66(2)(a) be amended, by deleting "認爲" and substituting "覺得".

That clause 66(2)(b) be amended, by deleting "認爲" and substituting "覺得".

Clause 67

That clause 67(2) be amended, by deleting "授予" and substituting "批出".

Clause 70

That clause 70 be amended, by deleting everything after ", 則" and substituting —

> "他須以使工程項目協議的條款得以實施爲目的，行使該項酌情決定權或權限，並須考慮本條例規定他要考慮或准許他考慮的任何事宜，或考慮他認爲適當的其他事宜。".

Question on the amendments proposed, put and agreed to.

Question on clauses 2, 6, 9 to 11, 13, 16, 18, 22, 23, 27, 28, 31, 32, 38 to 40, 42, 43, 45, 49, 57 to 59, 61, 66, 67 and 70, as amended, proposed, put and agreed to.

Clause 37

MR STEVEN POON (in Cantonese): Mr Chairman, I move that clause 37 be amended as set out in the paper circulated to Members.

As I have said during the Second Reading of the Bill, I propose to amend clause 37 so that during the first three years after the tunnel opens, if the actual net revenues are in excess of those required to satisfy a 16.5% internal rate of return, the excess amount should be put into the Toll Stability Fund. This will solve the problem that the traffic volumes projected may be too low. This will enable the operator to have enough revenues to repay the debt on the one hand and safeguard the interests of the public on the other. When the actual traffic volumes exceed the forecasts, the public may be benefited through the placement into the Fund the excess amount of net revenues.

Mr Chairman, I move that clause 37 be amended.

Proposed amendment

Clause 37

That clause 37(2) be amended, by adding —

"(aa) any other moneys paid by the Company into the Fund in accordance with the project agreement;".

Question on the amendment proposed.

MR ALBERT CHAN (in Cantonese): Mr Chairman, I rise to oppose Mr Steven POON's amendment motion. The amendment put forward by the Liberal Party is inadequate for ensuring consumers' interests because they are already forced to pay a high toll when the tunnel opens. Even taking into account the point that the tunnel's traffic volume exceeds the consortium's forecast, and any proceeds received in excess of the 16.5% of return will go to the Toll Stability Fund, this is still unfair to consumers because what they have to pay is in fact more than what is necessary. Furthermore, the additional sum they pay will merely be of some benefit to the future users, not themselves. They are doubly exploited under such an arrangement.

Mr Chairman, the main motive behind the Liberal Party's proposal is to exchange such an amendment for government and consortium support. Mr Chairman, legislation is not like buying food in marketplace where you will get a piece of bone free when you buy a catty of meat. The Liberal Party literally relinquishes the Legislative Council's right of monitoring and examination in the future 30 years in exchange for some trifle power of control in the first three years. This no doubt shows that they have yielded to the consortium and surrendered the sacred obligation and power that the public

conferred upon the Legislative Council. In this connection, Mr Chairman, the United Democrats of Hong Kong (UDHK) cannot support Mr Steven POON's proposed amendment for the aforesaid reason. The UDHK will put forward three proposed amendments later. As regards the implications and principles of these amendments, the interests of both the consumers and the consortium will be safeguarded with the former receiving more protection.

We will vote against Mr Steven POON's proposed amendment.

Question on Mr Steven POON's amendment to clause 37 put.

Voice vote taken.

THE CHAIRMAN said he thought the "Ayes" had it.

MR ALBERT CHAN: Mr Chairman, I claim a division.

CHAIRMAN: Committee will proceed to a division.

CHAIRMAN: Would Members please proceed to vote?

CHAIRMAN: Do Members have any queries? If not, the results will be displayed.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr PANG Chun-hoi, Mr TAM Yiu-chung, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mr Martin BARROW, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Mr Jimmy McGREGOR, Mrs Elsie TU, Mr Peter WONG, Mr Vincent CHENG, Mr Moses CHENG, Mr Marvin CHEUNG, Mr CHIM Pui-chung, Mr Timothy HA, Mr Simon IP, Dr LAM Kui-chun, Mr Eric LI, Mr Steven POON, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, Dr TANG Siu-tong, Miss Christine LOH, Mr Roger LUK, Ms Anna. WU and Mr James TIEN voted for the amendment.

Mr Martin LEE, Mr SZETO Wah, Mr Andrew WONG, Mr Albert CHAN, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Dr Conrad LAM, Mr LAU Chin-shek, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr MAN Sai-cheong, Mr TIK Chi-yuen, Mr James TO, Dr YEUNG Sum and Mr WONG Wai-yin voted against the amendment.

THE CHAIRMAN announced that there were 35 votes in favour of the amendment and 14 votes against it. He therefore declared that the amendment was approved.

MR ANDREW WONG: Mr Chairman, may I draw your attention to the electronic readout, which is 19 against?

CHAIRMAN: I do beg your pardon. It is 35 votes for and 19 against.

Question on clause 37, as amended, proposed, put and agreed to.

Clause 52

MR ALBERT CHAN (in Cantonese): Mr Chairman, I move that clause 52 be amended as set out in the paper circulated to Members.

The first amendment to clause 52 is to delete subclause (1) and replace it with "The Commissioner shall, by notice in the Gazette, as soon as practicable after a toll has been increased in accordance with this Part, amend Schedule 1 to vary the relevant toll." The second amendment is to delete subclause (3) of clause 52.

Mr Chairman, the powers that the Legislative Council has in respect of subsidiary legislation are clearly stipulated in section 34, Chapter 1, of the Interpretation and General Clauses Ordinance. The Ordinance indeed clearly spells out the essential powers vested with the Legislative Council. However, clause 52(3) of the Western Harbour Crossing Bill states that section 34 of Chapter 1 of the Interpretation and General Clauses Ordinance does not apply to the mechanism of toll increase of the Western harbour Crossing. Mr Chairman, the powers stipulated in section 34 of Chapter 1 of the Interpretation and General Clauses Ordinances apply to the existing three privately operated tunnels, namely, the Eastern Harbour Crossing, the Cross Harbour Tunnel and the Tate's Cairn Tunnel. The existing three tunnels were all constructed under the build-operate-transfer (BOT) arrangement. Toll increase of any one of the three tunnels is required to be gazetted. And the Legislative Council can amend the relevant toll increase proposals with the powers vested in it under section 34, Chapter 1, the Interpretation and General Clauses Ordinance.

Moreover, Mr Chairman, the political system now in force, under which the executive is accountable to the legislature, has been written into the Basic Law. The UDHK found in an opinion poll that 80% of the local community are in favour of the idea that the Legislative Council should have the powers to examine toll increase proposals of the Western Harbour Crossing. I am of the view that the Legislative Council should have the powers of scrutiny and making

amendments to deal with matters in relation to public utilities, especially franchised public utilities. All the more so in the case of the Western Harbour Crossing whereby it has a 30-year franchise. The proceeds and profits to be reaped over the coming 30 years will be enormous. The estimated net profits up to the year 2010 alone will be as high as $1.86 billion. In addition, being one of the three main harbour crossings in the territory, the daily volume of vehicular traffic at the Western Harbour Crossing could reach as many as 180 000 vehicular trips. From the point of view of traffic and transport, operating costs and profit control, the Legislative Council can shirk neither its existing responsibilities nor its rights. Still less so should the Council give up the powers which in the opinion of the public belong to the Council in the face of threats made by the consortium as well as the Government's intimidation. Therefore, Mr Chairman, I think that the Legislative Council must retain the powers laid down in Section 34 of Chapter 1 of the Interpretation and General Clauses Ordinance.

With these remarks, I beg to move.

Proposed amendment

Clause 52

That clause 52 be amended —

(a) by deleting subclause (1) and substituting -

"(1) The Commissioner shall, by notice in the Gazette, as soon as practicable after a toll has been increased in accordance with this Part, amend Schedule 1 to vary the relevant toll.".

(b) by deleting subclause (3).

Question on the amendment proposed.

MR RONALD ARCULLI: Mr Chairman, much has been said tonight about the Legislative Council not having any power to monitor or to scrutinize toll increases. What I really would like to do now is to analyse the position with my colleagues here, and perhaps Mr Fred LI might be persuaded.

Every year the consortium has to deliver to the Government three things: firstly, its annual budget; secondly, a three-year rolling projection coupled with quarterly management accounts with updates of these projections; thirdly, at the end of the year, audited accounts, which has to be accompanied by a report from the company's auditors that the expenditure used by the company is reasonable.

Indeed, before each toll increase, the consortium actually has to make an application to the Government and the Government can do one of two things: If it does not accept the net revenue figures, the Government can inform the consortium as such and they would sort it out by discussion, and if not, they would have to go before an independent expert for decision; the alternative is that if the Government accepts those figures, it can use the Toll Stability Fund to defer any toll increases.

Neither the United Democrats nor Meeting Point seem to care about the role that the Legislative Council might play in this process, because this Council does have power to scrutinize and to monitor the consortium's budgets, net revenue and expenses. And this has a very direct influence on whether or not an early increase or a deferral of increase goes through or not.

In terms of the Government's accountability to this Council, Members have already heard what the Secretary for Transport has proposed to do. But on top of that we have much more powers than that. So I am really quite saddened this evening to hear my colleagues actually deride the powers of this Council to mislead the public into thinking and into believing that this Council is without any power in this regard. We can also debate each increase if we wish. We can, if we also wish, have a Select Committee look into the situation.

However, if after the Legislative Council scrutinizes and exercises its power, together with the Government's review of the consortium's budget, expense and net revenue statements, we decide to accept that the statements are all correct, then of course the toll increases would be allowed.

Mr Chairman, I ask my honourable colleagues one question: In these circumstances can we honestly, in all conscience, say that the consortium has the unconditional right to increase their tolls without reference to or without consulting the Legislative Council? It seems to me that the answer is plainly no.

Mr Chairman, it is one thing to have a slip of the tongue which all of us do from time to time. But to twist our tongue and therefore to twist facts is an entirely different matter. In these circumstances, Mr President, I will oppose the amendment.

Question on Mr Albert CHAN's amendment to clause 52 put.

Voice vote taken.

THE CHAIRMAN said he thought the "Noes" had it.

MR ALBERT CHAN: Mr Chairman, I claim a division.

CHAIRMAN: Committee will proceed to a division.

CHAIRMAN: Would Members please proceed to vote?

CHAIRMAN: Do Members have any queries? If not, the results will be displayed.

Mr Martin LEE, Mr SZETO Wah, Mr Albert CHAN, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Dr Conrad LAM, Mr LAU Chin-shek, Mr LEE Wing-tat, Mr MAN Sai-cheong, Mr James TO and Dr YEUNG Sum voted for the amendment.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr PANG Chun-hoi, Mr TAM Yiu-chung, Mr Andrew WONG, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mr Martin BARROW, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Mr Jimmy McGREGOR, Mrs Elsie TU, Mr Peter WONG, Mr Vincent CHENG, Mr Moses CHENG, Mr Marvin CHEUNG, Mr CHIM Pui-chung, Mr Timothy HA, Mr Simon IP, Dr LAM Kui-chun, Miss Emily LAU, Mr Eric LI, Mr Steven POON, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, Dr TANG Siu-tong, Miss Christine LOH, Mr Roger LUK, Ms Anna WU and Mr James TIEN voted against the amendment.

Mr Fred LI, Mr TIK Chi-yuen and Mr WONG Wai-yin abstained.

THE CHAIRMAN announced that there were 14 votes in favour of the amendment and 37 votes against it. He therefore declared that the amendment was negatived.

Question on the original clause 52, proposed, put and agreed to.

Schedule 1

MR ALBERT CHAN (in Cantonese): Mr Chairman, I move that Schedule 1 be amended as set out under my name in the paper circulated to Members.

Basically speaking, the proposed amendment seeks to lower the tunnel toll of the Western Harbour Crossing by 17% when it opens in 1997. The toll for private cars, for example, will be lowered from the proposed $30 to $25. I

propose a toll reduction by 17% mainly because I find the opening toll in 1997 at $30 for private vehicles totally unreasonable. The consortium in essence has underestimated the traffic volume in 1997 when the tunnel is scheduled to be fully operational. The consortium forecasts that if the tolls for private cars are $20 for the other two tunnels in 1997 and that for the Western Harbour Crossing is $30, the daily traffic volume for the Western Harbour Crossing will be 72 000 vehicles. There is a glaring discrepancy between such an estimation and the Government's forecast. The Government forecasts that the toll for the other two tunnels will be $10 in 1997 which is $10 less than that estimated by the consortium. And should the toll for the Western Harbour Crossing be still set at $30, the daily traffic volume will be as high as 75 000 vehicles at the Western Harbour Crossing. In other words, there will be 3 000 vehicles in excess of that of the consortium's estimation even though the other two tunnels charge $10 less than its forecast. According to the Government's estimation, should the toll for the Western Harbour Crossing be set at $25 while those for the other two tunnels at $10, the traffic volume at the Western Harbour Crossing will then be as high as 79 000 vehicles. Apparently, the original estimation by the consortium is extremely on the conservative side.

The consortium declined this Council's request and refused to make available the consultancy report prepared by its own consultant firm. It is apparent that the consortium is reluctant to release the information. It makes one doubt whether the actual forecasted figure is the figure made public. Judging from present development, it is not likely that the other two tunnels will still charge $10 by 1997. In view of this, I trust that the daily traffic volume will surely exceed the consortium's estimated 72 000 vehicles by 1997. That being the case, the additional volume as estimated by the Government in comparison with the consortium's estimate will boost substantially the proceeds to a higher level than that originally forecasted by the consortium and the increase in proceeds will suffice to cover the proposed 17% reduction in toll. On the whole, the amendment put forward by the United Democrats would not reduce the overall proceeds of the Western Harbour Tunnel Company Limited nor would it affect the financing plan of the consortium. If the Government and the consortium insist on keeping the original toll of $30 for private cars, it would be difficult for the Western Harbour Crossing to bring a relief to the overall congested cross harbour traffic.

Furthermore, a high toll for the Western Harbour Crossing will have a knock-on effect on the other two tunnels. As a consequence, it may fuel inflation and impose heavier burden on people. According to a survey conducted by the United Democrats, 80% of the respondents consider $30 to be too high whereas 50% feel that $20 is a moderate charge.

Mr Chairman, the United Democrats' proposed amendment has taken into consideration the financial position of the consortium, the traffic volume, the financial burden on the people and the wish of the public. A reduction of the opening toll of the Western Harbour Crossing in 1997 by 17% will meet the needs and demand of all parties.

With these remarks, I move the amendments.

Proposed amendment

Schedule 1

That schedule 1 be amended, by deleting the Schedule and substituting —

"SCHEDULE 1 [ss. 2(1), 33, 34, 36 & 52]

WESTERN HARBOUR CROSSING TOLLS

Category	Vehicle	Toll $
1.	Motorcycles, motor tricycles	13
2.	Private cars, electrically powered passenger vehicles, taxis	25
3.	Public and private light buses	33
4.	(a) Light goods vehicles and special purpose vehicles of a permitted gross vehicle weight not exceeding 5.5 tonnes	37
	(b) In a vehicle specified in paragraph (a), each additional axle in excess of 2	25
5.	(a) Medium goods vehicles and special purpose vehicles of a permitted gross vehicle weight exceeding 5.5 tonnes but not exceeding 24 tonnes	54
	(b) In a vehicle specified in paragraph (a), each additional axle in excess of 2	25
6.	(a) Heavy goods vehicles and special purpose vehicles of a permitted gross vehicle weight exceeding 24 tonnes	79
	(b) In a vehicle specified in paragraph (a), each additional axle in excess of 2	25
7.	Public and private single-decked buses	33
8.	Public and private double-decked buses	45".

CHAIRMAN: The question is: That schedule 1 be amended as proposed by Mr Albert CHAN. Mrs Miriam LAU has also given notice to move an amendment to this schedule. I shall first call upon Mrs Miriam LAU to speak on the amendment proposed by Mr Albert CHAN as well as her own amendment, but shall not ask Mrs LAU to move her amendment unless Mr CHAN's amendment has been negatived. If Mr CHAN's amendment is approved that will by necessary implication mean that Mrs LAU's proposed amendment is disapproved.

MRS MIRIAM LAU (in Cantonese): Mr Chairman, the proposed amendment I move to schedule 1 is aimed at rectifying a technical error in the way the Bill is drafted. Category 9 of schedule 1 provides for the toll of "each additional axle in excess of 2". An axle is by no means one category of vehicle and should not be classified as one. Moreover, the toll for the additional axle only applies to goods vehicles. In other words, it should only be applicable to vehicles under categories 4, 5 and 6. My proposed amendment will list out the tolls applicable to the additional axles in a more district manner.

Mr Chairman, the proposed amendment I move to schedule 1 is entirely different from that by Mr Albert CHAN in nature. My amendment will not, in any event, affect the tunnel tolls specified in the Bill whereas Mr CHAN's amendment seeks to repudiate completely the opening toll and set it at a lower level, that is, reducing the $30 toll for private cars to $25. I have mentioned in my earlier speech at the Second Reading that the consortium had made it plain in no uncertain terms to the Bills Committee that if the tolls were lowered, it would definitely undermine its debt paying ability, thereto may result in the consortium withdrawing from the project. Mr CHAN is a member of the Bills Committee and he should clearly understand the consortium's stand on the matter. He should also realize that if his amendment is approved, it will only mean that the Western Harbour Crossing project, at worse, will fall through or at best we cannot have it constructed in the near future, and it is doubtful whether it can be constructed in the long run. Such a scenario will have immeasurable bearing on the overall traffic and economic development of Hong Kong.

The controversy over private car toll, whether it should be set at $30 or $25, mainly stems from the traffic forecast of the year after the tunnel becomes operational. Mr Steven POON's amendment to clause 37 agreed by this Council just now has settled this dispute in principle. Therefore, we should not continue wrestling with this issue any more.

Mr Chairman, I do not think Mr CHAN's proposed amendment serves any purpose. And it is regardless of the consequences as well. The majority of members of the Bills Committee indicate that they do not support Mr CHAN's proposed amendment. I do not either.

CHAIRMAN: Members may now express their views on the amendments proposed by Mr CHAN as well as Mrs LAU. Does any Member wish to speak?

