OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 3 July 1996

The Council met at half-past Two o'clock

MEMBERS PRESENT

THE PRESIDENT
THE HONOURABLE ANDREW WONG WANG-FAT, O.B.E., 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 MARTIN LEE CHU-MING, Q.C., J.P.

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

THE HONOURABLE SZETO WAH

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

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

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

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

THE HONOURABLE ALBERT CHAN WAI-YIP

THE HONOURABLE CHEUNG MAN-KWONG

THE HONOURABLE CHIM PUI-CHUNG

THE HONOURABLE FREDERICK FUNG KIN-KEE

THE HONOURABLE MICHAEL HO MUN-KA

DR THE HONOURABLE HUANG CHEN-YA, M.B.E.

THE HONOURABLE EMILY LAU WAI-HING

THE HONOURABLE LEE WING-TAT

THE HONOURABLE ERIC LI KA-CHEUNG, O.B.E., J.P.

THE HONOURABLE FRED LI WAH-MING

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

THE HONOURABLE JAMES TO KUN-SUN

DR THE HONOURABLE SAMUEL WONG PING-WAI, M.B.E., F.Eng., 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

THE HONOURABLE CHRISTINE LOH KUNG-WAI

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

THE HONOURABLE LEE CHEUK-YAN

THE HONOURABLE CHAN KAM-LAM

THE HONOURABLE CHAN WING-CHAN

THE HONOURABLE CHAN YUEN-HAN
THE HONOURABLE ANDREW CHENG KAR-FOO

THE HONOURABLE PAUL CHENG MING-FUN

THE HONOURABLE CHENG YIU-TONG

THE HONOURABLE CHEUNG HON-CHUNG

THE HONOURABLE CHOY KAN-PUI, J.P.

THE HONOURABLE DAVID CHU YU-LIN

THE HONOURABLE ALBERT HO CHUN-YAN

THE HONOURABLE IP KWOK-HIM

THE HONOURABLE LAU CHIN-SHEK

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

DR THE HONOURABLE LAW CHEUNG-KWOK

THE HONOURABLE LAW CHI-KWONG

THE HONOURABLE LEE KAI-MING

THE HONOURABLE LEUNG YIU-CHUNG

THE HONOURABLE BRUCE LIU SING-LEE

THE HONOURABLE LO SUK-CHING

THE HONOURABLE MOK YING-FAN

THE HONOURABLE MARGARET NG

THE HONOURABLE NGAN KAM-CHUEN

THE HONOURABLE SIN CHUNG-KAI
THE HONOURABLE TSANG KIN-SHING

DR THE HONOURABLE JOHN TSE WING-LING

THE HONOURABLE MRS ELIZABETH WONG CHIEN CHI-LIEN, C.B.E., I.S.O., J.P.

THE HONOURABLE LAWRENCE YUM SIN-LING

MEMBERS ABSENT

DR THE HONOURABLE DAVID LI KWOK-PO, O.B.E., LL.D. (CANTAB), J.P.

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

DR THE HONOURABLE ANTHONY CHEUNG BING-LEUNG

PUBLIC OFFICERS ATTENDING

THE HONOURABLE DONALD TSANG YAM-KUEN, O.B.E., J.P.
CHIEF SECRETARY

MR RAFAEL HUI SI-YAN, J.P.
FINANCIAL SECRETARY

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

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

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

MR DOMINIC WONG SHING-WAH, O.B.E., J.P.

SECRETARY FOR HOUSING

MRS KATHERINE FOK LO SHIU-CHING, O.B.E., J.P.
SECRETARY FOR HEALTH AND WELFARE

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

MR PETER LAI HING-LING, J.P.
SECRETARY FOR SECURITY

MR BOWEN LEUNG PO-WING, J.P.
SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS

MR KWONG KI-CHI, J.P.
SECRETARY FOR THE TREASURY

MR KWONG HON-SANG, J.P.
SECRETARY FOR WORKS

MRS LESSIE WEI CHUI KIT-YEE, J.P.
SECRETARY FOR FINANCIAL SERVICES

MR FRANCIS HO SUEN-WAI, J.P.
SECRETARY FOR TRADE AND INDUSTRY

CLERKS IN ATTENDANCE

MR RICKY FUNG CHOI-CHEUNG, SECRETARY GENERAL

MR LAW KAM-SANG, DEPUTY SECRETARY GENERAL

MISS PAULINE NG MAN-WAH, ASSISTANT SECRETARY GENERAL

MR RAY CHAN YUM-MOU, ASSISTANT SECRETARY GENERAL

PAPERS

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

Subject	
Subsidiary Legislation	*L.N. No.*
Medical Practitioners (Registration and Disciplinary Procedure) (Amendment) Regulation 1996	280/96
Inland Revenue (Qualifying Debt Instruments) Order	293/96
General Holidays Order 1996	294/96
Matrimonial Causes (Amendment) (No. 2) Rules 1996	295/96
Rules of the Supreme Court (Amendment) (No. 2) Rules 1996	296/96
Criminal Procedure (Amendment) Ordinance 1996 (37 of 1996) (Commencement) Notice 1996	297/96

Sessional Papers 1995-96

No. 93 — Revisions to the Estimate of Expenditure on Capital Projects approved by the Urban Council as at end of March 1996

No. 94 — Regional Council Revised Estimates of Expenditure 1995-96

No. 95 — Audited Statement of Accounts of the Hong Kong Rotary Club Students' Loan Fund for the year ending 31 August 1995

No. 96 — Audited Statement of Accounts for the Sing Tao Foundation Students' Loan Fund for the year ending 31 August 1995

No. 97 — Hospital Authority Annual Report 1994-1995

No. 98 — Statement of Accounts of the Samaritan Fund for the year ended 31 March 1995

No. 99 — Hong Kong Export Credit Insurance Corporation Annual Report for 1995-96

No. 100 — J.E. Joseph Trust Fund Report for the period 1 April 1995 to 31 March 1996

No. 101 — Kadoorie Agricultural Aid Loan Fund Report for the period 1 April 1995 to 31 March 1996

No. 102 — Report by the Commissioner of Correctional Services on the Administration of the Prisoners' Welfare Fund for the year ended 31 March 1995

No. 103 — Report on the Administration of the Immigration Service Welfare Fund from 1 April 1995 to 31 March 1996 prepared by the Director of Immigration

No. 104 — Securities and Futures Commission Annual Report 1995-1996

No. 105 — Pneumoconiosis Compensation Fund Board 1995 Annual Report

ORAL ANSWERS TO QUESTIONS

Means Test for Public Sector Medical Charging Policy

1. **DR YEUNG SUM** asked (in Cantonese): *Will the Government inform this Council whether, in reviewing the existing policy on fees and charges for medical services in the public sector, consideration will be given to modifying the existing policy by introducing a "means test" system?*

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Mr President, our health care policy is to ensure that no one is denied adequate medical treatment through lack of means. This implies that everyone should be allowed to enjoy equal access to medical services provided in the public sector, irrespective of their financial status.

I have no intention to depart from this established principle by subjecting well-off patients to means testing with a view to restricting their access to public medical services.

The review conducted by Government seeks to explore different strategies for the future development of our health care system against rising public expectations, escalating costs and ageing population. The scope of this exercise covers a wide range of complex and inter-related issues such as cost containment, interface between primary health care and hospital services, role of the private sector, fee structure and financing options. I assure Members that Government will consult public opinion as well as the views of this Council in the process.

DR YEUNG SUM (in Cantonese): *Mr President, recently representatives of the Private Hospital Group had a meeting with the Health and Welfare Branch and suggested that better-off patients should pay higher fees and charges for medical services in public hospitals with a view to improving the usage rate of private hospitals. What is the response of the Government in regard to this suggestion?*

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Mr President, the Private Hospital Group, which is formed by a number of private hospitals,

had a meeting with me lately. They urged that the Government should state clearly the detailed planning and allocation of resources for medical development and the like so that private hospitals can play their complementary and supporting roles where public hospital services are inadequate. The Private Hospital Group also exchanged a lot of ideas with me in regard to the operations of private hospitals, and presented some views on the arrangements of public medical facilities and subvention to medical costs. We will take into consideration in our review these suggestions from private hospitals. In my main reply, I have also mentioned that the established principle of the Administration will not change. That means we will not require the better-off patients to undergo any means testing with a view to restricting their access to public medical services.

MR LAW CHI-KWONG (in Cantonese): *Mr President, in answering the question raised by Dr YEUNG, the Secretary for Health and Welfare talked about the factors for consideration in the review, but there was no mention of the role played by the public in participating in policy formulation for and the monitoring of future medical services. May I ask the Secretary whether this has also been included in the scope of the review?*

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Mr President, the scope of our review this time is very wide and it has been discussed in detail at meetings of the Health Services Panel of this Council. The scope covers all the existing financing arrangements for our medical policy, the existing medical services provided and how to subsidize those in need in the future. In regard to public monitoring of government services, we already have in place a mechanism at the present moment. But in this respect, I can assure Members that we will put forward an effective monitoring system and we will conduct a full public consultation.

MR MICHAEL HO (in Cantonese): *Mr President, it has been mentioned in the main reply that the Administration is now reviewing its policy. Can the Administration inform us whether it will change the existing policy through tightening the scope of services without introducing the means test system, for example, only those patients who are in critical conditions will be provided with medical treatment, as suggested by the Private Hospital Group?*

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Mr President, the scope of our review covers: what types of services and how much of those should be included in public medical services, how to define basic services, what are emergency and non-emergency services and also what services are essential and what services should be provided in a certain order.

PRESIDENT: Mr Michael HO, are you claiming that your question has not been answered?

MR MICHAEL HO (in Cantonese): *Yes, Mr President. My question is whether the scope of services will be tightened, for example, only those patients who are in critical conditions will be provided with medical treatment.*

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Mr President, at the present stage I cannot say whether or not we will narrow the scope of services as there may be a lot of changes in the demand for our services. We will make our decision according to the needs of Hong Kong, the needs of the Hong Kong people as well as our affordability. In regard to what types of services are considered special needs and how to define them, all these questions are already within the scope of our review. Whether the result is to tighten or to relax the scope, I think that it is still too early to say at this moment.

MR HOWARD YOUNG (in Cantonese): *Mr President, in regard to the introduction of the means test system just mentioned, I would like to ask the Secretary for Health and Welfare whether there is actually someone who has suggested to the Government recently the introduction of a means test mechanism to drive the patients away from public hospitals? If so, who are those people or organizations? If not, is the means test proposal recently mentioned by the public only a kind of false alarm out of the misunderstanding and worries of certain patients organizations which probably have received the information through the media?*

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Mr President, in the main reply, I have already stated very clearly the policy of the Government. If members of the public ever have any worries in this respect, they should no longer worry about it. I have not received any concrete proposal recently concerning the introduction of a means test mechanism for the purpose of determining what kind of service should be provided to the people of Hong Kong.

MR WONG WAI-YIN (in Cantonese): *Mr President, may I ask the Secretary for Health and Welfare when will the medical policy review now underway be expected to finish? And after the completion of this review, when will the plans concerned be implemented? During the course of the review, what sort of consultation will be conducted?*

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Mr President, since our review is fairly comprehensive and complicated, it may take a longer period of time. We have already presented our detailed report during a Panel meeting of the Legislative Council. But I can also give a brief introduction here.

It is estimated that the review will take 18 to 24 months, during which various aspects will be reviewed. Since many areas are inter-related, we cannot review them all at the same stage. The scope of the review covers the expenditure on health care services, how to provide proper services, how to define adequate services, how to meet the needs of our clients as well as various financing options. In the course of our review, we will consult different organizations such as the Hospital Authority, associations related to medical and health services, the public and many other organizations. Upon completion of the review, I reckon that a comprehensive consultation exercise will follow.

Land Exchange for Beaconsfield House Site

2. **MR CHIM PUI-CHUNG** asked (in Cantonese): *Mr President, the Executive Council has recently endorsed the proposal of granting two government sites in Central (that is Beaconsfield House and the Garden Road Multi-storey Carpark Building) to a consortium for redevelopment by way of land exchange which will involve, among other things, the payment of a regrant premium. In this connection, will the Government inform this Council:*

(a) why the redevelopment rights of the two sites have been granted by way of land exchange and not sold by public auction, given that the property rights of the above properties belong entirely to the Government; and

(b) whether the premium received by the Government upon execution of the land exchange document will be included in the revenue from land sales for the current year, that is, whether it will be shared with the Land Fund; if not, why not?

PRESIDENT: I would take the last part to be a supplementary. You may raise it later on.

MR CHIM PUI-CHUNG (in Cantonese): *Mr President, I want to make a little amendment. If I have to repeat, it is .....*

PRESIDENT: I will allow that as a supplementary. You may wish to raise it afterwards.

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS (in Cantonese): Mr President, the two government sites have been granted by way of land exchange to the private developer who owns the former Hilton Hotel site because the developer can develop the three sites together fully, resulting in significant planning gains and a much improved environment in this part of Central. These planning gains include the provision of not less than 5 200 sq m of public open space within the expanded site of 9 656 sq m. These planning gains could not be achieved by piecemeal developments by different developers.

The developer will have to pay a full market value premium (at $3,027.4 million) for the two government sites. Existing public facilities such as the car park, the post office and the public convenience, will be reprovisioned.

The Government will receive the premium upon execution of the documentation for the land exchange, which is expected to be in August 1996. The premium will form part of the revenue from land transactions for the current financial year.

MR CHIM PUI-CHUNG (in Cantonese): *Mr President, in his reply the Secretary for Planning, Environment and Lands referred to the premium of $3.0274 billion as a very reasonable price. The question is that the two government sites have a total area of 9 656 sq m. In other words, if the land is developed with a plot ratio of 15 times, the total construction area will be 144 840 sq m. The premium per square metre is calculated to be $20,900. Is it a reasonable price? Of course, with his rich experience in the building and construction field, I believe the Secretary can figure out whether this is a reasonable and fair price in next to no time.*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS (in Cantonese): Mr President, I am afraid Mr CHIM has made some wrong assumptions in the calculation of the premium. First, in terms of town planning, the two government sites are originally planned for community use rather than commercial development. Therefore, when calculating the basic premium, we should not use the commercial land price as the basis. On the other hand, Mr CHIM also assumes that the whole plot granted to the developer is to be developed at a plot ratio of 15 times. However, when the development entitlement is transferred to the private developer of the former Hilton Hotel site, he has to reconstruct facilities like the car park, post office and public which will be included in the development area of the redeveloped building. Therefore, after deducting the area for such practical development, the future development of the Hilton Hotel site will only have a plot ratio of a little more than 11 times instead of 15. As for the detailed calculation, I cannot explain it here but I can give an assurance that the Government has itself conducted a premium evaluation on this development project and also hired two independent property evaluation firms, which have no current commercial connections with the Government or

with the private developer, to evaluate the sites, the outcome of which matches the Government's evaluation well. Therefore, we firmly believe that the premium we imposed has reflected the real market value.

MR ALBERT CHAN (in Cantonese): *Mr President, in this incident, the issue which has attracted the most criticism is the form of the land grant. The Secretary has said that the sites were granted to the developer concerned by way of land exchange, but in fact the development right was actually granted in the form of a private agreement lacking of transparency. Will the Government tell this Council whether it will consider enhancing the transparency of this form of land grant to let the public get the impression that the Government would not favour some consortia and strike any private deals with them, thus depriving the public of the chance to express their opinions or object to the relevant changes?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS (in Cantonese): Mr President, I want to point out a few things. First, land grant by way of land exchange is a form of land control which we have adopted for years. Therefore, we have not formulated a new policy or taken a new approach. Every land grant by way of land exchange is adopted depending on the situation of the site such as those similar or same forms of land grants by land exchange which we have employed before in other districts. On the other hand, the reason for our adoption of this approach in this site is that if we want to increase the open area or improve the urban facilities and even improve the planning and design, our assessment has shown that this is the best approach. Why? That is because the present sites of Beaconsfield House and the Garden Road Multi-storey Carpark can be turned into a public park in the future, landscaped and designed for wider public access. At the same time, traffic arrangements in that area can also be improved. If we grant the sites of Beaconsfield House and the Garden Road Multi-storey Carpark separately to developers for independent developments, it will result in these two sites still turning out to be buildings in future. Another problem is that when the Garden Road Multi-storey Carpark is under redevelopment, 500 parking spaces will suddenly be lost in that area and, as temporary arrangements cannot be made, traffic will be affected.

PRESIDENT: Mr CHAN, are you claiming that your question has not been answered?

MR ALBERT CHAN (in Cantonese): *Mr President, my question is whether the Government will review the present system to increase its transparency so as to provide the chance for public participation in the relevant planning process and reduce their suspicion of the Government striking secret deals with certain consortia in this kind of land grant.*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS (in Cantonese): Mr President, I am sorry to have omitted this point in my answer just now. In respect of this particular development project, we have in fact already drawn up an amended Town Planning Layout a few years ago and have also explained the general situation of the development to the public. Most importantly, we have also explained to the Town Planning Board that this approach would bring about planning gains. As regards the land grant by land exchange, I have already explained that this is one of the forms of land control often adopted by the Government. We also have many other forms of land grant, so there is no need to conduct a review on this particular approach. The most important thing is that we can explain to the public what planning gains will result in that area after the development. In this respect, we have done our part at various levels, including the district board.

MR HOWARD YOUNG (in Cantonese): *Mr President, in view of the fact that a private land grant benefits both the public revenue and the private corporation concerned, I have no objective as long as there is a fair valuation. But I want to ask that in planning this project, apart from securing the public facilities such as the car park, public convenience and open space, has the Government considered that the original building was a hotel of great significance to the tourist industry, so that it would take this opportunity to request the developer to include a hotel in the new development project? Is this feasible? Has there been any precedent?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS (in Cantonese): Mr President, perhaps I can explain it in this way: The title deed of the former Hilton Hotel was a commercial one. If we do not grant the land by such form of land exchange, the title deed owner of the former Hilton Hotel has every right to independently develop the site himself and build whatever commercial building he likes without any form of Government control. If the developer only develops his own site, we cannot impose any premium. Therefore, we cannot possibly use this opportunity to require them to build anything as long as the site is for commercial use and the future development is in line with the terms of the title deed.

PRESIDENT: Mr YOUNG, are you claiming that your question has not been answered?

MR HOWARD YOUNG (in Cantonese): *Yes. Perhaps the Government has misunderstood my question. The site not only includes private land but also two plots of Crown land. The Government has recently requested a specific building to be constructed in a land grant, just as it has once specified the construction of a hotel in Tsuen Wan. What I want to ask is whether the Government has the right to specify the construction of a certain facility on its part of the land.*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS (in Cantonese): Mr President, I think what Mr YOUNG meant to ask was why we could not develop a hotel on the future site of the Garden Road Multi-storey Carpark or the site of Beaconsfield House and include it as part of the development of the Hilton Hotel site. I think it will be very difficult for us to do so because, on the one hand, we have to accommodate the wish of the developer. As he has the potential right to develop the site independently, if he did not talk with us regarding the acceptance of these terms, there would not be any chance to talk with him. On the other hand, if we did not do it this way, after the former Hilton Hotel site has been developed, we may not obtain the possible planning gains in the sites of Beaconsfield House and the Garden Road Multi-storey Carpark as provided in the present development. Therefore, the situation often

depends on the response of the market and the trend of commercial activities. When we negotiated about this site, we did not include the hotel as one of the factors, nor had the developer the interest to do so.

MR CHIM PUI-CHUNG (in Cantonese): *Mr President, although the Secretary has explained the situation, actually the people are a bit discontented regarding the Garden Road and the Tuen Mun Nullah tenders. As representatives of the people, we have to raise questions and demand clear explanations from the Government when we see a problem. As regards the two sites just mentioned by the Secretary, is there any Government imposed restrictions forbidding the alteration of their use, or is the use of the Beaconsfield House site and the Garden Road Multi-storey Carpark site allowed to be altered so that the Government can develop them by itself without having to rely on other consortia?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS (in Cantonese): Mr President, I have already explained that should the sites of Beaconsfield House and the Garden Road Multi-storey Carpark be developed independently, it would result in the Carpark Building, the former Hilton Hotel and Beaconsfield House being turned into three buildings. As such, all planning gains will be lost. First, the public may not get the leisure grounds in the future as provided in the present design; second, during the redevelopment, 500 parking spaces will be lost in Central; third, the point which I have not mentioned just now is that without the garden which would appear after the development, the two historic buildings that we preserve in Central, namely the St John's Cathedral and the French Mission Building which is the proposed venue for our Court of Final Appeal, will not be able to have an open landscape. Therefore, with regard to overall planning, we must incorporate the development potential of the two neighbouring sites into the site of the former Hilton Hotel, and achieve this purpose by land grant in the form of land exchange.

PRESIDENT: Secretary, you may wish to respond to Mr CHIM Pui-chung's

original supplementary tagged onto the original question, that is, whether or not the full market value premium will be shared with the Land Fund of the Special Administrative Region?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS (in Cantonese): Mr President, the answer is positive.

Employees Compensation Assistance Fund Position

3. **MR CHAN WING-CHAN** asked (in Cantonese): *Mr President, the compensation paid from the Employees Compensation Assistance Fund (the Fund) in the two recent cases was in excess of $10 million per case, resulting in the current balance of the Fund standing at around $50 million only. This is causing concern that the Fund may go bankrupt should there be a few more claims involving huge amounts of compensation. In this connection, will the Government inform this Council:*

(a) of the number of cases being handled by the Employees Compensation Assistance Fund Board (the Board); how many of these cases involve claims arising out of the failure of employers to take out workmen's compensation insurance policy for their employees; and whether the Government has estimated if the current balance of the Fund is sufficient to pay the compensation in respect of the cases being handled by the Board;

(b) whether consideration will be given to reviewing the Fund's operation; and whether the Government will increase its capital injection in the event that the balance of the Fund is insufficient to meet the claims; and

(c) whether consideration will be given to increasing the number of inspection staff in the Labour Department in order to step up the prosecution of employers who fail to take out workmen's

compensation insurance policy for their employees, so as to reduce the number of cases handled by the Board, thus avoiding the danger of the Fund going bankrupt?

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr President, since its establishment in 1991, the Employees Compensation Assistance Fund Board (ECAFB) has handled a total of 93 claims. Apart from the two recent cases, each of which involved payments in excess of $13 million, all other claims involved payments of less than $2.5 million each. The vast majority of the claims that is 79 claims or 85% involved payments of less than $1 million.

As regards part (a) of the question, ECAFB is currently processing nine cases. Like all previous cases, they involve employees without cover of employees compensation insurance. We estimate that the current balance of the Fund is more than sufficient to meet the payments arising from these nine cases. This is based on our assessment that none of the nine cases would involve huge payments. Furthermore, as at 28 June 1996, the Fund has a balance of $59.2 million which would be increased by the projected income from the employees' compensation insurance levy of $21 million for the rest of 1996-1997. This far exceeds the average payments in the past five years of around $13 million per year.

As regards part (b) of the question, we are constantly monitoring the operation of the Fund. At present, the Fund is financed by a steady source of income from a 1% levy on employees' compensation insurance premium payable by employers. The amount is collected from the insurers by the Employees' Compensation Insurance Levies Management Board. The Government has not provided any capital injection into the Fund and we do not see the need to do so.

As regards part (c) of the question, a total of 123 Labour Inspectors are deployed, among other duties, to inspect industrial and non-industrial establishments to ensure that employers have taken out policies against their liabilities under the Employees Compensation Ordinance. In 1995, Labour Inspectors conducted 58 000 inspections and took prosecution action against 530 employers. We consider that the existing staffing establishment adequate for the purpose. The Department will of course continue its vigilant enforcement of the compulsory insurance provisions under the Ordinance.

MR CHAN WING-CHAN (in Cantonese): *Mr President, in the fourth paragraph of the main reply, the Secretary for Education and Manpower has indicated that the staffing establishment of the Labour Department is adequate for the purpose of inspection. But how come there are still 530 employers being prosecuted? In case the Fund has insufficient money for compensation, will the Government make an emergency capital injection into the Fund?*
PRESIDENT: So, two supplementaries.

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr President, in regard to the first part of the supplementary question, our inspection surely has certain deterrent effect. However, it is impossible to guarantee or ensure that a small number of employers will not violate the law. And actually, the number of employers violating the law has not increased in the past few years. It has in fact decreased over the last couple of years.

In regard to the second part of the question, I have already stated very clearly in the main reply. The Fund now has a balance of $59.2 million and, together with the projected income from the employees' compensation insurance levies of $21 million, that will add up to some $80 million. Besides, I have also said that among the cases that we are now dealing with, the claims are not expected to involve huge amounts of compensation. Thus at the present stage, there is no need to worry about the income of the Fund and of course, it is also not necessary to consider injecting capital into the Fund.

MR JAMES TIEN (in Cantonese): *Mr President, when this Fund was established in 1991, the employers did express that the idea of using the 1% levy payable by good employers as insurance premium to cover the bad employers is inappropriate, and that the Government should inject the capital. At that time, the Government argued that it was not the case, saying that the 1% levy was just a very small amount and most claims should involve payment of a few hundred thousand dollars. But recently, we have already seen that the claims involved payments of more than $10 million. The third paragraph of the main reply says that the Government has not provided any capital injection into the Fund and it*

does not see the need to do so. May I ask the Government if there are still more claims involving payments of over $10 million while the balance of the Fund is insufficient to meet the claims, can the Government assure this Council that the 1% levy will not increase and that it will extend loans to or inject capital into this Fund?

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr President, since the Fund is financially sound at the present moment, we will not consider making any changes to the Fund's existing sources of income. Of course, in the future if we see that there are significant changes in the operation of the Fund, whether in the aspect of income or expenditure, such that the Fund may not be able to meet the claims made, we will, as a matter of course, consider how to deal with the problem. But on this speculative question, I cannot make any commitment.

MR LAU CHIN-SHEK (in Cantonese): *Mr President, under the existing legislation, it is compulsory that the employers should take out workmen's compensation insurance policy for their employees. In regard to the fourth paragraph, will the Secretary for Education and Manpower tell us the reasons for the failure of those 530 employers in taking out insurance policies for their employees and what are the categories of reasons?*

Meanwhile, for the 530 employers prosecuted, how many of them have been convicted and how much have they been fined? And has the Government considered whether the existing legislation has sufficient deterrent effect?

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr President, the first part of the question is whether we have analyzed the reasons given by the 500-odd employers who have failed to take out insurance policies for their employees or the real reasons for their doing so. I think I will have to check with the Labour Department whether such kind of information is available. If it is available, I will provide a written answer to the question posed by Mr LAU. (Annex I)

The second part of the question is about the amount of money that the employers prosecuted have been fined by the court. The figures on hand are those for the year 1995 and the fines varied between $800 and $20,000.

PRESIDENT: And the deterrent effect?

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr President, as to the deterrent effect, of course we have to clearly point out that according to the law, once convicted, the maximum penalty is a fine of $50,000 and imprisonment for two years. That is the maximum penalty. The sentences by the court are generally a little below our maximum penalty. Perhaps I can add that as to the deterrent effect, according to our experience in these five years, there are approximately 20 cases involving claims payable from the Fund every year. Thus, there is no sign that the number of employers who fail to take out insurance policies for their employees is increasing.

PRESIDENT: Mr LAU Chin-shek, are you claiming that your question has not been answered?

MR LAU CHIN-SHEK (in Cantonese): *The first part of my question is about the reasons. If the Secretary for Education and Manpower has not analyzed the reasons concerned, I hope that he can ask the Labour Department to do the analysis and then give us a written reply.*

As regards the second part of my question, he has not told us the number of cases in which the employers have been convicted.

The third part is about the deterrent effect. Basically, the present situation has not been improved. It is only that the number of cases has remained at a certain level.

PRESIDENT: Mr LAU, this is not a debate and you should not be responding to the Secretary's reply.

Review of Rice Control Scheme

4. **MR FRED LI** asked (in Cantonese): *as the Government is reviewing the Rice Control Scheme which has been in existence for 41 years, will the Government inform this Council:*

(a) whether it has assessed the impact of the liberalization of the rice import trade on the price of rice; if so, what the outcome is; if not, why not;

(b) why it has suggested in a paper submitted to this Council in May that a reserve stock should be maintained to cater for 45 days' consumption, whereas in the consultation paper issued by the Government in February this year, it was stated that one month's reserve stock of rice should be adequate; and

(c) as about 80 per cent of rice in the territory is currently imported from Thailand, what measures the Government will adopt to identify more suppliers so as to reduce the risk of over-reliance on a single market?

SECRETARY FOR TRADE AND INDUSTRY (in Cantonese): Mr President, the Rice Control Scheme was introduced in 1955 with the objective of ensuring a regular and adequate supply of rice to consumers at reasonably stable prices, and to provide a reserve stock to cater for emergency situations or any short term shortage of supply. The Scheme has achieved this objective and served the community well during the past 41 years.

The Administration has recently reviewed the Scheme. Theoretically, if full liberalization of the rice trade leads to a highly competitive market, consumers will benefit. However, such a situation cannot be taken for granted. Full liberalization in haste may result in market confusion, price instability and even a highly anti-competitive situation in which the market is dominated by a few stockholders. We will therefore adopt a gradual approach in liberalizing the rice trade so as to allow the market to adjust to an increasingly competitive environment. Initially, this will be achieved by a gradual increase in the number

of stockholders this year and introduction of an optional quota system next year.

At present, Hong Kong maintains a reserve stock of rice at about 43 200 tonnes, which is adequate for about 45 days' consumption. The proposal to reduce this stock to 30 days' consumption was made in view of the shorter lead time to source alternative supply as a result of improved transportation. After consulting the Rice Advisory Committee and the Consumer Council, we consider that a reduced level of reserve will undermine public confidence in the ability of the system to respond to crisis situations. We therefore conclude that a reserve stock of 45 days' consumption should be maintained.