MR HOWARD YOUNG (in Cantonese): Mr Chairman, I do not want to give investors the impression that Hong Kong is a political city which is unfavourable to investment. Mr CHAN, in moving his amendment, has said that negotiations on tunnel toll were different from haggling in the market. I subscribe to this. However, the amendments he proposes now give me the impression that he is haggling over every ounce. The amendment just proposed by Mr Steven POON has capped the profits of the consortium. He has already pointed out that if the traffic volumes are very favourable by then, the Toll Stability Fund will have an income of $300 to $400 million, that amounts to about $4 per car (on average). Just now, the United Democrats opposed (Mr POON's) proposed amendment though it was carried by this Council in the end. I cannot see why after objecting to the option of 13% (the percentage of 4 dollars in 30 dollars), they come up with another proposal in favour of a greater reduction of 17% as against an acceptable reduction percentage which they have just opposed.

Economic prosperity is the very foundation of the future of Hong Kong. We need investors, whether they are local people, people from overseas or Mainland China, to invest in Hong Kong. Our aim is to attract people who have not yet dipped into their pockets to invest in the territory, the more the better. For those who have already invested in Hong Kong, we hope they would continue to stay. I agree that Members should be concerned about the livelihood of the people. However, it does not mean that we have to confront investors and claim that this was done in the interests of the public. Indeed, ways to care for people's livelihood include boosting investors' confidence, attracting investments and creating more job opportunities. If investment cools down and our economy suffers, the livelihood of the people will be affected. People would rather make money together than lose out in the end. If the consortium withdraws and the Western Harbour Crossing cannot be built, who is to bear the responsibility? I think if we really strive for the interests of the public, we should not gamble on such an important issue like the Western Harbour Crossing. Since the consortium has indicated that any amendment that alters the essential elements of the franchise would be unacceptable, and would lead to their withdrawal, I do find such amendment smack of a gamble. Complete veto of the Western Harbour Crossing project is a gamble which we should not take. I, therefore, object to Mr CHAN's proposed amendment.

DR YEUNG SUM (in Cantonese): Mr Chairman, I would like to advance two reasons in support of Mr Albert CHAN's proposed amendments.

Firstly, the Liberal Party proposed that the maximum rate of return for the first three years should be 16.5% on the assumption that the traffic throughput would be high. Since the traffic throughput would be on the high side, why can the tunnel toll not be lowered from $30 to $25?

Secondly, at the Bills Committee meeting, we asked the Administration whether the operation of the tunnel would be economically viable if the opening toll was lowered to $25. The Government replied at that time that basically the operation would be barely viable and that the Company would not collapse immediately.

In view of the above reasons, I support Mr Albert CHAN's proposed amendments.

MR LEE WING-TAT (in Cantonese): Mr Chairman, I am really at sea after I heard Mr Howard YOUNG's remarks just now. One must realize that tonight's debate not only involves the operation of the Crossing but also the democratization of our political system and the balance of interests between public opinion representatives and the consortium or the Government, and reconciliation of conflicting interests.

In respect of the Western Harbour Crossing Bill, I do not feel a bit that the United Democrats of Hong Kong (UDHK) are taking a gamble on the project and, in fact, it is the Government which has taken a gamble on it. By giving us such a short time to examine the Bill, does the Government think that we will endorse it no matter what? It seems very much that the Government is taking a chance. Just now I said the Government had already got hold of a majority of votes in this Council and it thought it would certainly win. The UDHK and Members from the UDHK have put forward the amendments and raised doubt in the public's long-term interests.

The second point I would like to raise is whether we need to respect the wish of the consortium. Our answer is positive. We will listen to their opinion and we will respect their views but it does not mean that we have to endorse and support every request made by the consortium. As Legislative Council Members, we have to balance the interests of the public, the operators and the investors and opt for the right choice. Mr Howard YOUNG mentioned a very serious logic reasoning, that is to say, there may be no more consortia willing to invest in Hong Kong if more pressure groups query them in respect of their investments. Should we bring the logic a bit further, then it would mean that no far-sighted consortium with international prestige will invest in democratic countries with full general elections. However, let us take a look at places all over the world in which the greatest number of internationally renowned investment companies make their investments and we can find that those are countries fully developed in terms of democratization. The major reason is that, long-term speaking, a democratic government can offer to the community the greatest guarantee of stability and disputes between social classes, races or other cultural differences need not be resolved through other means outside the scope of the system. We believe in democratic government because we do not feel that the consortium's interests will be neglected. Let me reiterate: public wish features significantly in our amendments. Mr Howard YOUNG wondered whether we were standing in the public's light when we moved the amendments.

Before we took such an action, we had consulted the public. And we are on their side. I do not understand why the Liberal Party and Mr YOUNG did not conduct a public consultation. They should ask the public what they will choose if they are given the choice. If we believe that people's eyes are discerning, we should not be afraid of their choice. If they fully understand the outcome of each of their own choices, we should support their choice and bear the consequences together.

MR RONALD ARCULLI (in Cantonese): Mr Chairman, I would like to give a brief response to Dr YEUNG Sum's remarks just now. He said that the Government had indicated that if the toll was set at $25, the proceeds were barely enough to make the project financially viable.

As far as I can remember, when the Bills Committee met and queried the Government and the consortium, the consortium replied that should the toll be set at such level, they would not go bankrupt but banks would not offer them loans because it would be virtually impossible for them to repay the bank if the toll was set at $25. For this reason, the consortium did not accept the proposal.

MRS SELINA CHOW (in Cantonese): Mr Chairman, I should like to raise a question: On what statistics is the current proposed amendment based and which people have been consulted? How does the proposer know that the great majority of the people support $25 rather than $20 or $15? I would like to know: On what scientific base has he conducted the consultation? Did he canvass the public as to the kind of response they would have if the tunnel became "no go" at a $25 toll? I believe if we should act on the basis of public opinion, we need to have a true and factual basis to support our course of action. I think the several UDHK colleagues who have spoken just now could hardly adduce any evidence. However, the most important thing is that they claim to be fighting for the public when in fact they are misleading them. The public will have to thank them for fighting to have the toll figure lowered. Whether they succeed or not is only of secondary importance. Given that their stand is to fight for the public, why do they not aim at $15 or $10, because the other two tunnels are charging $10? But the point is that they have not told the public the truth which is that the consortium does not need their approval to make this investment. The consortium can back off from the project without their approval. (It has the absolute right to do so.) The consortium however did put to the committee in very categorical terms that it would back off from the project if the $30 toll did not get the "go ahead". Such being the reason, the Liberal Party suggested this method to settle the problem, taking into account the worries of the consortium while not letting it have an excessive rate of return at the expense of the public. I do not think any amendment is worthy of our support if it is just some sort of wishful thinking without the proposer having gauged the genuine needs of the public.

DR CONRAD LAM (in Cantonese): Mr Chairman, I heard Mr Howard YOUNG just now remark that "people would lose out in the end". I wonder if he meant to say that Members should put people's money into the consortium pocket.

CHAIRMAN: I think the time is past for a request for elucidation. Do any other Members wish to speak?

SECRETARY FOR TRANSPORT: Mr Chairman, I have during the course of this exercise been accused of having misled members of the public. On the question of the $25 toll, may I repeat what I have just said. I said:

> "During the negotiations, we debated long and hard with the consortium on whether the opening toll for private car should be $30 or $25. The inescapable fact is that on the basis of the consortium's traffic forecast a $25 opening toll would not produce sufficient revenue even to service debt repayment in the early years of the franchise period. The consortium told us that they would accept an opening toll of $25 only if the Government were to guarantee them an actual traffic throughput that would be sufficient to give them a positive cash flow."

I said that this clearly we could not accept.

MR ALBERT CHAN (in Cantonese): Mr Chairman, as I have explained very clearly in my speech when moving the amendment, the amendment so moved is based on considerations of catering for the interest of the consortium and the needs of the public, having regard to traffic throughput and the wish of the public. Some Members criticized me just now probably because they had not listened to my speech. I do forgive them. Maybe they are indeed too tired today and hence not being able to register other comments aired in this Chamber. I should be happy to explain to them further after this sitting if they find it necessary.

Question on Mr Albert CHAN's amendment to schedule 1 put.

Voice vote taken.

THE CHAIRMAN said he thought the "Noes" had it.

MR ALBERT CHAN: Mr Chairman, I claim a division.

CHAIRMAN: Committee will proceed to a division.

CHAIRMAN: Would Members please proceed to vote?

CHAIRMAN: Do Members have any queries? If not, the results will be displayed.

Mr Martin LEE, Mr SZETO Wah, Mr Albert CHAN, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Dr Conrad LAM, Mr LAU Chin-shek, Mr LEE Wing-tat, Mr MAN Sai-cheong, Mr James TO and Dr YEUNG Sum voted for the amendment.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr PANG Chun-hoi, Mr TAM Yiu-chung, Mr Andrew WONG, Mr LAU Wong-fat, Mr Edward HO, Mr Martin BARROW, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Mr Jimmy McGREGOR, Mrs Elsie TU, Mr Peter WONG, Mr Vincent CHENG, Mr Moses CHENG, Mr Marvin CHEUNG, Mr CHIM Pui-chung, Mr Timothy HA, Mr Simon IP, Dr LAM Kui-chun, Miss Emily LAU, Mr Eric LI, Mr Steven POON, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, Dr TANG Siu-tong, Miss Christine LOH, Mr Roger LUK, Ms Anna WU and Mr James TIEN voted against the amendment.

Mr Fred LI, Mr TIK Chi-yuen and Mr WONG Wai-yin abstained.

THE CHAIRMAN announced that there were 14 votes in favour of the amendment and 36 votes against it. He therefore declared that the amendment was negatived.

Schedule 1

MRS MIRIAM LAU (in Cantonese): I move that Schedule 1 be amended as set out under my name in the paper circulated to Members. The reasons for this amendment have been exhaustively canvassed in my speech earlier.

Proposed amendment

Schedule 1

That schedule 1 be amended —

(a) by deleting categories 4, 5 and 6 and substituting -

"4.	(a)	Light goods vehicles and special purpose vehicles of a permitted gross vehicle weight not exceeding 5.5 tonnes	45
	(b)	In a vehicle specified in paragraph (a), each additional axle in excess of 2	30
5.	(a)	Medium goods vehicles and special purpose vehicles of a permitted gross vehicle weight exceeding 5.5 tonnes but not exceeding 24 tonnes	65
	(b)	In a vehicle specified in paragraph (a), each additional axle in excess of 2	30
6.	(a)	Heavy goods vehicles and special purpose vehicles of a permitted gross vehicle weight exceeding 24 tonnes	95
	(b)	In a vehicle specified in paragraph (a), each additional axle in excess of 2	30".

(b) by deleting category 9.

Question on the amendment proposed, put and agreed to.

Question on schedule 1, as amended, proposed, put and agreed to.

Schedules 2 and 3

MRS MIRIAM LAU (in Cantonese): Mr Chairman, I move that Schedules 2 and 3 to the Bill be amended as set out in the paper circulated to Members.

The reasons for this amendment are the same as those for Schedule 1, that is, to specify that the extra levy on additional axles is applicable to goods vehicles only.

With these remarks, Mr Chairman, I so move.

Proposed amendments

Schedule 2

That schedule 2 be amended —

(a) by deleting categories 4, 5 and 6 and substituting -

"4.	(a)	Light goods vehicles and special purpose vehicles of a permitted gross vehicle weight not exceeding 5.5 tonnes	15
	(b)	In a vehicle specified in paragraph (a), each additional axle in excess of 2	10
5.	(a)	Medium goods vehicles and special purpose vehicles of a permitted gross vehicle weight exceeding 5.5 tonnes but not exceeding 24 tonnes	20
	(b)	In a vehicle specified in paragraph (a), each additional axle in excess of 2	10
6.	(a)	Heavy goods vehicles and special purpose vehicles of a permitted gross vehicle weight exceeding 24 tonnes	30
	(b)	In a vehicle specified in paragraph (a), each additional axle in excess of 2	10".

(b) by deleting category 9.

Schedule 3

That schedule 3 be amended —

(a) in the subheading by deleting "from" and substituting "beginning on".

(b) by deleting categories 4, 5 and 6 and substituting -

"4.	(a)	Light goods vehicles and special purpose vehicles of a permitted gross vehicle weight not exceeding 5.5 tonnes	20
	(b)	In a vehicle specified in paragraph (a), each additional axle in excess of 2	15
5.	(a)	Medium goods vehicles and special purpose vehicles of a permitted gross vehicle weight exceeding 5.5 tonnes but not exceeding 24 tonnes	35
	(b)	In a vehicle specified in paragraph (a), each additional axle in excess of 2	15
6.	(a)	Heavy goods vehicles and special purpose vehicles of a permitted gross vehicle weight exceeding 24 tonnes	45
	(b)	In a vehicle specified in paragraph (a), each additional axle in excess of 2	15".

(c) by deleting category 9.

Question on the amendments proposed, put and agreed to.

Question on schedules 2 and 3, as amended, proposed, put and agreed to.

Schedule 4 was agreed to.

New Schedule 5 Estimated Net Revenue

Schedule read the First time and ordered to be set down for Second Reading pursuant to Standing Order 46(7).

MRS MIRIAM LAU (in Cantonese): Mr Chairman, I move that New Schedule 5 as set out under my name in the paper circulated to Members be read the Second time.

As I mentioned during the Second Reading debate on the Bill earlier, the inclusion of Schedule 5 is to incorporate into the Bill a table setting out the "estimates of net revenue", to allay Members' fears that the said table might be revised without notice to this Council in future, and to give at the same time transparency to the various minimums and maximums as set. The "Minimum Estimated New Revenue" in the table represents the minimum 15% rate of return demanded by the consortium, while the "Upper Estimated Net Revenue" represents the higher 18% rate of return. And the "Maximum Estimated Net Revenue" represents the 19% upper limit at which the consortium may share any extra revenue from tunnel tolls.

The Honourable Albert CHAN will be proposing another Schedule 5 wherein the "Minimum Estimated Net Revenue" is calculated at a 14% rate of return — thereby obliging the consortium to raise the tunnel toll only when its rate of return drops below 14% — and this will also have the effect of reducing the average rate of return from 16.5% to 16%. I should like Mr CHAN to explain to us clearly the arguments and figures supporting his conclusion that a 15% rate of return is too high while 14% is reasonable. He has of course every right to think that give or take a percentage point or half in the rate of return poses no problem at all. Unfortunately he is not the consortium which builds the Western Harbour Crossing, lest we would all be very happy to make do without the heated debate here. However, the consortium which will be investing in the construction of the crossing has asserted that they would not be interested in continuing with this investment should the rate of return be revised in any way (revised downwards of course). Therefore, the project would have to be aborted if Mr CHAN succeeded in selling Members his Schedule 5. Mr Chairman, I cannot support any proposal that would cause the construction of the Western Harbour Crossing to be aborted. And the majority of members on the Bills Committee have also voiced their objection to Mr Albert CHAN's proposal.

With these remarks, Mr Chairman, I so move.

Question on the Second Reading of the new schedule proposed.

CHAIRMAN: Mr Albert CHAN has also given notice to move a new schedule 5. I shall first call upon Mr Albert CHAN to speak on the new schedule proposed by Mrs Miriam LAU as well his own new schedule 5, but shall not ask Mr CHAN to move his amendment unless Mrs LAU's amendment has been negatived. If Mrs LAU's proposed new schedule 5 is approved that will by necessary implication mean that Mr CHAN's proposed new schedule 5 is disapproved.

MR ALBERT CHAN (in Cantonese): Mr Chairman, I oppose the amendment by Mrs Miriam LAU. The United Democrats of Hong Kong agree that a public utility company should enjoy a reasonable return, and we have not raised any strong opposition to the annual return rate of 16.5%. Unlike what Mr James TIEN has said, the UDHK do not regard a return rate of 16.5% as huge profits. But we think that by fixing the lowest estimated net return at 15%, the Administration is over-protecting the consortium to the disadvantage of consumers. A lowest estimated net return of 15% is clearly too high. The interest rate for the $5.1 billion borrowed by the consortium for the construction of the Western Harbour Crossing is only 10%, while the Administration's estimates of the annual inflation rates are 10% for the next five years and 7% after the next five years. The UDHK consider that the difference between the lowest estimated net return on the one hand and the inflation rate and the bank lending rate on the other should not be too great. And the difference between 10% and 15% is too great. In principle, it is more reasonable to adjust the lowest estimated net return to around 10%, because this 10% should at least be enough to make up for the consortium's loss due to inflation. However, the UDHK also understand that the consortium may have to face various unknown factors during the construction of the tunnel and in the next 30 years, and we have therefore come to a compromised proposal. The UDHK will move an amendment to adjust the lowest estimated net return from 15% to 14%. Calculating on the basis of this 14%, the consortium will have a net return of $1.86 billion by 2010. If the return rate is 15% instead, the net return by that year will be $2.028 billion. So the difference in net return by 2010 will only be $168 million. And the net return will be the return after deducting all the expenditures including payment of interests and dividend, and the capital and so on. Therefore, even if the net return rate is reduced to 14%, the investment is still a relatively attractive one to the consortium. The UDHK are only asking for an adjustment in this lowest return rate. As regards the toll increase mechanism that will be activated every four years, if the consortium maintains its internal return rate at 14% to 18%, it can still apply for an increase. The adjustment will have no serious impact on the consortium's finance.

Mrs Miriam LAU and some other Members have just said that the consortium has made it clear that it cannot accept the amendment. If the Legislative Council cannot make any amendment because of the opposition from the consortium, and if such kind of logic is to apply to all amendments in the

future, then the Legislative Council under the leadership of the Liberal Party will become a "lame duck" Legislative Council.

For the reasons given above, the UDHK will oppose the amendment by Mrs Miriam LAU.

CHAIRMAN: Members may now express their views on new schedule 5 proposed by Mrs Miriam LAU as well as Mr CHAN. Does any Member wish to speak?

MR LEE WING-TAT (in Cantonese): Mr Chairman, since this may be the last chance to speak before the Third Reading, I would also like to say a few words. Throughout the examination of the Western Harbour Crossing Bill, I have found that the most questionable aspect is that the Administration and Members of this Council have come up with many ways to ensure the consortium's profits in the next 30 years. Their intention is of course good. But during the last couple of meetings of the Bills Committee, we considered, after consulting the legal adviser, that even if the tolls in Schedule 1 to 5 were passed by this Council, nothing could prevent the Legislative Council Members in the future (including those in 1995, 1999 or beyond) from making another amendment. In fact, the key question is whether the Administration thinks that the Legislative Council is a place where we can discuss and consult by way of reasoning. If the consortium considers that the Legislative Council is not a place for rational discussion and consultation, then even if the tolls in Schedule 1 to 5 are passed this evening, that does not mean that the consortium's interests can be secured in the long run.

The Legislative Council of 1995 may be different from now. And 10 years later when all the Legislative Council Members are elected, they will still have the right to amend Schedule 1 to 5. So I think the Administration, the consortium and some Members of this Council are too shortsighted about the function of this Council. They think that by setting many entrenched obstacles, they can ensure that Schedule 1 to 5 be kept intact forever. But I believe that it is impossible. I am now only speaking on my own behalf. Even if Schedule 1 to 5 are passed this evening, that does not mean that I, LEE Wing-tat, cannot move an amendment in 1995, 1999 or some other time!

MR JAMES TO (in Cantonese): Mr Chairman, I agree very much with the views put forward by Mr LEE Wing-tat just now. Yet, on behalf of an ordinary member of the public, I would like to relate to Honourable Members his response to Mr LEE's view. This man said, "No, the future legislature will not do so. Should its operation in the present form remain unchanged, the Legislative Council will be basically manipulated by the majority of Members who are controlled by China's invisible hand. Given the background of the consortium, it seems we have no reason to believe that the future legislature

formed so undemocratically and controlled by such an invisible hand will amend these schedules." This is the conclusion drawn by the ordinary member of the public that I would like to share with Honourable Members.

MRS MIRIAM LAU (in Cantonese): Mr Chairman, I have listened very carefully to the speech delivered by Mr CHAN just now. However, he has not convinced me that his proposed amendment is made after careful consideration and is well-founded and justifiable. Nor can I agree that it is made not for the purpose of political posturing but rather for practical reasons. I would like to remind Members again that any amendment in connection with the return rate would lead to the withdrawal of the consortium. Are we willing to sacrifice the entire Western Harbour Crossing simply because there is a disagreement over the minor difference of 1% (in return rate)? Just now I did not say that we could not make any amendment without the consortium's approval. What I want to say is, the consortium has the right to withdraw if it does not agree with the amendment. Therefore we have to think it over carefully if we want to push through the amendment. Thank you, Mr Chairman.

Question on the Second Reading of the new schedule put.

Voice vote taken.

THE CHAIRMAN said he thought the "Ayes" had it.

MR ALBERT CHAN: Mr Chairman, I claim a division.

CHAIRMAN: Committee will proceed to a division.

CHAIRMAN: Would Members please proceed to vote?

CHAIRMAN: Do Members have any queries? If not, the results will be displayed.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr PANG Chun-hoi, Mr TAM Yiu-chung, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mr Martin BARROW, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Mr Jimmy McGREGOR, Mrs Elsie TU, Mr Peter WONG, Mr Vincent CHENG, Mr Moses CHENG, Mr Marvin CHEUNG, Mr CHIM Pui-chung, Mr Timothy HA, Mr Simon IP, Dr LAM Kui-chun, Mr Eric LI, Mr Steven POON, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG,

Dr TANG Siu-tong, Miss Christine LOH, Mr Roger LUK, Ms Anna WU and Mr James TIEN voted for the new schedule.

Mr Martin LEE, Mr SZETO Wah, Mr Andrew WONG, Mr Albert CHAN, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Dr Conrad LAM, Mr LAU Chin-shek, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr MAN Sai-cheong, Mr TIK Chi-yuen, Mr James TO, Dr YEUNG Sum and Mr WONG Wai-yin voted against the new schedule.

THE CHAIRMAN announced that there were 35 votes in favour of the new schedule and 19 votes against it. He therefore declared that the motion on the Second Reading of Mrs Miriam LAU's new schedule 5 was carried.

New schedule 5 read the Second time.

CHAIRMAN: The Committee has now agreed that the new schedule as proposed by Mrs Miriam LAU be added to the Bill; in other words, the Committee has taken a decision on this schedule and I will not call Mr CHAN to move his amendment.

MRS MIRIAM LAU (in Cantonese): Mr Chairman, I move that the new Schedule 5 be added to the Bill.

Proposed addition

New schedule 5

That the Bill be amended, by adding —

"SCHEDULE 5 [s. 42]

ESTIMATED NET REVENUE ($000,000's)

Year Ending 31 July in	Minimum Estimated Net Revenue	Upper Estimated Net Revenue	Maximum Estimated Net Revenue
1998	154	336	403
1999	201	399	471
2000	253	461	538

Year Ending 31 July in	Minimum Estimated Net Revenue	Upper Estimated Net Revenue	Maximum Estimated Net Revenue
2001	506	768	865
2002	713	1,016	1,128
2003	794	1,106	1,221
2004	880	1,202	1,321
2005	1,190	1,570	1,711
2006	1,455	1,881	2,039
2007	1,549	1,983	2,143
2008	1,623	2,061	2,223
2009	1,876	2,369	2,551
2010	2,028	2,562	2,760
2011	1,892	2,405	2,594
2012	1,821	2,326	2,513
2013	2,212	2,815	3,038
2014	2,573	3,267	3,524
2015	2,733	3,474	3,749
2016	2,891	3,682	3,974
2017	3,507	4,449	4,797
2018	4,018	5,090	5,486
2019	4,220	5,355	5,775
2020	4,422	5,621	6,064
2021	5,192	6,583	7,098
2022	5,747	7,285	7,855
2023	5,726	7,286	7,864

Note: In this Schedule "year" shall be construed having regard to the definition of "year" in section 42 of this Ordinance.".

Question on the addition of the new schedule proposed, put and agreed to.

HONG KONG PRODUCTIVITY COUNCIL (AMENDMENT) BILL 1993

Clauses 1 to 7 were agreed to.

BUILDINGS (AMENDMENT) BILL 1993

Clauses 1 to 21 were agreed to.

SHIPPING AND PORT CONTROL (AMENDMENT) BILL 1993

Clauses 1 to 3 were agreed to.

DUTIABLE COMMODITIES (AMENDMENT) (NO. 2) BILL 1992

Clauses 1 to 5 were agreed to.

Clause 6

SECRETARY FOR THE TREASURY: Mr Chairman, I propose that the Dutiable Commodities (Amendment) (No.2) Bill 1992 be amended by changing clause 6 as set out in the paper circulated to Members.

The amendment to clause 6 clarifies the scope of exemption from legal liability which the Commissioner of Customs and Excise would enjoy in carrying out his duties under the Ordinance.

Mr Chairman, I beg to move.

Proposed amendment

Clause 6

That clause 6 be amended, in the proposed section 52B by adding "to the goods or things" after "damages".

Question on the amendment proposed, put and agreed to.

Question on clause 6, as amended, proposed, put and agreed to.

New clause 7 Seizure and forfeiture

Clause read the First time and ordered to be set down for Second Reading pursuant to Standing Order 46(6).

SECRETARY FOR THE TREASURY: Mr Chairman, the addition of a new clause 7 is necessary to make a consequential amendment to the Smoking (Public Health) Ordinance (Cap. 371).

Mr Chairman, I beg to move.

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

Clause read the Second time.

SECRETARY FOR THE TREASURY: Mr Chairman, I move that new clause 7 be added to the Bill.

Proposed addition

New clause 7

That the Bill be amended, by adding —

"Consequential Amendments
Smoking (Public Health) Ordinance

7. Seizure and forfeiture

Section 10A(5) of the Smoking (Public Health) Ordinanc (Cap. 371) is amended -

(a) by repealing "under section 48" and substituting "under sections 48, 48A and 48C"; and

(b) by repealing "the said section 48" and substituting "sections 48, 48A and 48C of that Ordinance".".

Question on the addition of new clause proposed, put and agreed to.

INLAND REVENUE (AMENDMENT) (NO. 3) BILL 1993

Clause 1 was agreed to.

Clause 2

SECRETARY FOR THE TREASURY: Mr Chairman, I move that clause 2 be amended as set out in the paper circulated to Members.

I propose to amend clause 2 in order to clarify the circumstances under which a relevant sum derived from an associate will not be taken to be fully assessable.

Mr Chairman, I beg to move.

Proposed amendment

Clause 2

That clause 2 be amended —

(a) by deleting "of the Inland Revenue Ordinance (Cap. 112)".

(b) in the proposed section 21A -

(i) by deleting subsection (1)(a) and substituting -

"(a) 100% of the sum in the case of a sum derived from an associate:

Provided that this paragraph shall not apply in the case where the Commissioner is satisfied that no person carrying on a trade, profession or business in Hong Kong has at any time wholly or partly owned the property in respect of which the sum is paid; or";

(ii) in subsection (3), by deleting paragraph (c) of the definition "associate" and substituting -

"(c) where the person is a partnership -

(i) any partner of the partnership and where such partner is a partnership any partner of that partnership, any partner with the partnership in any other partnership and where such partner is a partnership any partner of that partnership and where any partner of, or with, or in any of the partnerships mentioned in this subparagraph is a natural person, any relative of such partner;

(ii) any corporation controlled by the partnership or by any partner thereof or, where such a partner is a natural person, any relative of such partner;

(iii) any corporation of which any partner is a director or principal officer;

(iv) any director or principal officer of a corporation referred to in sub-paragraph (ii);".

Question on the amendment proposed, put and agreed to.

Question on clause 2, as amended, proposed, put and agreed to.

New clause 1A	Purchase and sale of patent rights, etc.
New clause 3	Allowances under this Part in respect of capital expenditure on leased machinery and plant

Clauses read the First time and ordered to be set down for Second Reading pursuant to Standing Order 46(6).

SECRETARY FOR THE TREASURY: Mr Chairman, I move that new clauses 1A and 3 as set out in the paper circulated to Members be read the Second time.

Clauses 1A and 3 are added to bring into line with the terminology of the new Bill the corresponding definitions in sections 16E and 39E of the existing Ordinance.

Mr Chairman, I beg to move.

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

Clauses read the Second time.

SECRETARY FOR THE TREASURY: Mr Chairman, I move that new clauses 1A and 3 be added to the Bill.

Proposed additions

New clause 1A

That the Bill be amended, by adding —

"1A. Purchase and sale of patent rights, etc.

Section 16E(4) of the Inland Revenue Ordinance (Cap. 112) is amended in paragraph (c) of the definition "associate", by repealing subparagraphs (i) and (ii) and substituting -

"(i) any partner of the partnership and where such partner is a partnership any partner of that partnership, any partner with the partnership in any other partnership and where such partner is a partnership any partner of that partnership and where any partner of, or with, or in any of the partnerships mentioned in this subparagraph is a natural person, any relative of such partner;".

New clause 3

That the Bill be amended, by adding —

"3. Allowances under this Part in respect of capital expenditure on leased machinery and plant

Section 39E(5) is amended in paragraph (c) of the definition "associate", by repealing subparagraphs (i) and (ii) and substituting -

"(i) any partner of the partnership and where such partner is a partnership any partner of that partnership, any partner with the partnership in any other partnership and where such partner is a partnership any partner of that partnership and where any partner of, or with, or in any of the partnerships mentioned in this subparagraph is a natural person, any relative of such partner;".

Question on the addition of the new clauses proposed, put and agreed to.

EXCHANGES (SPECIAL LEVY) (AMENDMENT) BILL 1993

Clauses 1 to 9 were agreed to.

Council then resumed.

Third Reading of Bills

THE ATTORNEY GENERAL reported that the

EMPLOYEES' COMPENSATION (AMENDMENT) BILL 1993

WESTERN HARBOUR CROSSING BILL

DUTIABLE COMMODITIES (AMENDMENT) (NO. 2) BILL 1992 and

INLAND REVENUE (AMENDMENT) (NO. 3) BILL 1993

had passed through Committee with amendments and the

HONG KONG PRODUCTIVITY COUNCIL (AMENDMENT) BILL 1993

BUILDINGS (AMENDMENT) BILL 1993

SHIPPING AND PORT CONTROL (AMENDMENT) BILL 1993 and

EXCHANGES (SPECIAL LEVY) (AMENDMENT) BILL 1993

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

PRESIDENT: I will take the Western Harbour Crossing Bill separately from the other Bills. The questions is: That the following seven Bills be read the Third time and do pass:

EMPLOYEES' COMPENSATION (AMENDMENT) BILL 1993

DUTIABLE COMMODITIES (AMENDMENT) (NO. 2) BILL 1992

INLAND REVENUE (AMENDMENT) (NO. 3) BILL 1993

HONG KONG PRODUCTIVITY COUNCIL (AMENDMENT) BILL 1993

BUILDINGS (AMENDMENT) BILL 1993

SHIPPING AND PORT CONTROL (AMENDMENT) BILL 1993 and

EXCHANGES (SPECIAL LEVY) (AMENDMENT) BILL 1993

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

Bills read the Third time and passed.

PRESIDENT: The question is: That the following Bill be read the Third time and do pass:

WESTERN HARBOUR CROSSING BILL

Voice vote taken.

THE PRESIDENT said he thought the "Ayes" had it.

MR LEE WING-TAT: Mr President, I claim a division.

PRESIDENT: Council will proceed to a division.

PRESIDENT: Would Members please proceed to vote?

PRESIDENT: Do Members have any queries? If not, the results will be displayed.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr PANG Chun-hoi, Mr TAM Yiu-chung, Mr Andrew WONG, Mr LAU Wong-fat, Mr Edward HO, Mr Martin BARROW, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Mr Jimmy McGREGOR, Mrs Elsie TU, Mr Peter WONG, Mr Vincent CHENG, Mr Moses CHENG, Mr Marvin CHEUNG, Mr CHIM Pui-chung, Mr Timothy HA, Mr Simon IP, Dr LAM Kui-chun, Mr Eric LI, Mr Steven POON, Dr Philip WONG, Mr Howard YOUNG, Dr TANG Siu-tong, Ms Anna WU and Mr James TIEN voted for the motion.

Mr Martin LEE, Mr SZETO Wah, Mr Albert CHAN, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Dr Conrad LAM, Mr LAU Chin-shek, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr MAN Sai-cheong, Mr TIK Chi-yuen, Mr James TO, Dr YEUNG Sum and Mr WONG Wai-yin voted against the motion.

THE PRESIDENT announced that there were 32 votes in favour of the motion and 18 votes against it. He therefore declared that the motion on the Third Reading of the Bill was carried.

Bill read the Third time and passed.

PRESIDENT: In the Script, Mr Simon IP's motion appears before Mr Ronald ARCULLI's. But I am going to depart from the Script for technical reasons because there may be a problem if Mr ARCULLI's motion is moved after 12 midnight. I shall suspend the Council for a few minutes while we locate Mr ARCULLI.

Council suspended from 11.02 pm to 11.15 pm.

Members' motions

PRESIDENT: I have accepted the recommendations of the House Committee as to time limits on speeches for the two motion debates and Members were informed by circular on 17 July. The mover of motion will have 15 minutes for his speech including his reply; other Members will have seven minutes for their speeches. Under Standing Order 27A, I am requried to direct any Member speaking in excess of the specified time to discontinue his speech.

The reason, Mr ARCULLI, I have departed from the Script and put your motion first is that there is the question whether after midnight your motion is open to be moved and indeed voted on. We have 45 minutes and it will really be for Members to determine whether they will conclude their speeches before midnight so that the vote can be taken. If they do not finish their speeches in accordance with Standing Orders by midnight, I shall have to suspend the sitting and consider the constitutional position. (*Laughter*)

INTERPRETATION AND GENERAL CLAUSES ORDINANCE

MR RONALD ARCULLI moved the following motion:

"That the Declaration of Number of Proposed Districts and Specification of District Names Order 1993, published as Legal Notice No. 209 of 1993 and laid on the table of the Legislative Council on 9 June 1993, be amended -

(a) in section 1 by repealing "18" and substituting "19";

(b) in section 2 by repealing "18" and substituting "19";

(c) by repealing the Schedule and substituting -

"SCHEDULE [s.2]

Item	Name of District
1.	Central and Western
2.	Eastern
3.	Kowloon City
4.	Kwun Tong
5.	Mong Kok
6.	Sham Shui Po
7.	Southern
8.	Wan Chai
9.	Wong Tai Sin
10.	Yau Tsim
11.	Islands
12.	Kwai Tsing
13.	North
14.	Sai Kung
15.	Sha Tin
16.	Tai Po
17.	Tsuen Wan
18.	Tuen Mun
19.	Yuen Long “”

MR RONALD ARCULLI: Mr President, I rise to move the motion standing in my name in the Order paper.

What I did not realize was that I might be creating a constitutional jamboree as well. But be that as it may, I am grateful that my colleagues extended the time to this evening although the results of that remains to be seen.

Effectively, the Government is seeking to merge two districts — Yau Tsim and Mong Kok into one, because, under the Order that was tabled in this Council, there is a declaration that the territory would be divided into 18 instead of 19 districts. In terms of the reasons for it, the Administration has set out their position in the brief to the Legislative Council and effectively in one sentence: the Administration actually believes that they have a strong case for the merger of these two districts because of declining population and similarity in characteristics of these two districts. The Administration, of course, has chosen to ignore the position of the two district boards — the Yau Tsim and the Mong Kok District Boards, comprising of a total of 27 and all but one was against the merger. They claim, and I believe quite rightly, that the two districts are different; Yau Tsim, after all, is much more of a tourist area; Mong Kok a commercial district. Yau Tsim District Board says that law and order, transportation, environment and hygiene matters are treated and handled quite differently from those in Mong Kok. As for housing types, I suppose it is not very dissimilar to the rest of Hong Kong; so that cannot be a criteria by itself.