As regards the source of supply, the Administration does not impose any restriction or requirement on the stockholders. Thailand accounts for about 77% of our total rice import. This pattern, we believe, is largely a reflection of Thailand's ability to supply Hong Kong, the price competitiveness of Thai rice and consumer preference. The Administration does not consider it appropriate or desirable to interfere with the market forces. Given that we have a reserve stock adequate for 45 days' consumption, there is sufficient time for the stockholders to find alternative suppliers in case there is a need to do so.

MR FRED LI (in Cantonese): *Mr President, at present there are 45 registered rice stockholders in Hong Kong. Even though the Government has said that it will gradually increase the number of stockholders this year, it can possibly be taken to mean an increase of four or five stockholders. Since some stockholders will withdraw, the new stockholders are only to fill the places of the old ones. Thus the rice market is still a closed one. Does the Government intend to fully liberalize the rice market in a gradual process, say, can this target be achieved by the year 2000?*

SECRETARY FOR TRADE AND INDUSTRY (in Cantonese): The stance of the Government is to strike a balance between benefiting the consumers by encouraging competition on the one hand and stabilizing the market price as well as the reserve stock of rice on the other. Therefore, in the main reply, I have mentioned that we will adopt a gradual approach in liberalizing the rice market. In 1988, we will conduct a review of the newly adopted gradual approach. We hope that, from the review, we can find out what to do next after the first step. Anyway, no matter how it goes, in a conference of the Asia Pacific Economic Co-operation Organization, the Government has already undertaken that the

Hong Kong market will be liberalized in 2010 so as to attain the target of free trade. Of course, we hope that this timetable can be brought forward so that we do not have to wait till 2010 in order to achieve this target.

PRESIDENT: Are you claiming, Mr LI, that your question has not been answered?

MR FRED LI (in Cantonese): *The Secretary said it was 1988. I would like to ask whether it was 1998?*

PRESIDENT: 1998, Secretary?

SECRETARY FOR TRADE AND INDUSTRY (in Cantonese): I am sorry, Mr President. I would like to correct it. It should be 1998.

DR LAW CHEUNG-KWOK (in Cantonese): *Mr President, it is learnt that the price of rice at the centralized sale level is standardized through a common agreement among all the rice importers. May I ask the Government whether this is true? If so, has the Government considered other improvement proposals so that the consumers do not have to "consume expensive rice"?*

SECRETARY FOR TRADE AND INDUSTRY (in Cantonese): Mr President, at the moment I do not notice any sign of collaboration or monopoly, nor do I notice any form of common price fixing by way of co-operation among importers.

MR SIN CHUNG-KAI (in Cantonese): *In the coming year, will the Government review the implementation of the quota system, seriously assess the beneficial effects of an open market on consumers, and make the public understand the merits of an open market so as to relieve the unnecessary worries? Can the Government undertake to this Council that the year 2000 will be set down in the*

timetable as the target year for a fully liberalized market to be in place?

SECRETARY FOR TRADE AND INDUSTRY (in Cantonese): Mr President, on the issue of drawing up a timetable for full liberalization of the market, I hope that after a conclusion is drawn or a summation is made following the review due to be conducted in 1998 of the first phase of the gradual implementation process, we can provide a timetable on liberalization of the market to the public or the consumers and the Legislative Council.

MR FRED LI (in Cantonese): *In the consultation paper issued by the Government in February, it was mentioned that the rice could be transported to Hong Kong from its source of production in one month, and thus the paper suggested that the reserve stock of rice adequate for one month's consumption should be maintained, which was about 30 000 tonnes. The Consumer Council also recommended 30 days' reserve stock of rice and reckoned that it would be enough. I do not understand why the Government suddenly reverted to 45 days in its reply to this Council. Can the Government inform us of the reasons for not setting the reserve stock at 30 days' consumption so as to reduce the cost of storing rice and thus benefiting the consumers who would be paying a lower price for the rice, as well as the reasons for reverting to 45 days?*

SECRETARY FOR TRADE AND INDUSTRY (in Cantonese): Mr President, in regard to the 45 days' reserve stock of rice, during the meeting of the Trade and Industry Panel of the Legislative Council on 4 June this year, I already put forward the proposal concerning 45 days' reserve stock of rice. The Consumer Council issued a position paper in regard to the Government's consultation document. It also supported the proposition that the reserve stock should be based on the present quantity by way of standard, that is to say, 45 days' consumption. In the case of 45 days, I believe that different considerations would come into play. Of course, we in the Government hope that a rather firm and steady measure can be adopted so that the public can have more confidence in the stable supply of rice.

Vehicular Passageways in Small House Estates

5. **MR NGAN KAM-CHUEN** asked (in Cantonese): *In many private housing estates developed under the "small house land title" arrangement in the New Territories, there has been a lack of planning for the construction of vehicular passageways providing access to highways for use by residents and emergency vehicles. As a result of this, a number of disputes between estate residents and villagers over the use of vehicular passageways have occurred. In this connection, will the Government inform this Council:*

(a) whether there are any requirements stipulating that vehicular passageways must be provided in such estates; if so, what the details are;

(b) if the answer to (a) is in the negative, whether it will consider amending the existing regulations on land use planning and housing development so as to make the provision of vehicular passageways a requirement for all future housing estates developed under the "small house land title" arrangement; and

(c) how it will tackle the problem of the existing housing estates which are not served by vehicular passageways?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS (in Cantonese): Mr President,

(a) Although the provision of vehicular access is not a statutory requirement governing the grant of small house sites, proper access roads are planned in the layouts for small house developments either through plan preparation or processing of planning applications. For Village Expansion Areas, the provision of vehicular access forms part of the development package;

(b) the existing regulations and planning standards are considered generally adequate. However, we will review them to see if they can be further refined and improved. It is not possible to lay down a rigid requirement for all small house developments as the land ownership pattern and geographical situation vary greatly between them; and

(c) currently, most small house developments share the use of nearby village vehicular access. Under the Rural Planning and Improvement Strategy Minor Works Programme, projects are undertaken to provide road access to villages or rural areas as a whole. However, each project has to be justified by local population level and needs.

MR NGAN KAM-CHUEN (in Cantonese): *Mr President, the Secretary for Planning, Environment and Lands pointed out in part (a) of the main reply that the provision of vehicular access was no a statutory requirement governing the grant of small house sites. If there are no vehicular passageways, problems may arise when handling emergency cases. Has the Government considered ways to reduce or eradicate these potential risks to protect the lives or property of the public?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS (in Cantonese): Mr President, we have to consider several points in the first place. Basically, the sites of many small house applications are inside the applicants' own village, which may be served by only one pedestrian access or one vehicular passageway. Suppose every small house applicant is required to construct one vehicular passageway, firstly, the applicant has no property right over the land for the construction of that road; secondly, the land on which the passageway is to be built may involve the resumption of land from another property owner; thirdly, it is certainly impossible for the Government to resume land on behalf of the small house owner for the building of a small house. Therefore, when looking at the actual situation, as the building of small house forms part of the village development programme, we would consider it most ideal if there is already an existing vehicular access, but it is not possible to require those who construct or apply for the construction of small houses to provide vehicular access under every circumstance. In fact, we also hope that large scale developments, such as those in the layouts for small house developments or the Village Expansion Areas which I have just mentioned, can make provisions for

an access road in the plans so that future small house applicants can apply for land to build their small house along the same line, hence existing roads or roads which may be built in future will not be blocked.

In the case of emergency service, we will consult the Fire Services Department whenever we receive this kind of construction applications. We will only approve the development of more than one small house or a large scale project after the Fire Services Department is satisfied with the plans. From the statistics provided by the Fire Services Department, we can see that they have not encountered any difficulties in their work over the past few years due to problems arising from vehicular passageways in any village.

MR ALBERT HO (in Cantonese): *Mr President, the thrust of my question is about part (c) of the main reply. As far as we know, many small house developers have leased private lots to provide vehicular passageways when developing small houses collectively into estates. However, when the developers have sold out the estates, and after may be two years' time, they will not renew the lease after its expiry date.*

PRESIDENT: Mr HO, could you come to your question please?

MR ALBERT HO (in Cantonese): *The original land owner of the vehicular access will repossess the land and charge exorbitant fees for using the vehicular access, that means he will close the access and impose high charges for the right of way. Will the Secretary inform this Council whether the Government will resume these pieces of land under such circumstances to provide vehicular access as required by the residents, that means to have these pieces of land opened to the public for private vehicles to pass through?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS (in Cantonese): Mr President, there are many such developments in the New Territories which are different in nature, and we have to ascertain the nature of the development in the first place. If it is purely a typical small house development, actually, the original land owner is a villager of the village. As he belongs to that village, he can use the access in that village both before and after the development. There is also another kind of development which is not truly

small house development, but being converted to such upon the application of the developer who may have acquired a piece of agricultural land for the purpose. Under such circumstances, the development is required to have vehicular access of not less than 4.5 m, without which the development will not be approved. There is yet another situation in which the villager himself does not have enough land and has to apply for allocation of land from the Government to build his small house. In that case, we will find it very difficult to compel the applicant to provide vehicular access.

Since cases vary from one another, it is very difficult for me to provide a specific answer to Mr HO's question right now as it all depends on the actual situation. If the village already has an access, there will be no question of whether there is a developer or of the developer leasing that access. If that access is built by him, he can certainly continue to use it. However, if the original villager has already reached an agreement with other villagers before the development concerning the right of way, the related disputes have to be settled by the villagers themselves because they belong to the same village after all.

MR CHAN KAM-LAM (in Cantonese): *Mr President, my question is also focused on part (c) of the main reply and is similar to the question of the Honourable Albert HO just now. The Secretary has just said that if villagers had a dispute, they should resolve it by themselves, but in actual fact solutions could not be found in many cases. Would the Government provide some specific assistance on such problems to the villagers to help them resolve these disputes?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS (in Cantonese): Mr President, I have to go back to the problem which I mentioned just now. When a villager of a village in the New Territories wants to build a small house on his own lot, he has to complete some formalities. For instance, he has to obtain support from the village representative; or he has to be an indigenous villager who possesses the right to a small house. We will only approve the application after verifying such details. Since the villager and the village both come from the same origin, if that villager already enjoys the right of way, there is no reason he should lose the right after constructing a house. So a

circumstance under which problems may arise is where the villager has sold the small house to other people after a few years of building the small house or after paying the regranting premium, and the people who moved into the small house were not indigenous villagers of that village, in other words not his brothers or relatives, and thus conflicts would occur. However, when the villager first built the small house, he could do so only with the support of the village representative and other villagers. If problems emerge afterwards, the Government cannot possibly interfere at that juncture to resume the road for the villager in order to give an access to his small house.

PRESIDENT: Mr CHAN Kam-lam, are you claiming that your question has not been answered?

MR CHAN KAM-LAM (in Cantonese): *Yes, Mr President. My question referred exactly to the final point just made by the Secretary. As yet no solution has been found to this kind of problem, but it should not be ignored simply because there has been a charge in the property right.*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS (in Cantonese): Mr President, we would like to give Hong Kong people an advice: check out the situation before purchasing a village house if they are not the villagers of that village. In fact, vehicles are not welcome in many villages because it has always been the case that vehicles should not be driven into those villages. The configuration of a traditional village has the vehicular passageways outside the village and all villagers enter the village on foot. Therefore, when someone who has bought a village house says he cannot drive his car into the village, I hope Honourable Members can keep one point in mind, that is when we approved the construction of the village house, the approval did not include the building of a carpark for the house. Therefore, villages should have common parking spaces and common vehicular access, while villagers go to their village houses on foot. This is the conventional situation of villages in the New Territories. If a small house has its own carpark, it must be an unauthorized structure.

MR WONG WAI-YIN (in Cantonese): *Mr President, the Secretary mentioned in part (b) of the main reply that a review would be carried out. Would the Secretary inform us about the general scope and direction of this review, the amendments likely to be introduced and the time of its completion?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS (in Cantonese): Mr President, in principle, this review is to study whether we can make the best use of the layout plan format to improve the future construction of village houses or to alleviate the situation where supply cannot meet demand for village houses. In fact, Village Expansion Areas have been designated in many villages. We hope there will at least be a blueprint of the layout plan for the land in future to ensure village houses can be located along both sides of an area instead of being built on randomly chosen sites in the Expansion Areas, so that land can be set aside for road building or other purposes. However, this so-called review will in practice be carried out area by area depending on the situation of each place. Since some villages are situated on hills, there cannot be a blanket application of this policy. Therefore, I cannot inform Honourable Members about the date of completion for the review which is now underway, but the said requirement will be imposed according to individual circumstances.

A Specific Home Purchase Loan Scheme Application

6. **MR LO SUK-CHING** asked (in Cantonese): *I have received a complaint from a member of the public living in a squatter area. According to him, he submitted an application under the "Home Purchase Loan Scheme" on a white form but has been told by the Housing Department (HD) that, as he has been in joint ownership of an ancestral stone hut with several families of the same clan, his application is in contravention of the existing policy which does not allow joint possession of residential premises during the period covering the 24 months prior to the registration of the application and up to the time when the letter granting "approval in principle" is issued, and he is therefore regarded as failing to meet the eligibility criteria. At the same time, the HD also points out to him that under the existing policy on squatter clearance, when the squatter area in which he is living is cleared in future, he will not be eligible for public housing due to his partial ownership of the property in question. In this*

connection, will the Government inform this Council whether:

(a) when processing the application concerned, the HD has considered if the size of the stone hut in question is large enough to accommodate several families with a few dozen members living together; and

(b) the HD can exercise its discretion to process the application concerned according to the actual situation of the applicant?

SECRETARY FOR HOUSING (in Cantonese): Mr President, under the eligibility criteria for the Home Purchase Loan Scheme, a white form applicant will be disqualified if he or any member of his family has owned or co-owned any domestic property during the 24 months before the date of application. Domestic property in this context covers any land on which buildings can be constructed, regardless of size or location.

The complainant referred to in the question is a white form applicant with joint ownership of a number of land lots on Lautau Island, including two buildings lots with one house. His application was rejected on the grounds of ownership of domestic property.

Regarding the second part of the question, the Housing Department has not exercised discretion so far to waive the no-domestic-property rule for white form applicants since to do so will compromise the basic principles of the loan scheme and will be unfair to other applicants.

MR LO SUK-CHING (in Cantonese): *The spirit of this policy is that since a person who owns property has already got his own place to live in, he is hence not allowed to abuse social resources. However, under a variety of circumstances, the owner may appear to own property but actually the conditions may be such as to make it impossible for him to take up residence. For instance, the above-mentioned person owns a property of about 200 sq ft in a remote village on Lantau Island, but he owns only one eighth of the interest in the property. It is simply impossible that he can live there.*

PRESIDENT: Mr LO, please come to your question.

MR LO SUK-CHING (in Cantonese): *Under this situation, will the Government let him sleep in the street as he has nowhere to live? Will the Government review this policy so that everyone can have his own place to live in?*

SECRETARY FOR HOUSING (in Cantonese): Mr President, I think no one in Hong Kong has to sleep in the street. If there is such a case, the Government, through the Housing Department, will provide a proper shelter for these people. The spirit of this policy is that the applicant for public housing or the home purchase loan scheme cannot own any domestic property. As a matter of fact, this spirit is to ensure that the persons in real need of housing can enjoy such scarce resources as are available. If a person owns a certain kind of property and has the ability to find another place to live in, we should let him find a suitable place for himself to live in.

MR LO SUK-CHING (in Cantonese): *Although, on the face of it, he owns one eighth of the property, it is impossible that he can live there. And actually, he has no place to live in. How come he cannot apply for Home Ownership Scheme housing or home purchase loan just like the others?*

SECRETARY FOR HOUSING (in Cantonese): Mr President, I have already mentioned the spirit of this policy. In fact, the situation of this particular applicant is that he owns a number of land lots, including two building lots and one house. Although he only owns one eighth of the interest in the property, he owns the right sort of assets in principle. If necessary, he can give up or sell this property so that he can have proper resources to rent or purchase domestic accommodation. As far as I know, this complainant already has his own domestic accommodation at the present moment.

WRITTEN ANSWERS TO QUESTIONS

Industrial Safety

7. **MR CHENG YIU-TONG** asked (in Chinese): *In view of the recent spate of industrial accidents, will the Government inform this Council:*

(a) whether it will consider amending the existing legislation and codes of practice on industrial safety with a view to formulating stricter industrial safety standards and stipulating heavier penalties;

(b) of the establishment and strength of staff in the Labour Department responsible for carrying out industrial safety inspections on factories and construction sites; and whether the Department has specified the number of inspections to be carried out on each factory and construction site per year in order to ensure that employers and employees comply with the relevant industrial safety legislation and code of practice; if so, what the details are; and

(c) apart from carrying out inspections, what other measures are in place to ensure that employers provide a safe working environment to employees and to enhance the awareness of industrial safety among workers?

SECRETARY FOR EDUCATION AND MANPOWER (in Chinese): Mr President,

(a) It is the Government's policy to improve Hong Kong's industrial safety standards through legislative changes as well as through enhanced publicity, education and promotion on the awareness of industrial safety. We constantly review the adequacy of existing safety laws and codes of practice to ensure that the sanctions and standards reflect community expectations, the gravity of the offence and the level of compliance.

(b) As at 21 June 1996, the establishment of factory inspectors stood at

303 against the strength of 258, including 31 under apprenticeship training. The 303 posts include 49 new posts created in May this year. Eight of these new posts have been filled and the remaining vacancies will be filled when the recruitment formalities are completed. At present, 136 inspectors are engaged in construction site safety, including 10 temporarily redeployed from the factory inspection teams. The remaining 91 are engaged in monitoring safety in manufacturing, shipbuilding, catering, and other industrial establishments.

As regards inspection frequency, different types of construction sites are inspected according to their nature of activity and level of risk, as follows-

	Type of sites	*Inspection frequency*
(1)	Hand-dug caisson sites	once every two weeks
(2)	Public Works Programme sites and Airport Core Programme sites	once a month
(3)	Sites with unsatisfactory safety records	once a month
(4)	Other building or civil engineering sites	once every one to three months

The inspection frequency of manufacturing and other industrial undertakings varies. For more hazardous factory operations, the frequency of inspections ranges from once every three months to twelve months.

For both construction sites and factories, special inspections are conducted in response to complaints or as a result of major accidents. Special campaigns are also launched each year, in addition to the scheduled inspections, to tackle seasonal hazards such as fire

prevention during the dry months, and scaffolds and temporary works during the wet summer months.

(c) An integral part of the current safety control system is to encourage employers, professionals, safety practitioners and workers to be made more aware of what constitutes a safe working environment and safe practices through training, education and promotion. The Labour Department conducts various types of legislation-related briefing sessions and train-the-trainer courses for the industrial sector, whereas the Occupational Safety and Health Council runs safety awareness, occupational health and management training courses for various sectors. Both organizations publish safety booklets, guides, posters and so on and publicize safety messages and best practices through the media.

After consulting the Panel on Manpower of the Legislative Council, we will publish around August 1996 a Charter for Safety in the Workplace. The Charter will set out the rights of workers to enjoy a safe working environment and the employers' obligations to reduce the risks of accidents. It will also highlight the workers' obligations to follow safety instructions and to co-operate with the relevant authorities in reporting breaches of statutory requirements.

As part of an overall effort to improve safety at the workplace, the Administration will introduce several Bills into the Legislative Council in the 1996-97 legislative session. These will cover, among other things, work safety in confined spaces and construction sites, as well as the provision of a safety management system at the workplace.

A detailed description of the Government's existing and proposed measures to improve work safety is set out in the speech given by the Secretary for Education and Manpower in the Legislative Council during the motion debate on industrial safety on 26 June 1996.

Independent Police Complaints Council Bill

8. **MR JAMES TO** asked (in Chinese): *A motion was carried by this Council on 21 April 1993 urging the Government to set up an independent body*

to receive and investigate complaints in relation to police officers. The Government has also put the proposed Independent Police Complaints Council Bill as a priority item in the Legislative Programmes for 1994-95 and 1995-96, but up to now the Government has still not introduced the Bill into this Council. In this connection, will the Government inform this Council:

(a) why it has not yet introduced the Bill into this Council; whether it has to wait until the completion of the Comparative Study of Overseas Police Complaints Systems and the review of the Complaints Against Police Office's procedures before introducing the Bill; if so, when it will complete these two studies and inform this Council of the outcome;

(b) of the progress of the drafting of the Bill; whether it will introduce the Bill into this Council before the end of the current session; if not, when the Government will introduce the Bill; and

(c) whether, in drafting the Bill, the Government will consider expanding the scope of the investigation which can be undertaken by the Independent Police Complaints Council?

SECRETARY FOR SECURITY (in Chinese): Mr President,

(a) On 2 July, the Governor in Council approved the introduction into the Legislative Council of the Independent Police Complaints Council (IPCC) Bill, which aims to give statutory status and to enhance the monitoring role of the IPCC. We have in drafting the Bill taken into account the findings of the comparative study of overseas police complaints systems and the outcome of the independent review of Complaints Against Police Office (CAPO) procedures.

(b) We will introduce the IPCC Bill into the Legislative Council on 10 July 1996.

(c) The main function of IPCC is to monitor and review investigations by CAPO, which deals with all complaints against police officers. The IPCC does not investigate complaints directly. However,

where it identifies any inadequacies or discrepancies in Police investigations, they are taken up with CAPO. For example, the IPCC may ask CAPO to reinvestigate any complaint; it may also interview witnesses, complainants and complainees. In addition, members of the IPCC are able to observe CAPO investigations directly. The Bill will provide the legal basis for the IPCC to discharge all these duties. At the same time, we will also introduce a new package of improvement measures aimed at enhancing the independence of the IPCC, and the credibility and transparency of the police complaints system.

Domestic Waste Recycling

9. **MR HOWARD YOUNG** asked: *In many developed countries, domestic refuse is separated into different categories of waste such as paper, galss, aluminium, and plastic materials prior to collection in order to facilitate recycling. In view of the increasing awareness of the importance of recycling among the public, will the Government inform this Council:*

(a) whether the Government has any long-term plans for recycling waste materials;

(b) whether it has any knowledge of the results of the trial on separation of domestic refuse in some public housing estates in Tseung Kwan O organized by Friends of the Earth; and

(c) whether it will assess the feasibility of carrying out similar activities in all public housing estates and the community as a whole?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President,

(a) The Government's overall objective of waste management is to reduce waste at source, to promote reuse and recycling and to ensure that what remains is disposed of in an environmentally cost-effective

manner. To this end, the Environmental Protection Department (EPD) provides technical support and information to organizers of waste reduction and recovery programmes, as well as to waste collectors and recyclers. The EPD has also introduced a hotline service (Tel No. 2755 2750) to advise the public on the setting up of waste collection schemes to recover recyclable materials such as waste paper and aluminium cans. A pamphlet containing details on how to organize a waste paper separation and collection scheme in residential buildings and office premises has also been printed for distribution to the public.

To further promote waste reduction, a consultancy study commissioned by the EPD has recently recommended a number of waste reduction initiatives, including measures to facilitate more waste recovery and recycling. We are consulting interested parties on these recommendations to enable us to formulate a waste reduction plan for Hong Kong for further consultation with the public later in the year.

(b) The Housing Department has set up waste recycling programmes in all four housing estates in Tseung Kwan O with the assistance of the Friends of the Earth and the EPD. In 1995, about 168 tonnes of paper, 60 tonnes of ferrous metals, 4.4 tonnes of aluminium cans and 1.5 tonnes of PET bottles were recovered from the four estates.

(c) Waste recycling programmes similar to those in Tseung Kwan O are being carried out in over 50 public housing estates and over a thousand private establishments, including schools, commercial offices, banks, hotels and utility companies. Moreover, the Housing Department has included in all new cleansing contracts a requirement that a "salvaging operative" be appointed to deal with waste recovery activities in the estate in question. So far, about one third of public housing estates in Hong Kong have been provided with a "salvaging operative". The further extension of waste recycling programmes to the community as a whole will be addressed in the Waste Reduction Plan mentioned in (a) bove.

Inaccurate Profit Forecasts by Newly Listed Companies

10. **MR SIN CHUNG-KAI** asked (in Chinese): *As the performance results recently announced by two newly listed companies have failed to meet the profit forecasts as stated in the respective prospectuses, will the Government inform this Council if it is aware of:*

(a) how many of the newly listed companies providing profit forecasts in their prospectuses in the past three years have announced performance results in the first year after listing which are below the profit forecasts as stated in their prospectuses, please provide a list of these companies together with a breakdown of the difference between the actual and the forecast profits of each of the companies concerned;

(b) in regard to the companies mentioned in the answer to the second part of (a) above, whether such companies and their sponsors have been penalized; if so, what the details are; if not, why not;

(c) the average time taken by the Stock Exchange of Hong Kong to investigate into cases of inaccurate profit forecasts by newly listed companies; whether the investigation results of each of these cases will be made known to the public by the Stock Exchange of Hong Kong; if so, how the results will be publicized; if not, why not; and

(d) whether, given that newly listed companies are not required to state their profit forecasts in their prospectuses under the existing rules governing the listing of securities, the authorities concerned will consider prohibiting newly listed companies to state their profit forecasts; if not, why not?

SECRETARY FOR FINANCIAL SERVICES (in Chinese): Mr President,

(a) Between 1 January 1993 and 31 May 1996, 156 companies were newly listed on the Stock Exchange of Hong Kong (SEHK) and 144 had included profits forecasts in their prospectuses. All were able to achieve the profits forecasts. However, one company could only

achieve its profits forecasts by the inclusion of an exceptional item, that is activities not specifically mentioned in its prospectus. The company involved was Rich City Packaging Holdings Limited, and its actual profits deviated from its forecast by 5.9%. In addition, a second case is still under investigation by SEHK. It is therefore inappropriate to divulge details at this stage.

(b) Failure to meet a profits forecast does not in itself constitute a breach of the Listing Rules. However, failure to notify the market earlier of circumstances which the directors believe would render the forecast inappropriate contravenes the Listing Rules. The Rich City case had been considered by the Listing Committee of SEHK. Having considered the circumstances of the case, and in view of the fact that the company had made a statement clarifying its profit and loss account, the Listing Commitee decided to take no disciplinary action against the company.

(c) The time required by SEHK to investigate individual cases of inaccurate profits forecasts will depend on the circumstances of the case. In the Rich City case, the SEHK took about two months to complete its investigation. SEHK announces the result of its investigation and the sanction involved, unless the sanction involved is a private reprimand.

(d) Under the Listing Rules, a company seeking listing must include in its prospectus a statement on the financial and business prospects of the company for at least the current financial year. Companies and their sponsors may however include profits forecasts in the prospectuses as an additional reference for potential investors. We see no good reason to discourage such a practice.

Collection of Tuition Fees Pre-payment by Tertiary Institutions

11. **MR CHEUNG MAN-KWONG** asked (in Chinese): *Regarding the policy adopted by the tertiary institutions funded by the University Grants Committee concerning the collection of pre-payment of tuition fees from new students upon registration, will the Government inform this Council if it is aware of:*

(a) the policy concerning the collection of pre-payment of tuition fees (including the amount of pre-payment) adopted by the tertiary institutions in the past three years;

(b) how the amount of pre-payment of tuition fees is determined by the tertiary institutions; and whether all or part of the amount of pre-payment will be refunded to the students who drop out before the commencement of an academic year;

(c) the amount of non-refundable pre-payment of tuition fees collected, together with the number of students involved and the purposes for which such amounts have been used, in respect of each of the tertiary institutions in the past three years; and

(d) whether the tertiary institutions have received any complaints in the past three years about the amount of pre-payment being set at too high a level; if so, what the total number of such complaints is and whether the institutions will be urged to review the existing policy on the collection of pre-payment of tuition fees as well as the amount of pre-payment?

SECRETARY FOR EDUCATION AND MANPOWER (in Chinese): Mr President,

(a) The Administration understands from the University Grants Committee (UGC) that over the past three academic years, the institutions collected tuition fees in advance from full-time undergraduate students in two equal instalments, each being 50% of the total annual tuition fee. New students were required to pay the first instalment upon registration, which normally took place in August and September each year. Most institutions collected the second instalment around February each year, though the exact dates varied amongst institutions.

(b) The present practice on refund of tuition fees for students who drop out before the commencement of the academic year varies amongst the institutions. The City University of Hong Kong (CityU) refunds the full amount of tuition fees paid by new students provided that they notify the University of their withdrawal within

one month after registration or two weeks after the beginning of the first semester, whichever is the earlier. The Hong Kong Baptist University (HKBU) allows students who withdraw from their studies to apply for refund of the tuition fees paid for the first semester. The amount of refund would be 75% if the student applies for the refund during the week of tuition fee payment, 50% during the first week following the week of tuition fee payment, and 25% during the second week following the week of tuition fee payment. No refund is permitted thereafter. The Lingnan College (LC) only refunds 20% of the tuition fee paid by new students if notice of withdrawal is received before registration or within the first week after the commencement of the first term.

As for The Chinese University of Hong Kong (CUHK), The Hong Kong Polytechnic University (PolyU), The Hong Kong University of Science and Technology (HKUST) and the University of Hong Kong (HKU), tuition fees pre-paid are normally non-refundable. Nevertheless, all the seven institutions are prepared to consider refund of tuition fees on a case by case basis, having regard to the circumstances of individual students.