In terms of population size, in 1991 there were three districts in Hong Kong of similar size, namely Wan Chai, New Territories North and Sai Kung and indeed one much smaller which is Sai Kung. The district board members are elected really to allow the Administration to take their views into account in deciding policy recommendations. So in the present circumstances can anyone really blame them for feeling somewhat rejected in this heavy-handed exercise of central government authority? Their views and those who support them have been summarily dismissed, and I quote from the Legislative Council brief as being "without any convincing arguments against the merger". Is this the sort of response we can expect from a government trying to be more open and accountable?

Mr President, it is quite plain that the alteration of district boundaries is an exceedingly important matter and casts a very heavy burden on the Administration to justify a change rather than for the two districts to justify their objections. Unfortunately, the matter does not end there because the Mong Kok District Board took their grievance to the Governor, and in a reply to the chairman of the Mong Kok District Board, the Governor said, and I quote, "The proposed Boundary and Election Commission will upon the enactment of the enabling legislation consider and define the boundaries for new constituencies and make arrangement similar for the existing constituencies. The Governor in Council also need, in due course, to make a declaration on the districts for the purpose of the 1994-95 elections". I ask, does this mean that the Boundary and Election Commission may yet again change the district boundaries for the elections in 1994-95? If so, why tamper with it now?

Mr President, in my respectful submission, the Administration has not discharged the burden of proof on them to justify the merger.

In conclusion, Mr President, I would ask my colleagues to support the two district boards and to object to the merger. If I may respectfully remind this Council that district boundaries and thus district boards are repeatedly said to be the building blocks of our democratic institutions, please do not tamper with them lightly. If you cannot support them, at least do not vote against them. Mr President, I beg to move.

Question on the motion proposed.

MR ALLEN LEE (in Cantonese): Mr President, after the subsidiary legislation on the merger of the Yau Tsim and Mong Kok districts had been gazetted, the two chairmen as well as the members of the Yau Tsim and Mong Kok District Boards immediately came to the Legislative Council to complain and express their opposition. They also stated in detail their grounds for opposing the merger. The merger proposal was made without formally consulting the two district boards. I doubt whether such practice of the Government is open and fair. Governor PATTEN repeatedly remarked that political reforms had to be "fair, open and acceptable to Hong Kong people". Yet, the proposed merger of the Yau Tsim and Mong Kok districts is neither fair nor open, not to mention its failure to have the support of the local residents. This is virtually ridiculous in a representative government.

My colleagues from the Liberal Party and I went to the Mong Kok district on 3 July. I can tell Honourable Members in this Council that the local residents had time and again urged me to raise opposition to the merger of the Yau Tsim and Mong Kok districts on their behalf. There are totally 27 district board members in the Yau Tsim and Mong Kok districts, 26 of whom oppose the merger. The Government is not unaware of this situation but it simply goes its own way and pays no heed to public opinion. We also have 20 elected Members in this Council and I do not know their position. Yet, if they ignore the fact that 26 out of 27 district board members oppose the merger and still support the Government, we will have a clear idea in future how they would respond to public opinion.

District board members of the Yau Tsim and Mong Kok districts told me that they would keep an eye on this debate and the result of the voting. They would like to see whether the views they put forward on behalf of the local residents have been taken seriously. As to why the Government insists on merging the two districts despite the opposition of the Yau Tsim and Mong Kok residents, I belive all of us know the reason well and I need not spell it out here.

Mr President, other Members from the Liberal party and I will not support the proposed merger of the Yau Tsim and Mong Kok districts. We support Mr Ronald ARCULLI's amendment.

MR ANDREW WONG (in Cantonese): Mr President, the Government tabled in this Council a subsidiary legislation on 9 June this year in the form of an Order seeking to merge two districts — Yau Tsim and Mong Kok into one, that is, the Yau Tsim Mong district. In other words, from the next district board election onwards, the number of districts will be reduced from 19 to 18.

A subcommittee was set up by the House Committee on 25 June to study the subsidiary legislation and I chaired the subcommittee.

Three meetings were held by the subcommittee, including two with the Administration and one with the Mong Kok District Board and the Yau Tsim District Board. The subcommittee carefully considered the submissions made by the two district boards.

Deliberations made by the subcommittee were contained in detail in a report. Subject to your permission, Mr President, I shall attach the report as an appendix to the Hansard and I will not go into details here. I simply want to take this opportunity to express my own views.

Now the row we witness is turning a simple issue into a complicated one and has become politicized. As a matter of fact, the two districts, Yau Tsim and Mong Kok, are relatively smaller, in terms of population and area, than other districts. Therefore, the two districts and the North District are not in the same league. I hold that the splitting of the region into two districts in 1981 was in the first place a wrong decision. It is, therefore, a reasonable move to merge the two.

Mr President, with these remarks, I do not support Mr Ronald ARCULLI's amendment. This is not my practice to abstain from voting. If I do not support a motion, I am against it. Therefore, I will vote against it.

MRS PEGGY LAM (in Cantonese): Mr President, when the Government implemented district administration in 1982, district boards were formed to represent and reflect, by way of elected and appointed members, people's views on policies put forth by the Administration and problems affecting people's livelihood. District board members have therefore acted as the bridge between the Government and the public. For the last 11 years, district boards have made valuable contribution in areas such as environmental improvement, traffic and transport and community building. The district administration framework divided the whole of Hong Kong into 19 districts. Hence we have 19 district boards. And they have lived up to the expectations of the public in discharging their intended function of improving the overall condition of each individual district. I can think of no reason why changes are now called for given the proven operation of and arrangements for the 19 districts.

Mr President, the Administration's proposed merger of Yau Tsim and Mong Kok is founded on the grounds that the population of these two districts is

set to decline and that there is similarity in characteristics of both districts. But I find these reasons far-fetched and hardly acceptable. Moreover, the Administration has presented a case that the population each of Yau Tsim and Mong Kok is forecast to gradually decline to a little over 100 000 in the next few years and so they have to be merged because of their smaller population compared with the other districts. I cannot accept this argument. There are in fact some other districts whose population is smaller than these two. Besides, when we talk about population, are we looking only at the number of residents? What about people who work in the districts during daytime? Are foreign visitors counted? It is unfair to use resident population as the only criterion because many of the matters of concern to the district boards and issues discussed by them are connected with the daytime working population. Rightly as the Yau Tsim District Board has pointed out in a letter to this Council, the problems brought about by the Yau Tsim District's characteristic of being an international tourist area full of hotels and shopping arcades are different from those faced by the other districts, Mong Kok in particular. Mong Kok is generally regarded as an industrial area. How then could a tourist area be similar to an industrial one? The traffic problem alone in each of these two districts is very different. The problem for Yau Tsim, being a tourist area, of course relates more to coaches, while that for Mong Kok, being an industrial area, relates more to goods vehicles and public light buses. There is therefore no reason why these two districts should be forced to merge into one.

Moreover, surveys conducted by various parties revealed that most district boards oppose the merger of Yau Tsim and Mong Kok. Twenty-six of the 27 members of Yau Tsim and Mong Kok District Boards object to the merger; while another survey among important figures of various organizations in Mong Kok found that 80% of the community leaders said they had not been consulted beforehand, 95% think the information provided by the Administration insufficient and 65% are opposed to the merger. Judging from the findings mentioned above, the so-called comprehensive consultation cited by the Administration is only a unilateral assertion. The Administration has not taken into careful consideration, nor respected, the views of these two districts and, in particular, the function of district board members as representatives and reflectors of public opinion. In recent meetings between district board chairmen and the Governor and the Secretary for Home Affairs, 18 of the 19 chairmen expressed their objection to the merger.

It is therefore inappropriate to merge the Yau Tsim and Mong Kok districts under the circumstances mentioned above. Hence I must iterate that I oppose the proposed merger, not because I, being a district board chairman, have to stand on the same side as the other chairmen, but rather because I honestly believe that merging the two districts is a wrong move. I hope the Administration will have second thoughts about the proposal, take on board the opinions of various parties and scrap the merger plan.

With these remarks, Mr President, I support the Honourable Ronald ARCULLI's motion.

MR LEE WING-TAT (in Cantonese): Mr President, human beings are sensitive creatures. We are afraid of the uncertainty brought about by changes, and reluctant to part with things that we are about to lose. These are normal human feelings that are easily understandable. However, if these feelings of fear and reluctance exist for too long a time, they will become a kind of psychological complex that is resistant to changes. In such a case, a man will become stubbornly conservative. Although what I have just said seems to have come straight from a romantic novel, it is in fact a reflection of the sentiments of the members of the Yau Tsim and Mong Kok District Boards. Frankly speaking, it is really unfortunate and surprising that the proposed merging of the Yau Tsim and Mong Kok District Boards should develop into a confrontation between the district board members and the Administration. The decision to merge the two district boards should be no more than an administrative matter. But due to the mishandling by and lack of trust on both sides, the matter has now become a political issue. Furthermore, the comments of some Chinese officials have made this problem, which is a moderately important problem, become more and more complicated and difficult to resolve. It is in fact difficult to tell who is right or wrong in this issue, but some people have said that it is easy to tell who is right or wrong just as it is easy to tell black from white. Such a point of view is really disappointing.

Mr President, the UDHK consider that a standard principle should be followed in demarcating the administrative districts. We are supportive of using the population of the various districts as the basis for calculation of district size, and it should be ensured that the population of each district is more or less the same. The Administration's proposed criteria for the demarcation of districts, namely that each district board member should represent 17 000 persons and each district board should consist of 15 to 30-odd members, has basically allowed for a great measure of flexibility. Therefore, striking a balance between principle and reality, the Administration has, according to the criteria above, proposed the merging of the Yau Tsim and Mong Kok District Boards. We consider that the proposal has reflected that the population of these two districts has been steadily decreasing and the merging is administratively reasonable.

Although the Administration's decision is reasonable, there are areas in its consultation work which deserve criticism. In fact, the most neglected area in the whole issue is not where consultation involves the district board members and the district boards, but where it involves canvassing the views of the residents in the relevant districts. Although the District Offices concerned have emphasized that they have maintained constant contact with the residents to keep tabs on their views, they have only conducted an unsystematic survey among the owners' corporations as late as June this year and have done so only because of pressure from various parties. Moreover, it is really regrettable that the Administration has still stubbornly refused to conduct an independent opinion poll in order to know the views of the residents in the two districts. It is difficult for us to understand why in a time when public opinion is getting more

and more attention the City and New Territories Administration should be so conservative in this regard.

In respect of public consultation, what is even more surprising is that some members of the Yau Tsim and Mong Kok District Boards should oppose an independent opinion poll. These members may consider their views to be even more scientific than those obtained from an opinion poll. I still cannot understand this point. There are some other members who consider that an opinion poll is simply unnecessary, because they believe that they have a strong feeling for their district boards, and the public will not understand their feelings. This may be true, but it definitely cannot be the reason for not consulting the public. I think that for district board members who are representing the people of a district, such kind of attitude should not be encouraged.

Besides insufficient consultation, we consider that the Administration should also explain why it has not managed to allay the worries of the district board members who have repeatedly and strongly indicated that they oppose the merging because they worry that the Administration would cut the manpower and resources for the district boards concerned. We believe that if the Administration had made it clear at the outset that it would not cut the manpower and resources for the district boards concerned, it would have largely avoided the conflict with the district board members and dispelled their distrust of the Administration. Now the Administration has made such a promise. Although it has come a bit late, it should have allayed much of the worries of the district board members.

If the merging is approved, I hope that the Administration can provide special resources and assistance to the combined district board during the initial period such that the new district board and its members can more easily adapt to the new working environment after the merging.

Finally, I hope all the more that members of the two district boards can overcome the geographical barrier in between them, put aside the prejudices against and suspicion of each other, and strengthen the communication and co-operation between the two districts based on a determination on their part to reflect the views of the residents within the districts and to strive for their welfare. We believe that the two district boards are already mature in terms of their functioning; so they should be able to cope with the temporary problems of adjustment that may arise after the merging and effectively make use of the increased resources of the new district board to serve the residents of the district.

Mr President, I so make my submission. For the reasons given above, I oppose the amendment motion.

MR FRED LI (in Cantonese): Mr President, Yau Tsim District Board and Mong Kok District Board comprise of Yau Tsim (Yau Tsim is actually made up of two districts, that is, Yaumati and Tsimshatsui) and Mong Kok. I support Mr Andrew WONG's argument he made earlier that Yau Tsim and Mong Kok are different as the former is much more of a tourist area whereas the latter a commercial/residential district with many commuters in transit. Frankly speaking, we should know a district board's role. District board is merely a consultative body with no administrative power. It is responsible for bringing problems at district level to the attention of the central government. The central government in return finds it necessary to consult the district board members on certain policy issues so as to gauge the views of representatives elected at district level. District board members have neither administrative power nor administrative duties. A merger of district boards will not cause any confusion such as the absence of hawker control teams in the region in question. I put forward this point in response to some arguments I heard from some district board members who petitioned this Council. I totally cannot accept such a view that a merger would bring about confusion although I have been serving as a district board member since 1985.

Earlier on, during the debate on the Western Harbour Crossing, Mrs Selina CHOW queried the United Democrats about where they gathered the public opinion from and what sort of views they gathered. I am glad that Mr Allen LEE of the Liberal Party took the trouble to go to the districts and seek local residents' views. Yet if you request a district office to arrange for a meeting with the public, you would probably hear other different views. The district office may arrange for you to meet representatives from the owners' incorporations, some mutual aid committee chairmen or a few locals. They may say to you that they very much support the merger. Therefore, I would like to know who arrange for your meeting with the residents. What sort of residents have you met? I hold that if we really want to gather public opinion, it is better to engage independent organizations to carry out a study and to consult local people in a formal manner. By and large, I find the surveys conducted by district offices not thorough enough. The surveys they conduct are no more than making a few telephone calls, interviewing a handful of people or consulting a few members before the area committee meetings. Most of the surveys are not done in a scientific way and are directed at people with vested interests such as members of the area committees and people of the owners' incorporations, whose views on the merger may be different from those of the general public.

Should a district board member conduct a survey on the general public, he will find that many people do not have any particular view whatsoever about the merger or may even know nothing about the merger. I think this must be the most typical reaction of the residents. The residents simply do not see what is wrong with the merger of Yau Tsim and Mong Kok. They are neither against nor for it.

I can never accept that if one lives at Yau Tsim for 10 years, one would be a Yau Tsim belonger and the merger of Yau Tsim and Mong Kok will turn one into a Yau Tsim-Mong belonger, so that the merger is totally unacceptable because it may affect one's sense of belonging to the community. This argument is put forward by district board members and I find it unconvincing. I have also gone through all of their many arguments. From a third party's point of view (I do not have any interests in, or any connections with, the districts in question), I cannot accept these arguments.

To me, the most important consideration is for the Government (or Mr Michael SUEN's department) to ensure that after the merger, the resources allocated to the new district board and the manpower of the district office should not be lower than the present level. This is the area that deserves our attention and concern. I do not consider the merger a serious problem. It is the Government's refusal to conduct a survey that prompts us to hold this debate. Had the Government conducted a scientific survey to have a clear idea about the public's views by enabling more residents to express their views in an objective way, the result would have been much more desirable. Instead, the situation now is that some people consult their fellow residents whereas other people consult their neighbours but they cannot persuade each other to support their views. As a result, we have to take a vote on this question here.

Mr President, I support the merger proposed by the Government and oppose the motion.

DR YEUNG SUM (in Cantonese): Mr President, the present controversy over the merger of the Yau Tsim and Mong Kok District Boards stems from insufficient consultations by the Government in the way it carries out its established policy. Logically speaking, if we do not agree to the policy in question, we should carry out in-depth study and hold discussions to see whether or not amendments should be made to the policy in question. However, if the controversy is a result of poor consultation and not caused by the policy in question, then it is merely an administrative question or it has something to do with the way a policy is carried out. In that case, it should be dealt with by the Government. What we should do is to urge the Government to clear up any misunderstanding and improve the future consultation mechanism at the district level. The current issue arises from the first merger of two districts since the inception of district administration. And we find that the consultation work by the Government leaves much to be desired. We should appreciate the district board members' worry and concern over the merger.

In terms of policy, the United Democrats consider the Government's demarcation policy now in force reasonable and acceptable. Under this policy, for example, every district board member represents approximately 17 000 residents in each district. This is in line with the provision in the Boundary and Election Commission Ordinance. Furthermore, it is an established practice to have 15 to 30 members in each district board and such an

arrangement ensures that the boards achieve efficient operation, and standardizes the overall district administration.

Some people are of the view that the Government applies double standards as the Island District Board is not required to merge with other districts even though its population is so small while the Yau Tsim and Mong Kok districts are to be merged. However, I trust that it is well known to everybody that there are many unique geographical factors of the Islands district which should be taken into consideration. Since Yau Tsim and Mong Kok are neighbouring districts, they share many regional characteristics in terms of traffic, infrastructure and economic activities. In other words, the allegations mentioned just now do not hold water. We consider the merger of Yau Tsim and Mong Kok a sensible administrative decision. The policy itself has nothing wrong.

Then, how can we clear up the district board members' misunderstanding and assuage their concern? We feel that the district office should make a specific commitment to ensure that there will be no reduction in the allocation of staff resources and other resources after the merger. It should also ensure that at the early stage of the merger, there will be special assistance, and arrangements made available, to the new district board to sort out the teething troubles as soon as possible so that the new district board could provide services to the local residents as effective as the two former boards.

Mr President, with these remarks, I oppose the motion.

MR ERIC LI (in Cantonese): Mr President, with regard to the proposal of merging the Mong Kok and the Yau Tsim districts, I have heard many different opinions and have analysed the matter from various angles. However, after mulling it over, I fail to see any strong case or objective data to support or oppose the merger. The only conclusion I can draw from the whole episode is that in dealing with this issue, the Government has adopted a very high-handed approach in the sense that it is extremely unwilling to listen to dissenting views and acts stubbornly against people's advice.

As far as I understand, the district boards are of the view that it is best to resolve things through discussions. Should the Government be willing, before putting the merger into effect, to wait a little longer and notify the district board members its position regarding other relevant problems concerning the district boards, such as the seats of appointed members, and to engage in serious discussions with the district board members over "a cup of tea", I believe it is possible to sort things out smoothly. It is a pity that this time the Government abandoned the use of discussion "over a cup of tea" which has all along proved to work very well with the district boards. Instead it suddenly issued an administrative fiat which in consequence has aggravated the situation. In this connection, whereas I do not think there are strong grounds to oppose the merging of the Yau Tsim and the Mong Kok districts, I do not feel I should support the attitude of "not listening, not seeing and not consulting" adopted by

the Government in dealing with this issue either. Therefore, in order to express my reservations about the merger as well as my sympathy for members of the said district boards whose views have not been respected, I shall abstain from voting on this motion.

MRS SELINA CHOW (in Cantonese): Mr President, one can say the administrative means of merging Yau Tsim and Mong Kok districts is a very big irony. As Mr CHIM Pui-chung said earlier on, officials today spent a great deal of time on canvassing. In fact, we know that this time officials, including the Chief Secretary and even our Governor PATTEN, had spent an enormous amount of time on canvassing in the above connection, and of course what they said was much more convincing than what we said. However, this Government, which wishes to strive to be open, fair and acceptable to the people of Hong Kong, with senior officials always claiming to uphold such principles, really lets us down when it fails to match its deeds with its words as it totally ignores public opinion. Of course we know that Mr ARCULLI's motion does not stand a good chance to be carried today, because one must admit that senior government officials have done very vigorous canvassing, and the Secretary for Home Affairs, Mr Michael SUEN, has invited many Members to breakfasts to talk about the merger. We on our part did not do any canvassing at all. However, one thing that is totally beyond us is how Members sitting in this Council who represent public opinion can turn a blind eye to the views of the residents in the affected districts, and even employ some apparently very convincing arguments to maintain that in principle or in theory, things should be done in a way against people's wish whereas in the case of other debates, public opinion is, more often than not, their most powerful weapon.

Mr LEE Wing-tat was right in saying just now that at times emotion could become quite illogical. However, history, emotions and aspirations are very important to each and every one of us. Come to think of how those elected member who reside in the said district would feel when it turns out that their views are not being taken seriously by the Government. I believe everyone will understand why they feel so upset. Just now Dr YEUNG Sum has said that government consultation is insufficient. I do not believe that government consultation is insufficient. The fact is that government consultation is not consultation in its true sense, but only something which looks like consultation superficially. People tell the Government, "We do not want it", and keep saying that they do not want it, but the Government refuses to listen. In this connection, the heart of the problem now before us is that the Government refuses to respect opposing voices on this issue. Living in a district, one is inclined to identify oneself with the institutions or things of that district, and this is as natural as one identifies oneself with one's own name. Why is it that the debate in this Council on whether the title of "barrister" should be changed almost ended up in a fight? Why is that so? Simply because it matters where those involved are concerned! Mr Fred LI can say coolly that "they" should be merged because of the small population in the two district, "they" should do this, "they" should do that, precisely because he finds the merger not affecting

him directly. This is too patriarchal and I believe our representative government does not hope to see things being handled in such manner.

Moreover, there is an argument which is least convincing, and that is the point some people put forward that this is an administrative arrangement and it has nothing to do with the elections. I believe this cannot fool even a small child. This is because basically a district board has a political role to play, and the provision of administrative service is also part of the role of a district board, how then is it possible to split them up? It is particularly so at a time when we have moved one step forward in that a commission is going to be set up to study demarcation. How then is it possible to handle the two issues separately? This argument is simply not convincing. In the final analysis, do we respect public opinion? Now 26 out of 27 members voice their opposition. Can one still dismiss it flatly that they do not represent the views of the local community because they have not consulted them. If they cannot represent the views of the local community, who can do so? When the Government needs their help in promoting certain policies or in organizing certain activities, officials would immediately call a meeting with them and canvass them vigorously. And what the Government does is "drop one's benefactor as soon as his help is not required," as the Chinese saying goes. When there is a need for it to carry out an administrative order to prove that it is an executive-led government, the Government would choose to brush aside the views of these opinion leaders and ask them to give way to enable the Government to handle things in its own way. Furthermore, because of strenuous canvassing, the Government has successfully secured the support of the opinion leaders in the Legislative Council which is at a higher stratum in the three-tier government. This is hardly a convincing argument.

I wish to remind honourable colleagues, no matter whether one has been canvassed over breakfasts by the Government or not, I feel that after all, we must all heed public opinion. We are not saying now that the introduction of this administrative arrangement is correct or incorrect. However, the timing of this administrative arrangement is wrong for sure, because the Government has failed to consider this issue together with the demarcation of boundaries in connection with the elections. Nor has it fully respected the views of the local community by way of taking into account the opinions of their representatives in the district boards. Therefore, I hope that honourable colleagues will support Mr ARCULLI's motion although we did not invite you to breakfast.

MR JIMMY McGREGOR: Mr President, I had not intended to speak. But I have listened to a great deal of politicking going on in the last few minutes. What I would point out is that a great many of us have very little idea of what the people of the grassroots level think in terms of their district and district requirements and specially the district elections. I find it very strange sometimes to hear Councillors in this Council who have never stood for any election in their lives speaking about what people think and what they do not think in regard to elections. I feel very much that such Councillors should listen

very carefully to those who have been directly elected by the people and see what their views are. In this particular regard, I do support the feelings and thoughts of the United Democrats and I oppose very much the proposal by Mr ARCULLI.

SECRETARY FOR HOME AFFAIRS: Mr President, I am grateful to the Honourable Andrew WONG and his colleagues on the Legislative Council Subcommittee for their careful consideration of the Declaration of Number of Proposed Districts and Specification of Names Order gazetted under section 3(1A) of the District Board Ordinance, giving effect to the merger of Yau Tsim and Mong Kok districts.

Last October, on the occasion of the debate on the Governor's policy address, I informed this Council that we had reached the point where we should take stock of the evolution of the District Administration Scheme since 1982 and consider its future development, particularly in respect of the number of districts and their boundaries. This is necessitated by the sheer dynamism of Hong Kong which keeps it growing and expanding and we need to ensure that the District Administration Scheme continues to function smoothly and effectively.

We have witnessed, in the last 15 years or so, a large-scale population movement from the old built-up urban areas to the new towns. The impact of population redistribution on the District Administration Scheme is obvious. To cater for the needs of the new residents in the new towns, we had in 1979 split the then Tai Po District into Tai Po and North Districts; in 1985 split the then Tsuen Wan District into Tsuen Wan and Kwai Tsing Districts.

While we have so far not taken any steps to redress the problem of declining population in the urban areas, it is a matter of time before action has to be taken. My reference to the need to review the number of districts and their boundaries was made against this background.

In November and December last year, I put forward several proposals to realign district boundaries for consultation with the district boards. I would like Members to take note of this open consultation process, which I think is an adequate reply to the accusation that we have chosen not to consult. My main areas of consultation included the merger of the Yau Tsim and Mong Kok districts and other proposals proposing to realign the boundaries of Islands, Tsuen Wan, Kwai Tsing, Sai Kung, Sha Tin, Wan Chai and Eastern Districts. But as a result of this open consultation process, we took into account the views expressed by district board members and we take stock of the situation. We reconsider our position very carefully and we have come to the conclusion that the timing was not ripe for some of those proposals. However, we are convinced that the case to merge the Yau Tsim and Mong Kok districts is justified and is in the best interest of the population as a whole.

On the specific question of consultation with the Yau Tsim and Mong Kok District Boards, apart from my staff who have been working very hard on the ground, I have personally met the Yau Tsim and Mong Kok District Boards to seek their views on the matter. I met them separately on 20 November last year and listened very carefully to the views expressed by members of these two boards. Subsequently, both boards discussed it at length at their own December board meetings respectively. I have gone through their minutes detailing the grounds on which they raised objections to the merger proposals and I have made a point of ensuring that these objections were fully taken into account by the Administration in reaching a decision on the matter.

So far, there are three main areas of concern. First, members of the two boards are worried that the merger would result in a reduction of allocation of financial and staff resources to the two districts. This is a point which has just been raised by a number of Honourable Members tonight. I would like to take this opportunity to reassure Members and also the two district boards that the object of the merger is not to reduce the amount of public resources being made available to the residents of the two districts. More specifically, there will be no reduction in the amount of district board funds that will be allocated to the new District compared with the combined allocation for the two districts at present.

Another point of objection raised by district board members is that the merger would adversely affect the sense of belonging of district residents. According to feedback collected by our staff on the ground, this sense of belonging is much more closely related to the immediate neighbourhood of one's own residence. They would feel very strongly about activities at the street block level which have a direct bearing on their quality of life. The wider question of merger simply does not feature very much in this consideration.

It has also been argued that after the merger, the new district board would have too many problems to deal with. However, since the two district boards share many common characteristics such as land use, housing types, density of development, and types of economic activities, these common problems can more logically and effectively be dealt with together. The traffic and public transport problems along Nathan Road, Shanghai Street and Canton Road, the hawkers problems in Dundas Street, and the building management problems of old tenement buildings in Yau Ma Tei and Mong Kok, are just a few of the more significant examples.

Some doubts have been expressed about the level of support for the proposal amongst the residents within the two districts. Tonight we have heard the Honourable Allen LEE telling us that he just paid a visit to Mong Kok district and that he came to different understanding as to the level of support for this proposal from among residents on the ground. We have carried out a survey of our own, as mentioned by Members, but there are also other surveys being carried out by other groups with different backgrounds. Without exception, they all show that the majority of respondents, that is to say, about 60% hold no view and are indifferent to the merger. Of the remaining 40%

who express a view, those in favour of the merger marginally outnumber those who are against. There is no coincidence in all this, because they all reflect the true picture.

Mr President, our decision to gazette the Order to merge the Yau Tsim and Mong Kok districts is not taken lightly. I would like to take this opportunity to make it clear that as the Policy Secretary responsible for the District Administration Scheme, I attach great importance to the views of the district boards. I would like to be in the happy position of always being able to accept the views of the district boards. However, in this less than ideal world of ours, where one cannot be oblivious to policy, practical and resource implications, there must be some occasions when the Administration feels unable to come to the same conclusions as the district boards. To my mind, it is important that when this happens we explain ourselves. This, I believe, I have just done.

Mr President, with the above remarks I would urge Honourable Members to support the merger of the Yau Tsim and Mong Kok districts to form a new Yau Tsim Mong District by approving the Declaration of Number of Proposed Districts and Specification of Names Order without any amendment.

PRESIDENT: Order, please. Mr ARCULLI, do you wish to reply bearing in mind the time?

MR RONALD ARCULLI: I do not want to filibuster myself to death, Mr President, no. (*Laughter*)

Question on the motion put.

Voice vote taken.

THE PRESIDENT said he thought the "Noes" had it.

MR ALLEN LEE: Mr President, I claim a division.

PRESIDENT: Council will proceed to a division at which time midnight will have expired.

MR MARTIN LEE: Mr President, could we dispense with the requirement of ringing the division bell for three minutes as all the Members are here?

PRESIDENT: Are Members prepared to suspend Standing Orders so that we do not need to wait three minutes? Anyone against? None being against it, Council will proceed to a division forthwith.

Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr TAM Yiu-chung, Mr Edward HO, Mr Ronald ARCULLI, Mr Martin BARROW, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Mrs Elsie TU, Mr Peter WONG, Mr Moses CHENG, Dr LAM Kui-chun, Mr Steven POON, Dr Philip WONG, Mr Howard YOUNG and Mr James TIEN voted for the motion.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr HUI Yin-fat, Mr Martin LEE, Mr SZETO Wah, Mr Andrew WONG, Dr LEONG Che-hung, Mr Jimmy McGREGOR, Mr Albert CHAN, Mr Vincent CHENG, Mr Marvin CHEUNG, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Timothy HA, Mr Michael HO, Dr HUANG Chen-ya, Mr Simon IP, Dr Conrad LAM, Mr LAU Chin-shek, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr MAN Sai-cheong, Mr TIK Chi-yuen, Mr James TO, Dr Samuel WONG, Dr YEUNG Sum, Mr WONG Wai-yin, Dr TANG Siu-tong, Miss Christine LOH, Mr Roger LUK, Ms Anna WU voted against the motion.

Mr CHIM Pui-chung and Mr Eric LI abstained.

THE PRESIDENT announced that there were 18 votes in favour of the motion and 34 votes against it. He therefore declared that the motion was negatived.

CONSULTATIVE PAPER ON LEGAL AID

MR SIMON IP moved the following motion:

> "That since Legal Aid is necessary to uphold the right to equality before the law, this Council urges the Government to set up an independent statutory authority to be responsible for the administration of Legal Aid, so as to ensure its independence; enhance the perception of fairness and increase its accountability to the public."

MR SIMON IP: Mr President, I rise to move the motion standing in my name in the Order Paper. Mr President, this is a very expensive motion for me because in order to ensure the presence of Honourable Members at this late hour, I have promised to provide a midnight snack (*Laughter*).

Legal aid is the most important means of giving concrete expression to the fundamental principle that everyone is equal before the law. That principle of

justice dictates that the law should never distinguish between persons of different means and that there is not one law for the rich and another law for the poor. The fairness and impartiality of the administration of legal aid must, therefore, be put beyond all doubt. It is with this objective in mind that I raise this debate today about the independence of legal aid services.

While I am delighted that the Administration has completed a comprehensive review of the operation of legal aid, I am disappointed that the issue of independence has again been fudged. The Government has paid little regard to the constitutional implications of having an essential component in the administration of justice being subjected to political or executive influence.

The importance of legal aid as an indispensable part of our system of justice is unquestioned. It ensures that our legal rights are not rendered sterile merely through the lack of means. For a clear and articulate statement of this principle, it is worth repeating the much quoted words of the Lord Chancellor's Advisory Committee on Legal Aid.

> "For the majority of citizens, it is legal aid which transforms a theoretical right of access to justice into a practical reality ..... If the rule of law and equality before the law lie at the heart of the social system, then equally legal aid lies at the heart of the legal system."

Litigation against the Government is becoming increasingly common. This produces the difficult situation where a government department has to decide whether a person should be entitled to financial aid to litigate against the Government. Since the staff in the Legal Aid Department depend on the Government for their position and advancement, it is understandable that people aggrieved by their decisions will have little confidence in the fairness of those decisions.

The Royal Commission on Legal Services chaired by Sir Henry BENSON reached the same conclusion. In rejecting a system of government-run legal aid services, it said:

> "If all the lawyers available to assist an individual at public expense depended on the authorities for position and advancement, there would be a risk that an individual's case might be conducted not in the way which best served his interests or complied with his wishes, but in a way which avoided causing difficulties and gave least offence to those in authority."

This is the primary reason why we need to have the Legal Aid Department independent of the Government. The proposal in the Consultative Paper to have a Legal Aid Service Council to supervise legal aid while retaining its administration within the Government is cosmetic and inadequate. The clash of interests and conflict of loyalties I have described will not be avoided. The legal aid staff will still depend on the Government for their position and advancement. One example of such a conflict is the non-renewal of the contract

of the former Director of Legal Aid last year. It was widely perceived that he lost his job because he granted legal aid in cases which went against government policies.

This conflict of interest has not escaped the notice of the International Commission of Jurists, which has also called for the independence of legal aid services in their Report on Hong Kong last year and it said:

> "It is also essential to ensure the independence of the Legal Aid Department, which at present funds much of the human rights litigation. It is a government department, headed by a Director of Legal Aid. Consideration should be given to making the Legal Aid Department an independent Board rather than a government department."

At present, the Duty Lawyer Scheme is administered by the legal profession and is an efficient and cost-effective scheme. So if one part of legal aid services is independent, then why not the other? Incorporation of both schemes under one statutory independent body will streamline services and achieve greater efficiency and economy. It will also end the anomaly of having two separate bodies being responsible for one service.

To have independent statutory bodies performing public functions separately from the Government is not unprecedented. Many such bodies already exist — for instance the ICAC, the Office of the Commissioner for Administrative Complaints and the Judicial Service Commission, to name but a few. Their existence outside the Government was created precisely because of the need for them to be independent of the Government and seen to be so. I need hardly remind the Government that even the staff of the Legislative Council are being made independent of the Government.

The argument against independence

In the Consultative Paper, the Government said that giving the Legal Aid Department an independent status outside the Government would involve a cost of HK$80 million, as well as causing "considerable disruption" as there is no guarantee that the staff would join the new organization.

I think the worry over disruption is more imaginary than real. If the new organization can offer terms of employment as attractive as those of the current Department, there is no reason why the staff should not join the new organization.

I have conducted a survey amongst all the professional officers of the Legal Aid Department to ascertain their views on the independence of their department. Of the 26 replies that I received, 17 were in favour of independence while nine were against. One expressed no opinion. The overall response rate was 46%. The result therefore shows a 2:1 ratio in favour of independence.

While the views of the serving staff of the department are important and valuable, the issue should not be decided by reference to their opinions alone. We the legislature must consider the wider interests of the community. If those interests were to conflict with the views of the staff and pursuit of those interests were to result in some wastage, that would be the price we would have to pay to achieve the greater good.

The Government mentions HK$80 million as the "price" for independence. But I must question the basis on which this figure is calculated. Presumably, it is based on the worst case scenario where all the staff would leave and have to be paid off. However, my survey has already shown that this would not be the case — the majority of the staff would opt to stay. Moreover, staff on pensionable terms would simply have their pensions frozen until they attain the age of 60. There is no new or additional outlay. For staff on contract terms, their end-of-contract gratuities are payable regardless of whether they leave the department or not. To attribute these payments as a cost of disestablishing the department is fallacious.

But even if HK$80 million is indeed the "price tag" for an independent organization, it is a relatively small sum for enhancing confidence in the rule of law and the administration of justice.

In the debate on legal aid last year, the Secretary for Constitutional Affairs raised several arguments against the independence of legal aid. He said that independence cannot bring about greater security of tenure to the staff of the Legal Aid Department because organizations outside the Civil Service normally employ their staff on contract terms, whereas government employees are engaged on permanent and pensionable terms, and thus are more difficult to remove.

With respect, I think this argument is misconceived. If there is any merit in that argument, then I ask, not rhetorically, why have not judges been kept in the Civil Service? Why have they been given greater security of tenure outside the Civil Service? Whether staff are employed on contract or pensionable terms is, in my view, irrelevant. What matters is ultimately who, the Government or an autonomous statutory authority, has the authority to hire and fire, to decide on terms and conditions of service and on promotion.