(c) The table in Annex A compiled by the UGC shows the total number of new students who discontinued or did not commence their studies after the payment of tuition fees in the past three years, the total amount of fees refunded and the total amount of forfeited tuition fees retained by the institutions. The UGC-funded institutions used the tuition fees collected from students enrolled on UGC-funded courses, including the forfeited tuition fees retained by the institutions, to support activities approved by the UGC and the Government.

(d) None of the UGC-funded institutions received any complaints about the levels of tuition fee instalments in the last three years. Policies and practices regarding the collection of tuition fees are matters for the institutions. They are kept under regular review on the institutions' own initiative as well as in response to appeals from the Joint Committee on Student Finance.

All the seven UGC-funded institutions will be introducing modifications to their fee collection arrangements in the 1996-97 academic year for first year undergraduate students, details of which have been collated by the UGC and are shown in Annex B. In addition, the institutions will consider individual requests for deferring the payment of the first instalment of tuition fee from new students who demonstrate genuine financial difficulties while they await financial assistance from the Government under the Local Student Finance Scheme (LSFS).

Annex A

Refund of tuition fees to new students
who discontinued or did not commence their studies
after payment of tuition fees in 1993/94 to 1995/96

Institution	*Total no. of students who drop out*[1]	*Total amount of tuition fees refunded*	*Total amount of tuition fees forfeited by students and retained by institution*
CityU	213[2]	$2,195,993[3]	$0
HKBU	33	$283,625	$163,625
LC	100	$173,175	$692,700
CUHK	44	$24,000	$519,625
PolyU	38	$217,345	$206,630
HKUST	16	$44,500	$157,500

1 Not all of these students qualified for refund.

2 Data available for 1994-95 and 1995-96 only and covers both sub-degree and undergraduate students; 113 of the students were full-time and 100 part-time.

3 $1,519,731 were refunded to full-time students and $676,262 were refunded to part-time students.

HKU	29[4]	$0	$622,000

Annex B

Institution	*New arrangement for payment of tuition fees by first year undergraduate students in the 1996-97 academic year*
CityU	The University will only require new students to pay 10% of tuition fees upon registration; the remaining 90% will be collected in two instalments.

Institution	*New arrangement for payment of tuition fees by first year undergraduate students in the 1996-97 academic year*
HKBU	The University will allow new students to pay their tuition fees by three instalments. An initial payment of $5,000 on registration, a second instalment (half of the remaining balance) in November, and a third instalment (the other half of the remaining balance) in late December for tuition fees in respect of the second semester.
LC	The College will allow new students to apply for deferment of payment of 50% of the tuition fees for one month after the due date.
CUHK	The University will introduce an interest-free bridging loan scheme to help new students pay their tuition fees before they receive their grants and loans under the Local Student Finance Scheme.
PolyU	The University will allow new students who meet certain criteria to pay only one-fourth of the first instalment of the tuition fee upon acceptance of offer with the remaining three-forths to be paid

[4] Data available for 1995-96 only, no data available in respect of 1993-94 and 1994-95.

together with the second instalment when they have received grants and/or loans under the Local Student Finance Scheme.

HKUST The University will allow new students to pay $5,000 in August and the balance of the first instalment of their tuition fees by 1 October 1996.

HKU The University will allow new students to pay $5,000 in September and the balance of the first instalment of their tuition fees by 15 October 1996.

Overstay by Two-way Exit Permit Holders

12. **MR CHOY KAN-PUI** asked (in Chinese): *Will the Government inform this Council:*

(a) of the number of people coming to Hong Kong from China on two-way exit permits, as well as the number of such people who have overstayed, in each of the past three years;

(b) of the respective ratios of minors, adult males and females among those who have overstayed;

(c) whether it has detected any two-way exit permit holders taking up employment while staying in the territory during the past three years; if so, of the types of work they are mainly engaged in; and

(d) whether, in view of the reports that many two-way exit permit holders have overstayed and gone into hiding to wait for amnesty in 1997, the Government will discuss the problem with the Chinese side; and whether the Government will take other measures to prevent holders of two-way exist permits from overstaying in the territory?

SECRETARY FOR SECURITY (in Chinese): Mr President,

(a) The number of people coming to Hong Kong from China on Two-way Permits (TWP) and the number of overstayers are:

Year	*No. of TWP Holders*	*No. of TWP Overstayers*	*No. of overstayers who returned to China voluntarily*
1993	209 400	17 102	10 282
1994	245 927	26 614	11 450
1995	260 313	38 250	13 246
1996 (January-May)	108 022	11 760	5 178

(b) We do not have a breakdown on the number of minors, and adult males and females among the TWP overstayers.

(c) In our enforcement action against illegal employment, we have found TWP holders working in Hong Kong, but not all of those found working were overstayers. The number of TWP illegal workers arrested are:

Year	*No. of arrested TWP illegal workers*
1994	1 855
1995	2 883
1996 (January-May)	944

As we only started to keep separate statistics for TWP illegal workers in 1994, the arrest figure for 1993 is not available. We have not kept separate records specifically on the types of the work TWP illegal workers engaged in. Our observation is that most of them take up jobs which require little or no skills, and the common places of work are restaurants, factories, and construction sites.

(d) It is clear from the Joint Declaration and the Basic Law that entry of Chinese residents in the Mainland to Hong Kong after 30 June 1997

will continue to be regulated by the existing arrangements. There is no question whatsoever of an amnesty in 1997. We have not so far seen any evidence of large scale overstaying or illegal immigration into Hong Kong for the purpose of waiting for an "amnesty" in 1997. In fact, the number of TWP overstayers in the first five months of this year has decreased when compared to that in the same period last year (14 801 TWP overstayers during the period January-May 1995, as compared to 11 760 TWP overstayers during January-May 1996).

Enforcement action against overstayers, particularly those who seek to work illegally in Hong Kong, have been stepped up. The size of the Immigration Task Force has been doubled in October 1995. The number of raids and prosecution actions have also been increased, as evidenced by the following statistics:

Year	*No. of Raids*
1994	1 074
1995	2 160
1996 (January-May)	595

Year	*No. of prosecutions of TWP overstayers*
1993	4 106
1994	6 720
1995	10 576
1996 (January-May)	5 390

(Note: persons prosecuted in a particular year are not necessarily arrivals and overstayers of that year)

The maximum fines for illegal workers and their employers have been raised in January 1996. Publicity has been increased to warn prospective employers not to employ illegal workers. We also have regular liaison with the relevant Chinese authorities to tackle the problem together.

Flat Transfer and Household Split Applications by Public Housing Tenants

13. **MR ALBERT CHAN** asked (in Chinese): *I have received a number of cases of complaints concerning public housing tenants seeking assistance in their applications for transfer to other flats or splitting of households. The tenants concerned claimed that they had been interviewed and assessed by professional social workers of the Social Welfare Department (SWD) and that their applications had been recommended by the SWD, but the Housing Department (HD) still rejected their applications. In view of this, will the Government inform this Council:*

(a) of the basis of the HD's rejection of the SWD's recommendations; and

(b) why the HD did not directly investigate the family background of the applicants concerned and instead asked them to seek assistance from the SWD in the first instance, bearing in mind that the HD could determine whether or not to accept the SWD's recommendations?

SECRETARY FOR HOUSING (in Chinese**)**: Mr President, the Housing Department receives about 200 requests each month from households living in public rental housing for transfer to other flats or for additional flats as a result of splitting of households. Each application is considered on its merits. The majority of requests can be resolved by the Housing Department. If it appears that there may be social or medical grounds which support a request, or that professional counselling may help to resolve the problem faced by an applicant, the Department will refer the case to the Social Welfare Department for advice.

The Housing Department normally accepts the Social Welfare Department's advice. Where the Housing Department does not concur, the two departments will jointly reassess the situation and reach an agreed conclusion on how to handle the case. There is no question of the Housing Department rejecting the Social Welfare Department's advice.

Western Harbour Crossing Toll

14. **DR SAMUEL WONG** asked (in Chinese): *It has been reported that the Western Harbour Crossing will be completed ahead of schedule and open to traffic at the beginning of next year. In this connection, will the Government inform this Council whether:*

(a) when the Western Harbour Crossing becomes operational, the toll will still be set at $30 per trip as previously determined; and

(b) the Government will consider adjusting the tolls for the Eastern Harbour Crossing and the Cross Harbour Tunnel before the Western Harbour Crossing comes into operation, so as to narrow the difference in the tolls charged by the three tunnels?

SECRETARY FOR TRANSPORT (in Chinese): Mr President, the toll levels for the Western Harbour Crossing are provided for in Schedule 1 to the Western Harbour Crossing Ordinance. Section 36 of the Ordinance states that the Western Harbour Tunnel Company shall not charge tolls greater than those specified in Schedule 1, which are based on 1997 prices. The level for private cars specified therein is $30. The specified toll levels will enable the franchisee to service its debts and earn a reasonable return over his investment, taking into account the project cost, market risks and the anticipated traffic volume, for which a detailed study has been conducted.

In line with existing policy, an application for toll increase from the franchisees of the Eastern Harbour Crossing and the Cross Harbour Tunnel will be considered on the basis of its own merits under the terms of their respective franchises.

We appreciate that the toll differential between the Western Harbour Crossing and the two other cross-harbour tunnels might affect usage. We will monitor the traffic volume and pattern of utilization of the three tunnels after the commencement of operation of the Western Harbour Crossing.

Ranking Criteria of Civil Service Posts

15. **MR ERIC LI** asked: *The training and accreditation of "professional accountants" in the territory are undergoing major reforms which aim to raise the standards and international standing of locally qualified professional accountants and expand the field of competency requirements. In the light of this, will the Government inform this Council whether it will review the ranking criteria of civil service posts especially at the Head of Department and Policy Secretary levels so that holders of accredited professional accounting qualifications can be considered for filling such posts?*

SECRETARY FOR THE CIVIL SERVICE: Mr President, we set the entry requirements for individual civil service grades having regard to the job requirements of the grade concerned. A professional qualification is stipulated for appointment to a particular grade which calls for expertise in that profession.

In respect of professional accountants, the qualifications of the Hong Kong Society of Accountants (HKSA) are accepted for appointment to the following entry ranks:

Entry Rank	*Head of Grade*
- Treasury Accountant) - Accounting Officer II)	Director of Accounting Services
- Insolvency Officer II	Official Receiver
- Auditor) - Examiner)	Director of Audit
- Assistant Assessor	Commissioner of Inland Revenue
- Insurance Officer	Commissioner of Insurance

We last reviewed the entry qualification requirements of the above ranks in 1993-94 when the HKSA introduced a new examination structure for the joint HKSA/Chartered Association of Certified Accountants (ACCA) professional examinations. As a result of the review, we revised the entry requirements for

the ranks of Accounting Officer II, Insolvency Officer II, Examiner and Assistant Assessor which do not require full HKSA membership, to reflect changes to the HKSA examination levels. Although HKSA modified the examination structure leading to the full membership of the HKSA, we continue to accept this full membership for entry to the ranks of Treasury Accountant, Auditor and Insurance Officer.

Senior positions in the Civil Service are normally filled by internal promotion of officers from the lower rank. For appointment or promotion to senior positions at Head of Department and Branch Secretary levels, apart from considering any qualifications relevant to the job, we have to consider the other essential abilities of the officers, such as administrative and management skills, experience, leadership and any special attribute required of the post.

Complaints against Labour Tribunal Presiding Officers

16. **MR LEUNG YIU-CHUNG** asked (in Chinese): *Some employers and employees have complained that the presiding officers of the Labour Tribunal often scold the claimants and the defendants while adjudicating claims. In view of this, will the Government inform this Council whether:*

(a) there is any channel for the claimant or the defendant to lodge a complaint during a hearing if they are dissatisfied with the presiding officer's manner; if not, why not; and

(b) any complaints against presiding officers of the Labour Tribunal have been received over the past five years; if so, what the types of complaints are and how the complaints have been handled, and whether the Government will consider adopting measures to improve the situation?

CHIEF SECRETARY (in Chinese): Mr President,

(a) Parties wishing to complain about the conduct of a Presiding Officer of the Labour Tribunal may do so to the Chief Magistrate. The

Chief Magistrate will investigate the complaint and take such action as may be appropriate, but will not interfere with any on-going judicial proceedings or decisions. Parties are informed of these complaint procedures through information pamphlets available in the Labour Tribunal.

(b) In the past five years, the Judiciary has received some 50 complaints about the Labour Tribunal. These were mainly about Presiding Officers not accepting the complainants' evidence, the long waiting times for cases to be heard or concluded and, occasionally, about a Presiding Officer's conduct of the case. Each of the these complaints was investigated. Where appropriate, the complainant is advised to pursue the matter through appeal. Waiting times are no longer a problem at the Labour Tribunal as cases are now normally heard and concluded in one to two months. Where the complaints concerns a Presiding Officer's conduct, it is brought to that officer's attention and he is requested to provide an explanation to the Chief Magistrate. Where the Chief Magistrate considers the complaint justified, he submits the case to the Chief Justice.

I have the Judiciary's reassurance that they will continue to ensure that parties to proceedings in the Labour Tribunal receive, and are seen to receive, a fair hearing.

Pilot Development Programme for Administrative Officers

17. **DR DAVID LI** asked: *It has been reported that about 15 Administrative Officers will be sent to attend a pilot development programme at the University of Michigan in Ann Arbor, which replaces the course previously undertaken at Oxford University. In this connection, will the Government inform this Council:*

(a) of the criteria used in selecting the appropriate university for the development programme;

(b) of the total cost of sending an Administrative Officer to the University of Michigan's programme as compared to the cost of sending an Administrative Officer to the programme at Oxford

University; and

(c) whether it will consider sending Administrative Officers to similar programmes at a selected university in mainland China?

SECRETARY FOR THE CIVIL SERVICE: Mr President, in November 1994, the Civil Service Branch invited a number of prestigious universities from different countries to submit proposals for a training programme for Administrative Officers. Selection of the institution to run the course was based on the resources of the teaching faculty, the structure, content, administration and cost of the proposed programme, as well as the specialization of the institution. The proposal from the University of Michigan was eventually chosen as it was best able to meet our requirements in these regards. The teaching faculty assigned to the programme include renowed experts in different fields, and the University of Michigan itself is also highly reputable. Its Political Science Department, Business School and Law School, which are involved in organizing the training programme, are consistently being ranked among the top in the United States.

The average cost of sending an officer to the three-month course at Michigan University is around $150,000 as compared to $220,000 for the nine-month Oxford Course. It should be noted that the University of Michigan's programme is shorter but more compact in that it includes a speaker series in addition to the three core and one elective subjects.

The objective of the new programme in the University of Michigan is to expose young Administrative Officers to the latest concepts in management, public administration and international economics. The first course will begin in September this year. We have no plan to replicate this training programme in other universities at this stage. However, since July 1993, the Administration has been sending administrative and departmental officers to the Tsinghua University in Beijing to attend a five-week course. The aims of the course are to enhance the abilities of participants in the use of Putonghua and written Chinese, and to increase their understanding of the political, social, economic and legal systems in China. So far, 13 courses have been organized.

Government Concessionary Schemes for Franchised Public Transport Operators

18. **MR WONG WAI-YIN** asked (in Chinese): *At present, the Government offers many concessionary schemes to franchised public transport companies to assist them in reducing their operating costs and developing their services. In this connection, will the Government inform this Council of:*

(a) the specific concessionary scheme which the Government offers to each franchised bus company;

(b) the specific concessionary scheme which the Government offers to each franchised ferry company; and

(c) the criteria adopted by the Government for determining that concessionary schemes should be offered to the above franchised companies?

SECRETARY FOR TRANSPORT (in Chinese): Mr President, the Administration offers different concessions to franchised bus and ferry companies.

Franchised bus companies are granted exemptions from fuel tax, first registration tax, annual licence fees for buses and rentals for depots.

Franchised ferry companies are permitted to let space at ferry piers for commercial use and at vehicular ferry pier concourses for public parking, on condition that the revenue so generated is used to cross-subsidize ferry operations. Franchised ferry companies are also exempted from annual licence fees for vessels and rentals for short term tenancy sites.

The criteria for the provision of concessions to franchised transport operators include the question of whether the concessions would help reduce operating costs, improve services and achieve specific Government policy objectives, for example, to encourage public transport operators to introduce or improve concessionary fares for the elderly.

Environmental Impact Assessments

19. **DR LAW CHEUNG-KWOK** asked (in Chinese): *Will the Government inform this Council:*

(a) of the number of infrastructural and construction projects undertaken by the Government over the past three years in which Environmental Impact Assessments (EIAs) have been undertaken, and the main classifications of these projects;

(b) of the major recommendations concerning environmental protection made in the EIA reports and which of these recommendations have been adopted by the Government; and

(c) how many of the above EIAs were conducted by private consultancy firms, and what was the total amount of consultancy fees paid by the Government in this regard?

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

(a) Since 1993, a total of 146 EIAs on Government projects have been undertaken. They are broadly classified as follows:

Port and airport-related projects	9
Feasibility studies	5
Site formation, drainage and water supply	27
Sewerage and waste disposal	24
Roads, bridges and railways	47
Residential developments	31
Miscellaneous	3
Total:	146

(b) The recommendations arising from EIAs are aimed at preventing and mitigating any adverse environmental impacts attributable to the development projects. They vary according to the nature, scale and location of a project and the environmental impacts it generates. The recommendations include, for example, noise barriers or

enclosures for a road project; amendments to the design, shape, timing, sequence and method of reclamation works; conservation measures for projects located in ecologically sensitive areas; and monitoring and auditing arrangements to minimize noise, air and water quality impacts, and so on. These are implemented either by appropriate design of the projects or through contractual or lease conditions. There have been occasional difficulties in the past in enforcing proper and full implementation of EIA recommendations. The EIA Bill, which is now being examined by a Bills Committee of the Legislative Council, seeks to introduce a statutory mechanism for enforcing the EIA requirements.

(c) All the EIAs were carried out by private consultants. The total amount of consultancy fees paid by the Government for the 60 EIAs which have been completed over the past three years are still being collated and the information will be provided to Honourable Members as soon as it is available. However, it may be useful to note that for most projects, the cost of the EIA study is less than 1% of the project cost. (Annex II)

Control of Air Quality in Underground Car Parks

20. **DR JOHN TSE** asked (in Chinese): *As the Environmental Protection Department (EPD) intends to issue a practice note regarding the control of air quality in underground car parks, will the Government inform this Council:*

(a) whether the EPD regularly monitors the air quality in underground car parks; if so, of the results of the inspections conducted by the EPD in the past three years;

(b) whether, in assessing the air quality in such car parks, the effects of such pollutants as benzene, suspended particulates and ozone emitted by pertol-engined vehicles and diesel-engined vehicles have been assessed; if not, why not; and

(c) in regard to those car parks with air quality below the required standards, whether the Government has put in place any measures requiring the management companies to improve the air quality in such car parks; and whether the Government will consider introducing legislation to regulate the air quality in underground

car parks?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS (in Chinese): Mr President,

(a) The Environmental Protection Department (EPD) conducted surveys on the levels of carbon monoxide in 38 underground car parks in the territory in late 1992 and early 1993. The surveys showed that half of these car parks have relatively high concentrations of carbon monoxide, which could be reduced if ventilation was improved.

(b) Pollutants such as benzene, suspended particulates and ozone have not been assessed because carbon monoxide levels are generally indicative of the air quality inside a car park. Other air pollutants are unlikely to be excessive if carbon monoxide is maintained at an acceptable level.

(c) At present, there are no air quality standards for car parks. However, in consultation with air pollution experts and various professional bodies, the Environmental Protection Department is compiling Practice Notes on the Control of Air Pollution in Car Parks, for issue to developers, professionals and car park management companies. The Practice Notes, which will be issued later this year, will set out the air quality guidelines for carbon monoxide and, as an additional precaution, nitrogen dioxide, and will advise on measures — such as the installation of monitors, car park layout and ventilation requirements — to improve air quality inside car parks. The EPD will monitor compliance with the Practice Notes before considering whether legislation is necessary to regulate the air quality in car parks.

MOTIONS

INTERPRETATION AND GENERAL CLAUSES ORDINANCE

THE SECRETARY FOR FINANCIAL SERVICES to move the following

motion:

"That -

(a) the Twelfth Schedule to the Companies Ordinance (Cap. 32) be amended by repealing, in respect of the entries relating to the sections mentioned in column 1 of the Table, the amount of fines mentioned in column 2 and substituting the amount of fines or level of fines in column 3;

(b) the Appendix to the Companies (Winding-up) Rules (Cap. 32 sub. leg.) be amended in Forms 63A and 63B, in the Warning -

(i) by repealing "of $50,000" and substituting "at level 6";

(ii) by adding "(sections 349 and 351)" after "6 months."

TABLE

Section creating Offence	*Repeal*	*Substitution*
8(8)	$5,000	level 3
	$200	$300
10(3)	$5,000	level 3
	$200	$300
21(9)	$5,000	level 3
	$500	$700
22(6)	$50,000	level 6
	$500	$700
22A(4)	$10,000	level 4
	$500	$700
26(2)	$5,000	level 3
27(2)	$5,000	level 3
30(2)	$25,000	level 5
30(2A)	$100,000	$150,000

	$25,000	level 5
38(1B)	$25,000	level 5
38(3)	$50,000	level 6
38B(3)	$50,000	level 6
38C(2)	$50,000	level 6
38D(8)	$50,000	level 6
	$200	$300
40A(1)	$500,000	$700,000
	$100,000	$150,000
43(4)	$50,000	level 6
43(5)	$250,000	$350,000
	$100,000	$150,000
44A(4)	$50,000	level 6
44B(3)	$25,000	level 5
45(3)	$25,000	level 5
	$500	$700
46(5)	$10,000	level 4
47A(3)	$100,000	$125,000
47F(4)	$25,000	level 5
	$1,000	$1,300
Section creating Offence	*Repeal*	*Substitution*
47F(5)	$25,000	level 5
47G(10)	$5,000	level 3
	$200	$250
49G(6)	$50,000	level 6
	$500	$650
	$10,000	level 4
	$200	$250
49G(7)	$10,000	level 4
	$200	$250
49K(6)	$100,000	$125,000
	$25,000	level 5
49M(6)	$10,000	level 4
	$500	$650
49N(4)	$5,000	level 3
	$200	$250
50(3)	$5,000	level 3
	$200	$300

54(2)	$5,000	level 3
	$200	$300
55(3)	$5,000	level 3
	$200	$300
57A(3)	$5,000	level 3
	$200	$300
57B(6)	$25,000	level 5
58(1B)	$1,000,000	$1,250,000
	$100,000	$125,000
63	$100,000	$150,000
	$25,000	level 5
64(5)	$5,000	level 3
	$200	$300
69(2)	$5,000	level 3
	$200	$300
70(2)	$5,000	level 3
	$200	$300
71A(9)	$5,000	level 3
	$200	$300
74A(4)	$25,000	level 5
	$500	$700
Section creating Offence	*Repeal*	*Substitution*
75(4)	$5,000	level 3
	$200	$300
81(3)	$25,000	level 5
	$1,000	$1,500
82(2)	$25,000	level 5
	$1,000	$1,500
87(3)	$5,000	level 3
	$200	$300
88(4)	$25,000	level 5
	$500	$700
89(4)	$25,000	level 5
	$500	$700
89(5)	$25,000	level 5
90(2)(a)	$5,000	level 3
	$200	$300
91(4)	$25,000	level 5

	$1,000	$1,500
92(3)	$5,000	level 3
	$200	$300
93(3)	$5,000	level 3
	$200	$300
93(4)	$5,000	level 3
93(5)	$5,000	level 3
95(4)	$10,000	level 4
	$500	$700
96(3)	$5,000	level 3
	$200	$300
98(3)	$5,000	level 3
	$200	$300
99(4)	$5,000	level 3
103(7)	$5,000	level 3
	$200	$300
104(7)	$5,000	level 3
	$200	$300
109(4)	$25,000	level 5
	$500	$700
Section creating Offence	*Repeal*	*Substitution*
111(5) (relating to subsections (1) and (2))	$25,000	level 5
111(5) (relating to subsection (4))	$5,000	level 3
	$200	$300
114C(3)	$5,000	level 3
114C(5)	$5,000	level 3
115A(7)	$25,000	level 5
117(5)	$5,000	level 3
	$200	$300
117(6)	$5,000	level 3
119(4)	$5,000	level 3
	$200	$300
119A(3)	$25,000	level 5
	$500	$700
120(3)	$5,000	level 3

	$200	$300
121(4)	$200,000	$300,000
122(3)	$200,000	$300,000
123(6)	$200,000	$300,000
124(3)	$200,000	$300,000
128(6)	$50,000	level 6
	$200	$300
129(6)	$50,000	level 6
	$200	$300
129B(3)	$10,000	level 4
129C(3)	$100,000	$150,000
129F	$100,000	$150,000
129G(3) (relating to subsection (1) or (2A))	$5,000	level 3
129G(3) (relating to subsection (2))	$25,000	level 5
	$200	$300
131(7)	$5,000	level 3
	$200	$300

Section creating Offence	*Repeal*	*Substitution*
133(2)	$5,000	level 3
134(1)	$100,000	$150,000
	$25,000	level 5
140(5)	$25,000	level 5
140A(7)	$100,000	$150,000
	$25,000	level 5
140B(3)	$100,000	$150,000
	$25,000	level 5
141D(4)	$25,000	level 5
152A(4)	$25,000	level 5
152B(4)	$25,000	level 5
152C(2)	$100,000	$150,000
	$25,000	level 5
152D(1)	$1,000,000	$1,500,000
	$100,000	$150,000
152E	$1,000,000	$1,500,000

	$100,000	$150,000
153(3)	$5,000	level 3
	$200	$300
155(5)	$5,000	level 3
	$200	$300
155A(5)	$25,000	level 5
155B(3)	$50,000	level 6
155B(4)	$50,000	level 6
156(1)	$500,000	$700,000
	$100,000	$150,000
157J(3)	$100,000	$150,000
	$25,000	level 5
158(8)	$5,000	level 3
	$200	$300
158A(3)	$25,000	level 5
	$500	$700
158B(2)	$50,000	level 6
	$500	$550

Section creating Offence	*Repeal*	*Substitution*
159(3)	$10,000	level 4
161A(2)	$25,000	level 5
161BA(7)	$25,000	level 5
161BA(11)	$5,000	level 3
	$200	$300
161C(3)	$25,000	level 5
162(3)	$25,000	level 5
162A(2)	$5,000	level 3
	$200	$300
163B(2)	$25,000	level 5
166(4)	$500	level 1
166A(4)	$25,000	level 5
166A(5)	$25,000	level 5
167(3)	$5,000	level 3
	$200	$300
168A(4)	$5,000	level 3

	$200	$300
190(5)	$25,000	level 5
	$200	$300
227(3)	$25,000	level 5
	$200	$300
228A(2)	$25,000	level 5
228A(3A) (relating to subsection (3)(b))	$25,000	level 5
228A(3A) (relating to subsection (3)(c))	$25,000	level 5
229(2)	$5,000	level 3
	$200	$300
233(3)	$25,000	level 5
237A(3)	$5,000	level 3
238(2)	$5,000	level 3
239(3)	$5,000	level 3
	$200	$300
239(5)	$5,000	level 3
	$200	$300
239(6)	$5,000	level 3

Section creating Offence	*Repeal*	*Substitution*
241(6)	$25,000	level 5
247(2)	$5,000	level 3
248(3)	$5,000	level 3
	$200	$300
248(5)	$5,000	level 3
	$200	$300
248(6)	$5,000	level 3
253(2)	$5,000	level 3
	$200	$300
271(1)	$100,000	$150,000
(relating to any other paragraph)	$25,000	level 5
272	$100,000	$150,000
	$25,000	level 5
273	$100,000	$150,000

	$25,000	level 5
274(1)	$100,000	$150,000
	$25,000	level 5
275(3)	$100,000	$150,000
278	$100,000	$150,000
278A	$100,000	$150,000
280(2)	$5,000	level 3
283(4)	$5,000	level 3
284(3)	$5,000	level 3
	$500	$700
290(2)	$5,000	level 3
	$200	$300
297(2)	$25,000	level 5
297A	$100,000	$150,000
	$25,000	level 5
299(2)	$5,000	level 3
300A(7)	$5,000	level 3
	$200	$300
300B(5)	$5,000	level 3
	$200	$300

Section creating Offence	*Repeal*	*Substitution*
301(2)	$5,000	level 3
	$200	$300
337B(7)	$50,000	level 6
	$500	$700
340	$25,000	level 5
	$500	$700
342D	$100,000	$150,000
342F(1)	$500,000	$550,000
	$100,000	$150,000
348C(4)	$5,000	level 3
	$200	$300
349	$50,000	level 6
349A(2)	$100,000	$150,000
	$25,000	level 5
350	$5,000	level 3

	$200	$300
350A	$5,000	level 3
360J	$100,000	$150,000"

SECRETARY FOR FINANCIAL SERVICES (in Cantonese): Mr President, I move the resolution standing in my name in the Order Paper.

The motion before Members seeks to increase the statutory maximum fines stipulated in the Companies Ordinance (Cap. 32) and its subsidiary legislation and to convert them as appropriate into a standard scale.

Section 100A(1) of the Interpretation and General Clauses Ordinance (Cap. 1) provides that the Legislative Council may, by resolution, amend any Ordinance so as to increase the amount of any fine specified in that Ordinance.

The Criminal Procedure (Amendment) (No. 2) Ordinance 1994 enacted in July 1994 introduced a scale of fines for statutory penalties not exceeding $100,000. This enables the maximum fine level to be increased from time to time by a single order of the Governor in Council to take account of inflation and hence preserve the deterrent effect of the penalties. The standard scale of fines consists of six levels, ranging from $2,000 at Level 1 to $100,000 at Level 6.