The Government considers that there are already adequate safeguards. At present, one can appeal to the Registrar against decisions made by the Legal Aid Department refusing legal aid in civil cases. The Government has said that they are considering extending this right of appeal to criminal cases as well. While an appeals procedure is essential, the Government has overlooked the importance of the initial decision-making process by a member of the Legal Aid Department. It is far more often than not that the initial decision will determine whether someone will obtain legal aid. Many refused aid will not appeal, thinking it to be futile. Many of those who do will fail because the Registrar will normally not overturn the exercise of judgment by the Director of Legal

Aid unless the Director was plainly wrong. An appeals authority is no substitute for an initial decision maker whose impartiality is beyond doubt.

The Government argues that the Legal Aid Department already operates independently. Under the Legal Aid Ordinance, the Director of Legal Aid must consider applications before him in accordance with statutory criteria. While this is true, the statutory criteria allow for a wide margin of subjective judgement. They cannot prevent bias in favour of the Government in non-clearcut cases.

The Government has quoted figures saying that a high proportion of legal aid cases are already assigned to private practitioners so that there cannot be any question of bias. This argument does not answer my concern. What is in issue here is the initial decision whether to grant or refuse legal aid. The danger lies in the Government denying legal aid in cases which go against its interests.

I must stress that independence does not mean less accountability or less transparency. Separating the Legal Aid Department from the Government should be concurrent with the establishment of a statutory Legal Aid Authority comprising a majority of representatives of the general public and a minority of lawyers. It should be chaired by a non-lawyer outside the Civil Service. The Authority would be required to submit annual reports which must be laid before the Legislative Council. Through such a mechanism, public participation in the formulation of legal aid policies would be ensured, as well as the effective implementation of those policies. Independence will not mean control of legal aid by the legal profession. Independence means just that: independent of the Government and independent of the legal profession.

Conclusion

Even the Government — which has been dragging its feet over this issue — acknowledges the importance of independence. Here I quote from the Consultative Paper:

> "..... the Working Group agrees that the perception of independence is important. The Working Group therefore gave serious consideration to ways of further enhancing the independence of legal aid administration, and the mechanism for monitoring efficiency and cost-effectiveness."

Several years ago in another review of legal aid services, the Government also expressed the unequivocal view that the neutral position of the Legal Aid Department should be established beyond doubt. Once it is accepted that independence, both in fact and in perception, is important, as the Government has done, there is no place for half measures of the type proposed by the Government in the Consultative Paper.

Protection of the rule of law requires that legal aid services should be independent of the Government and outside the Civil Service. There is no time

to lose. I urge the Government to act positively and without further hesitation or delay.

Mr President, I so move.

Question on the motion proposed.

MR MARTIN LEE (in Cantonese): Mr President, legal aid is a powerful instrument for society in its quest for justice. Legal aid can safeguard the implementation of the spirit of the rule of law, that is, "everyone is equal before the law", and ensure that the poor and the rich may equally enjoy rights protected by law and not be denied access to legal services because of inadequate means.

For years, the Administration has declined to accept that the administration of legal aid should be placed under the responsibility of an independent body, in spite of clear and precise opinions voiced by the public and the legal profession who have also presented very good justifications. Why has the Administration ignored these opinions and has been delaying reforms long overdue?

I believe there are no more than two reasons.

Firstly, it is the question of expenses. The Consultative Paper on Legal Aid pointed out that the Administration would need to commit additional resources if the Legal Aid Department was to become an independent body. This boils down to the question of what choice to make based on our cherished values. The UDHK have come to the view that it is worthwhile to perfect our legal system at a reasonable cost. We cannot expect the horse to run fast when we do not let it graze, can we?

Secondly, it is the convenience of control. The Administration may have regarded legal aid as an ordinary service to the public, thus placing it under the government administrative framework for effective control of its policies and expenditure. If this is really the case, the Administration has undoubtedly made a big mistake in letting general administrative considerations take precedence over the upholding of the principle that "everyone is equal before the law". This indeed deals a very heavy blow to the legal aid service.

In fact, we occasionally heard news that government departments might have resorted to the use of administrative powers to influence the way the Legal Aid Department operates. The termination of the service of former Director of Legal Aid, Mr Patrick MOSS, last year is an example. According to press reports, Mr MOSS did not have his contract renewed because of the localization policy as explained by the Administration. But speculations have been rife within and without the legal profession that Mr MOSS had infuriated the

government top brass in granting legal aid to some Vietnamese boat people in Hong Kong to challenge the legality of their detention by the Government.

According to Mr MOSS, during a discussion on the work report of the Legal Aid Department between him and a high ranking government official, it was indicated to him that he had not taken into consideration public opinion in approving legal aid applications. It is believed the remark meant that the public did not wish to see legal aid granted to the boat people, thus implying that he should not have approved the applications concerned. However, we must note that the criteria for granting legal aid are clearly written in our statute books. And the Hong Kong Bill of Rights Ordinance has also spelt out that all Hong Kong residents are equally protected under the law regardless of colour or race. This same principle was reiterated by the Secretary for Constitutional Affairs in a debate in this Council last year. The Director of Legal Aid indeed would have gone against the spirit of the rule of law had he considered the applications in accordance with the opinion of government officials and the then prevalent social prejudices in disregard of the criteria provided for in the relevant statute. The root cause of this evil is that legal aid services are not administered by an independent body but are subject to interference through the invisible hand of the executive departments.

A Policy and Administration Co-ordinator post was created in the Legal Aid Department by the Administration last year to review the department's operation and organizational structure. But some Legal Aid Department staff suspect that the Administration is trying to monitor and control the work of the department's staff under the guise of co-ordination. They suspect that the Co-ordinator has transferred out of the department some staff who are very devoted to their work and inclined to approve certain types of application, in order to reduce the number of legal aid cases challenging the Government.

Mr President, it is difficult for us outsiders to tell whether such news heard from the grapevine is true. But these rumours have indeed damaged the impartial image of the administration of legal aid and seriously undermined public confidence in the service. We cannot help asking: Is the Administration being unfairly presented in an adverse light over this matter? Or does it really intend to make the Legal Aid Department a docile lamb as speculated?

The UDHK are of the view that the Administration should reform the existing legal aid system as soon as possible to facilitate development of the service in four directions, namely independence, public accountability and provision of a comprehensive and high quality service. The UDHK support that:

> firstly, all types of legal aid services (including existing services provided by the Legal Aid Department) should come under a legal aid body independent of the Government;

secondly, a monitoring committee composed of legal professionals, people outside the legal profession (especially those who have kept a sustained interest in legal aid services) and government representatives should be formed to monitor the legal aid body's operation; and

thirdly, a body similar to the Consumer Council should be set up under the monitoring committee to protect the rights of legal aid applicants and to make specific proposals to improve legal aid services.

Mr President, the UDHK believe that a fully independent administrative organization which is accountable to the public will boost people's confidence in the legal aid system and will be of significance in perfecting the territory's legal system.

With these remarks, Mr President, the UDHK will support the motion.

MR TAM YIU-CHUNG (in Cantonese): Mr President, in order to ensure that people are provided with better legal aid services and to increase the transparency of institutions providing such services to enable the people to participate in the monitoring with a view to gearing such services more to the practical needs of our community, I am in favour of the setting up of an organization to monitor the operation of the Legal Aid Department and to review our legal aid system from time to time. I, however, have reservations about the setting up of an independent statutory authority to be responsible for the administration of legal aid.

As a matter of fact, the setting up of an independent statutory authority means that legal aid services have to be brought completely outside the bureaucracy. A number of problems would ensue as a result. Past experience tells us that such changes would bring about a lot of controversies. One of them is about the impact on the staff of the Legal Aid Department. If the department is to be turned into an organization independent of the government machinery, the staff of the department would lose their civil servant status and be offered a different renumeration and welfare package. As such, no one can be sure that all of the staff would accept the new terms and join the new body. If a large number of staff quit, legal aid services would be undermined, and may even cause disruption. More importantly, making a department which has been closely linked with the Judiciary independent of the Government is a change in the judicial system. Its effects on the future judicial system need to be thoroughly studied and widely consulted. And this matter needs to be put on the agenda of Joint Liaison Group meetings.

I support the recommendation made in the Government's Consultative Paper on Legal Aid to retain the Legal Aid Department as a government department, while setting up a Legal Aid Service Council with its members coming from the legal profession, Members of this Council or non-lawyers and representatives of other government departments to take up the entire

management of the public-funded legal aid service. I support the recommendation because this can enhance the transparency of legal aid services to render possible the participation of the Administration on the one hand while minimize the possible administrative disruption created on the other.

Mr President, it is my earnest hope that the said Legal Aid Service Council will conduct a comprehensive review on our legal aid system. Under this system, there are areas which need to be improved to address the actual problems in Hong Kong, in particular, the inadequate protection of the rights of the grass roots. My colleagues at the Hong Kong Federation of Trade Unions told me that, under the existing legal aid system, workers are always placed in a disadvantaged position when they get involved in labour dispute cases. Even with sound justifications, they may lose the case if legal aid is not made available to them. At present, in processing legal aid applications, the Legal Aid Department would have the applicant means tested which means that the applicant would only be eligible for legal aids if his or her disposable assets do not exceed $120,000. Nevertheless, as they join no retirement protection scheme, a lot of local workers would save as much money as they can before they retire in order to be able to maintain a decent living in their retirement. Very often, this sum of money which colloquially is called "coffin money" would be regarded as disposable assets. The Legal Aid Department always denies them legal aid precisely on the grounds that they have such saving. In the past, the Federation has handled a lot of labour dispute cases such as claims for arrears of wages and unreasonable dismissal cases. It is not uncommon to find that despite that the worker's claim was allowed in the Labour Tribunal, once the employer lodged an appeal, the case would be heard in court. When this happens, the worker concerned may be in an unfavourable position because the employer can always afford the service of a lawyer while the worker would be likely to fail the means test if he or she applies for legal aid. I accept that a means test is necessary in processing applications for legal aid so as to ensure that those more well-off would not be provided legal service out of the public purse. But come to think of it, where a worker, with no retirement protection, has to run the risk of being unreasonably dismissed and becoming unemployed, how will he or she be willing to risk his or her savings for the twilight years for redressing the justice by initiating litigation against the employer? If our legal aid system fails to address the real situation of the community as well as the problems of the workers, then the rights of the grass roots can hardly be safeguarded. This is the area where review and improvement are required.

Mr President, on the basis of the above, I oppose the motion.

MR MOSES CHENG: Mr President, I have always been very vocal about the need for openness, transparency, and public accountability as a means of preserving the important principle of justice that we hold to be the very foundation of a society governed by "rule of law". I believe that everyone in this Chamber can offer praise for the way Hong Kong has developed a legal aid scheme, and incorporated its importance into the Bill of Rights, to protect and

offer fairness to all. This motion debate is not about the lofty ideals at the root of legal aid as a concept, because there already exists an overwhelming consensus on those virtues. Rather, this debate is about the practical and logistical aspects of administering legal aid in a manner that is wholly consistent with the principles of justice, fairness, and equality.

Unfortunately, in the common quest for making universal principles consistent with our practice we have become mired by polarized extremes. On the one hand, the Government has made clear its reluctance to significantly alter the *status quo*, and seemingly refuses to recognize the ultimate need to diffuse and distinguish its role in the administration of justice. While government provision of both prosecution and defence in most cases has yet to prove substantially detrimental, it is an obvious anomaly and an affront to the positive perceptions of the public good.

The truth is that many aspects of the Government's role in legal aid — however effective and however well-intentioned — are simply counter to the common principles of independent judicial propriety. In most developed democratic societies the justice systems have evolved sufficiently to separate the role of the government and remove any lingering doubts over conflicting or self-serving interests.

The Government is correct to point out the potential for disruption and adjustment costs as part of the package in altering the *status quo*, but these are not considerations capable of overriding the more precious need to establish permanent perceptions of fairness and adherence to democratic principles. The question for Hong Kong is not "if we should endorse the principle of independent justice and separation of government's role", but "how, when, and at what pace"?

Still, the Administration's pragmatic appraisal should not be dismissed lightly and must be considered as a significant assessment of the present reality. That is why I have serious concern and reservations about the position and plans of the other extreme of the spectrum. Even though we know that independent administration of legal aid can ultimately meet its potential, serve the public, and satisfy principle, it is less certain that an immediate and abrupt transformation is the best means of achieving that objective. Most birds are destined to fly, but for them to fly strong and right, it is extremely important that they not be pushed from the nest prematurely. I hope that all of us on this Council, especially those who seem rushed (or perhaps impulsive) about transitional timelines, will fully consider the evolutionary nature of Hong Kong's relatively young legal aid scheme, and evaluate a more effective and smooth path to transition.

Just as it is imperative upon one extreme of this debate to recognize the principle leading to a fully independent commission, it is incumbent upon the other to realize the practicalities of such a change. I would advise that we get on track immediately, cautiously size up all the imminent hurdles, and then

pursue the definitive goal of an independent authority at a pace suitable to avoid unnecessarily stumbling along the way.

The bottom line for legal aid is evaluated in terms of serving our citizenry. Therefore, to avoid disruption or excess public expenditure, a "steady and sure" pace is preferred over one that is "rushed and reckless". This call, which I echo from the Liberal Party manifesto, is a call to again form a consensus on legal aid that conforms to the principle of judicial fairness and impartiality, and pragmatically establishes an independent authority that is both effective and durable through time.

The obstacles of alteration that have been cited by the Government thus far require an appropriate plan and timetable, but they are not insurmountable. Indeed, the Government has applied itself with innovation where independent authorities have been established before. The successful performance of the ICAC is testament to the role independent commissions can perform in pursuit of justice. The recent transfer of hospital services to the Hospital Authority also provides a worthy model to illustrate that the difficulties of change can be absorbed with minimum disruption, given both time and good planning. It is entirely possible to devise comparable prudent and progressive methods to transform the authority over legal aid in a stable manner that minimizes obstacles and disruptions and — we must now initiate work towards that goal.

It has been little more than a year since we last discussed legal aid with the comprehensive attention it deserves. In that time frame, its steady progress has been significant, and some might argue that transformations are already under way. With the arrival of a Deputy Director, skilled in management, and able to assist with organization and oversight, the administration of legal aid appears to be working more effectively for more people. This welcome change should be perceived as a credible beginning of a new era, rather than a conclusion to old problems.

I urge the Government to accept the imminence of a separate, distinct role and an independent commission, as this ideal is derived from democratic and proven principles of justice. While I have nothing detrimental to say about the manner or motive of the Government's administration of legal aid, I am firmly convinced that the powerful perception of "the fox guarding the hen-house" must be washed away from our justice system. I am equally convinced that we must have the patience and wisdom to pursue this change prudently in due course. Therefore, it is the intention of my colleagues from the Liberal Party and I to support a pace of planning that insures that the public and legal aid clients will not be adversely affected by impulsive schemes which concentrate on short-term objectives. I hope we can unite all ends of the spectrum through common principle and practice, and arrive at the best solution to aid the cause of justice in Hong Kong.

Mr President, with these remarks I support the motion.

MR FREDERICK FUNG (in Cantonese): Mr President, the public has been requesting practically for quite some time that the Legal Aid Department (LAD) be made independent of the GOvernment. However, the Government has turned down this request, usually by saying that the LAD already has a high degree of operational independence. The Association for Democracy and People's Livelihood (ADPL), including myself, is disillusioned and feels frustrated. Therefore, I would like, on the occasion of the present debate, to continue pressing for an independent statutory legal aid body.

Everybody agrees that the judiciary system needs to have a detached and independent status. Therefore, I believe that the legal aid system, which is a part of the judicial system and can be conducive to the administration of justice, should have a similar independent status. It is only natural and reasonable that such a proposal should be supported. Therefore, I think that the Government's grounds for rejecting a more independent role for the LAD are unacceptable.

It must be realized that, even though the LAD has long had a high degree of administrative independence, it is still being perceived to be a government department. This of course has an effect on the public's confidence in it. I want to ask the Government if it has made any study on the public's confidence in the LAD. Are there citizens who, by reason of the LAD's being a government body, do not believe that it will whole-heartedly assist them in litigation against the Government?

The ADPL, including myself, is in favour of replacing the LAD with a Legal Aid Authority. However, I must stress that the ADPL, including myself, bases its case for the independence of the LAD solely on the independence of justice. The Government must not reduce its funding for an independent legal aid body simply because it is not part of the bureaucracy.

If the Government is afraid that there will be disruption in the LAD's operations during the transition to independence, then why has the Government shown so much interest in the "de-officialization" of some other government departments? The Government has had the ability to convert some "official" bodies into "unofficial" bodies. Therefore, I think that it can cope with the problems arising during the conversion of a government department into an independent body. An example of such an independent body is the Hospital Authority in the area of health care. Besides, the LAD is a relatively small department. Therefore, I do not think that the process of turning it independent will affect its operations.

The Government expressed concern that it must spend $80 million on making the LAD independent. I, too, believe that the Government will probably have to spend more money if the LAD is to be separated from, and made independent of, the Government. However, I think that the $80 million additional spending will absolutely be worth it, because an independent legal aid body will make Hong Kong's judicial system more mature, because the public

will be more ready to use its services and because it will have a greater degree of transparency.

As said earlier, a very important factor affecting the readiness of members of the public to seek legal aid services is their perception of these services. I hope that the Government will also pay attention to some other factors, particularly the means test, the cost-sharing ratio and the application fee as recommended by the consultation paper.

First of all, the means test is now based on the applicant's disposable income. This is a better arrangement than that in the past, when the means test was based on the applicant's income. However, as the ADPL, including myself, has always been urging, legal aid services should benefit at lest 70% of the population of Hong Kong. Statistical evidence shows that 70% of all four-member families in Hong Kong earn $16,590 or less a month. In other words, 30% of all four-member families which earn $16,590 or more a month are therefore ineligible for legal aid. It is obvious that, given Hong Kong's high cost of living, these families, that is, the ones earning $16,590 or so a month, are in fact not affluent. When any of them needs help because of a legal problem that has arisen, it can only pay the legal fees out of its own pocket. I believe that legal aid services are even more badly needed by families whose income is lower still. Therefore, I think that the Government is in fact far from meeting our ideal goal by setting the legal aid eligibility threshold at $120,000 of disposable income. It is undeniable that the cost of legal services in Hong Kong is very high. Even a family earning tens of thousand dollars a month will find it difficult to afford the lawyer's fees if any of its members has to go to court. Since the Bill of Rights Ordinance provides that every citizen shall have a right to be represented in court, the threshold of the means test must be raised. Then people will not have to worry that they may have to stop fighting for their rights in court simply because they cannot afford the legal fees.