The standard scale, however, does not take account of inflation in respect of fines specified in money terms before their conversion to the scale. A review of the existing fines has therefore been necessary. I have reviewed those under the Companies Ordinance and now propose to revise 259 statutory maximum fines under the Companies Ordinance (Cap. 32) and two statutory maximum fines under the Companies (Winding-up) Rules (Cap. 32 sub. leg.).

All maximum fines at or below $100,000 after adjustment will be converted to the appropriate level of fines on the standard scale. However, a daily fine or a daily penalty below $100,000 after adjustment and fines greater than $100,000 will continue to be expressed in money terms.

Mr President, I beg to move.

Question on the motion proposed, put and agreed to.

FACTORIES AND INDUSTRIAL UNDERTAKINGS ORDINANCE

THE SECRETARY FOR EDUCATION AND MANPOWER to move the following motion:

"That the Factories and Industrial Undertakings (Amendment) Regulation 1996, made by the Commissioner for Labour on 31 May 1996, be approved."

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr President, I move the motion standing in my name on the Order Paper.

The Sex Discrimination Ordinance, which renders certain kinds of sex discrimination unlawful, was enacted on 14 July 1995. Exceptions are however laid down in sections 12 and 57 of the Ordinance for cases in which sex is a genuine occupational qualification, and for acts done for the purposes of protecting women. Such exceptions will expire in one year's time after the enactment of the Ordinance, unless they are extended by another year by resolution of this Council.

Regulation 25 of the Factories and Industrial Undertakings Regulations provides that no woman should be permitted to clean any dangerous part of any machinery or mill-gearing while the machinery or mill-gearing is in motion. The regulation is listed under Schedule 3 of the Sex Discrimination Ordinance as one of the provisions to which exceptions under sections 12 and 57 apply.

The Administration agrees that there is no evidence to suggest that women are more accident prone than their male counterparts in performing certain dangerous jobs. I therefore propose that the Factories and Industrial Undertakings (Amendment) Regulation 1996, which repeals the references to woman in regulation 25(1) and (2), should be approved by Members.

The proposal has been endorsed by the Labour Advisory Board.

Mr President, I beg to move.

Question on the motion proposed.

MISS CHAN YUEN-HAN (in Cantonese): Mr President, I speak in my capacity as Chairman of the Subcommittee on the Resolutions regarding section 7 of the Factories and Industrial Undertakings Ordinance (Cap. 59) and section 57(4) of the Sex Discrimination Ordinance (Cap. 480).

We, the Subcommittee, agree with the part proposed by the department concerned as the Secretary for Education and Manpower has said just now on the Factories and Industrial Undertakings Ordinance when he spoke on the motion. However, having regard to the point that in the past there used to be restrictions for women to take part in such kind of work, should we not consider doing a bit more for the safety of women and young persons taking part in such kind of work when these restrictions are dispensed with? This point should also be applicable to what the Secretary for Education and Manpower is going to put forth in his next motion. Thank you, Mr President.

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr President, I have listened carefully to the views of the Honourable Miss CHAN Yuen-han and will take them into consideration in due course.

Question on the motion put and agreed to.

FACTORIES AND INDUSTRIAL UNDERTAKINGS ORDINANCE

THE SECRETARY FOR EDUCATION AND MANPOWER to move the following motion:

> "That the Construction Sites (Safety) (Amendment) Regulation 1996, made by the Commissioner for Labour on 31 May 1996, be approved."

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr President, I move the motion standing in my name on the Order Paper.

The Sex Discrimination Ordinance, which renders certain kinds of sex discrimination unlawful, was enacted on 14 July 1995. Exceptions are however laid down in sections 12 and 57 of the Ordinance for cases in which sex is a genuine occupational qualification, and for acts done for the purposes of protecting women. Such exceptions will expire in one year's time after the enactment of the Ordinance, unless they are extended by another year by resolution of this Council.

Regulation 46 of the Construction Sites (Safety) Regulations provides that no woman should be permitted to clean any dangerous part of any machinery or plant at a construction site while the machinery or plant is in motion. The regulation is listed under Schedule 3 of the Sex Discrimination Ordinance as one of the provisions to which exceptions under sections 12 and 57 apply.

The Administration agrees that there is no evidence to suggest that women are more accident prone than their male counterparts in performing certain dangerous jobs. I therefore propose that the Construction Sites (Safety) (Amendment) Regulation 1996, which repeals the reference to woman in regulation 46(1), should be approved by Members.

The proposal has been endorsed by the Labour Advisory Board.

Mr President, I beg to move.

Question on the motion proposed, put and agreed to.

SEX DISCRIMINATION ORDINANCE

THE SECRETARY FOR EDUCATION AND MANPOWER to move the following motion:

"That section 57(3) of the Sex Discrimination Ordinance be amended by repealing "1st" and substituting "2nd"."

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr President, I move the motion standing in my name on the Order Paper.

The Sex Discrimination Ordinance, enacted on 14 July 1995, renders sex discrimination unlawful in the employment field. The women-specific protective employment restrictions laid down under the Women and Young Persons (Industry) Regulations are exempted from the application of the Sex Discrimination Ordinance for a period of one year from the date of enactment of the Ordinance. The purpose of this resolution is to extend this grace period for another year.

The objective of the Women and Young Persons (Industry) Regulations, made under the Employment Ordinance, is to safeguard the health and welfare of female (and young) workers in industry. The Regulations prohibit women from working in dangerous trades, for example boiler chipping, manufacturing process using arsenic, lead, mercury and so on, restrict their working hours and prohibit them from working on rest days. Section 57(3) of the Ordinance provides for a one-year grace period to exempt these provisions from the application of the Ordinance. To allow time for the Administration to review and to take appropriate adaptive measures, section 57(4) further provides that this grace period may be extended for another year by resolution of this Council.

During the current one-year grace period the Labour Department has conducted a thorough review of the Women and Young Persons (Industry) Regulations and assessed the implications of removing those women-specific provisions which are incompatible with the Sex Discrimination Ordinance. As the exercise required extensive and time-consuming research and analysis of similar employment legislation in other countries, and Hong Kong's obligations under various International Labour Conventions, the review was only completed in April this year. The report on the review by the Labour Department was put to the subcommittee set up by this Council for the purpose of examining my present motion at its meeting on 19 June 1996.

The review has identified three options to deal with the issue. The first is to remove the employment restrictions in the Regulations. The second is to extend these restrictions to male workers. The third is to preserve the women-specific employment restrictions.

The issues involved are very complex and the implication of each of the options on the labour market needs to be carefully considered before taking a

decision. Furthermore, amending regulation 4 of the Women and Young Persons (Industry) Regulations which prohibits the employment of women in underground and tunnelling works would mean that Hong Kong has to denounce the application of the International Labour Convention No. 45 on Underground Work (Women) Convention. The Chinese side will need to be consulted through the Joint Liaison Group if the International Labour Convention No. 45 is to be denounced, as it involves Hong Kong's international rights and obligations after June 1997.

Statutory restrictions over certain aspects such as working hours, overtime employment and compulsory rest days are likely to be controversial. Legislative control in these areas for both men and women in all economic sectors would mean improved benefits for employees but, at the same time, higher labour cost and less flexibility for employers.

I wish to point out that the review report prepared by the Labour Department represents no more than the initial assessment by an internal working group. It merely sets out the possible approaches to resolving the incompatibility between the Women and Young Persons (Industry) Regulations and the Sex Discrimination Ordinance. The Administration has not taken a final view on these important issues. We will have to consult the Labour Advisory Board, and other parties concerned extensively before deciding on the way forward.

Given the complexity and far-reaching implications of the subject, plus the need to consult widely and extensively, it is necessary to seek an extension of the grace period for another year. I am grateful that the subcommittee set up to examine my present motion has indicated its support to extending the grace period under section 57(3) of the Sex Discrimination Ordinance for another year. I confirm that the Administration will undertake to draw up a timetable on the consultation and legislative procedures involved and, to make regular progress reports on the matter to the Manpower Panel of this Council.

Mr President, I beg to move.

Question on the motion proposed.

MISS CHAN YUEN-HAN (in Cantonese): Mr President, I speak in my capacity

as Chairman of the Subcommittee set up to study the motion. Mr President, during its deliberation on the resolution, the Subcommittee noted that the Government had not completed the review and made specific recommendations in the past year regarding the relevant provisions of the Women and Young Persons (Industry) Regulations stipulated in Schedule 3 of the Sex Discrimination Ordinance. In this connection, the Subcommittee would like to express its great discontent. Although members of the Subcommittee conceded that provisions for the protection of women should only be altered upon careful deliberation, it was felt that the Administration should set a reasonable working timetable as soon as possible. I must reiterate again that when the Sex Discrimination Ordinance was passed, in view of the fact that the Ordinance was in conflict with some existing legislation, the Government was given a grace period of one year which is due to expire on 14 July this year. Unfortunately, the Government has not done anything during the past year. Therefore, we feel dissatisfied. However, if we do not give the Government a further extension of one year, when the Sex Discrimination Ordinance comes into force, it would be in conflict with some existing labour legislation such as the Factories and Industrial Undertakings Ordinance. Therefore, having no alternative, we are forced to agree to the extension for one more year. Moreover, during the deliberation, the Subcommittee noted that Regulation 27 of the Dutiable Commodities (Liquor) Regulations stipulated in Schedule 3 of the Ordinance would be amended in July by way of subsidiary legislation. Having carefully considered all relevant factors, the Subcommittee has decided to support this resolution.

MR MICHAEL HO (in Cantonese): Mr President, the Democratic Party can only "reluctantly" vote in favour of this motion.

We have this helpless feeling because we know that once the Sex Discrimination Ordinance is fully implemented, a lot of amendments will have to be made to the Women and Young Persons (Industry) Regulations. However, many relevant amendments and research actually have not been completed, and what we have today are merely some preliminary results of the research.

Today we are to amend the provision which reads "Schedule 3 shall expire on the 1st anniversary of the day on which this Ordinance is enacted" by deleting "1st anniversary" and substituting "2nd anniversary". In other words, the Government knew it well in July last year that the expiry date would come in a

year's time. But the reality is that in the 11 months up to June this year, the Government had not duly worked on the research and amendments, and then asked us in June to amend the above-quoted provision. My view is that to seek to substitute the words "1st anniversary" in the provision with "2nd anniversary" is really the worst option which we have no alternative but to take. So while supporting the motion, the Democratic Party would voice its protest and regrets. I so submit.

MISS MARGARET NG: Mr President, as indicated in the report of the Honourable Miss CHAN Yuen-han, Chairman of the Subcommittee on the motion, the Subcommittee, including myself, supports the Administration's motion.

However, I would like to make clear that we did so under protest, because the situation was such that this Council has no alternative but to do so. For if we do not, the Regulations under review left unamended will have become unlawful, while, at the same time, there is just no time for any amendments to be passed by this Council.

Mr President, I cannot accept the explanation of the Secretary that the delay was due to the time required to carry out research and analysis of similar employment legislation in other countries, and Hong Kong's obligation under international labour conventions. The Subcommittee has been shown the report of this research and review. Nothing in it suggests it could have taken a year to do. The public officer quite frankly, as it is his duty to do so, told us that it had taken a year because of the limited manpower assigned to it.

Mr President, let me be equally frank. I simply cannot dismiss the possibility that the Administration has deliberately permitted the delay because it does not want to face the issue.

It does not take an expert to see that restricting the regular and overtime working hours would have a direct result on wages. That given workers are paid on an hourly rate and vast numbers of them have to work for long hours in order to earn a reasonable income, to restrict their working hours must mean either reducing their income by law or requiring employers to raise wages.

More than that, there are immediately relating issues, such as guaranteed minimum working hours or payment in lieu of, and unemployment benefits. These are deeply controversial issues. Once the Pandora's Box is opened, there is no shirking from them.

But we have got to face the issues. We have got to search our conscience, examine the realities, and give our workforce a fair deal. The Administration is not here to run away from hard problems.

I do not suspect the Administration without good cause. Out of a desire to ensure that the one-year extension will be sufficient for the remaining task, we asked the Administration what remains to be done. We are told the following process has to be followed:

- obtaining a comprehensive review from the Census and Statistics Department as to the projected impact on the economy;

- consultation with the labour unions and with employers' organizations;

- discussion and resolution in the Labour Advisory Committee;

- briefing the appropriate the Legislative Council panel(s);

- drawing up drafting instructions for the Law Draftsman; and

- an Amendment Bill to be introduced in this Council.

Mr President, does that suggest work well within the coming year? Does the Secretary mean to confront this Council with a dilemma again, of either rubber-stamping legislation or allowing unlawfulness? That would be, I am sure, intolerable to all Honourable Members.

I cannot, by any speech, call back the time which the Administration has let slip. Nor can I advocate curtailing any process of consultation or careful legislation. But I cannot let the occasion pass without comment. I beg the

Secretary earnestly to be frank with this Council, and give us any practical assurance he can to ensure that this important task can be accomplished within the year.

Thank you, Mr President.

MR LEUNG YIU-CHUNG (in Cantonese): Mr President, it has almost been a year since the Sex Discrimination Ordinance was enacted. However, the review on the Women and Young Person (Industry) Regulations is still going at a snail's pace, and that is really disappointing. In fact, if the Administration had given a higher priority to the review, it could have been completed earlier, and consultation with the labour sector could thus have been carried out as soon as possible. If that had been the case, this Council would have been able to vote today on the amendments to the relevant legislation, and we simply would not have to consider the question whether an extension for another year should be granted or not. Therefore, I think the request for an extension for another year actually reflects the perfunctory work attitude of the Government, and we have found this most regrettable.

Mr President, during the "May Day" labour movement, a slogan was put forward: "Eight hours of work, eight hours of rest and eight hours of education". This is also the goal our labour bodies in Hong Kong have for a long time been striving for. Therefore, I fully support the imposition of restrictions on the number of working hours in order to safeguard all the workers in Hong Kong. However, what I have found unsatisfactory is that in reviewing the number of working hours, the Government has not considered what difficulties or what impact it would have on the livelihood of workers once these restrictions on working hours are imposed. In fact, many workers have to work long hours mainly because of the low wages they are receiving, and that makes it impossible for them to make ends meet. If they do not work overtime, they simply cannot maintain their livelihood. Therefore, I urge the Government once again to enact legislation for minimum wages, so that the livelihood of workers can be safeguarded. Also, for overtime working hours outside the normal eight hours, wages ought to be calculated on the basis of at least 1.5 times the normal rates. Only in this way can the living standard of our workers be improved by law

through the restrictions on the number of working hours. Otherwise, such restrictions may produce a result to the contrary, which can have an adverse effect on their financial situation. I urge the Government to seriously consider our recommendations and consult the Manpower Panel of this Council as soon as possible.

Moreover, since the Government has failed to effectively amend the relevant ordinances in the past year, I also suggest that the Government should establish a task force for the amendments of these ordinances as soon as possible, so as not to delay the progress for the Sex Discrimination Ordinance to take effect.

Mr President, these are my remarks.

MR ALBERT HO (in Cantonese): Thank you, Mr President. Over the past several months, as Chairman of the Home Affairs Panel, I have convened public hearings on some of the reports concerning the International Covenant on Human Rights published by the Hong Kong Government. For instance, at a recent public hearing on the International Covenant on Civil and Political Rights, many non-government bodies expressed some strong views on the Government's failure to complete the legislative work in time and as soon as possible for the removal of all forms of discrimination. Moreover, the Government has failed to give effect to the enacted laws as early as possible, thus arousing strong discontent among these bodies. These laws include the Sex Discrimination Ordinance and the Disability Discrimination Ordinance. In the coming October, the United Nations Human Rights Commission will convene a meeting regarding the human rights report sumbitted by the British Government on behalf of Hong Kong, and I believe that by that time the Commission will certainly demand an explanation from the Hong Kong Government concerning the criticisms from these non-government bodies. Therefore, I hereby repeatedly urge the Government not to delay at any event. As a matter of fact, time will soon run out before the handover of sovereignty in 1997. I believe in the year to come, all the world will be watching Hong Kong to see whether or not the Hong Kong Government is doing its best, doing everything it ought to do and putting into practice the commitments it should fulfill following the signing of the International Covenant on Human Rights. In this connection, we are striving

for having the Government to submit another report before July 1997 so as to explain in detail whether or not it has done all it has to do in removing discrimination in every aspect. I believe I can represent Honourable colleagues on the Home Affairs Panel who are concerned about human rights in urging the Government once again to put it into practice. Thank you, Mr President.

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): I fully understand the strong views of Honourable Members who have spoken on the Administration's motion to seek extension of the grace period for another year. I would like to reassure Members that the Administration will arrive at a final conclusion on this important issue in the year to come. Meanwhile, I would also reassure Members that the Administration will undertake to draw up a timetable on the consultation and legislative procedures involved, and to make regular progress reports on the matter to the Manpower Panel of this Council. I thank Members for their support of this motion.

Question on the motion put and agreed to.

BILLS

First Reading of Bills

WITNESS PROTECTION BILL

WASTE DISPOSAL (AMENDMENT) BILL 1996

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

Second Reading of Bills

WITNESS PROTECTION BILL

THE SECRETARY FOR SECURITY to move the Second Reading of: "A Bill to provide for the establishment of a programme for the protection of certain witnesses and persons associated with witnesses."

He said: Mr President, I move the Second Reading of the Witness Protection Bill. The Bill seeks to provide a legislative framework for the existing Witness Protection Programmes, and to establish a system for the change of identity of high-risk witnesses.

The existing Witness Protection Programmes are operated by the police and the Independent Commission Against Corruption (ICAC) to provide protection for high-risk witnesses. The key features of these Programmes include a professional threat assessment, a high level approving authority, agreements on the offer and termination of protection, relocation arrangements, and an appeal mechanism. Changing the identity of witnesses is not a feature in the existing Programmes. However, taking account of the recommendations of Justice KEMPSTER's Commission of Inquiry into Witness Protection, we consider that changing identity, coupled with other protection measures such as relocation, is effective both in terms of physical protection, and especially in providing reassurance, to high-risk witnesses. We have therefore undertaken to introduce legislation to facilitate the change of identity of witnesses and, at the same time, enhance the effectiveness of the existing Witness Protection Programmes by giving them legal backing.

The Witness Protection Bill gives legislative effect to the features of the existing Witness Protection Programmes, in particular, the requirement of witnesses to provide certain information to the approving authority, the assessment criteria for inclusion in the Programmes, the signing of a memorandum of understanding of admission into the Programmes, and the procedures for the termination of protection.

As regards the change of identity of witnesses, we propose that, on the personal recommendation of either the Commissioner of Police or the Commissioner, ICAC and with the Governor's approval, official documents pertaining to a protected witness will be issued under a new fictitious persona. Apart from providing clear statutory powers for officials to change the identity of

witnesses, our proposed scheme is comprehensive in that it will not indicate any change of identity has taken place, and the identification documents of the witness's spouse and children can also be covered. This will provide greater reassurance to the protected witnesses. However, the protected witnesses will not be provided with any academic or professional qualifications, since it cannot be done on a fictitious basis when a person does not possess the requisite skills.

We propose to impose penalties for the improper disclosure of certain types of information concerning the Witness Protection Programmes. The Bill provides that disclosure of details of the Witness Protection Programmes by the witnesses involved, without legal authority or reasonable excuse, should constitute an offence punishable by imprisonment for a maximum term of five years. Moreover, we propose that any disclosure of information, without lawful authority or reasonable excuse, as to the identity or location of a protected witness, or any improper disclosure of any information which may compromise the security of a witness, should be punishable by imprisonment for a maximum period of 10 years.

The high level approving authority of the scheme will ensure that it is not open to abuse, and address any possible concern about the integrity of official documents issued. The Bill contains provisions to ensure that officials and authorized persons are protected from civil or criminal liability, while acting in good faith and in due execution of their duties in relation to the Programmes.

Mr President, success in criminal investigations and subsequent persecutions very often depends on the willingness and the co-operation of witnesses to testify in criminal proceedings. It is therefore vital to have effective measures to protect and reassure witnesses, to encourage them to come forward to assist in investigation and to testify in court. We believe that our proposals will achieve this. We have consulted the Security Panel of this Council, and are grateful for the general support given to our proposals.

Thank you, Mr President.

Question on the motion on the Second Reading of the Bill proposed.

Debate on the motion adjourned and Bill referred to the House Committee pursuant to Standing Order 42(3A).

WASTE DISPOSAL (AMENDMENT) BILL 1996

THE SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS to move the Second Reading of: "A Bill to amend the Waste Disposal Ordinance."

He said: Mr President, I move the Second Reading of the Waste Disposal (Amendment) Bill 1996. The Bill seeks to amend the Waste Disposal Ordinance (WDO) to facilitate the implementation of charging schemes in accordance with the "polluter pays" principle.

At present, there are two charging schemes under the WDO — one is for the disposal of chemical waste, introduced in March 1995, and the other is for waste disposal at landfills.

Members will recall that the regulation on landfill charging was passed by this Council in June last year and our original proposal was that landfill charges should be paid by a simple mechanism of pre-paid tickets by those who deliver waste to landfills. However, during our further consultation with waste collectors, we were given to understand that a pre-paid ticket system would create serious cashflow problems for waste collectors as they would be required to pay upfront.

To address the concerns of the waste collectors, we intend to set up an account billing system to collect landfill charges in arrears. Under this system, the account holder could be either the waste producer or the waste collector, and it would also be possible for the landfill operator to run the system, thus simplifying the charging arrangements further, and reducing costs. Such arrangements would require amendments to the WDO, which at present does not allow deferred payment or for charges to be collected other than by public officers. The Bill, therefore, seeks to provide for different methods of charge collection, such as account billing; and to authorize the Director of Environmental Protection to delegate the charge collection work to contractors, such as the waste disposal facility operators.

In order to enable landfill operators to properly collect charges on the Government's behalf, we propose that they should be allowed to maintain

operational order and security at landfills, and to suspend the provision of landfill services for non-payment of charges and bad debts. As these powers are not provided for in the WDO, we propose to amend it to confer such powers on the Director of Environmental Protection and to allow the delegation of these powers to the contractors as appropriate.

Lastly, we would also like to take this opportunity to repeal section 28 of the WDO in order to meet the requirements of Article 10 of the Bill of Rights. Section 28 of the WDO empowers the Governor in Council to review a decision of the appeal board set up under the Ordinance, where that decision has reversed a decision of the Director of Environmental Protection and the latter considers that exceptional circumstances require the review of the appeal board's decision in the public interest. However, Article 10 of the Bill of Rights provides that, in the determination of his rights and obligations in a suit of law, everyone shall be entitled to, I quote, "a fair and public hearing by a competent, independent and impartial tribunal established by law." Permitting the Governor in Council to overturn the appeal board's decision appears to contravene this Article. In order to remove this inconsistency, we propose to repeal section 28 of the WDO.

Mr President, the Waste Disposal (Amendment) Bill seeks to provide for regulation-making powers to deal with the payment and collection of charges, as well as measures to ensure the maintenance of orderly conduct at waste disposal facilities and to take action against any evasion of charges. Charging schemes are necessary instruments to create an economic incentive for waste producers to practise waste minimization, reuse and recycling. The amendments proposed in the Bill will facilitate the implementation of charging schemes under the WDO by addressing the concerns of the affected parties. I therefore commend the Bill to Members for their favourable consideration.

Thank you, Mr President.

Question on the motion on the Second Reading of the Bill proposed.

Debate on the motion adjourned and Bill referred to the House Committee pursuant to Standing Order 42(3A).

Resumption of Second Reading Debate on Bill

NURSES REGISTRATION (AMENDMENT) BILL 1996

Resumption of debate on Second Reading which was moved on 29 May 1996

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 Bill

Council went into Committee.

NURSES REGISTRATION (AMENDMENT) BILL 1996

Clauses 1, 2 and 3 were agreed to.

Council then resumed.

Third Reading of Bill

THE SECRETARY FOR HEALTH AND WELFARE reported that the

NURSES REGISTRATION (AMENDMENT) BILL 1996

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

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

Bill read the Third time and passed.

MEMBER'S MOTIONS

4.15 pm

Dr John TSE was not present to move his motion.

PRESIDENT: I now suspend the sitting for five minutes.

4.20 pm

Council then resumed.

INTERPRETATION AND GENERAL CLAUSES ORDINANCE

DR JOHN TSE to move the following motion:

> "That the Sewage Services (Sewage Charge) (Amendment) Regulation 1996, published as Legal Notice No. 199 of 1996 and laid on the table of the Legislative Council on 29 May 1996, be repealed."

DR JOHN TSE (in Cantonese): I move the motion standing in my name in the Order Paper.

At present, a consumer of potable water whose premises are connected to a communal drain or a communal sewer which is vested in and maintained by the Government is required to pay a sewage charge at a prescribed rate. The Sewage Services (Sewage Charge) (Amendment) Regulation 1996 aims at increasing the prescribed rate of sewage charge from $1.20 to $1.38 per cu m of water supplied. The House Committee formed a subcommittee to study this Regulation and the Sewage Services (Trade Effluent Surcharge) (Amendment) Regulation 1996. I was elected chairman of the Subcommittee. The Subcommittee has held two meetings with the Administration and has received 15 deputations. It has also received over 70 written submissions. First of all, I must point out that all the deputations and submissions we received have expressed strong objection to the Government's proposal to increase sewage

charges and trade effluent surcharges. As I will move a separate motion on the issue of trade effluent surcharges later in this sitting, I am now only focusing my attention on the proposal to increase sewage charges.

While members of the Subcommittee are in support of cleaning up the environment, they have reservations about the present charging system which operates under the principle of recovering the full costs of providing sewage services. In order to recover the operating costs of the Sewage Services Trading Fund (SSTF), the Administration intends to increase sewage charges over a four-year period with the cumulative increase amounting to 168%. In other words, the rate of sewage charges will increase gradually from $1.20 in April 1995 to $3.22 in April 1999. By any standard, such an increase is indeed alarming. Some members of the Subcommittee are of the view that the Government should consider injecting capital into the SSTF.

The Administration has explained to Members that it has taken a number of measures to minimize the level of increase necessary to cover the operating costs. Such measures include setting the target return rate of the SSTF at zero; waiving the requirement for the SSTF to take account of the depreciation of its assets in setting charges and making full use of the revenue generated in 1995-96. According to the Administration, the Government has spent $20 billion on the capital projects of the SSTF. Nevertheless, the idea of injecting capital into the SSTF to maintain its operation is not in line with the "polluter pays" principle.

Members of the Subcommittee expressed their appreciation to the Administration for addressing the grave concern among Members and the public about the projected increases and putting forth an alternative proposal to smooth over the increases. Under the proposal, the Administration plans to recover the operating costs of the SSTF by 2004-05 rather than 1999-2000 as recommended in its original proposal to increase charges. But I must stress that even under the alternative proposal put forward by the Administration, the percentage increases for the next two years will still be as high as 37.5% and 26.5% respectively. Members of the Subcommittee held that the Administration should take a fresh look at the charges concerned. They believed that in the light of the present economic downturn and high unemployment rate, it would be indeed inadvisable to make life more difficult for the public. Thus, members of the Subcommittee have unanimously agreed that sewage charges should be frozen at the present level and that the Sewage Services (Sewage Charge) (Amendment) Regulation 1996 should be repealed.

Mr President, I would like to express the views of the Democratic Party on the proposed increases in sewage charges.

Members and the public taken in by the Government and caught in a "no turning back" situation

When this Council considered the sewage charges in the last legislative session, the annual increase proposed by the Planning, Environment and Lands Branch was only 10%, except for 1998. But the Government is now proposing to increase the charges per cu m from $1.20 to $3.22 in 1999. The Democratic Party considers that such an approach is like starting with an acceptable proposal such that Members and the public cannot turn back when drastic increases are imposed later on. The Government is thus suspected of misleading the general public.

Asking for too much increase

The Democratic Party opines that the Government should understand public sentiments. In the light of the present general economic downturn and high unemployment rate, the Government should handle any kind of fee increase in a prudent manner. The 15% increase proposed by the Government is no doubt asking for too much, just like "a lion opening its mouth wide", which is far beyond what people can afford.

Supporting the "polluter pays" principle is not synonymous with immediate recovery of full costs

Mr President, the Democratic Party believes that supporting the "polluter pays" principle by no means indicates an endorsement of the Government's attempt to recover the full costs immediately. As a matter of fact, drainage works is a kind of public works. The Government should not back away from its commitment in this respect. Moreover, the Democratic Party conducted an opinion survey last January and interviewed nearly 500 members of the public. About 80% of the respondents did not go along with the Government's plan to recover the full costs of treating domestic sewage. The majority of the public is also of the view that the Government should share the costs of treating sewage with the public instead of shifting all the responsibility to the public.

The demand to freeze sewage charges is a concession from the Democratic Party

In fact, when the Government levied the sewage charges, the Democratic Party already found the sewage charge of $1.20 excessive. We have been calling on the Government to sympathize with public sentiments and reduce the sewage charge to $0.70 per cu m. Thus, our demand to freeze sewage charges is not only a concession to the Government but also the Democratic Party's bottomline. Over the last two months, we have also collected the signatures of 40 000 members of the public who are against the increase in charges. This is proof that most of the people oppose the present proposal to increase sewage charges.

To sum up, the views of the Democratic Party are as follows: (1) The Government first presented the proposed charges as just "the price of a roll". Members were taken in and agreed to the levy of sewage charges. When it is too late for Members to turn back, the Government then proposes drastic increases. "The price of a roll" becomes "the price of a cake". (2) The proposal of the Government points to a cumulative increase of as high as 168%. Such an increase is too much, and the pace of cost recovery is too fast. (3) In the light of the present economic downturn, an increase of 15% in the charges would mean a heavy burden on the public. Thus, the Democratic Party is against the Government's proposal to increase sewage charges.

Mr President, I so submit.

Question on the motion proposed.

MR CHAN WING-CHAN (in Cantonese): Mr President, since the sewage charges were first levied, a big controversy has been aroused in our society. Voices of discontent have echoed among members of the public and the commercial and industrial sector. Particularly aggrieved are people in the catering industry. They condemn the criteria for such levies as unfair, and question the justification of what the Government calls the "polluter pays" principle. That is why the Government's proposed 15% increase in sewage charges and trade effluent surcharge for this year has met with vehement opposition from people in a wide array of sectors. They accuse the Government

of turning a blind eye to the dire straits the public is in and complain that they have been deceived by the flowery words the Government uttered when the sewage charge scheme was introduced.

The public is reacting so strongly not because they do not support environmental protection or the "polluter pays" principle, but because of "miscalculations" resulting from poor budgeting on the part of the Government when the sewage charge scheme was introduced and also because of serious blunders committed by the Government in both the methods and strategies adopted to implement the scheme.

To the catering industry and the hotel industry, the former in particular, this upsurge in sewage charges and trade effluent surcharge represents a renewed blow to them at a time when the impact of the previous blow can still be felt. The Government's administrative malpractice in the implementation of the trade effluent surcharge has already dealt the first blow to the catering industry, with complaints from the industry still left unresolved. In this follow-through blow, charges are drastically increased.

Apart from this, the Government has totally ignored the factor of "affordability" when deciding the rate of the increase. In the schedule the Government has proposed, it is suggested that the rate of increase for this year is 15%, while that for next year is 34.8%, and the year after next is 35.5%. The cumulative increase for the three years amounts to 168%. In recent years, Hong Kong has witnessed a persistent economic downturn. The unemployment rate has remained high. The number of unemployed people is reaching 90 000. People find it hard to bear the heavy livelihood burden, and their standard of living keeps on dropping. But the Government still blindly executes the policy it has laid down, adhering to the principle of "full cost recovery and regular adjustment of service charges", and indulging in lofty talk about the principles of financial management without any regard to the reality.

The hotel and catering industries, which I represent, are bound to be hit by this charge hike, since these are industries with high water consumption levels. Everybody knows that Hong Kong's economy has been sluggish over the past few years, business of the catering industry has been in the doldrums, many restaurants and food stores are closing down; and unemployment is rampant. Recently, the Eating Establishment Employees General Union and the Hotels, Food and Beverage Employees Association, both under my chairmanship, jointly

conducted a survey on their members' employment status. The result showed the magnitude of the unemployment situation: as many as 12.4% of the members were unemployed, and 70% of whom had been displaced due to company winding up or company downsizing. I shall not go into the details of the findings of the said survey as the media have already covered that subject.

Yet there is an incident I feel like mentioning. This is about a footage from a TV report, in which some remarks I made were broadcast. These were not about unemployment, though. I was asked by a reporter, "There has been a spate of food poisoning cases lately. Do they have anything to do with the thin business of the catering industry? Are the two related?" In reply I pointed out that the number of food poisoning cases were extremely small some years back when business was good and turnover was high. I also pointed out factors contributing to food deterioration.

A few days later I received a call from an operator of a Chinese roast meat establishment who said, in a tone hardly concealing his agitation, "Councillor CHAN, your comment on TV about food poisoning has rubbed salt into the wounds of our stagnant business. We are so helpless. You councillors should not speak so much on food poisoning to affect our business." "Instead," he continued, "you should talk more about how the sewage surcharge affects us. Your remarks in the Legislative Council opposing the increase of water charges, for example, are praise-worthy." Well, that was a "mixed" response indeed.

Mr President, I do not want to dwell on this subject any more. But I want to point out one thing: operators of eating establishments, those of small establishments in particular, are confronted with a whole bunch of adversities, like lackluster business and exorbitant rent. The sewage surcharge has already added to their burden, and now comes the drastic increase in sewage charges and trade effluent surcharge. It is understandable that these owners should feel helpless, anxious, upset and at a loss. The hordes of displaced hotel and catering workers, as well as nearly 90 000 unemployed workers in all sectors, of course, are even more distressed and helpless.

Some displaced workers suffer more than acute financial difficulties. After becoming jobless for an extended period, they feel upset and helpless, as if they have been abandoned by society. Some may think of themselves as "useless". In utter despair, some might even resort to committing suicide.

Two days ago, a 25-year-old young man plunged to his death after failing to get a job for months. I was very upset when I heard such news!

Mr President, if in circumstances like these the Government still wants substantial increases in trade water charges, sewage charges and trade effluent surcharge, that will certainly add to business operating costs, thus driving more eating establishments and restaurants out of business, smashing workers' "rice-bowls", and pushing the unemployment rate of the catering industry higher up.

To put it in a nutshell, the Government's drastic increase in sewage charges and trade effluent surcharge is an attempt to shirk its responsibility, using the "polluter pays" principle as a pretext. Such a move seems to be neither reasonable nor justifiable and is certainly not admitting the fact that our economy is in recession. The Government is taking advantage of a Bill passed in the last legislative session to levy a greatly increased sewage surcharge arbitrarily.

As an accountable government, the Government should conduct a comprehensive review of the "full cost-recovery" principle. It should assume certain responsibilities in public services. It should also look into the actual situation and be more sympathetic to the public. An increase in charges, not to mention a drastic one, is not something to be made at the whim of the Government.

Lastly, let me reiterate the position of the Hong Kong Federation of Trade Unions: we support freezing this year's domestic sewage charges and trade effluent surcharge at the present level so as to lessen the burden on members of the public. We also urge all Members of this Council to vote in favour of the above.

Mr President, these are my remarks.

MR HENRY TANG (in Cantonese) : Mr President, we, the Liberal Party, have long been agreeing with the "polluter pays" principle put forward by the Government. We also subscribe to the spirit of the Sewage Services Bill, which was passed by a clear majority in the Legislative Council in 1993. These days

there is already a consensus in the Hong Kong society that we will work hard together and embark on the full implementation of the task of environmental protection. The Liberal Party will not hesitate to pitch in.

Hong Kong people had no objection to their paying sewage charges in the past year. We were also happy to commit ourselves to a better future. But the Liberal Party is rooted in the masses and is also a party which has a deep understanding of the difficulties in business operation encountered by the industrial and commercial sector. In the face of the generally weak performance of the Hong Kong economy, the Hong Kong Government unexpectedly put forward a proposal to increase both sewage charges and trade effluent surcharge substantially. Under the proposal, the charges will rise by 15% with effect from August this year, and the cumulative increase for the next three years up to 1999 will amount to 168%. Such an alarming rate of increase has sent shock waves to the general public and the industrial and commercial sector. While they are in support of environmental protection, there have been grumblings and protests all over the territory.

As a matter of fact, heavy users of water, such as the catering, bleaching and dyeing and electroplating industries, will bear the brunt of such increases. In the last financial year, the catering industry paid a total of $400 million of surcharges, amounting to 80% of the total surcharges. The increases in sewage charges and trade effluent surcharge would also deal quite a serious blow to the clothing, bleaching and dyeing and electroplating industries. We are concerned that drastic increases would push up the costs of these industries, resulting in a rapid loss of competitiveness. As far as I know, there is a big bleaching and dyeing factory which has to bear a bill of $20 million every year after adding the sewage charges and sewage surcharge to the water charges. The bill is expected to go up 1.7 times in three years. If the sewage charges and sewage surcharge continue to rise drastically, I guess more factories would be forced to fold. Thus, we think that the Government can hardly convince the public that the proposed increases are justifiable. Even if the users want to protect the environment, they cannot afford the charges. The Liberal Party has decided to vote against the increases. I am now putting forward the Party's stance and our counter-proposals.

(1) Mr President, the Liberal Party demands that the Government immediately shelve the motion to increase sewage charges and trade effluent surcharge, and the Legislative Council should set up an ad hoc committee to conduct a thorough review of the goal of the Sewage Services Trading Fund to recover the full costs, the various

rates of charges and the overall plan itself. Before the results of the review are published, our Party would not accept any motion tabled by the Government in this respect.

(2) We support the "polluter pays" principle and its spirit. But the annual collection of charges from the public and the industrial and commercial sector should take into account a reasonable level that the general public can afford. Otherwise, the Government is not keeping its word regarding the pledge made when seeking the support of the Legislative Council for the Sewage Services Bill. At that time the Government indicated there would only be a slight annual increase. We do not believe that an increase of 15% to 35% can be considered a slight increase.

(3) We suggest that the cost-recovery period for the Fund to break even should be extended from the present five years to 20 years, that is, until the year 2015. We believe that there is no hurry for a government trading fund to recover the costs, because the fund should only need to break even rather than make money. From worldwide experience, the cost-recovery period of similar public funds normally spans 10 to 20 years, or even as long as 40 years.

(4) The Liberal Party considers that since the Government has now amassed a huge surplus, it should inject capital into the Trading Fund to meet a possible deficit. In view of the annual appropriation of the Drainage Services Department spent on sewage services in the past, for example, $430 million in 1993-94 and $480 million in 1994-95, the Government should inject this amount with an annual increase of about 10% into the Fund instead of handing the money that used to be appropriated back to the Treasury.

(5) The Liberal Party is also of the view that the Government should consider extracting a portion of the rates collected annually from the public from the Urban Council coffers and injecting the amount into the Trading Fund. The net revenue from rates for 1994-95 totalled $12.7 billion, of which $7.6 billion was allocated to the Urban Council and the Regional Council. It is understood that at present the municipal councils can hardly spend all their revenue. It is believed that the allocation of a portion of the rates to the Trading Fund would be supported and welcomed by the public, which would also be in line with the "user pays" principle.

(6) The Liberal Party thinks that an open society should allow the public to monitor the income and expenditure account of the Trading Fund so that they can have a clear picture of whether the money has been spent in their interests.

(7) We demand that the Government review the current rate of trade effluent surcharge and whether the sampling method is fair for measuring the concentration of the pollutants in the sewage discharged by the trades concerned. We propose that consideration be given to taking the median value of the concentration of the samples as the basis for determining the surcharge.

(8) From the angle of people's livelihood, especially during an economic slowdown, we opine that there is no need for the Government to peg various kinds of fees and charges with inflation. Otherwise, this would meaning acting against the will of the public, and the Government would be taking the lead in imposing hefty increases and pushing up the inflation.

(9) Finally, the Liberal Party proposes that the Government can even consider and study the idea of privatizing the Trading Fund. The management of the Fund by the private sector with highly efficient methods of operation will probably be more effective than management by the public sector.

Mr President, on behalf of the Liberal Party, I express strong objection against the proposal to increase the sewage charges and trade effluent surcharge. Our 10 colleagues in this Council will support Dr the Honourable John TSE's motion.

MR IP KWOK-HIM (in Cantonese): Mr President, apart from being a dark month for industrial safety, last June has not been a good time for the general public either. Within the same month, the Government made two announcements of fee increases related to water supplies. Besides increasing the water charges, it also raised the sewage charges by as much as 15%. This is an "unprecedented" move, while we hope that it will also be the last of its kind.

The Democratic Alliance for the Betterment of Hong Kong (DAB) has always held a positive view towards the "polluter pays" principle, considering it necessary because polluters should be accountable for the pollution they have produced. To propose a freezing of the increases in sewage charges does not mean that we do not support this principle. The Secretary for Works Mr KWONG Hon-sang has recently referred to the support given by this Council in late 1994 to the "polluter pays" principle which involved the levying of sewage charges on the industrial and commercial sector and the general public for the purpose of improving the territory's water quality. He further pointed out that all the political parites were, at that time, already well aware of the Government's timetable set for the levying of sewage charges: the trading fund has to break-even by the year 2000, after which the rate of increase in sewage charges will then come down gradually. Seen in this light, the attempt made by the various political parties to freeze the rate of increase on the ground of poor economic conditions appears to be a departure from the principle they supported in the past. The DAB must clarify the situation by pointing out that it was a result of the Government's own doing. The forecast the Government provided Members with turned out to be inaccurate. It has over-estimated the charges payable by industrial and commercial users and under-estimated the number of successful appeal cases, causing a revenue loss of $ 200 million, or one-third of all the charges collected last year. As a result, the "optimistic projections" fail to work out, and so the Government can only resort to increasing the charges concerned. In order to achieve the original target of recovering all the costs within five years, the rate of increase is raised from the previously set 10% to 15% to make up for the loss. This is what we find unacceptable.

Mr President, since the imposition of the sewage charges under the "user pays" principle last year, interim figures show that some 500 large and medium-sized restaurants or food establishments have closed down as a result, and many others are bordering on closure. If the Government still seeks to raise the charges, these "borderline" food establishments will probably close down one after another. In addition, many other industries, such as the garment manufacturing and the dyeing industry, are also "plagued " by the sewage charges. For some individual manufacturers, the net profits that they can make in one year are not enough to cover the payment of sewage charges. The DAB maintains that it is the Government, not Members of this Council, that has failed to honour past promises. When the sewage charges were first imposed last year, the Hong Kong Government undertook to conduct a review on the charges a year

later. Today, when the report on the said review is yet to be seen, the Drainage Services Department has submitted a request for adjusting the charges to the Executive Council for approval.

Faced with the concerted efforts of Members, who are determined to secure a freeze on the level of sewage charges, the Government has proposed a new scheme under which the cost recovery period is to be lengthened from five to 10 years. However, this new scheme is still unacceptable because the rates of increase in the years between 1996 and 1999 will still range from 15% to 37.7%, dropping to 7.8% only after the year 2000. This may well be regarded as "hardship followed by happiness ". But the point is that in the past year, the hardship suffered by members of the public and the affected industries, in particular food establishments, were actually beyond the understanding of outsiders. The DAB is afraid that the industries and food establishments which are on the verge of collapse may close down well before they can experience the "happiness" under the new scheme. In that case, many people will join the ranks of the unemployed, for which the Government cannot rid itself of the blame.

Mr President, the territory's water quality has been affected by worsening pollution over the past 10 years. The Government, having adopted a "could not care less" attitude in the past, was only determinid in recent years to really do something about the problem. However, members of the public and the industries concerned are required to pay off all the costs involved within just a few years. This is not fair to members of the public. In particular, given the territory's economic sluggishness in recent years, the drastic increases in sewage charges as proposed by the Government will no doubt make life more difficult for the already struggling general public. The DAB proposes that the Government should appropriate more public funds to help the sewage disposal scheme to make up for its operating losses.

Mr President, the DAB will vote for the subcommittee's recommendation on freezing domestic sewage charges and industrial and commercial sewage surcharges.

These are my remarks. Thank you, Mr President.

MRS SELINA CHOW (in Cantonese): Mr President, today on behalf of the Retail Management Association and the Hong Kong Tourist Retail Association, I want to voice my strong opposition to an increase in the sewage charges and trade effluent surcharge proposed by the Government. To support my

opposition, I will give an account of the various unfair phenomena which I have learnt from the sector. As a Legislative Council Member, I should of course not only reflect the views of my constituency but also care for the interests of Hong Kong as a whole. That said, I am convinced that the increases currently proposed by the Government will not only do harm to the business sector, but will also produce far-reaching negative effects on everyone connected with the sector, including the employees and employers, and eventually dealing a blow to the economy of Hong Kong.

The Retail Management Association has expressed its support for the "user pays" principle and the basic principle of environmental improvement. However, even in the light of these two principles, the Association fails to see any reasons for the Government to strangle those trades that require high water consumption and to penalize those proprietors who are willing to install their own sewage treatment facilities in accordance with the law.

The Association also pointed out that the Government had hardly provided the catering industry with any advice on reducing pollution, and that if the Government had really cared about the environment, it should have directed its efforts to assist the industry in reducing pollution instead of looking only to collect the sewage charges and surcharge from the industry on a punitive basis. When the Government first announced the Strategic Sewage Disposal Scheme, it repeatedly assured the public and the industrial and commercial sector that the effects on them would be minimal. But, it has subsequently turned out that 20% to 30% of the real profits (if any) made by the industry would be "discharged" to the coffers of the Government.

A representative of the Hong Kong Tourist Retail Association pointed out that the Government had never consulted them adequately on the issue of sewage charges, nor had it clearly explained and accounted for the basis on which the sewage charges and trade effluent surcharge were calculated. The Association also criticized the Government for never providing any recommendations or assistance to help the industrial and commercial sector to reduce the pollution it might caused. When people in the trades sought assistance from the Government, they would only meet with "evasive" responses without any positive advice. To play safe and avoid trouble could not be the act of a responsible government.

In addition, the assumption adopted by the Government in calculating the extent of pollution caused by the catering industry was unacceptably high. So it was hard to blame anyone for suspecting the Government of trying to obtain as much money as possible. There were no uniform standards governing the test of water samples and in some cases, samples were collected for testing before the food establishments concerned could carry out water treatment. Are such tactics morally justifiable?

What is more, the Government has assumed that 80% of the water used by a food establishment will turn into sewage, and adopts this arbitrary percentage as one of the criteria for determining the calculation of trade effluent surcharge. Perhaps the Government has borrowed a disclaimer statement commonly seen in television series, adapting it to say: All estimates are purely fictitious and any similarity to them is just coincidence. But a scientific research undertaken in Australia showed that the percentage should only be 40%! We should be able to see whether the Government is really making an excessive demand.

All these are not one-sided stories told by representatives of the affected trades. They have been substantiated by a report of the Commissioner for Administrative Complaints. With over 90% of the appeal cases successful, revealing the chemical oxygen demand levels of the sewage discharged in these cases as only one third to one half of the standard laid down by the Government, there is ample proof that the Government's assumption about oxygen demand levels are erring seriously on the high side. I believe that Honourable colleagues on the Subcommittee can still remember the time during the first meeting when I asked whether the high percentage of successful appeal cases could already bear out the fact that the Government's assumption about oxygen demand levels had been too high. The government official concerned could actually quibble by saying that since appeals were in fact meant to provide opportunities for making rectifications, the success rate should be 100%. With such an attitude, how can they learn from the outcome of appeal cases and make rectifications accordingly? In fact, the number of appealable cases far exceeds the number actually lodged because many small-scale food establishments do not find it financially viable to spend $30,000 or $40,000 on lodging an appeal for a saving of $10,000 or $20,000 in sewage surcharge a year. Perhaps it is precisely because the Government is aware of such a state of mind that it should

dare to unscrupulously "fleece" these food establishments.

Mr President, I do not intend to discuss in detail the entire issue of sewage charges now because, thanks to Dr the Honourable John TSE, my fellow Members will have the chance of an in-depth discussion next week. Today, I just want to ask the Government one question: having already agreed to review the entire scheme of trade effluent surcharge, why should it insist on increasing the charge at this stage when it should in fact cut the charge? Is this some kind of benevolent government policy?

I hope the Financial Secretary and the Secretary for the Treasury would not fret at my remarks because the Financial Services Branch is not to blame on this issue. The mistake is probably the result of improper handling by other Policy Branches and departments concerned. I hope the two Secretaries can see to it that justice is done by admitting the mistake and making rectifications. That way, everybody would be happy.

SECRETARY FOR WORKS (in Cantonese): Mr President, during the past few weeks I have heard views from a number of Members on the revision of the sewage charge and trade effluent surcharge. I am disappointed to find that we have been unable to convince Members so that they will support the Government's motion for charge increases. However, Members who have just spoken all support the "polluter pays" principle endorsed by this Council in December 1993. Now we need to support, through concrete action, this principle and to accept a reasonable adjustment of the sewage charge.

The basic principle underlying the levying of the sewage charge is "polluter pays". This principle has been widely discussed among the community during the past few years and many have accepted it. The principle was endorsed and accepted by the Legislative Council during a motion debate held in 1993.

I must point out that the Sewage Services Bill and the two pieces of subsidiary legislation relating to charging were passed by the Legislative Council after exhaustive debates during the period from late 1994 to early 1995. Although the data produced by the Administration at that time would not

necessarily indicate that the charge would be as cheap as what a "cake" would cost, yet I believe it would be just about what a "bun" would cost. The Administration never had the intention to doctor the figures and present them in flowery language or by any other means.

In January this year, the Legislative Council held a motion debate on the freezing of the sewage charge. During the debate, the Administration reminded Members that the "polluter pays" principle was widely supported by the community. Various sectors of our community accept that they must share the cost for cleaning and improving the water quality of our harbour. We believe the public can afford to pay the cost.

At a recent meeting of the Bills Committee to scrutinize the proposed sewage charge increase, Members also supported the "polluter pays" principle. But I hope Members are not conveying a wrong message now, that is to say, the Legislative Council pays only lip service to the "polluter pays" principle which the Council endorsed before.

I feel that we should respect this established environmental target and accept that the public has to bear the cost. I believe that no sound argument can be advanced to convince us that this affluent society of ours cannot bear a charge which is, in reality, a very low one.

I would like to remind Members once again that, if we stick to the "polluter pays" principle, we must resort to concrete action. We must allow the charges recoverable by the Sewage Services Trading Fund to be reasonably revised so that there will be sufficient revenue to pay for the operation and maintenance of our ever expanding sewerage facilities to ensure good water quality. Mr President, we can further discuss matters which Members are concerned about, such as extension of the period for full recovery of the trading fund capital. At the subcommittee meeting held on 19 June, the Administration put forward an amendment proposal to the effect that recouping of the trading fund capital, expected to be realized in 1999-2000, will be extended to 2004-05. Next year and the year after next, we will need to substantially increase the sewage charge mainly because the sewerage works being carried out at Stonecutter's Island will be commissioned. As a matter of fact, the Administration has invested heavily in sewerage works and such works are not solely being funded from charges paid by users. However, members of the subcommittee did not discuss or analyze in detail the Administration's proposal.

If the Legislative Council does not support our proposal to increase the sewage charge, the trading fund will soon run into deficit and this will lead to even steeper increases in the future.

Here I would like to take the opportunity to explain our grounds for proposing to increase the sewage charge and trade effluent surcharge.

Facilities under the Strategic Sewage Disposal Scheme will be commissioned one after another in the next few years. 70% of urban sewage will be channelled to our Stonecutter's Island facility for preliminary treatment and this will improve the water quality of our harbour. As I said a moment ago, operating costs will rise mainly because of the commissioning of our new, massive-scale facilities. We are proposing a 15% increase in respect of the sewage charge and the surcharge with effect from 1 August 1996, higher than the 10% increase originally expected. The main reason for this is that the effective date, originally fixed on 1 January, is being deferred for seven months and a higher increase is necessary to reflect the interim rate of inflation.

The purpose of Dr the Honourable John TSE's motion is to seek to freeze the sewage charge and surcharge at their present level. His reason is that in view of the economic downturn it would not be right to increase the burden on Hong Kong people and add to the operational difficulties of the business sector by increasing the trade effluent surcharge. However, at a sitting of this Council a few weeks ago, we already pointed out that our proposal would only result in 61% of the households paying an extra $1 to $2.5 each month and 16% of the households having to pay nothing at all. I believe this amount will not constitute a heavy burden on Hong Kong people. Moreover, the trade effluent surcharge will only result in a 0.04% increase in the operating costs of businesses.

If the motion proposed by Dr TSE is carried, the problem will only be deferred with a snowballing effect, which means that it will lead to even steeper increases in 1997-98 and the public will have to bear even higher sewage charges. An undesirable phenomenon of "people having to bear the consequence of pollution by their predecessors" will arise.

Mr President, I have explained the reasons for our proposal to increase the

sewage charge and trade effluent surcharge as well as the possible effects a freeze on such charges will have on the public. I hope Members will carefully consider the views presented by the Administration. Lastly, I call on Members to oppose the motion.

Thank you, Mr President.

SECRETARY FOR THE TREASURY (in Cantonese): Mr President, concerning the increase of the sewage charges and the trade effluent surcharge, Honourable Members have on one hand claimed they support the "polluter pays" principle but on the other hand, gone against this principle by requesting the Government to inject more capital. In other words, they want the general taxpayers to increase their burden in order to reduce the charges that the polluters should pay.

I would like to take this opportunity to reiterate that the Sewage Services Trading Fund (SSTF) was established on 11 March 1994 by a resolution of the Legislative Council adopted on 9 March 1994. According to the resolution, $6.8 billion was injected into this Trading Fund by the Government as its capital to implement Stage I of the Strategic Sewage Disposal Scheme and six items under the sewage collection master scheme.

The capital for the SSTF is free from capital cost charges, as what Dr the Honourable John TSE said just now, our rate of return is zero. Furthermore, since the SSTF will see a huge deficit from this year onwards, we have waived the requirement for the SSTF to take account of the depreciation of its fixed assets in its books when adjusting the sewage charges. In other words, when the SSTF has to replace its fixed assets in future, the cost will not be paid out of the Trading Fund. Therefore, it is misleading to say that the Government wants to recover the full costs. Actually, our proposal is to achieve a balanced budget in the operation gradually within a few years, and it is indeed a very flexible way to handle the "polluter pays" principle.

Moreover, as the Secretary for Works has just pointed out, 16% of the users will still be paying nothing while 61% will pay only $1 or $2.5 more per month. Concerning the effect of the trade effluent surcharge on the operating costs of businesses, the increase represents only about 0.04%. Therefore, it is unjustifiable to say that the two charge increases will seriously affect people's livelihood.

If Members choose to ignore the above objective reasons and veto our two proposals to increase charges, the SSTF will incur cash deficit towards the end of this year. If the SSTF cannot balance its books within a reasonable time, it will contravene the stipulations in the Trading Funds Ordinance. In that case, we will need to review the overall operation of the sewage services, including whether we should continue the trading fund mode of operation.

Thank you, Mr President.

DR JOHN TSE (in Cantonese): Mr President, I wish to respond to several points raised by government officials.

First, the Government says it feels disappointed because Members do not support the increase in charges. In fact, it is not the Government but actually Members and the public who should feel disappointed. The fault lies in the Government because when sewage charges were being determined, there was a lack of transparency and that the efficiency was poor. That is why the charges turn out to be so high, and it is the reason why we oppose the increase.

Moreover, government officials have also asked why we once supported the "polluter pays" principle but go back on our words now. I have only become a Legislative Council Member in this session, but I know why Members of the last legislative session supported the "polluter pays" principle. That was because the Government claimed that it would be cheap, and would only be "at the cost of a bun". But things turn out to be different now. That we support the "polluter pays" principle does not mean that we support the move to recover the full cost right away. We are opposing now because the Government is charging too fast, too hastily and at rates too high. Someone in the relevant trade has drawn a rather good analogy. He said that when people support the "polluter pays" principle, it does not mean that they are giving the Government a blank cheque for it to fill in any amount it likes.

Moreover, the crux of the question is whether or not the current rate of increase is reasonable. If the Government had stated, at the time when the trading fund was set up, that a 10% increase would be made every year until 1998, when the accumulated increase would be 50% by that time, and an additional 10% increase would be made, well, if I had been a Member of this Council then, I would have agreed. But the reality is not like this. This reality

is that an increase of 15% is sought this year, then a 35% increase next year, and another 35% the year after next, and then 28% for 1999. In other words, the total increase would be as high as 168% in just a few years' time. Is this rate of increase reasonable? It certainly is not. Recently, the Government has hastily put forth a new proposal, and it is meant to recover the cost. This time it really has listened to our views and extended the period for recovering the full cost, not to do it by the year 1999 or 2000. However, the situation is even worse when the period is extended. Previously, it wanted an increase of 35% for next year, but the new proposal is even worse because it now wants an increase of 37.5%. One would have thought that when the period is extended, the rate should be lower. But to one's surprise, it is in fact higher. So how can we support the new proposal?

The Government has remarked that "the consequence of pollution created by this generation is to be borne by the next one". I do not agree with this because I do not think people have such a short lifespan. So it would still be the same bunch of people, the same bunch of Hong Kong citizens in time. Most importantly, all along the Government had been injecting capital into the Drainage Services Department, but as soon as sewage charges were introduced, the injection of capital stopped. Is it necessary for sewage charges to be levied in such a fast and hasty manner? We think that this is really questionable.

The Secretary for the Treasury has also mentioned the question of balancing revenue and expenditure. I believe no Members will oppose having the revenue and expenditure balanced. What we oppose is the Government's levying of sewage charges for the sake of making money. Last year alone, it earned $70 million. I think it is even more questionable that an increase in charges is necessary in view of the profit gained. This is not just a question of balancing revenue and expenditure, as sewage charges are now just like a poll tax which generates revenue for the Treasury. And the Government has certainly saved money.

Meanwhile, the Government has also raised the question of deficit. Of course, no Members would like to see the Government in deficit. But in case a deficit does arise, members of the Subcommittee have in fact discussed the possibility for the Government to inject capital, and have expressed the wish that the Government would not charge any interest. The Government's current proposal is that if the Government is to inject capital, interest has to be charged at

8.5%, which is by no means a low rate. My opinion is that interest should not be charged. Therefore, I think it is unfair for the Government to threaten Members of this Council with a deficit.

Thank you, Mr President.

Question on the motion put and agreed to.

INTERPRETATION AND GENERAL CLAUSES ORDINANCE

DR JOHN TSE to move the following motion:

> "That the Sewage Services (Trade Effluent Surcharge) (Amendment) Regulation 1996, published as Legal Notice No. 200 of 1996 and laid on the table of the Legislative Council on 29 May 1996, be repealed."

DR JOHN TSE (in Cantonese): Mr President, I move the motion standing in my name in the Order Paper.