Concerning cost-sharing, I think that the formula now being used is not satisfactory because only people with low income are eligible for legal aid. A family that has an annual disposal income of $120,000 may have to pay up to 43% of this amount, that is, $51,200, in legal fees under the cost-sharing scheme. I believe that such a family will in most cases be reluctant to use such legal aid services. People are worried that there is no guarantee that, after they spend a large part of its savings or spend all its disposable income on litigation, they will win its case or the award will be enough compensation. Therefore, now that social welfare policies and systems are still flawed from the point of view of low-income families, I think that such a cost-sharing formula may not be proper.

Lastly, the consultation paper recommends that every applicant for legal aid should pay a $300 application fee. I take exception to this recommendation. It is no doubt that the paper also recommends waivers for several classes of people. Still, I think that $300 is in fact not a small amount in the eyes of low-

income people. I think that this $300 will probably turn away potential applicants from using legal aid services and it is therefore not proper.

Now I would like to sum up my speech. The Government is actively promoting the idea that law is fair and not rich people's plaything. So I think that the above factors affecting the use of legal aid services by members of the public must be corrected. I am also convinced that the best way to teach rule of law to the public is to let them use legal aid services without fear of being unable to afford the legal fees. Then they will have greater confidence in legal services and in the judicial system, believe in the rule of law and believe that indeed everybody is equal before the law.

With these remarks, I support the motion.

MR MAN SAI-CHEONG (in Cantonese): Mr President, an inter-departmental working group was formed by the Government last year to review laws, policies and practices connected with legal aid services. Having regard to the membership and work objectives of the working group, members of the legal profession felt that this review was going to be more in the nature of an administrative review than a comprehensive and reformative one. Most of them therefore cherished few expectations for this review. And I believe all of us, having read this consultation paper, will have similar thoughts.

Legal aid is an indispensable element in the administration of justice. Although various kinds of legal aid services are generally available in Hong Kong, indeed there is still much room for improvement. The Government still needs to probe into some deeper issues, such as what the quality of legal aid is, whether legal aid services are sufficient, whether they meet the needs of the public, whether the public knows and understands how to make use of legal aid, and how best the Government can provide and co-ordinate the various types of legal aid services effectively. I believe the Government has not reviewed or examined these questions. Failure to do so may probably be attributed to the existing lack of an effective administrative framework for legal aid. At present, legal aid services are principally provided by the Legal Aid Department and the two professional law bodies. The problem is one of lack of co-ordination and co-operation between the government department and the professional bodies. Constrained by its characteristic of being an executive department, the Legal Aid Department can hardly initiate any development study or propose any reform to the legal aid policy. Denied of any effective participation in the formulation of the legal aid policy, the public has no effective channels, nor find it less difficult, to put forth any proposal for improvement, let alone playing their monitoring role.

The UDHK have come to the view that the establishment of a comprehensive statutory framework for legal aid, which is independent of the Government, will help in dealing with and resolving the problems mentioned above. As Mr Martin LEE has pointed out just now, the UDHK's idea is to set

up an independent legal aid body to be responsible for the practical management and co-ordination of legal aid services, in order to raise service efficiency and strengthen co-ordination among various services. This need to co-ordinate among various services is already affirmed in Item 59 of the consultation paper. This arrangement of course serves another important purpose, that is, taking the administration of legal aid outside of an executive department to improve the independence and impartiality of the legal aid services, thus forestalling any executive pressures and influence being brought to bear on the administration of justice.

At the same time, we are also proposing that a monitoring committee, comprising members of the public and representatives of the legal profession and the Government, be set up to exercise effective monitoring over the administration of legal aid services. This will naturally enhance public participation and promote more effective discharge of the public's monitoring function, thus strengthening the legal aid body's accountability to the public.

Moreover, I hope that some advisory and research bodies can be set up to collect public opinions and information on the promotion, development and administration of legal aid services, as well as proposing specific policies to effect improvement. I believe this will help in improving the legal aid services and meeting the needs of the public. I suggest any such body so set up should first get to understand the current situation of how various kinds of legal aid services are being used. Legal aid services should fundamentally be available and accessible. If we fail to understand this situation, we will have failed to know if the legal aid services are popular with the public or whether they have really benefited from the services.

On the whole, the Government should introduce practical reforms to the legal aid administrative framework, thereby bringing into full play legal aid's function in the administration of justice. We think that grouping all legal aid services within the remit of an independent statutory administrative body is a necessary step towards perfecting Hong Kong's legal system. I am however very disappointed with the Government for not putting forth outright reform proposals in the consultation paper.

With these remarks, Mr President, I support the motion.

MR JAMES TO (in Cantonese): Mr President, major political and economic changes have taken place in Hong Kong in recent years. However, the administrative structure of legal aid services has remained unchanged for these 20 years. Such stability does not bespeak the system's popularity. On the contrary, it shows how conservative the Government has been about reform. The United Democrats of Hong Kong (UDHK) think that there can be no compromise of the principle that the administration of legal aid should be separate from, and independent of, the Government. This principle cannot be met half-way. During the Second Reading of the Legal Aid Bill in 1966, the

then Legislative Councillor Mr WOO Pak-chuen already noted that the Government should not be in administrative charge of legal aid. Over the years, the legal profession often talked about the importance of the independence of legal aid administration in emphatic terms. A moment ago, Members cited cases in which there was possible suspicion of the Government's interference in the work of the Legal Aid Department.

In view of the above, plus the fact that Hong Kong is gradually shedding its colonial colours and the Government is heading in the direction of greater accountability and openness, we feel that the administration of legal aid must be made independent soon. There should be no more delay. Therefore, we oppose the recommendation of the Government's Consultative Paper that a Legal Aid Authority be set up but the Legal Aid Department is to remain a government department. We object to this recommendation on grounds of the following:

Firstly, the Government does not have a convincing case. As a matter of fact, the Consultative Paper agrees in principle that the perception that the administration of legal aid is independent is very important. The paper also agrees that the administration of legal aid should be more transparent and more accountable to the public. However, the Consultative Paper fails to make a convincing case against the independence of the Legal Aid Department based on fundamental administrative reasons. Take one example. The Consultative Paper estimates that it will cost about $80 million to dis-establish the Legal Aid Department. What is the point? In practice, several government departments, after being made independent, have become more efficient. This, over the long term, will save money. The only point that we can see is that the Government is again citing an unconvincing ground for rejecting a principle basic to the legal system.

Secondly, the nature of legal aid services is quite unique. Some people support the Government's position by citing the analogy of the relationship between the Housing Authority and the Housing Department under the housing policy. Clearly, legal aid services involve principles of law and justice. Therefore, they must be sufficiently independent in practice and should be regarded as such by the public. In contrast, housing does not have such a special feature. Much of the work in housing service is routine administrative work. We cannot use housing service for an analogy. Besides, the Government is clearly one party to the litigation in all proceedings under the Bill of Rights Ordinance or the Crimes Ordinance. Therefore, the integrity of the Director of Legal Aid may come under suspicion because, under the present system, he is not independent of the Government but has the discretion to approve applications for legal aid filed by persons who do not pass the means test.

Thirdly, the Government's arrangements are not transitional. Some people, who agree with the Government's position, think that these are transitional arrangements until legal aid is fully independent. However, the Government has not made such a promise. Nor do I believe that the Government is entertaining such an idea. Speaking from personal experience, I

can tell that we will get a long-term problem in return for our accepting an interim compromise solution. This has happened many times before. We should be cautious.

In addition to calling for the independent administration of legal aid, the UDHK also think that the Legal Aid Department must meanwhile be made more open and accountable. Not only members of the legal profession, but also other individuals with an interest in the department's work, should be allowed to participate in the making of legal aid policy and in the supervision and management of the department. After all, the department serves the general public and is almost completely funded with taxpayers' money. Therefore, input from the community, as well as public supervision of legal aid services, is essential.

A moment ago, one Member said that the independence of the Legal Aid Department would affect the judicial institution. I take exception to this, for the reason that the judicial institution is not the same thing as the legal institution. The judicial institution refers to the trying of cases in courts of law. The legal institution refers to all structures and problems having to do with law. It seems unconvincing to me that one may oppose the independence of the Legal Aid Department on the ground that it will affect the judicial institution or the legal institution.

In addition, I object to taking an issue involving the independence or any change of the Legal Aid Department to the Sino-British Joint Liaison Group for discussion. We can all recall what happened to the independence issue in the case of Radio Hong Kong. To this day, the UDHK, including myself, think that the independence issue of Radio Hong Kong is an internal affair of Hong Kong now and will be an internal affair of the Hong Kong Special Administrative Region under the Basic Law's stipulations of "one country, two systems" and "a high degree of autonomy." It should not have been referred to the Sino-British Joint Liaison Group.

I hope that the Government, when studying the whole issue of whether the Legal Aid Department should be independent, will also pay attention to some related problems, such as how to conduct popular law education more effectively so as to enhance the general public's knowledge of law and of litigation. Also, the Government should encourage dedicated organizations and individuals in the legal profession to provide quality legal services free of charge and at no cost to the Government. In foreign countries, there are church groups and voluntary bodies which use religious faith or other methods to motivate members of the legal profession to handle special types of cases including cases not covered by the legal aid system. Of course, such groups must be totally voluntary. I hope that the Government will take note of the foreign examples.

Lastly, I would like to say that I am not trying to establish a link between every reform and the 1997 question. Still, the 1997 question in fact does make

the public think of the many systems in China. How drastically will justice be affected by administrative interference with the legal aid system?

I hope that the Government will reconsider the recommendations of the Consultative Paper and make the legal aid system fully independent.

With these remarks, I support Mr Simon IP's motion.

MR WONG WAI-YIN (in Cantonese): Mr President, Hong Kong is an important modern metropolis and financial centre and has a well-developed economy. Consequently, it also has a complex and rigorous legal system. An additional fact is that English is still the principal language used in legal documents and court proceedings. As a result, for members of the public who cannot afford legal representation, there is really no equality before the law to talk about. The defendant's right to legal counsel in a criminal case is already one of the human rights guaranteed by the Hong Kong Bill of Rights Ordinance. It is clear then that a sound legal aid system is simply indispensable to a sound legal system and a society ruled by law.

In July last year, I moved a motion on legal aid services in this Council. My motion was that the Government should be urged to publish a consultation paper on the subject within one year and invite public comments. Last month, the Government finally published the Consultative Paper on Legal Aid. It was in any case a positive response from the Government. I believe that it is Hong Kong's first public consultation paper of its kind. I find its contents to be a bit simple. Still, it is wide-ranging and will be meaningful for the development of legal aid services in Hong Kong. True, legal aid services involve many technical questions of law. Still, I hereby call on all sectors of the community to offer comments generously. The questions of basic policy, principle, direction of development, supervision and accountability are the same for legal aid as they are for other policy areas. These questions mainly involve choice and compromise among different sets of values. There is nothing mysterious or very abstruse about them. In the final analysis, legal aid services are services to the public. So the Government should encourage members of the public, who are the users of the services, to participate in the discussions and to offer comments generously. This will be very important for the improvement of legal aid services. Organizations and individuals in the legal profession are knowledgeable about the operations of law. Their comments will of course be important. But, like any other profession, the legal profession also has its professional self-interests and blind spots. Therefore, attention must also be paid to the comments of others, including members of the general public.

Mr President, the present consultation paper deals with how legal aid services should be improved. Apart from this, it also recommends the establishment of a new body to improve the planning, management and provision of legal aid services. What kind of a body this should be is the main topic of today's motion debate.

The consultation paper mentions three options. The first option is to keep things the way they are and basically to maintain the existing system. So far, not many people seem to be in favour of this option. Therefore, our discussions should be focussed on the two other options. Both these two options have one thing in common. It is the establishment of a body made up primarily of people outside the Government. The body will have overall responsibility for legal aid services. It will be a non-governmental body but will be funded by the Government. The two options depart from whether this body should be directly responsible for the day-to-day administration or a department of the Government, for instance, the Legal Aid Department, should continue to provide legal aid services.

The three powers should be separated and they should act as checks and balances on one another. The executive should not interfere with the administration of justice. This, in Western capitalist countries as well as in Hong Kong, is the consensus view on how government should be; it is also something to which the general public has become accustomed. Legal aid services are a part of the legal system and have to do with the administration of justice. Though they do not completely come under the administration of justice, which is the duty of the courts of law, still, the principle that legal aid services should basically not be subject to administrative interference must be respected. Therefore, the overall administration of legal aid services should be relatively independent of government hierarchy. This principle, too, will become the consensus view of the vast majority in the community. Therefore, the real crux of the question is: What kind of procedural independence should be given to this body responsible for the overall administration of legal aid services? At one time, some professional groups suggested a body which would be made up almost completely of these same professional groups and which would be responsible for all legal aid matters. Meeting Point has strong reservations about such a suggestion. Professional groups, as I have pointed out earlier, have their professional self-interests and blind spots. So the body with overall responsibility for the administration of legal aid must have the participation of representatives of the general public who are not members of the profession. This will be the only way to keep the interests and viewpoints of all sectors in balance.

Mr President, concerning the degree of independence for this body with overall responsibility for the administration of legal aid, Meeting Point thinks that an independent and non-governmental Legal Aid Authority must be set up and it should have the following principal responsibilities and powers:

(1) Allocation of the Government's legal aid money.

(2) In accordance with law, formulating legal aid policies and defining the contents and items of legal aid.

(3) Hearing appeals of rejections of legal aid applications.

(4) Exercising jointly with the Government the power of veto over the appointment of top-level legal aid administrators.

Meeting Point thinks that, if the Authority is given the four principal responsibilities and powers listed above, then it will not be necessary to take away from the Legal Aid Department immediately its responsibility for the provision of legal aid services. If the Authority itself is highly independent and has sufficient powers, then, letting a government department continue providing legal aid services on an interim basis will help to avoid the kinds of of confusion and non-convergence of services that may arise from the making of too many sudden changes. It must be realized that setting up an independent Legal Aid Authority is by itself a major change. It will take interested parties some time to adjust to this change. Besides, if the Authority has the four powers listed above, it will be able to carry out such further reforms as may be required in the future.

Mr President, in view of the above, plus the fact that Meeting Point agrees that, in the long term, legal aid services should develop in the direction of greater independence, the four Members from Meeting Point support Mr Simon IP's motion.

The buzzer sounded a continuous beep.

PRESIDENT: Mr WONG, you have to stop.

MS ANNA WU: Mr President, I am a member of the Law Society Council and I support fully the position that has been taken by both branches of the legal profession on the motion.

It is curious that the Government should be so keen in entrusting certain services to bodies outside the Government, such as the Hospital Authority, but should be so resistant when it comes to legal aid. My curiosity is increased since the Administration's philosophy seems to be that it should farm out services as far as possible to outside operators.

Mr President, the Government readily admits that the administration of justice must be separate from and independent of the Government. The administration of legal aid must operate and be perceived by the public to operate outside the Government. Retaining the Legal Aid Department within the Government simply will not do. Adopting a half-hearted measure by creating a body to monitor the Legal Aid Department simply makes matters worse. This would only lead to a false sense of security, when in fact the Legal Aid Department will continue to be nothing more and nothing less than a government department.

The Legal Aid Department is a government department. In terms of the civil service hierarchy, the Director of Administration, who represents the relevant policy branch, has the responsibility for the department. He assesses the performance of the department and the department confers with him on any matter that relates to the objectives of the department or has policy implications. Any extension of legal aid to cover Bill of Rights cases or consumer protection cases would undoubtedly require the approval of the relevant policy branch. The staff of the department are civil servants and are accountable to their seniors in the service in the same way as other civil servant are. I doubt if the staff of the Legal Aid Department would be looked upon kindly by the Government if they were known to be taking a position different from that of the Government on the administration of legal aid.

It is patently obvious that the administration of legal aid should be run, not just in name but in substance, outside the Government. If the Government disagrees, then it has to demonstrate why legal aid should be run as a government department rather than as an independent body outside the Government. It is time that we stopped pussyfooting around the subject. Where is the credibility of legal aid if the public, rightly or wrongly, feels that the provision of such aid is dependant on the Government being favourably inclined? Where is the credibility of legal aid if the merit tests of applicants are vetted by civil servants?

When legal aid was introduced to the public in the 1960s, it was under the administration of the Judiciary. The Legal Aid Bill of 1966 stated, and I quote, "It is proposed that the Legal Aid Scheme should be under the control of a Director of Legal Aid, who will be appointed by the Governor under clause 3 of the Bill. Initially it is intended to appoint a Deputy Registrar of the Supreme Court as Director, though at a later stage it may be found necessary to establish a separate organization, outside the Judiciary". I am surprised that the separate organization turned out to be a government department.

Mr President, I wish to refer to a number of matters arising from the Consultative Paper on Legal Aid.

On consumer protection, it must be recognized that complaints from individual consumers normally involve only small amounts of money. To pursue an individual claim would not be cost efficient. But to require a group of consumers all to satisfy the means test as is recommended in the Consultative Paper would effectively disqualify consumer representative actions from legal aid. To advance the cause of protection for the consumers, different arrangements must be made.

I would advocate the greater use of specialized tribunals which are more cost efficient and informal to deal with matters such as consumer protection and certain Bill of Rights cases, particularly those that require solutions to issues involving groups of individuals. I would also advocate greater relaxation of the Supplementary Legal Aid Scheme for the benefit of the sandwich class in terms

of nature of claims covered and the eligibility criteria of the applicants. This type of assistance, which is based on a contingency basis, could also be extended to consumer representative actions.