The Sewage Services (Trade Effluent Surcharge) (Amendment) Regulation 1996 seeks to increase the rates of the trade effluent surcharge (TES) for the 30 trades as set out in Schedule 1 by 15%. As I have said earlier, the Subcommittee set up to study this Regulation and another related regulation received 15 deputations, and one of the main points put forward by these bodies is that the Administration has seriously underestimated the impact TES has on the operating costs of various trades. A point of concern is that quite a number of bodies have stressed that sewage charges and TES are taking up more than 3% of the operating costs of restaurants and the textile industry, rather than 1% as the Administration has claimed. The profit margins of a lot of trades are already very thin, which are to the tune of 4% to 5% of the operating costs, whereas sewage charges and TES add up to far more than 50% of their profits. It is generally known that the economy of Hong Kong has become sluggish and many industries are facing difficulties. Nevertheless, business operators have to absorb any increase in costs and dare not shift it upon the consumers. Therefore, it is not surprising that the Subcommittee received more than 70 representations, and all of those who have submitted representations are opposing the charge increase proposal. Members understand that a lot of operators have already

found it difficult to bear the burden of sewage charges and TES now. So, if the Administration increases the charges further, it would be dreadful to think of the consequence.

The Subcommittee has noted that the existing charging scheme of TES is flawed. The Administration is now using the concentration of chemical oxygen demand of sewage as the criteria for levying charges, and many TES account holders have complained against such a practice. Moreover, the Administration has set it down that the amount of TES for certain industries and enterprises is to be determined at 80% of the volume of water supplied. This has also aroused objection. The procedure of the existing appeal mechanism is not only expensive, but also very complicated. Consequently, those who are paying TES are rather unwilling to lodge an appeal.

The Subcommittee is concerned about the economic impact TES has on the various trades if the Administration is to increase it further. In view of the fact that members of the public have urged the Administration to improve the existing charging scheme, any proposal to increase TES will not only aggravate the existing situation, but will also precipitate the shrinking of business of industrial and commercial enterprises, or even the folding up of businesses. The Subcommittee has therefore reached a unanimous decision that TES should be maintained at the existing level, and that the Sewage Services (Trade Effluent Surcharge) (Amendment) Regulation 1996 should be repealed.

Mr President, I also wish to present the view of the Democratic Party on the increase in TES. The Democratic Party's stand is that it supports the Government's move to recover the full costs of operation, otherwise it will be for members of the public to subsidize the business sector in their money-making concerns. However, the Democratic Party is of the view that in considering the increase in TES, the Government should also take into account the actual economic circumstances. In view of the current sluggish economy, a substantial increase in TES will only mean an extra burden on the industrial and commercial users. On the other hand, however, it is our belief that under favourable economic circumstances, the industrial and commercial users will certainly be more willing to take up their responsibility for the environment.

Moreover, as I have just said, the Government has obviously been

erroneous in the course of determining TES, and there are inadequacies in drawing up the criteria for charging. In determining TES, it has not consulted people in the trades sufficiently; and in implementing TES, it has also not provided the relevant education on environmental protection. Therefore, the Democratic Party will oppose the Government's proposal to increase TES.

Mr President, I so move.

Question on the motion proposed.

DR LAW CHEUNG-KWOK (in Cantonese): Mr President, though it has been the Association for Democracy and People's Livelihood's (ADPL) persistent policy to support the Government's cost-recovery principle regarding the adjustment of charges for the provision of services to the business sector, the ADPL strongly opposes the present increase in the trade effluent surcharge (TES). There are four main reasons for it:

- Firstly, there is a material discrepancy between the forecast and actual figures in the income and expenditure position of the Sewage Services Trading Fund.

- Secondly, the increase in this charge adjustment is very large, and the interim rate of increase is even more astonishing.

- Thirdly, there is a large gap between the estimates by the Government and those by the textile industry and restaurants with regard to the increased costs incurred by the industries as a result of the TES. It is our view that before another increase is proposed, the Government must seriously deal with this conflicting point.

- Fourthly, from the appeal cases lodged by restaurants against the sewage charges imposed, it can be seen that the mechanism for the determination of sewage charges is very unreasonable. This is a policy that wastes both money and manpower and need to be immediately improved.

The ADPL sincerely hopes that after the increase in sewage charges is

rejected by this Council today, the Government will consider amending the entire sewage services charging scheme in real earnest, and immediately conduct a review regarding the rationale for levying charges, economic feasibility, efficiency of operation, equitability in relation to various trades, people with different levels of income, different time frames and so on.

With these remarks, I support Dr the Honourable John TSE's motion.

SECRETARY FOR WORKS (in Cantonese): Mr President, I already explained in detail why the Government has to raise the sewage charges during the discussion of the earlier motion and I will not repeat the explanation.

I would only like to spend a little time to return to the figures concerning the trade effluent surcharge. I would like to point out that only those trades and industries discharging sewage with a higher concentration than the general domestic sewage will need to pay the surcharge. This is because the treatment of trade effluent is more costly and this kind of charging system is also consistent with the "polluter pays" principle. According to the figures that we have, the sewage charges and the trade effluent surcharge represent only less than 3% of the operating costs of most factory owners. Even if we take our proposal to increase the charges by 15% into consideration, the operating costs will only increase by about 0.04%. To the trades and industries which use a lot of water, for example, the dyeing industry, the restaurant business and the laundry business, these sewage charges and surcharge only constitute 0.6% to 0.8% of their operating costs. If these charges are to be increased by 15%, the operating costs will go up by 0.1% to 0.3%. In view of these figures, I do not think that some eating establishments will have to close down because of the need to pay the sewage charges, as some people in the trade have claimed. According to the Drainage Services Department, the sewage charges and surcharge paid by 75% of all the eating establishments amount to less than $2,000 per month. According to the current proposal to increase the charges, these eating establishments will have to pay an additional $300 per month in sewage charges and it is negligible compared with other expenditures such as salary, rent and foodstuffs. We have listened to a lot of opinions from the restaurant business about the trade effluent surcharge and the Government has responded to these opinions separately. I would like to reiterate one point, and that is the basis for the trade effluent surcharge is fair, reasonable and practical and there is no question of being unfair to certain trades.

In a press conference on 21 May this year, the Government announced that it would commission a consultant to review the current issue of trade effluent surcharge. I would assure Members that all of the opinions from people in the trades will be considered in the review. The review will be completed at the beginning of next year and the recommendations made in the review will be considered before any future adjustment of the trade effluent surcharge is made. Before the review is completed, we believe the trade effluent surcharge should be adjusted in the same way as the sewage charges.

Mr President, I have clarified the impact of the trade effluent surcharge on trades and industries and in the last motion debate, I also gave the reasons for the proposal of increasing the sewage charges and the trade effluent surcharge and explained the impact on the public if these two charges were frozen. I hope that Members will consider the Government's views carefully. Finally, I call upon Members to oppose the motion.

DR JOHN TSE (in Cantonese): Mr President, first of all, I welcome the Hong Kong Association for Democracy and People's Livelihood's recommendation for a review of the whole sewage services charging scheme. I also welcome the Government's promise that a consultant will be commissioned to conduct a comprehensive review as soon as possible. But I am not going to speak too much on this because a motion on a similar subject will be moved next week. I will, therefore, discuss two points only.

An important bone of contention in the present charge increase is the percentage the increase represents in relation to the operating costs. People in the trades say that the current percentage is rather high. But according to official figures, the percentage usually ranges from 0.1% to 0.3%, which is quite different from the figures we have got. Which of them is more believable? So I really wish to have an independent study which can lay down some objective criteria for us to see the percentage of the operating costs the increase represents and whether it is reasonable. At present, the figures presented by both sides are rather dubious. Another point I would like to raise is that trade effluent, for which the surcharge (TES) is imposed, and chemical waste treated by the Government are both pollutants. Why is the TES recovering 100% of the operating costs while the charge for chemical waste is only about 20%? From this we can see that there is a lack of consistent criteria in the formulation of

environmental protection policies. Discrepancy in criteria will cause unfairness to the business sector. In fact, we have already put forth the most reasonable argument, and that is we are now in an economic downturn. If business is good, I believe the business sector would not mind paying a higher surcharge. But when the economy is not too good, we hope the Government can take our advice to freeze the charges and review the charging scheme as soon as possible. Thank you, Mr President.

Question on the motion put and agreed to.

INTERPRETATION AND GENERAL CLAUSES ORDINANCE

MR LEE CHEUK-YAN to move the following motion:

> "That the District Court Equal Opportunities Rules, published as Legal Notice No. 236 of 1996 and laid on the table of the Legislative Council on 5 June 1996, be amended by adding after rule 2 -
>
> "2A. Application
>
> These Rules shall apply to any proceedings by or against the Crown."."

MR LEE CHEUK-YAN (in Cantonese): Mr President, I move the motion standing in my name in the Order Paper. The Resolution put forth today which is merely a technical amendment, should have been part of the three resolutions concerning the commencement dates for the Sex Discrimination Ordinance and the Disability Discrimination Ordinance which I intended to put forth last Wednesday. The original "significant point" was to set 2 September 1996 as the commencement date for the two Ordinances. Regrettably, they were ruled out of order by the President and so could not be put forth for voting. What is put forth today is the one that only effects a little technical amendment.

The Sex Discrimination Ordinance and the Disability Discrimination Ordinance were passed by this Council in June and July last year respectively .....

5.32 pm

PRESIDENT: Mr LEE Cheuk-yan, please kindly resume your seat. Now that you have referred to my ruling on two other motions, I need to give this Council a ruling. So I suspend the sitting for five minutes.

5.40 pm

PRESIDENT: Council will now resume. The Honourable LEE Cheuk-yan gave notice on 18 June 1996 of his intention to move three motions at the Legislative Council sitting to be held on 26 June 1996, to amend two Notices under the Sex Discrimination Ordinance and the Disability Discrimination Ordinance and to amend the District Court Equal Opportunities Rules.

I directed, under Standing Order 22(2)(c), that the notices of the proposed motions, with the exception of Mr LEE's proposed amendments to the District Court Equal Opportunities Rules, be returned to Mr LEE as, in my opinion, they were out of order.

In regard to the first motion, the Sex Discrimination Ordinance Commencement Notice, Mr LEE sought, in addition to the provisions in the Notice, to also appoint 2 September 1996 as the day on which all the remaining provisions of the Ordinance should come into operation.

In regard to the second motion, the Disability Discrimination Ordinance Commencement Notice, Mr LEE sought, in addition to the provisions in the Notice, to again appoint 2 September 1996 as the day on which all the remaining provisions of the said Ordinance should come into operation.

Lastly, in regard to the District Court Equal Opportunities Rules, Mr LEE sought, first, to appoint 2 September 1996 as the day on which those Rules should come into operation and second, to add a new section 7 to the Rules, as follows:

"7. Application to proceedings by or against the Crown.

For the purposes of section 73C(7) of the District Court Ordinance, these rules shall also apply to all proceedings by or against the Crown."

The first problem I had to tackle was: Are Commencement Notices subsidiary legislation? On this question of whether or not Commencement Notices are subsidiary legislation, Counsel to the legislature has drawn my attention to the fact that, on the initiative of the Administration, such notices have been included in the items of subsidiary legislation laid on the table of the Council and shown as such for the last 29 years but that, so far as he is aware, until now the Council has never sought to take any legislative action on a Commencement Notice. He has also advised that in a recent judgment of the House of Lords *(R v. Secretary of State for the Home Department, ex parte Fire Brigade Union and others)* the court held a Commencement Order, made under similar powers in all material respects to those under the Sex and Disability Discrimination Ordinances, to be part of the legislative process because such an order brings the legislation into effect. In other words, it is a delegated legislative act which has legislative effect.

I am persuaded by the very careful analysis provided by Counsel and am of the view that the Administration has not advanced compelling grounds to show that the long-standing practice of the Council treating Commencement Notices as subsidiary legislation (as defined in Cap. 1) should be overturned.

I have taken account of the Administration's reference to the *Legislation Handbook* published by the Australian Public Service Board in 1975 which, in effect, offers the view that a Commencement Notice is executive rather than legislative in character. However, in my opinion, the view expressed in *Erskine May* (21st ed p.538) that "The commencement of a statute may more conveniently be provided for by delegated legislation" is to be preferred in the Hong Kong context. In addition, it is also significant that *Bennion* (2nd ed p.171) classifies Commencement Orders (which are the equivalent of Hong Kong Commencement Notices) as delegated legislation.

Having decided on the question of whether Commencement Notices are subsidiary legislation, the question next follows whether Mr LEE's proposals are in order under section 34(2) of Cap. 1. There are, in my view, two possible interpretations of section 34(2) as regards the scope of the Council's power of

amending Commencement Notices:

The first interpretation:

This interpretation emphasizes "in any manner whatsoever consistent with the power....." and suggests that the Council's power of amendment is as extensive as the scope of the delegate's statutory authority to make the Commencement Notice. Under this interpretation, since the scope of the delegate's power extends to appointing different days for different provisions of the Ordinance, so also does the Council's power of amendment. Hence the Council can properly amend a Commencement Notice by adding commencement days for other provisions of the Ordinance even though those provisions were specifically excluded from the Commencement Notice by the delegate. It can properly amend the Notice to include other provisions because it is within the original power of the delegate to include them, so the argument runs.

The second interpretation:

This interpretation emphasizes that "consistent with the power to make such subsidiary legislation..." must be interpreted in the context of the making of the subsidiary legislation. Hence if the delegate has not exercised the power to appoint a commencement day for certain provisions of the Ordinance, it is not in order under section 34(2) for the Council to "amend" the Commencement Notice by adding those provisions to the Notice. The basis of this interpretation is: when passing section 34(2), the Council consciously gave itself no power to interfere with a commencement day for a provision in an ordinance until a Commencement Notice is issued in respect of that provision. Therefore, if a Commencement Notice is issued in respect of only some provisions in the Ordinance the Council does not thereby acquire the power under section 34(2) to extend the Commencement Notice to other provisions.

The Commencement Notices in respect of the Sex Discrimination Ordinance and of the Disability Discrimination Ordinance, confined as they are to those provisions which seek to enable the Equal Opportunities Commission to start to operate, are clear in scope. On the other hand, Mr LEE seeks to amend

them in order to bring all the provisions in the Ordinances into operations. This raises the question of whether or not, by so proposing, Mr LEE is going beyond the scope of the original Notices which relate only to the coming into operation of the Equal Opportunities Commission.

I am of the opinion that the second interpretation of section 34(2) is the correct one and therefore it is out of order for Mr LEE to move amendments to the Notices in respect of provisions in the Ordinances for which a commencement date has not been appointed. My view is not altered by the fact that the word "amend" is defined in Cap. 1 (section 3) to include "add to".

As regards the District Court Equal Opportunities Rules, applying the same reasoning, I rule that it is in order for Mr LEE to seek to move his proposed amendments to the Rules.

A copy of my ruling was issued to Mr LEE on 25 June and copies are available outside the Chamber for Members' reference. Mr LEE Cheuk-yan, please continue.

MR LEE CHEUK-YAN (in Cantonese): Mr President, when the Sex Discrimination Ordinance and the Disability Discrimination Ordinance were enacted by this Council in June and July respectively last year, consequential amendments were made to the District Court Ordinance so as to empower the District Court Rules Committee to formulate district court rules. Meanwhile, the District Court Equal Opportunities Rules were laid on the table of the Legislative Council for scrutiny on 5 June 1996. I understood from the legal advisers in the Legal Service Division of this Council that the consequential amendments made at that time, that is, sections 73(b)(7) and 73(c)(5) of the District Court Ordinance, stipulate that the district court rules laid down by the District Court Rules Committee shall not apply to any proceedings by or against the Crown, unless otherwise provided. However, in the District Court Equal Opportunities Rules now submitted to this Council, there is no stipulation that these rules shall apply to proceedings involving the Crown. It is therefore doubtful whether or not these rules shall apply to proceedings involving the Crown. To avoid any doubt, I have decided to move this motion to amend the relevant subsidiary legislation in order to make it clear that the District Court Equal Opportunities Rules shall apply to all proceedings by or against the Crown.

As far as I know, the Home Affairs Branch and the Health and Welfare Branch are not opposed to this motion. I earnestly hope that Members will support this resolution.

Mr President, I beg to move. Thank you.

Question on the motion proposed, put and agreed to.

PRESIDENT: I have accepted the recommendations of the House Committee as to the time limits on speeches for the motion debates and Members were informed by circular on 1 July. The movers of the motions will each have 15 minutes for their speeches including their replies, and another five minutes to speak on the proposed amendments, where applicable. Other Members, including the movers of the amendments, will each have seven minutes for their speeches. Under Standing Order 27A, I am obliged to direct any Member speaking in excess of the specified time to discontinue his speech.

WESTERN CORRIDOR RAILWAY

MR NGAN KAM-CHUEN to move the following motion:

> "That, in view of the exorbitant construction and land resumption costs of $80 billion for the Western Corridor Railway (WCR) as announced by the Kowloon Canton Railway Corporation, this Council urges the Government to actively strive for the early completion of the WCR; step up discussions with the Chinese Government on matters relating to the project; and adopt a highly responsible attitude in prudently handling the compilation of the construction cost, so as to ensure that the scheme would be cost effective without incurring any unreasonable expenditure, and that the public would not have to pay high fares in future."

MR NGAN KAM-CHUEN (in Cantonese): Mr President, I move that the motion set out under my name in the Order Paper be adopted.

In view of the exorbitant costs of $80 billion for the construction of the

Western Corridor Railway (WCR) and the related land resumption as announced by the Kowloon-Canton Railway Corporation (KCRC), this Council urges the Government to step up the relevant discussions with the Chinese side to actively seek to complete the construction of the WCR as soon as possible. This Council also urges the Government to handle carefully the costing of the WCR in a highly responsible manner to ensure that the whole project would be cost-effective without incurring any unreasonable expenditure which could result in high fares for the public in future.

Despite the recent new developments regarding the WCR project, I remain convinced that the motion debate today is still relevant because the early completion of the WCR for service to the public can only be achieved by first making the Hong Kong Government assume its responsibility and admit that it has an obligatory part to play in the whole project. Recent remarks made by the Governor himself and Transport Branch officials on the project were all highly disappointing to those residents who have waited long for the WCR. I hope that the public officers present today, especially the new Secretary for Transport, Mr Gordon SIU, can understand the reason why we are holding this motion debate. It is hoped that the Government will stop feinting ignorance this time and take this Council's call for early implementation of the WCR project seriously.

Mr President, when the planning errors relating to Tuen Mun New Town were first detected, the Government should have taken prompt remedial measures to quickly build a railway and road networks that can provide the new town with direct links to the urban areas. However, because of the slow reaction by the Government, the 800 000 residents in the area have long been forced to put up with the inconvenience of traffic congestion. Matters came to a head in September last year when Tuen Mun Road was closed for one week due to a fallen boulder, rousing angry outbursts from the residents of Tuen Mun and Yuen Long and bringing popular discontent to the verge of explosion. Following this incident, we all thought that the Government would take on a more positive attitude and carry out the WCR project as soon as possible. However, the residents' hope was misplaced.

The Government had dragged its feet over the construction of the WCR for a long time until later when the former Secretary for Transport made an optimistic announcement while he was in office, saying that the WCR would be completed in 2001. Unfortunately, when the tentative cost involved became

known and aroused the concern of the Chinese side and members of the public, the Government started to hint that it wanted to back out by putting forward various excuses such as the time-consuming process of land resumption and the need to obtain the go-ahead from the future SAR Chief Executive. In any case, the Government is unwilling to tackle the issue by taking such positive steps as seeking to lower the cost involved and holding serious talks with the Chinese side.

Making positive efforts to lower the cost involved

The WCR is a mammoth and complex development project, second only to the new airport in terms of financial commitment and scale of construction. Its tentative cost estimate is an exobitant $75 billion, liable to float by 25% upon the completion of technical studies. Whether such level of cost is too high or reasonable should be a subject for more in-depth studies. But precisely because of the project's mammoth scale, the chance of something going wrong is naturally bigger. Just by looking at the $10 billion contingency and reserve funds, we can see that inadequate supervision of the project may well cause the construction cost to shoot up to $90 billion.

Having studied the WCR project for so many years and supported by a huge team of engineering professionals, the Government has no reason to be lacking in information and the ability to judge whether a cost of $75 billion for the WCR is "a real bargain". I cannot believe the Government is unable to identify any possibility of cost reduction in such a large-scale project, unless the officials concerned are "dillydallying" over the WCR and trying to delay it by procrastinating on various excuses.

Some time ago, I conducted a simple questionaire survey in the streets of New Territories West during which 300 residents were interviewed. Sixty per cent of the respondents considered the cost of the WCR too high and expressed grave concern that they might have to pay exorbitant fares in the future. I believe that the only way to effectively address the prime concern of New Territories West residents over the issue of fares is by reducing the construction cost involved.

Stepping up discussions with the Chinese side

Mr President, when Mr Gordon SIU was Secretary for Economic Services,

he demonstrated himself to be an expert in handling Sino-British disputes over the new airport. In spite of his expertise, I believe nobody would want the WCR project to follow the same old path of the new airport. Actually, the Chinese side has clearly indicated that there is a need to build the WCR. However, since the construction project will straddle 1997, there is a need for the Hong Kong Government to step up discussions with the Chinese side and make regular progress reports to the Joint Liaison Group (JLG), with particular focus on the financial commitments and guarantee involving the future Hong Kong Special Administrative Region (SAR) Government, so as to allay China's worries about the project. As long as these issues remain unresolved, concrete arrangements for the financing of the WCR cannot be finalized and the whole WCR project will thus be delayed. For that reason, the Government must now face these issues squarely. In addition, the Hong Kong Government should hold serious talks with the Chinese side on how best the WCR can link with the infrastructure development in mainland China.

Delaying finalization of project an irresponsible act

Governor Chris PATTEN commented earlier that the decision on the construction of the WCR should be made by the SAR Government and the Chief Executive, implying that finalization of the project would be delayed. I think it is extremely irresponsible of the Governor, the topmost decision-maker of the Government, to make such a comment. First, the SAR Government has not come into being, and the Chief Executive has not been selected either. So it is not possible for them to monitor the progress of the project. More importantly, planning work at the present stage will have far-reaching effects on the entire construction project by playing a guiding role. Now that the Hong Kong Government has spent so many years on studying the territory's railway development, it should have accumulated a certain amount of useful information and data. It is therefore only right that a decision should be made soon after discussions with the Chinese side. But it just turned out that the forward stopped short of the goal and asked a reserve player to score the goal for him.

This may not be an appropriate analogy. But the fact remains that if the Government delays in making a decision, the cost of the project will jump by $4 billion a year. And, if the British Hong Kong Government is not the final

decision-maker, it may not be too keen to identify the most cost-effective construction plan and financing arrangements. Hence a delay in the finalization of the project will not be in the interests of Hong Kong.

Achieving early operation of railway to solve knotty traffic problem

Mr President, the Democratic Alliance for the Betterment of Hong Kong (DAB) very much hopes that the WCR can start operation in 2001. The reason is that apart from helping to ease the traffic problems of New Territories West, the construction project will also vitalize economic activities within the area by creating more employment and investment opportunities and by making good use of the area's advantage in being a linkage point with the Mainland. The route alignment as currently proposed will also lead to the development of huge plots of vacant land which can supplement development of the urban areas and tie in with the territory-wide development strategy. In addition, the proposed development of the port cargo line and goods marshalling yards will also alleviate the environmental problems caused by the increase in freight transport in the New Territories as well as maintain the competitive edge of our port facilities. For all these reasons, an early implementation of the WCR project will be of immense benefits both to the residents of New Territories West and to the development of Hong Kong as a whole.

It is now of paramount importance for all parties concerned to work together in sincere co-operation. We should first identify the most cost-effective way of constructing the WCR and then start the construction works as quickly as possible. In the interim, the authorities concerned should lay all the necessary groundwork for the construction. Earlier on, the Government requested the KCRC to suspend the award of some of its technical studies contracts but still has given it a free hand to award consultancy contracts relating to settled local alignments so as to assist the Government in conducting its own separate assessment. This is a pragmatic approach.

In addition, the Government should also take active steps to plan the allocation of resources and priority for the resumption of land relating to the WCR. As soon as the route alignment study is completed, the Government should actively contact the affected land owners in the New Territories as early as possible to ensure a better progress in land resumption. In fact, the Government did have some successful precedents in land resumption in the New Territories, an example being the one for Route 3 which runs through similar

areas as the WCR.

Sometime earlier, Transport Branch officials noted that the land resumption would take five to six years because the route alignment would affect as many as 1 000 graves. One point about this claim warrants query. In its past tackling of the flooding problem in the New Territories, the Government also claimed that progress was hindered by land resumption. With its rich experience in this particular respect, how can the Government fail to estimate and control the time required for land resumption beforehand? Why did the former Secretary for Transport still firmly maintain just before his retirement that the WCR could be completed by 2001? Land resumption should not be used as an excuse for delaying the construction of the WCR.

The Hong Kong Government has disclosed to the media that it intended to deal with the land resumption under a new legislation covering a broader scope, and that the relevant bill would be submitted to the Legislative Council at the end of this year. This approach is different from what the KCRC proposed about amending the Roads Ordinance so as to shorten the time required in legislative drafting. With a completely new legislation, the time required for the drafting and scrutiny work will inevitably exert great pressure on the Legislative Council. I hope that the Government can explain the reasons for this approach and clarify whether this will further delay the WCR project. I also hope that the Government will release the latest timetable for the WCR project as soon as possible.

Mr President, after so many years of debates and arguments, the WCR project cannot be delayed any further. I hope that the Hong Kong Government will adopt a positive attitude toward the issue of construction cost and step up its discussions with the Chinese side with a view to implementing the project as soon as possible. Later on, other Members from the DAB will speak further on the WCR project.

With these remarks, I move the motion under my name.

Question on the motion proposed.

PRESIDENT: Mr WONG Wai-yin has given notice to move an amendment to this motion. His amendment has been printed on the Order Paper and

circularized to Members. I propose that the motion and the amendment be debated together in a joint debate.

Council shall debate the motion and the amendment together in a joint debate. I now call on Mr WONG Wai-yin to speak and to move his amendment. After I have proposed the question on the amendment, Members may express their views on both the motion and the amendment.

MR WONG WAI-YIN's amendment to MR NGAN KAM-CHUEN's motion:

"To delete everything after "That" and substitute with the following:

"This Council strongly reproves the Government for delaying the construction of the Western Corridor Railway and disregarding the long-standing traffic congestion problem suffered by more than 800 000 residents in north-western New Territories; and urges that the Government expeditiously construct the Railway and fully consult and respect the views of this Council in regard to the planning, costing and financial arrangements of the project, and that the fares of the future Railway should also be subject to the monitoring of this Council, so as to ensure that they would be reasonable and acceptable to the public"."

MR WONG WAI-YIN (in Cantonese): Mr President, I move to amend the Honourable NGAN Kam-chuen's motion. The amendment is set out in the motion standing in my name in the Order Paper. The amendment I put forward today mainly aims at four aspects:

(1) this Council strongly reproves the Government for delaying the construction of the Western Corridor Railway (WCR) and disregarding the long-standing traffic congestion problem suffered by more than 800 000 residents in the North-west New Territories (NWNT);

(2) the Government is urged to expeditiously build the Railway;

(3) the views of this Council should be fully consulted and respected in regard to the planning, costing and financial arrangements of the

WCR project; and

(4) the fares of the future Railway should also be subject to monitoring by this Council, so as to ensure that they would be reasonable and acceptable to the public.

Following the population expansion in Tuen Mun and Yuen Long districts and the sharp increase in cross-border freight transport, the problem of inadequate external transportation system in NWNT was exposed as early as the end of the 1980s. In order to tackle the traffic congestion problem in NWNT, the Government began the planning in 1991 in relation to building the WCR and, in a formal consultation paper entitled "Railway Development Study" published in 1993, proposed that the WCR be built. The Railway would provide three services: a passenger service line linking the NWNT and the urban areas, a port railway line and a cross-border passenger service line. The WCR project was listed as a high priority development item for completion by 2001. During the consultation period, both the public and the Legislative Council explicitly conveyed to the Government two messages: first, the WCR terminus should be extended from Tuen Mun north to Tuen Mun Town Centre, and second, the WCR project should be completed before 2001. The Government had not given any direct reply in respect to the above two requests until last August when a huge boulder rolled down a slope and dropped on the Tuen Mun Highway. The event caused a forced closure of the road, which ended in paralysis of traffic in the NWNT. It was not until then that the Governor Mr Chris PATTEN agreed to consider extending the terminus to the Tuen Mun Town Centre when the WCR was to be built. As for the completion date, the Government refused to have it completed earlier, setting 2001 as the target date.

To ensure that the WCR could be completed in 2001 as scheduled, the Legislative Council had time and again asked the former Secretary for Transport, Mr Haida BARMA, about the planning progress of the WCR and reminded the Government that it should begin the resumption of land expeditiously to avoid any delay in the project. Nonetheless, Mr BARMA assured Members confidently that the WCR would definitely be completed just in time in 2001 at meetings of the Legislative Council Panel on Transport and in other public occasions. However, the Deputy Secretary for Transport, Mr LEUNG Sai-wah, recently overrode that unexpectedly. He said that the WCR project was still under planning and so decision could not be made until the completion of technical studies in mid-1997. He went on to say that technical studies

notwithstanding, neither the Hong Kong Government nor the future SAR Government would be obliged to implement the railway project. Then it was suddenly revealed that the land required for the project involved quite a number of residential, agricultural, commercial and rural land lots, and over 1 000 graves. Since land resumption would take at least five years, the Government announced that the target completion date of 2001 was unrealistic. On 24 June, Governor Chris PATTEN said in public that the decision to build the WCR or not would be taken by the SAR Government and its Chief Executive. This implied that the Government would not take a decision because that was not its responsibility. It was therefore uncertain whether the WCR would be built. The Government promised time and again that the traffic problem in NWNT would be improved but now it claims that it is not responsible for the construction of the WCR. The Democratic Party is very disappointed and indignant that the Government shirks its responsibility and disregards the long-standing traffic congestion problem suffered by more than 800 000 residents in NWNT.

The Government has been putting off the construction of the WCR on the pretext of conducting studies. The plan for the WCR began five years ago during which the Kowloon-Canton Railway Corporation (KCRC) expended $434 million in study costs and submitted to the Government a consultancy report of 2 000 pages. Yet, the Government maintains that the WCR is still under planning. Moreover, from previous land resumption experience, the Government must have known that 130 ha of privately owned land would need to be resumed for the WCR. It is inexcusable that the Government was not aware until now that land resumption would take time. All these unconvincing explanations reveal that the Government has no intention to complete the WCR in 2001 and is using an excuse to put it off. The Government can hardly absolve itself of the blame that the WCR has not been implemented. I therefore move that this Council strongly reproves the Government.

I believe the seriousness of traffic congestion in Tuen Mun and Yuen Long is known to everyone. I wish to point out that from the estimate by the KCRC the cost of the WCR will go up by about $4 billion if it is completed one year behind schedule. This implies that a delay in the WCR project would mean a rising cost. The higher the cost, the slighter the chance that the WCR will be built. Besides, the population in the north-western New Territories will reach 1 million by 2001. By then the pressure of external transport cannot be alleviated even with the completion of Route 3 in 1998. For the above two reasons, the Democratic Party opines that the Government must take a decision expeditiously

and build the WCR, and must strive to complete the project in 2001 so as to tackle and solve the traffic congestion problem in NWNT permanently.

In view of the fact that the preparation work in respect of the WCR lacked transparency, which has given rise to suspicions and disagreements, and to avoid unnecessary delay in the project, the Democratic Party requests that the Government from now on makes public all the latest information in respect of the project and consults this Council. In view of the fact that the cost would be so high that the fares might be subject to pressure in the future, the best way to safeguard the public's interests is for the fares to be monitored by this Council. Other Members from Democratic Party will later explain in greater detail the above points.

Mr President, with these remarks, I move my amendment.

Question on the amendment proposed.

MR LAU WONG-FAT (in Cantonese): Mr President, the Hong Kong Government has earned itself a bad name in the way it handled the traffic problems in the North-west New Territories (NWNT). It has lost its credibility. The recent problems concerning the Western Corridor Railway (WCR) are an unpleasant surprise. Many parts of the event are bizarre and preposterous. The attitude of the relevant authorities is even more perplexing. Had it not been for the public concern caused by the refusal of the Kowloon Canton Railway Corporation (KCRC) and the Secretary for Transport to brief the Preparatory Committee (PC) on the WCR at the Committee's request, which forced the Government to disclose the relevant information, it would have taken an indefinite period of time for Hong Kong people to know the truth.

The WCR is the largest and most important infrastructure project after the New Airport. The Government has an inescapable responsibility to arrange for its prompt commencement. But judging from the evasive and slovenly performance of the Administration in the matter, people cannot help being disappointed and suspicious.

Mr President, the KCRC is a company wholly-owned by the Government. With insufficient transparency and for reasons unknown, the KCRC approved a

consultancy agreement costing almost $500 million for the WCR, and plans to spend another $750 million for commissioning a study by a technical consultancy. The Government is also planning to engage a consultant to scrutinize the research report submitted by the KCRC. So it seems that the Government and the KCRC have joined hands in staging a show of spending astronomical amounts in consultancy fees. Is there a real need for such studies? Are there any overlaps in these studies? Has the Government duly discharged its responsibility in monitoring the operation of the KCRC? With never-ending consultancy studies, how can expenditures be estimated? With so many questions unanswered, the Government owes the public a detailed explanation.

An equally important topic to focus on is the date of completion of the WCR. After the release of the consultative paper on the findings of the Railway Development Study in 1993, the Transport Branch repeatedly declared that the WCR could be completed in 2001. The latest undertaking was made in the middle of last month by Mr BARMA, the retiring Secretary for Transport. But things took a sharp turn for the worse a few days later when officials from the Transport Branch denied that the WCR could be completed as scheduled in 2001. They attributed the delay to difficulties and the time needed to resume land. According to the Administration, it takes five years to resume land, that is, land resumption can only be accomplished in 2002 and so the completion of the WCR would be two to three years behind schedule. This explanation is ridiculous and far from being convincing.

Land resumption by the Government for development purposes has a long history. In the construction of such a large-scale railway, it would be a big joke if the relevant departments had not given due consideration to possible problems in land resumption. It will be annoying if the Administration tries to make difficulties in land resumption a scape-goat of the mistake.

Since the 1970s, the Government has resumed more than 1 860 ha of private land without any difficulty. Without such expeditious resumption of land, how can new towns have developed at such a high speed? Moreover, the Government is armed with two formidable weapons: the Crown Land Resumption Ordinance and the Roads (Works, Use and Compensation) Ordinance. The Gazette also works like magic, and the land owners cannot resist land resumption at all, because once a resumption notice is published in the Gazette, the parcel of land in question would automatically become Crown land at the expiration of three months. Hence, the Government might be

exaggerating when it indicated there was difficulty in land resumption. I do not know how the five years needed for land resumption was arrived at. In fact, all that the relevant departments have to do is to consult the land owners as early as possible and grant reasonable compensations to those affected. I believe it would not be difficult to complete land resumption within a shorter time. In this respect, the Heung Yee Kuk will be quite pleased to play an active role in the co-ordination work.

Mr President, the Government has only itself to blame in the WCR problem. The Government has to shoulder most of the responsibility for the delay caused, which has led to an enormous increase in construction costs. At any rate, the several million residents in the NWNT will be victims of the mistakes made by the Government. As a remedy, the Government needs to quickly look into ways to minimize delays in construction works. In addition, since the WCR project straddles 1997, the Government should bring the matter as well as the relevant information for to the Sino-British Joint Liaison Group for discussion. It should also brief the PC about the matter. These steps will ensure the completion of the WCR at the earliest date and in the most cost-effective manner.

Mr President, these are my remarks.

MRS MIRIAM LAU (in Cantonese): Mr President, the knotty problem of traffic plaguing the North-west New Territories has subjected both the 800 000 residents living in the area and the cross-border commuters of the transportation industry to chronic suffering. The losses thus incurred in terms of time and money defy calculations. Therefore, it is indisputable that the Western Corridor Railway (WCR) should be built as soon as possible. However, it appears that some people are already disenchanted with the original plan of the WCR. There is a danger of falling into retrogression.

The fact that the Government has asked the Kowloon-Canton Railway Corporation (KCRC) to conduct a feasibility study is, in itself, perfectly all right. The problem is whether it was worthwhile to spend $270 million in commissioning consultants to conduct a feasibility study which, in the end, fails to facilitate the Government to come up with any concrete decision on the feasibility of the project. The KCRC keeps stressing that the consultancy studies were conducted in accordance with statutory provisions. Even if this is

the case, members of the public are simply baffled by loads of question marks as to why it only cost the Government some $20 million to formulate the Railway Development Strategy, a study which had lasted a number of years, while it costs nearly $300 million to conduct a feasibility study for the WCR? Why does the Government have to commission yet another consultant to assess the feasibility study, only to find it is unable to make even an initial decision as to whether the WCR project should be given the green light? Of the consultancy contracts which added up to more than $430 million in value, why are two thirds of them given to a single consultant company called BECHTEL? Why do overseas consultant firms win virtually all consultancy contracts? Why can the Government decide the fate of the WCR only after yet another technical study is completed? Is the Government resorting to delay tactics, or is the scheme purely need-dictated? If need dictates, why are both Members of this Council and members of the public kept in the dark?

Some argue that there is nothing wrong and certainly no cause for overreaction with regard to the spending of a billion-odd dollars on consultancy fees in a project with an estimated cost of $75 billion. The important point is there is still no conclusion whether the estimated cost of $75 billion is reasonable and acceptable. And there is a more fundamental question: how come the estimated cost for the WCR in money-of-the-day terms has gone up by $20 billion to $30 billion to as high as $75 billion, when, just two years ago, it was only estimated at $45 billion to $53 billion in the Railway Development Strategy? An extension to the Tuen Mun would only cost an additional $1.5 billion. So how would one explain this drastic increase? The KCRC has recently made public the details of its estimated cost for the WCR, which clearly show that the amount of money allocated to different items of the project is rather too generous, thus blowing up the estimated cost to $75 billion from a previous estimate of $33.7 billion. The provisions for consultancy fees, contingency fund, reserves and the like alone amount to $5 billion to $6 billion each. Whether this budget is reasonable or not is open to question. Hong Kong needs the WCR, but there is no blank cheque in hand. Therefore, each item of expenditure must be handled with great prudence, and the Government is duty-bound to ensure that the whole project should proceed with maximum cost-effectiveness.

Let us come back to the question of consultancy fees. The crux of the problem lies not in whether or not it is worthwhile to spend a billion-odd dollars in consultancy fees on a project which costs tens of billion dollars. The question is whether the billion-odd dollars was money well spent. The KCRC

is, after all, a government-owned corporation, and the monies it spends are monies from the taxpayers. Even with the billion-odd dollars spent on consultancy fees, the Government cannot guarantee that the project will proceed as scheduled because it has not come up with any decision concerning the WCR. The WCR is a project that certainly will straddle 1997, and whether there will be government capital injection will have a bearing on the financial commitment of the Hong Kong Special Administrative Region (SAR) Government will be financially committed. If it ever turns out that the SAR Government cannot commit itself to this project, or if the project plan has any alteration, then the billion-odd dollars will go down the drain. It will be a sheer waste of government funds.

Confronted with such a stupendous construction cost, some people begin to query if freight service should be made an integral part of the WCR. There have been suggestions that the project should proceed in phases; that only a railway connecting Tuen Mun needs to be built; and some have even gone so far as to suggest a complete re-routing of the railway in order that the project could be accommodated within a tight budget. My opinion is that construction of the WCR should be put into the perspective of Hong Kong's general needs in the long run, and we should not be constrained by the construction cost into taking a short-sighted view. The Railway Development Strategy is the result of years of study on the Government's part and it has survived through lots of debates. It has been agreed that the WCR should be an integrated means of railway transport comprising cross-border freight and passenger service and domestic passenger service linking the suburbs of Tuen Mun. Hong Kong has a pressing need in all those three aspects, and there is no reason why we should go against the original proposal at this time of the day. Some are worried that newly developed ports in China might pose a threat to Hong Kong and reduce the amount of cargoes shipped through Hong Kong. Apparently, China's cargo industry is heading towards containerization. And if we did not build a railway connecting the container terminals, it would be like we were disarming ourselves and surrendering to others our hard-earned reputation in the freight industry. That would greatly undermine our competitiveness. That we are worried about the cost of the WCR should definitely not be a reason to trim the toes to suit the shoes.

Our urgent task now is to study very carefully the budget for the WCR and to trim the inflated portions. We should also step up communication with the Chinese side for the purpose of proceeding with the WCR as soon as possible, and avoid any project slippage that may increase the cost.

It is also my belief that the Government should cease being narrow-minded, self-complacent and arbitrary; instead, it should handle the WCR project in an open and frank manner. The Legislative Council should be fully consulted, and its opinion respected by the Government in areas concerning the planning, costing and financial arrangement of the project. In this regard, I agree with the Honourable WONG Wai-yin. But I differ with him when he comes to insist that the fares of the WCR should be subject to monitoring by the Legislative Council.

When the consultant's report concluded that the WCR was perfectly feasible financially, it was obviously drawing reference from the KCRC model and did not consider the factor that the fares would have to be subject to monitoring by the Legislative Council. If the monitoring of fares by the Legislative Council was a factor to be considered, it would be hard to imagine the implications on the financing of the WCR. From a research paper entitled "Monitoring of Mass Transit Systems" published recently by the Research and Library Services Division of the Legislative Council Secretariat, we got the idea that the mode in which the KCRC operates is basically a successful one. In some overseas countries even state-run railways have a fare increase rate higher than that of the inflation rate, whereas in the case of the KCRC, fares are adjusted annually with reference to the inflation rate, with no subsidy whatsoever from the Government.

The latter part of Mr WONG Wai-yin's amendment only introduces unnecessary ramifications and adds complications to the already complicated issues involved in the WCR project. Our first and foremost goal is to go after an early completion of the WCR by the Government, and to ensure that the project would proceed with cost-effectiveness. The fares will then naturally fall within the affordable ranges of the public.

Mr President, with these remarks, I support the original motion and oppose the proposed amendment.

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

MR ALBERT CHAN (in Cantonese): Mr Deputy, in December 1994, the Government published the Railway Development Strategy, putting forward a proposal for the building of the Western Corridor Railway (WCR) in the western part of Hong Kong to link the border and west Kowloon. The WCR is a railway project unrivalled in terms of scale in the history of Hong Kong. The Kowloon-Canton Railway Corporation (KCRC) has estimated that the entire project will cost about $80 billion.

Recently, the WCR project has once again became controversial. Issues centring around the disputes include the estimated passenger volume, whether a freight railway line should be built at the same time and whether the construction cost of some $70 billion was too high. The abilities of the KCRC to carry out such a large-scale project have also come into question as it has always given people the impression that it is a railway management company, without concrete experience in building a railway. Argument has also focused on the fact that the KCRC is employing a consulting company to carry out unified planning for the some $70 billion project.

In January this year, the former Secretary for Transport briefed the Legislative Council Panel on Transport on the WCR project at one of its meetings. Before that meeting, however, the KCRC, without having done any comprehensive consultation on the matter, employed BECHTEL as chief consultant and project manager for the project. At the time, I was of the view that the KCRC was not acting in a responsible manner and I strongly criticized it for that. Regrettably, the KCRC just ignored all relevant criticisms and continued to depend on BECHTEL for the planning of the WCR project. I regret that the KCRC has chosen to ignore Members' views. In so doing, the KCRC has not only ignored the well-meaning criticisms of Members but also insulted local experts who specialize in the co-ordination of large-scale local infrastructure construction. The KCRC has been depending too much on international authority and this is neither desirable nor tolerable.

In the past 20 years, Hong Kong has continued to carry out large-scale infrastructure constructions, such as the Mass Transit Railway, container terminals and the New Airport Core Programme projects. A number of works programmes in the past needed to depend on foreign experts in planning and co-ordination. This practice has gradually become habitual. In fact, created dependence, a social work term, may well serve to describe this situation. This mentality of depending on foreign experts readily creates an inertia, which will completely stifle creativity and potential.

Mr Deputy, in my opinion, a government or a statutory body with a sense of responsibility should discharge its duty in bringing into full play the potentials and creativity of the community. It should not just depend on outside forces, putting aside local expertise and resources. I think it was wise for the Government to establish the New Airport Projects Co-ordination Office (NAPCO) when it planned to build the New Airport and its core programme projects. We have all seen the achievements and the role played by NAPCO in the 10 core projects. Most of the core projects could be completed within the time and budget specified. Hong Kong people should be proud of this. Although the Government has also engaged BECHTEL as the consultant and project manager for the New Airport at Chak Lap Kok and the core programme, there are provisions in the relevant contracts for technical transfer to enable local staff to acquire the experience for use in large-scale programmes in future.

Mr Deputy, I think NAPCO definitely has the abilities, technical know-how, and experience to co-ordinate large-scale projects. In the interests of Hong Kong residents, the Government should not and need not continue to rely on foreign expertise. To give local people a chance to put what they have learned to use, the Government has a duty to ensure the co-ordination work for the WCR does not have to be dependent upon foreign consultants. As I pointed out in the Budget debate, the Government should formally establish a sizable authority for infrastructure construction to assist the Government and statutory bodies to carry out the co-ordination of local infrastructure projects. In the near future, Hong Kong will still have a number of large-scale infrastructure projects, including projects related to the railway, ports, roads and even cross-border infrastructure constructions. All these will require good co-ordination, planning and management to facilitate control of the progress of works and expenditure. So, the establishment of an authority for infrastructure construction is essential. I am of the view that the authority should come under the leadership of the Central Government and should report to the Chief Secretary. This will strengthen the effectiveness of the authority's work and make possible the accumulation and continuity of experience in the co-ordination of large-scale infrastructure construction. I hope the WCR project can be planned and carried out under the leadership of an infrastructure authority led by local people and can be completed in 2001.

Mr Deputy, some Members have earlier mentioned the Government's comments on the WCR. I feel that what the Government has done is hardly convincing. Although Mr Gordon SIU has just taken over the work of the Transport Branch, I hope he could make good use of the relevant experience gained while he was with the Economic Services Branch, such as his experience with the 10 core programme projects. I hope he will allay any worry of delay in the construction of the WCR so that the project can be completed by 2001.

Mr Deputy, with these remarks, I support the amendment moved by the Honourable WONG Wai-yin.

DR LAW CHEUNG-KWOK (in Cantonese): Mr Deputy, to the people of Hong Kong, the Western Corridor Railway (WCR) is within sight but still beyond reach. The Government has promised that the WCR will be commissioned by the year 2001. Today, it goes back on its statement and remarks that the WCR is only at the conception stage, and detailed studies are yet to be carried out. The Hong Kong Association for Democracy and People's Livelihood (ADPL) is disappointed with such an attitude of the Government, be it a responsible or irresponsible one.

According to the original plan, the bulk of the construction work for the WCR and its eventual completion will basically take place after the return of Hong Kong's sovereignty to China. For this reason, the WCR project should not be a matter just for the Hong Kong Government, and it is only reasonable that the project should be planned, studied and discussed with China. However, it is disappointing that so far both China and Britain have not started any discussion, rendering the prospect of this railway project all the more unclear.

In a word, the recent row China and Britain are having regarding the North-west Railway (or the WCR) boils down to only one important point: the cost is too high. The estimated cost for the construction of the WCR has triple-jumped from the original $25.3 billion to the latest $80 billion approximately, and the average cost per kilometre is quite similar to that of the Airport Railway. The ADPL is worried that if the cost of the WCR is too high, it will bring pressure to bear on the fares in future, thus creating a heavy burden on passengers (mainly the residents of the North-west New Territories) (NWNT). Besides, given such a high cost, in order that financing arrangements for the

construction of the railway can be achieved, the Government appears to have found it necessary to overestimate the number of passenger trips and the volume of freight movements. The current study proposal estimates that when the WCR is commissioned, there will be 300 000 passenger trips per day, and by 2001, it will even be as many as 720 000 passenger trips per day. These figures are probably overestimates. Thus the WCR inevitably will have to resort to raising fares to make good the shortfall when the actual figures turn out to be lower than the estimates, and passengers and members of the public will be the ultimate victims.

Right now, nobody will doubt the need to build the WCR. What the ADPL is concerned about is whether the WCR can be built at a reasonable price and in a cost-effective way. Therefore, the ADPL asks the Government to supervise the construction cost of the WCR effectively and set up a mechanism for the fares of the WCR to be monitored by the public.

Besides our concern for the cost, the ADPL is also very much concerned about the route planning of the railway. The ADPL is of the view that the Government must re-study the route of the WCR. According to the existing preliminary proposal, the WCR will have an extension from Yuen Long to Tin Shui Wai, Siu Hong Court and Tuen Mun Town Centre. This route has two major deficiencies, one of which is that the area directly covered where residents in Tuen Mun can readily avail themselves of the railway service is too small, as most housing estates in Tuen Mun are not accessible by the proposed Tuen Mun extension. So, for most of the residents, if they wish to take the WCR to the urban areas, they must first of all take a trip by feeder transport. Secondly, under normal circumstances, it is beyond one's imagination there would be any resident of Tuen Mun who would choose to give up taking buses directly to Kowloon via the Tuen Mun Highway, but would take the devious WCR route instead, by going north first, and down south again to Kowloon. Therefore, the ADPL has always maintained that the Tuen Mun passenger extension of the WCR proposal is not of great help, and hundreds of thousands of NWNT residents will hardly benefit from it.

As for the route of WCR, the ADPL has the following recommendations: the WCR should start from Yuen Long, and then through Tin Shui Wai, Tuen Mun Town Centre and the Butterfly Bay area to be connected to the Airport Railway. Also, this line should be given priority for construction. One of the advantages of this proposal is that the area served is large, and it is estimated that

600 000 people can directly benefit from the WCR. Secondly, the railway is to link up New Territories West (including Yuen Long, Tin Shui Wai and Tuen Mun) with the urban areas directly. According to the Government's original proposal, if a resident of NWNT wishes to go to Central, he probably would have to take three separate trips: the Light Rail Transit, the WCR and the MTR, changing trains many times, whereas according to the ADPL's proposal, residents can go to Central in a shorter time. Thirdly, the area of land to be resumed will be less, and it will be easier to deal with, as the knotty problem of land resumption and delays can thus be avoided. We hope that the WCR can be commissioned as soon as possible and that the construction cost can be reduced.

The ADPL proposes that the WCR should start from Yuen Long and go through Tin Shui Wai, Butterfly Estate and further on to connect with the Airport Railway. In addition, there will be Route 3, which is under construction, the Lingdingyang Bridge, which will link up Zhuhai with Tuen Mun, plus the construction of a completely new highway along the shoreline to go from Tuen Mun to the urban areas. All these are to tie in together. Only in this way can we be freed from the quagmire of traffic problems in NWNT completely.

Although the emphases of the original motion and the amendment today are different, the ADPL supports them all the same, especially the stand that the fares of the WCR should be monitored.

With these remarks, I support the original motion and the amendment.

MR CHEUNG HON-CHUNG (in Cantonese): Mr Deputy, I believe no one will argue that we do not need the Western Corridor Railway (WCR). Residents of the North-west New Territories (NWNT) and the entire Hong Kong freight industry are particularly in need of it. In view of this, the Democratic Alliance for the Betterment of Hong Kong (DAB) urges the Government to take a more pro-active approach towards an early construction of the WCR.

There are many questionable areas in the overall planning and implementation of the WCR plan. The proposed financial arrangement is unacceptable, too. The Government has commissioned the Kowloon-Canton Railway Corporation (KCRC) to conduct a preliminary study, with the intention of letting the corporation build and operate the WCR. This may not be the right decision, though, because the KCRC's experience centres around operational

matters and it has no experience in any major railway construction project. The KCRC has to date already spent more than $400 million in the study, and it will spend a further $750 million for a more detailed one. On the other hand, the Transport Branch has spent more than $40 million of taxpayers' monies to commission a consultant firm to assess the KCRC's study report. Such overlapping and redundant researches are indeed unacceptable. Members of the public have begun to query if public funds have been wasted, all the more so because the Government fully owns the the KCRC and is represented on the KCRC's Board of Directors, and thus it should of course be aware of what is going on in the corporation. The Government has spent a lot of money in the study of the WCR plan. Much time has been spent, too. But the Government has remained silent on the KCRC's plan. That is baffling. From the outset we felt that the KCRC should not be made to conduct the study. The Government should have done it all by itself.

Ever since the WCR plan was announced, the estimated cost for this project has been adjusted several times over the last five years, each time by a multiple factor. To date, the project is estimated to cost some $70 billion, excluding the cost needed for land resumption. In mathematical terms, each metre of this 52-kilometre-long railway will cost as much as $1.5 million, enough money to buy a domestic housing unit in today's new town. That is unacceptable. The fares, according to projection, will be very expensive. On the financing front, the Government will have to inject $40 billion, for which, given a 12% rate of return, returns to the Government alone will reach $4.8 billion. Fare for a single trip would go even higher up if operating cost, depreciation rate, loans and so on are taken into consideration in addition to the 12% rate of return. It is highly questionable whether residents of the NWNT could afford such expensive fares.

I had been asking the Transport Branch whether it had consulted the Chinese side on the plan of the WCR. In reply the Administration said relevant report had been sent to the Chinese side. There we have a study report that runs to more than 2 000 pages and each page is worth more than $200,000. And it was only after the Preparatory Committee for the Hong Kong Special Administrative Region (SAR) expressed its concern over the WCR plan about a month ago that the Government made the study report available to the Chinese side and subsequently to this Council. But that was only a recent occurrence. We doubt very much if any consultation had taken place before that.

I remember the former Secretary for Transport had, in many previous meetings, "swore on his words" that the WCR could be completed in 2001 as scheduled. While his words were still ringing in our ears, the current Acting Secretary for Transport said a few days ago that the WCR project would experience a delay for at least half a year, because it would take at least five years to resume all the 40-odd ha of land and to relocate more than a thousand tombs of indigenous residents of the New Territories before the project could commence. A delay for half a year would add another $2.1 billion to the cost. The Government is boxing its own ears and being self-contradictory. Although the Government has in hand an expensive report running to more than 2 000 pages, it is still unable to ascertain its position or to delineate the routing; so how could it know which land to acquire and which tombs to relocate? The Government is, in doing so, trying to shift the burden to the residents of the New Territories and distract public attention. This is unfair to the residents of the New Territories and the landlords. The Government is "working behind closed doors" in a stealthy manner. Either it has a secret concealed or there is something it dreads telling the public.

Mr Deputy, in implementing the WCR plan, the Government has made a complete mess of it. The accounts are confusing. While asserting that it would discuss with the Chinese side, the Government did not produce any report. Meanwhile, consultancy contracts have been awarded one after another, and claims of land resumption made. These are all done with the intention of presenting a *fait accompli*. Opinions from the Chinese side and the Legislative Council may only be sought at the final stage, and should they have any comments, the Government would say that they are causing delay. In this way the Government could shift the responsibility completely onto other parties.

Since the proposal for the WCR plan was put up, the Government's administrative malpractice has become manifest. Given that the KCRC is wholly owned by the Government, and that both the Secretary for Transport and the Secretary for the Treasury are members of the Board of Directors of the KCRC, the Government should be well informed of the position of the consultancy study. Why then would the Government need to have the report assessed? Has there been any communication problem? Consequent to a question raised in this Council by the Honourable Eric LI in regard to the

accounts of the KCRC, it was revealed that the KCRC would be spending a total of $1.6 billion to study the WCR plan. On the other hand, the KCRC would raise a loan of $3 billion for working capital. It will also set up a department comprising a staff of more than 100 people to handle the works of the WCR. This clearly contravenes what the Government has undertaken since it would mean the KCRC will be using money derived from existing passengers on the WCR project. This will also create pressure for fare increase on the existing railway.

Mr Deputy, the north-west region, the freight industry and Hong Kong in general need to have the WCR, but government planning has been so messy that a lot of time and public monies have been wasted. Worse still, the Government has been shifting the blame onto others. This is totally disappointing and the Government should be held responsible.

The delay in the WCR is due entirely to the Government's improper planning. Nevertheless, we believe that the project should keep going, and be given even greater impetus. The Government should act candidly and assume responsibility. As to the amendment the Honourable WONG Wai-yin has put forward, the DAB cannot accept it. If Mr WONG Wai-yin's amendment is divided into two parts, then we can support the first part, which reproaches the Government. But we find the second part, which requires the fares of the railway to be subject to monitoring, questionable. While we believe that the fares of the WCR should be subject to monitoring, it is not necessarily the Legislative Council which should be the body to monitor it. An independent monitoring mechanism may do. Therefore, we cannot support Mr WONG Wai-yin's amendment.

Mr Deputy, these are my remarks.

MR PAUL CHENG: Mr Deputy, I rise in support of the original motion because as far as I know, we all agree that there is an urgent need to build the Western Corridor Railway.

The Government needs to assume its leadership to ensure the Kowloon-Canton Railway Corporation become more transparent and appropriate consultations be carried out with the Chinese Government so that the project can become a reality as soon as possible in the most cost-effective manner. We

need to resolve the traffic congestion problem in the northwest New Territories and at the same time help support further economic growth in that part of Hong Kong.

Action speaks louder than words. Besides, as legislators, most of us are not really qualified to get into the details. Therefore, I appeal to all parties not to make this project into a political football match. Let us not waste any more time on the lengthy debate today. The sooner we finish here, the earlier our colleagues and the Hong Kong Government can leave to do their job.

Thank you, Mr Deputy.

MR CHOY KAN-PUI (in Cantonese): Mr Deputy, the idea of the Western Corridor Railway (WCR) was put forth in the Second Comprehensive Transport Study early in 1989. But perhaps owing to the political environment at that time and the fact that both the Chinese and the British sides were concentrating their efforts on making bargains in the new airport negotiation, the Government did not accept this suggestion. It was not until 1993 that the Government published the Railway Development Study in which it was recommended that $23 billion be spent on the construction of the WCR which was proposed for completion by 2001. Linking the border and West Kowloon, the Railway will provide three kinds of services. These services will include the port freight line from the border to Kwai Chung Port Terminal, the cross-border passenger link and the sub-regional passenger services provided by the North-west New Territories Urban Link.

This is a forward-looking proposal as it can solve the long-standing traffic congestion in the North-west New Territories (NWNT) and cope with the rapid development of China-Hong Kong relationship and the economic development in Hong Kong in the next century.

Mr Deputy, why is the Railway not built despite general support from the Chinese side, the public, the business sector and public opinion? I believe it is because of the political row between China and Britain. Perhaps somebody is trying to drive a hard bargain by means of this trump card so that he can make a profit before quitting. This so-called "conspiracy theory" is not necessarily unfounded.

In a nutshell, the following points are noted:

(1) The cost had been climbing from the initial estimate of $23 billion to $30 billion in May 1994. In November 1995, the cost rose to $75 billion plus $5.4 billion for land resumption, totalling some $80 billion.