To conclude, I would mention that in other jurisdictions legal insurance can be purchased by members of the public so that they will have access to legal advice and assistance wherever needed. This is a useful idea that we should explore.

Mr President, I support the motion.

CHIEF SECRETARY: Mr President, I would like to thank Mr Simon IP and other Members who have spoken during this debate for their many interesting points on our legal aid services.

Although many Members have focussed on the question of the independence of legal aid services, of course the Consultative Paper covers a much wider range of subjects than that. It covers financial eligibility limit, the scope of civil and criminal legal aid, the Supplementary Legal Aid Scheme for the "sandwich class", proposal for a Fixed Fee Interview Scheme, and sources of funding, and so on. We welcome the comments by a very few Members who have made comments on those points also and will take them into account in our recommendations.

The theme of today's motion is the system of administration of our legal aid services which is one of the subjects covered by the Consultative Paper. At the outset, I would wish to make the point most strongly that I would not wish to prejudge the outcome of the current consultation exercise. However, I think it would help if I can explain briefly the present system and the Working Group's findings.

As Members have pointed out, at present publicly funded legal aid services are provided by the Legal Aid Department and through the Legal Advice and Duty Lawyers Scheme operated by the legal profession. Although the Legal Aid Department is a government department, the Director of Legal Aid is empowered under the Legal Aid Ordinance to consider applications before her independently, in accordance with statutory criteria. There is no interference whatsoever by the Administration with decisions made by the Legal Aid Department on the grant of legal aid.

The legal profession has emphasized that it is important that the legal aid administration should be perceived to be independent. This point was also made by a number of Members who spoke during the previous motion debate last July. With this objective in mind, the Working Group has considered three options to enhance the perception of the independence of legal aid administration. Option (a) is to establish an Advisory Committee on Legal Aid and to maintain largely the *status quo*. Option (b) is to establish a non-

government statutory authority for the day-to-day administration of publicly funded legal aid services to replace those provided by the Legal Aid Department and the various schemes operated by the legal profession. Option (c) envisages also the establishment of an independent statutory authority with responsibility for the overall management of publicly funded legal aid services, but retaining the Legal Aid Department and the Legal Advice and Duty Lawyers Scheme, effectively as agents discharging the authority's responsibilities.

Whilst I accept that option (a) is not a big step forward, the other two options go a long way towards enhancing the perception of the independence of legal aid administration, as they provide for the setting up of an independent statutory legal aid authority. The statutory authority should comprise lawyers and non-lawyers and this would provide greater opportunities for public participation in the administration of legal aid. There is no question, I think, that the transparency and accountability of legal aid administration would be enhanced by such a scheme.

The main difference between options (b) and (c) is that option (c) does not involve the dis-establishment of the Legal Aid Department or the dissolution of the schemes currently run by the legal profession. Their existing activities will be retained but they will operate under the supervision and control of the new authority. They are effectively agents of the authority and are accountable to it.

The Working Group favours option (c), as it meets the objective of enhancing the independence of legal aid administration, and is capable of quicker implementation with less disruption in the delivery of legal aid services during any changeover.

Most Members who have spoken during the debate today are in support of the setting up of an independent statutory legal aid authority. Some Members, notably Messrs Simon IP and Martin LEE, have gone further to suggest that the Legal Aid Department should be entirely independent of the Government so that legal aid administration is seen to be free from any hint of bias or possible interference by the executive branch of the Government. I must say again that though the Legal Aid Department operates as a government department, the question of interference by the executive does not exist. Neither is there any conflict in the role of the Department as suggested by Mr Simon IP. There are numerous examples in which the Legal Aid Department, acting on behalf of its clients, has successfully taken the Government to court. The Department is defending the clients daily against legal action instituted by the Government. There are even cases in which legal aid has been granted by the Director of Legal Aid to sue the Legal Aid Department itself. I notice that Mr IP makes much of the perception point but has not produced a single piece of evidence to suggest that decisions taken within the Legal Aid Department have on any occasion been influenced by the status of legal aid officers.

Could I here also comment on the point made by Members about the departure of the previous Director of Legal Aid. I strongly resent the

suggestion, made by two Members, that the decision not to renew the contract of the former Director of Legal Aid was influenced by professional decisions made by that Director. It was in fact the Public Service Commission — whose integrity, I think, Members of this Council would agree is beyond doubt — which made strong representations that the Director's post should be localized. I find it strange that at a time when the Legislative Council is pushing hard for a faster pace of localization, that we should be criticized for doing just that in this case.

Furthermore, clients of the Legal Aid Department do not appear to share the concern, as suggested by some Members, that a person seeking legal aid for suing the Government, or defending himself against charges filed by the Government, should not be represented by the Legal Aid Department. According to the Legal Aid Department's recent survey, no less than 88% of its clients actually preferred the Department's counsel to outside lawyers to take up their cases. This shows that there is no lack of confidence in the independence of the Legal Aid Department and its competence in defending the clients' interests.

Perhaps we should look just briefly at the practical considerations if the Legal Aid Department were to be dis-established. Some Members have referred to these points already. The first consideration is certainly the impact on the staff. Mr Simon IP has asked the Legal Aid Department staff to indicate their preference for an independent status outside the Government. I wish to point out that the Director of Legal Aid has given her professional and departmental staff copies of the Consultative Paper on Legal Aid. And so far there is no conclusive evidence that the proposal to separate the Legal Aid Department from the Government would be welcomed by the staff in general.

The second practical consideration is related to costs and many Members have referred to this. There would be significant costs of abolishing the professional and departmental posts in the Legal Aid Department. Whether we should pay for such substantial costs at the expense of other services in Hong Kong is clearly a question that needs to be addressed and addressed seriously.

The third consideration is the disruption in services. There would be a lead time in dis-establishing the Legal Aid Department and in establishing a replacement organization that would encompass the services currently provided by the Department and the schemes operated by the legal profession. There will be inevitable disruption in these services and inconvenience to users during the transitional period. I note that both Mr WONG Wai-yin of Meeting Point and Mr Moses CHENG of the Liberal Party favour evolutionary changes in our system to minimize the disruption in the provision of our legal aid services.

To sum up, we have already in place a well-established system whereby legal aid is efficiently administered by the Legal Aid Department and the legal profession to cater for the needs of the clients. It is independent in practice and

neither the Department nor the legal profession's schemes are subject to outside interference. Any problem about the independent image of legal aid administration in Hong Kong is one of perception, and that is a point that many Members have made during this debate.

The question, I think, is whether we should pay for the price of dis-establishing the Legal Aid Department for enhancing, in terms of perception, the independence of legal aid administration as advocated by Mr Simon IP and some other Members. The alternative option favoured by the inter-departmental Working Group, and found, I note, to be acceptable by Mr TAM Yiu-chung and Mr WONG Wai-yin, involves the setting up of an independent Legal Aid Authority with the Legal Aid Department as its executive arm. It is by no means a cosmetic change as suggested by Mr Simon IP or a half-hearted measure as suggested by Ms Anna WU.

But I would stress to Members that notwithstanding the comments and clarifications I have made, the Administration is not in a position to take any firm view on the future development of legal aid administration at this stage. We would not wish to do so because we do not wish to prejudge the outcome of the current public consultation. I welcome the views of Members made during the debate this evening. Those views together with other responses to the Consultative Paper on Legal Aid will be taken into account by the Administration in forming its final recommendations.

Mr President, I hope that Members will not feel that the inducements offered by Mr Simon IP to stay for the debate should also extend to their also having to vote for his motion in order to receive the benefit which he is offering. *(Laughter)* Clearly the two official Members have resisted any such blandishment. *(Laughter)* Since it is too early for the Administration to come to views on the motion, Mr President, I will abstain.

PRESIDENT: Mr Simon IP, do you wish to reply? You have 1 minute 12 seconds.

MR SIMON IP: Mr President, I thought I saw breakfast being brought in for the Chief Secretary in the Ante Chamber, but perhaps, I am wrong.

To advance bureaucratic reasons against making legal aid services truly independent exposes the lack of will on the Government's part to improve the present system. It gives the lie to the importance which the Government says it attaches to the perception of independence. It confirms the cosmetic nature of its proposals. The cosmetics was so cleverly applied that it has managed to fool one or two Members of this Council.

As far as disruption is concerned, I do not think there will be much. The Government is very experienced in setting up bodies which take over services

from the Government. Disruption of services can be eliminated with proper planning and organization which the Government is so good at.

As for the costs of disestablishment of the Legal Aid Department, even assuming it is going to cost $80 million, it is worth one-hundredth of the Tsing Ma Bridge. Is the rule of law worth just one-hundredth of the Tsing Ma Bridge?

Question on the motion put.

Voice vote taken.

THE PRESIDENT said he thought the "Ayes" had it.

MR SIMON IP: Mr President, I claim a division.

PRESIDENT: Council will proceed to a division.

PRESIDENT: Would Members please proceed to vote?

PRESIDENT: Do Members have any queries? If not, the results will be displayed.

Mr Allen LEE, Mrs Selina CHOW, Mr HUI Yin-fat, Mr Martin LEE, Mr SZETO Wah, Mr Andrew WONG, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Dr LEONG Che-hung, Mrs Elsie TU, Mr Peter WONG, Mr Albert CHAN, Mr Vincent CHENG, Mr Moses CHENG, Mr CHEUNG Man-kwong, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Mr Simon IP, Mr LAU Chin-shek, Miss Emily LAU, Mr LEE Wing-tat, Mr Eric LI, Mr Fred LI, Mr MAN Sai-cheong, Mr Steven POON, Mr TIK Chi-yuen, Mr James TO, Dr YEUNG Sum, Mr Howard YOUNG, Mr WONG Wai-yin, Dr TANG Siu-tong, Miss Christine LOH, Mr Roger LUK, Ms Anna WU and Mr James TIEN voted for the motion.

Mr TAM Yiu-chung and Dr Philip WONG voted against the motion.

The Chief Secretary, Mr Martin BARROW and Mrs Peggy LAM abstained.

THE PRESIDENT announced that there were 37 votes in favour of the motion and two votes against it. He therefore declared that the motion was carried.

Private Member's Bill

First Reading of Bill

IMMIGRATION (AMENDMENT) BILL 1993

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

Second Reading of Bill

IMMIGRATION (AMENDMENT) BILL 1993

MR MICHAEL HO moved the Second Reading of: "A Bill to amend the Immigration Ordinance."

MR MICHAEL HO (in Cantonese): Mr President, I move that the Immigration (Amendment) Bill 1993 be read the Second time.

The importation of labour is now a highly controversial policy. Imported workers numbering no more than 25 000 at any time have been allowed to work in Hong Kong since the Government started to expand the labour importation scheme in 1992. The general labour importation scheme introduced in 1992 has turned labour importation into an established long-term policy in Hong Kong. And such an institutionalized policy has enormous economic repercussions. Under the present arrangement, the Legislative Council is denied any role in terms of the formulation and implementation of the policy. The policy, after endorsed by the Governor in Council, was then implemented by the Immigration Department and the Labour Department. In this respect, I think changes should be made to strengthen the Legislative Council's monitoring role with respect to the labour importation policy. According to the present constitutional arrangement, the Governor in Council is not accountable to the Legislative Council in the executive-led government. For this reason, it is difficult for the Legislative Council to influence the Executive Council's decisions. However, as Legislative Councillors we are duty bound to exercise this Council's power to monitor the labour importation policy on behalf of the public. Given the existing limitations, we hope that, as a first step, we could monitor the implementation of the policy by scrutinizing the details of the labour importation scheme.

In order to achieve the aforesaid aims, now I move the Immigration (Amendment) Bill 1993. The Bill confers on the Government the power to formulate rules relating to the implementation of the labour importation policy

and introduce them to this Council for enactment in the form of subsidiary legislation. In this way, Members of the Legislative Council can monitor the implementation of policies through the examination of the subsidiary legislation in question. In the event that the Government wishes to make any change in the implementation rule in future, it has to make prior corresponding amendments to the subsidiary legislation and submit it to the Legislative Council for endorsement before implementation.

The arrangement of the amendment to the Bill is in line with the Government's current practice. At present the Government is implementing quite a number of policy-related Ordinances by way of the introduction of guidelines or implementation details in the form of subsidiary legislation. For instance, there are the Noise Control Ordinance and the Ozone Layer Protection Ordinance which are related to the environmental policy, and the Public Bus Services Ordinance, the Ferry Services Ordinance and the Cross-Harbour Tunnel Ordinance which are related to public utilities. That is to say, even if there is any change in the bus routes or any increase in the Cross Harbour Tunnel toll, the proposals must be submitted to this Council for scrutiny in the form of subsidiary legislation. The present arrangement under which the implementation details of the labour importation scheme would not be required to have the Legislative Council's endorsement is an exception but also an anomaly. Meanwhile, I have also referred to laws of the United Kingdom on the importation of foreign labour. The United Kingdom Immigration Act 1971 confers on the Secretary for State for the Home Department the power to formulate rules controlling the importation of foreign labour and the rules must be submitted to the House of Commons for endorsement before being put into effect. The Bill now before us is in compliance with the United Kingdom's long-standing practice.

Before I move the Bill, I have discussed with officials of government departments concerned. They also said that preparation for the drafting of related subsidiary legislation was underway. After all, it is I, instead of the Administration, who decided to take the initiative to introduce the Bill. The main reasons are as follows:

Firstly, given that not contravening the Standing Orders, Legislative Council Members are entitled to introduce a Bill. The proper exercise of such power by the Members is of paramount importance to strengthening the practice that the executive should be accountable to the legislature and giving full expression to the spirit of monitoring the Government by the Legislative Council which represents public opinion. Under the present constitutional structure, the Governor in Council is not accountable to the Legislative Council. For this reason, a bill drafted by the executive branch of the Government may be negatived by the Executive Council. Over a year has elapsed ever since the Bill was proposed and discussions on it were held by legislators and the Administration. I would not like to see any further delay, so I have decided to introduce the Bill to this Council during this session. The Administration has already concurred with the principles behind the Bill. As it shares common

objectives with the legislators, the Administration will not oppose the Bill simply because it is not introduced by itself. Furthermore, the introduction of the Bill can also tie in with the working schedule. According to the present pace of progress, if the Bill is enacted at the end of 1993 after being examined and approved by the Legislative Council, by that time the Administration should also have completed the drafting of the subsidiary legislation which can subsequently be submitted to the Executive Council for endorsement before tabled to the Legislative Council for examination.

The Bill seeks to amend Section 11 of the Immigration Ordinance (Cap. 115) by adding Section 11(1B). It is to ensure that foreign workers will be permitted to enter Hong Kong for the purposes of employment only in accordance with rules approved by the Legislative Council. Yet, since the Bill only applies to foreign workers who enter Hong Kong for employment under the general labour importation scheme, we have to introduce an additional Section 11(1C) to render Section 11(1B) inapplicable to foreigners who come to Hong Kong for employment not under this scheme. After the enactment of the Bill, the Government has to submit to the Legislative Council for the examination of the implementation details of the labour importation policy in the form of subsidiary legislation. This amendment will not have any financial and manpower implication.

Mr President, I beg to move.

Bill referred to the House Committee pursuant to Standing Order 42(3A).

End of Session

PRESIDENT: That concludes the business of this Session. It remains for me to wish Members well during the summer recess. The new Session will start on 6 October 1993 to which date I now adjourn this Council.

Adjourned accordingly at twenty-six minutes past One o'clock on the morning of 22 July 1993.

Note: The short titles of the Bills/motions listed in the Hansard, with the exception of the Foreign Corporations Bill and Western Harbour Crossing Bill, have been translated into Chinese for information and guidance only; they do not have authoritative effect in Chinese.

WRITTEN ANSWERS

Annex I

Written answer by the Secretary for Planning, Environment and Lands to Mr Fred LI's supplementary question to Question 1

The detection team formed by the Housing Authority is currently made up of two Housing Officers. The team is meant to be operated on a trial basis and its operation is mainly focussed on public rental estates in Central Kowloon. A review will be conducted later in the year to consider how the operation can be extended to other regions.

Annex II

Written answer by the Secretary for Education and Manpower to Mr Moses CHENG's supplementary question to Question 2

I have obtained the statistics for summonses involving scaffolds from the Commissioner for Labour. They are as follows:

	No. of summonses	*No. of convictions*
1990	50	46
1991	67	65
1992	64	63
Total	181	174

Annex III

Written answer by the Attorney General to Mr James TO's supplementary question to Question 5

I confirm that since "court" is defined in section 2 of the Official Languages Ordinance (Cap 5) to include "any tribunal" and the Lands Tribunal is not listed in the Schedule to the Ordinance as being a court in which proceedings may be conducted in either of the offical languages, the effect of section 5(2) of the Ordinance is that proceedings (which is generally taken to include pleadings) in the Tribunal shall be in English.

WRITTEN ANSWERS — *continued*

The position in the Tribunal is modified by rules 18(1A) and 51 of the Lands Tribunal Rules which provide, respectively, that the registrar may require a Chinese translation of an expert's report to be lodged and that if the rental value of premises in dispute is less than $500, notices of application and opposition by the tenant or sub-tenant may be in Chinese.

I understand that if a litigant is in person and reads only Chinese, the registrar will as a matter of practice require a translation of the report.

I also understand that the Chief Justice is considering increasing the rental limit in rule 51 from $500 per month to $5,000 per month.

Annex IV

Written answer by the Chief Secretary to Mr Martin BARROW's question raised in relation to the Chief Secretary's statement

The position of the ethnic minorities was fully considered by Her Majesty's Government during the passage of the British Nationality (Hong Kong) Act 1990. It was decided then that no special provision should be made for them under the Act. In the report of the Nationality Sub-Committee of the Legislative Council, and in the debate of 10 March 1993, Members also agreed that the British Nationality Scheme was not the right way to provide for the ethnic minorities. Legal advice from the Home Office and the Attorney General's Chambers confirmed that an addition to the overall quota would require an Act of Parliament, and could not be done through the Order in Council which provides for the implementation of the second phase of the scheme.

What the Legislative Council proposes, and what we have been seeking, is British citizenship for the ethnic minorities. If Her Majesty's Government accept this, the way to give effect to it is essentially a matter for Her Majesty's Government. But it would require the enactment by Parliament of new primary legislation.

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