(2) The Government has been avoiding discussion on the project with the Chinese side. Although this project is planned to commence after 1997, the British Hong Kong Government intends to do the planning all by itself in order to present a *fait accompli* to force the Chinese side to accept it. To be honest, leaving aside the fact that Hong Kong's sovereignty will revert to China, how can such cross-border railway project be planned and the route be determined alone without discussion with the counterpart authorities on the other side of the border? Will China accept that the border crossing point be sited at Lok Ma Chau? Has the town planning of Shenzhen been taken into consideration?

(3) This project is planned under an almost clandestine operation intending to get around the monitoring by the Legislative Council and the public.

Early this year, the Government in a very low key manner sought to amend the Kowloon-Canton Railway Corporation Ordinance in this Council in order to confer more power on the Kowloon-Canton Railway Corporation (KCRC) in planning and designing the WCR through the Kowloon-Canton Railway Corporation (Permitted Activities) Order 1996. Such an amendment was endorsed without objection by this Council, which was unaware of its impact at that time. Making use of this Order, KCRC signed a consultancy contract which is worth over $1 billion under a clandestine operation without prior public consultation. It has also planned to sign a contract for technical studies which will be worth billions of dollars. As these are expenditures by a public corporation, the KCRC, rather than government expenditures, the Government can get around the monitoring by this Council. Let us think: How can such a medium-sized enterprise as the KCRC can, under normal circumstances and within a short span of one year, enter into consultancy contracts which are worth billions of dollars and undertake a project which is worth as much as $80 billion?

When the above was revealed to the public, the public was caught by surprise. Under criticisms from all political parties in this Council and queries from the Chinese side, the British Hong Kong Government ordered KCRC to stop entering into consultancy contracts for technical studies. I hope this is a good thing showing that the Government is willing to follow advice rather than

an abandonment of what it is undertaking in a narrow-minded way and leave the unsolved traffic problem in the NWNT to the Hong Kong Special Administrative Region (SAR) Government to handle.

Although at present we have insufficient technical information to assess the construction of the WCR, yet from the perspective of development needs and on the premise that the project will generate economic benefits, it should be undertaken without delay.

The pragmatic approach should be for the Government to take up responsibility for the planning and construction of the WCR and enhance transparency. At the same time, it should discuss the project with the Chinese side in a frank and open manner so as to formulate a cost-effective and feasible plan which will lay down sound first-phase preparations for the construction of the Railway. This will enable the SAR to expedite the construction of the Railway which is of economic and strategic importance and be built on a sound basis.

In a nutshell, the Hong Kong Progressive Alliance is of the opinion that the WCR should be constructed without delay. But it should not incur over-expenditure. It should be good value for money and be put into proper use. Moreover, it should generate economic benefits in keeping with the development of Hong Kong.

Mr Deputy, with these remarks, I support the original motion.

MR ALBERT HO (in Cantonese): Mr Deputy, the Government should bear the blame for the delay in the completion of the Western Corridor Railway (WCR). It seems the Government completely lacks a sense of urgency and the crisis situation in dealing with the grim traffic problems in New Territories West. Since 1991, the Government has spent several years' time and a few hundred million dollars on the matter. But so far only a proposal entitled Railway Development Strategy and a feasibility study report have been produced. And the Government still has to obtain a report from an independent consultancy before a decision can be made and specific technical studies carried out. To date, the Government has neither a fixed stance nor any plans or timetable for the

proposal and the report which have cost hundreds of millions of dollars. Worse still, the Government publicly announced recently that it would abandon the goal of completing the WCR in 2001. Residents in western New Territories find this very disappointing. We support the Honourable WONG Wai-yin in strongly condemning the Government for its irresponsible attitude in ignoring the hardship suffered by New Territories West residents. We are convinced that our condemnation is fully supported by residents in New Territories West.

Mr Deputy, the Government and the Kowloon-Canton Railway Corporation (KCRC) obviously lacked transparency in their preparatory work for the WCR. Members of this Council have repeatedly questioned the Government in the past six months but have failed to obtain any specific information. This gave people the impression that the Government was working behind closed doors. It also led to speculations among various sectors in the community about the WCR programme. All these attracted criticisms from the Chinese side, the Preparatory Committee, the media and Members of this Council. Given the present Government orientation, the WCR programme may also be delayed for an indefinite period of time. Under pressure from all parties, the Government at long last was willing to disclose to this Council the 2000-page consultancy study report submitted by the KCRC, and make public the amounts spent by the KCRC on its planning for the WCR over the past five years. Since the KCRC is a public body wholly-owned by the Government, its assets belong to the Hong Kong taxpayers. Nevertheless, we find it most regretable that it actually spent several hundred million dollars on research over these five years without giving an account of the spending to the public or the Legislative Council. To prevent the KCRC and the Government from bypassing the Legislative Council again in their squandering, the Democratic Party urges the Government, from now on, to consult the Legislative Council and take its views into account in all aspects related to the preparatory work for the WCR, including the work on the planning, costing and financial arrangements. Furthermore, on behalf of the Democratic Party, I urge the Government to submit to the Legislative Council a revised timetable at the earliest possibility; and to publicize details of all future contract-signing, legislative procedures and financial agreements for the information of the public and Members of this Council. This will enable everyone to monitor and expedite the work progress of the Government so that the project can be realized at an early date.

The Democratic Party is of the view that the Government should not at this

stage abandon the goal of completing the WCR in 2001. On the contrary, it should speed up all works and seek consensus and support from all sectors to bring about an early completion of the WCR. As far as land resumption is concerned, the Democratic Party has in fact been making requests to the Lands Department to complete the preparatory work for the project as soon as possible, or even set up a working group to cater specifically to the needs for land resumption necessitated by the WCR project so as to minimize the time required for such resumption. In the Legislative Council, the Government must co-operate with Members in an open and sincere manner by providing Members with sufficient information so that we can collaborate in scrutinizing the WCR programme and strive for an early completion of the scrutiny.

Mr Deputy, in the interest of people's well-being, the construction of the WCR should brook no delay. At this stage, we should not complicate matters by changing the overall routing of the WCR, especially after we have spent so much money and time on relevant research. I feel that if we go ahead with studying the plan put forward by the Association for Democracy and People's Livelihood, it is likely that the railway cannot be completed after another eight or 10 years. For the best interest of residents in north-western New Territories, we urge all parties to stop any unnecessary argument at this stage. Let us deal with the WCR project in a pragmatic manner and seek consensus and support from all sectors to realize the implementation of the programme and the commencement of train service at an early date. The Democratic Party thinks that the Government may expedite work progress by taking early action to complete the following matters:

(1) submit to the Legislative Council the relevant legislation to confer power on the Government to resume land and enter private land for the purpose of surveying and construction works. We believe Members of this Council will undertake to accommodate by making the most use of their time to complete early the scrutiny of the relevant legislation. We may even work during the summer recess. I believe many Members will be willing to come back and work together.

(2) fix a preliminary route map and the scope of the relevant works projects, amend the outline plan, consult the public and deal with objections. This can be done simultaneously with technical research, with a view to determining the routes at an early date.

(3) sign agreements in principle at an early date to enable the project to commence as soon as possible. We believe other specific agreements may be signed in future after having consulted the Legislative Council.

In conclusion, I hope the Government can implement the plan early to improve the transport link of the New Territories with other parts of Hong Kong.

These are my remarks. Thank you, Mr Deputy.

MR NGAI SHIU-KIT (in Cantonese): Mr Deputy, I am in support of the building of the Western Corridor Railway (WCR) to provide an essential means of transport for residents in the area.

In respect of the WCR project, I think many people have doubts about the project as I do, which include the commencement and completion dates of the WCR. Government officials gave three different versions within one month. The construction cost of the project even multiplied within two to three years, arriving at an incredible figure. Government officials and the Kowloon-Canton Railway Corporation (KCRC) are reluctant to explain the whole project in detail. What are the reasons? What is the true story? The people of Hong Kong are being kept in the dark.

For years, residents in the North-west New Territories (NWNT) have been eagerly looking forward to the building of a railway by the Government to link up the NWNT with the urban area. The WCR should be built as soon as possible for the sake of both the people's livelihood and the economy. However, the Government keeps on making excuses by saying that the project has to be studied carefully and "no decision has been reached" at this moment. The residents have been waiting for more than 10 years, but the WCR project is still in the air. Actually, the Government is not undecided on the issue. It knows what to do already and is well planned. Otherwise, the Government would not have allotted or prepared to allot billions of dollars for the consultancy contracts and the design contracts. It is thus clear that, to the Government, the WCR Construction Project is like an arrow nocked to the bowstring, which must be

released. We do not understand why the Government did not explain the project clearly to the public but left the public in suspense so that they felt it was all talk but no action. What has the Government got up its sleeve?

In these few years during the latter part of the transition period, government officials made self-contradictory statements as to when the railway construction work would start. At one time, they said that work would start early next year; and at another time, they changed it to early 1998. But then suddenly, it was disclosed that owing to the land resumption problem, the WCR project would not be completed by 2001. The WCR project has a vital bearing on the long-term interest of the territory and is closely related to the livelihood of about a million residents in the NWNT. This has also given rise to the question of whether the enormous amount of financial reserve of Hong Kong has been put to appropriate use. Does the Government really handle things in such a "facetious" and "muddled" manner? Or does the Government have difficulties which it would be embarrassing to tell?

The people of Hong Kong have the right to query the construction cost of the WCR, which actually multiplied within only a few years. The initial estimated cost was some $20 billion. It has increased substantially to the present cost of $75 billion with the added land resumption cost of $5 billion. The construction cost is so expensive that it almost drives us breathless. According to the study report of the KCRC, the Government will have to inject $44 billion directly into the KCRC and to guarantee the $25 billion loan that the KCRC will borrow. In other words, the financial obligation of the Government in respect of the WCR project will be as high as $70 billion, which represents over 50% of the present financial reserve of $120 billion. It was also said that if the WCR project was to be delayed for one year, the cost would increase by $4 billion. The Government is now saying that the project has to be postponed owing to land resumption problem. Are billions of dollars earned through hard toil of the taxpayers going to be wasted this way? It really makes us heave a deep sigh.

Mr Deputy, the crux of the issue is that all major infrastructure projects straddling 1997 have to be discussed in the Joint Liaison Group (JLG) and no projects can go ahead unless an agreement is reached. Such procedures have

long been established and the whole world is aware of this. Yet the British side is slow in bringing up the issue for discussion and has even refused to brief the Preparatory Committee on these projects. Instead, the British side has squandered a lot of money under the cover of the KCRC undertaking consultancy research. Government officials argued that the research did not involve government funds. However, everyone understands that the KCRC is fully owned by the Government. Besides, KCRC funds and Government money are actually the same thing. At the end of the day, it is the people of Hong Kong who are going to shoulder the debts the multi-billion dollar project incurs, is it not?

Members of the Legislative Council have requested the KCRC not to grant any consultancy contracts for the time being until the Chinese and the British sides have reached an agreement on the WCR project. In reply, government officials advised that as the KCRC was an independent body, the Government would not issue an administrative directive to this effect, otherwise the business operation of the KCRC would be affected. Some government officials even threatened that if Members held up the consultancy studies, the works would not be able to start as scheduled. Taking everyone by surprise, about a week later, at the instance of two government officials who sat on the Board of the KCRC, the Board decided to defer the granting of 20 WCR technical consultancy study contracts which were worth a total of $750 million. The subtle relationship between the Hong Kong Government and the KCRC is thus self-evident. No wonder there are people commenting that, in the WCR incident, the KCRC is merely a rubber stamp and the "backstage ruler" is the Government. I believe that the criticism is well founded.

Members of the Legislative Council are obliged to point out that the Government, being aware that all major projects straddling 1997 can only be implemented after an agreement has been reached in the JLG, still chooses to act arbitrarily. No matter whether the presentation of such a *fait accompli* is made in the name of the Government or in the name of the KCRC, which is fully owned by the Government, such a move is not appropriate. On the one hand, the Hong Kong Government has emphasized that the WCR project has a tight schedule. On the other hand, it is slow in acceding to the request of the Chinese side to submit information to the JLG and to start discussion. This sort of evasive attitude of the Government will only arouse suspicion and contribute

nothing to the promotion of the WCR project. As a matter of fact, the Government is extremely irresponsible. We are obliged to object to such a show-the-tail-but-hide-the-head tactic.

Mr Deputy, the Chinese side has indicated many times that it holds a positive attitude towards the WCR project. I hope that the Government will learn from the way the question of a second airport runway was solved within a short time, and will discuss with the Chinese side as soon as possible so that the WCR project can be completed at an early date in a cost-effective manner to benefit the residents of the north-western part of the New Territories and the economy of Hong Kong as a whole.

Mr Deputy, with these remarks, I support the original motion and oppose the amendment.

MRS SELINA CHOW (in Cantonese): Mr Deputy, the Government is to be blamed for the present state of affairs about the Western Corridor Railway (WCR).

The past decade or so has seen rapid development in the New Territories. Public housing is everywhere, so are a lot of privately-built housing estates. There has been a huge population growth in the New Territories. In addition, China opened its doors and in Hong Kong the freight transport industry flourished. Mass transit is the only way to ease the traffic in the New Territories. However, the Government has been slow and hesitant in its response to the situation. All past Secretaries for Transport should be held responsible.

Information recently released as a result of strong requests made by Members shows that between 1991 and 1995 more than 50 studies were made by the Government and the Kowloon-Canton Railway Corporation (KCRC) acting under its authorization, at a cost of over $430 million. Despite all these, the Government is still saying it has not decided whether or not it will go ahead to construct the WCR. When Members asked how it was possible that such a huge sum was spent before a decision was arrived at, officials responded by saying that the construction of the WCR was only an option. Such an equivocal answer can only succeed in arousing suspicion that the relevant heads in the

government are using "not yet decided" as an excuse to squander money through the non-governmental organization KCRC, keeping the public and Members of this Council in the dark.

Hong Kong has never been mean in its investment in large-scale infrastructure projects. It has the capacity to support such construction. The question is whether the money is spent properly and whether it is worth spending.

Just when the KCRC proceeds in full swing with its work on the WCR, the Government completely ignores the importance of transparency for such a large-scale infrastructure construction. At the same time, news on rocketing costs is being heard. Added to all these is the bickering between the Hong Kong Government and the Chinese side arising out of failure in communication between them. Thus, we are worried that the WCR would be unnecessarily delayed.

Indeed, there should be sufficient grounds and certain elements of desirability in the routing and passenger and freight service needs arrived at by experts after more than five years' research on 50 items. To enable the WCR to go to completion at an early date, the Government should act on what has been done already. Any amendments should only be made where they would not hinder the progress of construction.

Various parties have been proposing in the past few days to cut works projects relating to freight service in the WCR programme in order to keep expenditure low. I am entirely against this proposal. Hong Kong is an important cargo transhipment centre and one of the busiest container ports in the world. It can ill-afford to lose the opportunity of having a much needed mass transit support system. Curbing the cargo transportation capabilities of the WCR can only hurt Hong Kong's competitiveness in its transportation industry and even its other related trades as it amounts to a blow to its economy.

Of course, I am not saying the KCRC should be given a free hand to spend money. I must make it clear that we do not have sufficient data in this respect to come to any conclusion. The reality before us is that the amounts of expenditure put forward by the KCRC have never been agreed to by the Government: the consultancy fees reached a high of over $6 billion, while contingencies and reserves were estimated to be $11.5 billion. In terms of

percentage, such expenditure is higher than that in similar projects.

Furthermore, the general project manager is the American company BECHTEL. The company obtained more than $900 million in consultancy fees for the airport project. This time, the company was again appointed as consultant for the WCR. Up to the present, the company has obtained over $280 million in research and consultancy fees. That is to say, BECHTEL alone has received nearly $1.2 billion in consultancy fees from the two largest infrastructure construction projects in Hong Kong in recent years. Does the Government regard this to be an equitable allocation of business in the overall investment in infrastructure construction in Hong Kong? Is BECHTEL the only company in the world that Hong Kong can rely upon? Has the engineering sector in Hong Kong learnt anything from the construction of the Mass Transit Railway and the Airport? Or has it not learnt anything at all over all these years, or has it learnt something that cannot be put to use? Is the Government serious about technology transfer and localization, both of which are part of the Government's daily slogan? The Government should explain in detail.

A few days ago, Governor PATTEN suddenly said the Government of the Special Administrative Region should be the party to decide whether or not to go ahead with the construction of the WCR. I am completely at a loss to know why this is the case. I find this unacceptable too. Does the Governor lack faith in the present Hong Kong Government and its officers or is he casting doubt on the Chinese side when he said so? If there is sufficient communication, explanation and preparations for a consensus, why can the Government not reach an understanding within a few months and then make a decision? Is the second runway at Chek Lap Kok scheduled to complete by the end of 1998 not the result of effective communication?

What pleases us is that the new Secretary for Transport, Mr Gordon SIU, is reported to be determined to rectify past mistakes as quickly as he can and to iron out some problems with the Chinese side. He is heading in the right direction. I look forward to learning how the Government plans to complete the WCR at the earliest possible time and in the most economical manner.

MR CHAN KAM-LAM (in Cantonese): Mr Deputy, early last year, the Kowloon-Canton Railway Corporation (KCRC) was "chosen" by the Government to study the specific construction plan and financial arrangements

for the Western Corridor Railway (WCR). Since then, the KCRC has been conducting the study "behind closed doors". Needless to say, this Council and the public are kept in the dark as to what was going on. Even the Secretary for Transport and the Secretary for the Treasury, who were re-appointed in mid-1995 as directors of the KCRC, and other government departments, including the Planning, Environment and Lands Branch and the Highways Department, do not seem to know much about the KCRC consultancy study. Not only did they have to engage a consultant to conduct a scrutiny which would require one year to complete, a time longer than that taken by the KCRC for the study, but the officials from the Transport Branch also suddenly realized only two weeks ago, as if it was something newly discovered, that it would take five years to resume the land required for the construction of the WCR. Hence it would not be possible for the railway to be completed by 2001. These officials also shirked their responsibilities by saying that 2001 was only an indicator. This is just like throwing cold water on the residents in North-west New Territories. Our view is that the Government should be held responsible for the delay in the construction of the WCR.

In fact, the KCRC is wholly-owned by the Government. Government officials have often stressed that the KCRC was operated on prudent commercial principles, and it would not be appropriate for the Government to intervene too much in its affairs. But what is the real situation? In its consultancy report, the KCRC actually mentioned that all studies were done at the request of the Government and in accordance with the Government's ideas. It seems the Government is pulling the strings behind the whole programme. Up to now, the Government has been unable to give this Council a clear account of what role government officials will play in the overall WCR programme.

Mr Deputy, the Democratic Alliance for the Betterment of Hong Kong (DAB) is of the view that given the immensity and high cost of the WCR project, the Government should play a more active role, getting totally involved in the study and design of the project. It should also work with the Chinese side to make a thorough assessment of the overall demand in passenger and freight services, rather than drawing a conclusion only on the basis of a single proposal put forward by one company.

Recently in the community, and even among most Members of this Council, have discussions about the WCR only focused on the proposal contained in the consultancy report submitted by the KCRC to the Government,

as if that proposal was the only one to be adopted for the construction of the WCR. In fact, the proposal is open to a number of criticisms.

First of all, the Government insists on the construction of a railway system that embraces cross-border passenger and freight services as well as local passenger service. However, in the consultancy report, demand for the three kinds of service was assessed on the basis of very optimistic and wishful assumptions. We are deeply worried that the KCRC may have over-estimated the service demand and the future rate of return, thereby drastically increasing the pressure on the fare structure and the repayment of debts in the future.

As regards local passenger service, even if we put aside the problem of expensive and time-consuming land resumption, the routing alone is questionable. The three spur lines currently planned for the WCR programme, running from Tuen Mun Town Centre to Yuen Long, Yuen Long to Tsuen Wan and Tsuen Wan to West Kowloon, are actually overlapping and in competition respectively with the Light Rail Transit, the Country Park Section of Route 3, and the Airport Railway. It seems that the consultancy report has not made an analysis in this respect.

After the WCR commences its service, the role to be played by the Light Rail Transit, the effect of Route 3 in easing the traffic on Tuen Mun Road when it is open in mid-1997 and the functional share of transportation service to be taken up by these three systems are still the guess of everyone!

Therefore, we request that the Government make public as soon as possible the findings of the 1993 in-depth research on the various plans put forward so that people can be better informed when making a comparison on the issue. On the other hand, since the WCR is planned by the British Hong Kong Government but will be implemented by the Hong Kong Special Administrative Region Government after 1997, undoubtedly the entire programme has to be endorsed by the Chinese side. The DAB would urge the Government to adopt a sincere and co-operative attitude and present all necessary information to the Chinese side as soon as possible.

Mr Deputy, it is understood that the residents in North-west New Territories are being tormented by the traffic problems, but can we afford to act rashly on a railway that costs nearly $100 billion?

Mr Deputy, I conclude my speech with this limerick:

"The railway should be built as soon as possible, but the fare charged must be reasonable. Whether the North-west New Territories can prosper, the Western Corridor Railway will be the key factor!"

Thank you, Mr Deputy.

DR SAMUEL WONG (in Cantonese): Mr Deputy, a fallacy in town planning led to the development of new towns such as Tuen Mun and Yuen Long, which accommodate a large population without providing job opportunities in the same district. Tens of thousands of workers have to put up with traffic congestions day in, day out. In the middle of 1980, after some preliminary research the Kowloon-Canton Railway Corporation (KCRC) came up with three plans to shorten the journey time and waiting time for commuting between Tuen Mun, Yuen Long and the urban area. Regrettably, these plans were put aside by the Government on the pretext that a territory-wide study on railway was under way. With such and further delays, it was almost eight years later that the Government in January 1995, basing on the latest Railway Development Strategy, requested the KCRC to conduct a preliminary feasibility study. At the time, I made some open comments on the issue: it was questionable whether the KCRC management, only experienced in operating a railway, would have sufficient experience to study, plan and construct the Western Corridor Railway (WCR), which was going to cost $30 billion to $40 billion. I suggested that government departments should arm themselves with the knowledge gained from "technology transfer" in the ten Airport Core Programme projects undertaken over the past four to five years and form a railway group to conduct an in-depth study of the WCR. Unfortunately, the Government never considered my idea.

What followed was the engagement of several batches of expert consultants by the KCRC because it lacked the requisite expertise on its staff. It cost quite a significant amount of money before a feasibility study report of some 2 000 pages with a $75 billion estimate for the project was produced in November last year. It was when the Transport Branch and the KCRC jointly briefed the Legislative Council in January this year about the report that we discovered the Transport Branch had never exchanged ideas in detail with the KCRC and its consultants since January last year. In other words, the

Government gave the KCRC and its consultants a carte blanche. They produced a report which, when read between the lines, appeared to say the date of commencement of train service had been fixed and all the money and staffing required were there. It was not until recently when the Government came under mounting external political pressure that the former Secretary for Transport hastily clarified that the Government had spent $30 million to $40 million in appointing a separate consultancy to study in detail the KCRC's feasibility study report. And the Government could not take a stand on whether to support the report until around November this year. If that is the case, the Government has made a very big mistake. Why did the Government not embark on a study of the matter concurrently with the KCRC when it first requested the latter to conduct a feasibility study so that there could be regular exchanges of information between the two sides? Instead, it allowed the KCRC to fumble around, wasting more than a year before it announced the engagement of a consultant to take a good look at the report!

In February this year, together with several engineers well versed in railway transport, I publicized a proposal for a speedy relief of traffic congestion between Tuen Mun and the urban area. The proposal involved building a link from somewhere near Tuen Mun pier across the sea to the Lantau Line of the Airport Railway across the sea. At the time (it was February), our argument was that it would take a very long time to resume the land required to build a railway, but our humble proposal would cost only about $15 billion. At the same time, our proposal could let the Government or the KCRC have more time to thoroughly plan the WCR and study the reliable forecast share of freight transport and the suitable siting of a railway for China-Hong Kong through train service. Regrettably, the Government's reply was a mere official formality, insisting that the land resumption would take only around a year. Sarcastically, four months later, the Government slapped itself in the face by saying the completion date of the railway for 2001 had to be postponed due to the lengthy time required for the land resumption.

To summarize, the major cause of the delay is the Government's refusal to take advice from other people! The Government and the KCRC have addicted to become dependent on "consultancy engagement". While the Transport Branch direly lacks officials with the technical knowhow, and department heads and Policy Secretaries are frequently shuffled, how can the plans submitted by the KCRC be given the necessary attention and scrutiny? In several articles I published this year on the WCR, I have referred to Hong Kong as a unique

"consultants' paradise on earth" not to be found anywhere else. In fact, within the civil service, there is sufficient expertise to tackle the technology and overall planning required for the WCR. For example, the authority responsible for the New Airport Core Programme projects, having worked together with BECHTEL for some years and spent several hundred million dollars in consultancy fees, should have gained enough experience to plan for this nearly $100 billion WCR project.

Mr Deputy, with these remarks, I support the original motion today.

MR SIN CHUNG-KAI (in Cantonese): Mr Deputy, I would like to present the views of the Democratic Party in regard to route alignment and fare structure.

A moment ago, some Honourable colleagues mentioned certain new proposals on route alignment, and Dr the Honourable Samuel WONG and Dr the Honourable LAW Cheung-kwok expressed their worries in this aspect. I would like to raise one point, and that is the construction of this railway route is to serve three purposes. First, it is to carry passengers, serving as a means of transport for 800 000 residents living in Tuen Mun and Yuen Long. Second, it is to transport goods. Third, it is to serve as a border crossing. The Democratic Party reckons that whatever the route alignment, it should be able to serve all these three purposes. We should not decide on a route simply by looking at the needs of Tuen Mun and Yuen Long residents. As a matter of fact, residents in the urban areas, including Kwai Tsing and Tsuen Wan, are also suffering from the transport and traffic pressure in the north-west region. Everyday, there are 6 000 to 7 000 trucks travelling between China and Hong Kong, causing serious traffic problems, whether in the aspect of noise or environment, in Kwai Tsing and Tsuen Wan. If we are to build a mass transport system, I think this will alleviate some of these problems. In regard to cross-border service, we support that at the present stage we should plan a new border crossing. I, therefore, reckon that any new proposal should be implemented with these three purposes in mind. Even the failure to serve just one of them will not, I think, make an ideal or perfect route. Of course, in regard to priority, we can study this in detail. But the overall planning of the whole route should take account of these three purposes.

Secondly, I would like to talk about the fare structure. With regard to the preparatory work for the Western Corridor Railway (WCR) this time, there are

some ambiguities in the relationship between the Government and the public corporation concerned. As a result, a lot of work has been duplicated. Not only is it a waste of public funds, but it is also a waste of time. Besides, the Government has made use of the public corporation status of the Kowloon-Canton Railway Corporation (KCRC) as a trick to cover up a lot of information instead of passing it to the Legislative Council. I think it is necessary to correct this practice of the Government. The Hong Kong Government, as the only shareholder of the KCRC, and the Secretary for Transport and the Secretary for the Treasury, as members of the KCRC Board of Directors, should play properly their supervisory roles on behalf of the taxpayers instead of acting like the so-called "sleeping directors". In regard to the KCRC's using $434 million of taxpayers' money to conduct studies within five years, there is no reason why the Government should act like it was "none of its business", and stand with folded arms in the KCRC's study of the WCR project. When the 2 000-page study report by the consultants was submitted to the Government, the Government again employed another consultant to examine the KCRC's report. I do not understand this: When the Government spent an extra $50 million to examine the $434 million report, so which would be the accurate one, the new report or the old one? Suppose the more expensive report is criticized by the less expensive one, which report shall we believe? I think this is really causing doubt. In order to ensure that the money of the taxpayers is well spent, I think the KCRC and the three railways should be subject to monitoring by the public, that is, the Legislative Council. The Democratic Party will move the Mass Transit Railway Corporation (Amendment) Bill 1996 and the Kowloon-Canton Railway Corporation (Amendment) Bill 1996 next week so that the fare increase applications of the three railways, and hopefully the four railways in the future, will be subject to monitoring by the Legislative Council. That will prevent the Government and the KCRC from spending money without restraint.

In regard to the high cost of $80 billion estimated for the construction of and land resumption for the WCR, the Democratic Party thinks that, at the present stage, we are not up to the technical level to judge whether it is too high or not. However, we hope that the Government can study carefully whether the different items of expenditure are essential and ensure that the cost can be effectively controlled and reduced. But I would like to point out one thing which is that when considering the WCR project, not only should cost-effectiveness be considered, but the traffic and transport needs of the residents in the north-west region and the urban areas should also be considered,

while the overall social benefits thus arising should also be taken into account. We should not merely consider the aspect of "money".

I understand that many Members are worried that the construction cost of the WCR is too expensive and doubt whether the public can afford the fares of the WCR. This indeed is very worrying to us. But in fact, the construction cost, apart from having a bearing on fares, is also related to the Government's capital injection and its purpose of building the railway. If, in investing in the WCR, the Government is looking for profitable returns, this will surely have certain pressure on the fares. At present, the KCRC has set the investment return rate at 12% per year on average for the WCR, which we think is very high. This may be one of the reasons for exorbitant fares. I wonder what role the Government is playing when it tries to solve the problem concerning the transport needs of the residents in the north-west region or urban areas and the need for freight service? Must there be a 12% rate of return on the Government's capital investment? As a matter of fact, the Government itself has the responsibility to provide an efficient and fast transport system for the residents. Therefore, the capital injected should not be aimed at a high commercial rate of return. If the Government is willing to lower the rate of return on investment in the WCR or to set it at 0%, I believe that the fares can be reduced drastically in the future. Judging from the existing fare increase mechanism of railways, both the Mass Transit Railway Corporation (MTRC) and the KCRC enjoy autonomy in relation to fare increases, and the interests of the passengers cannot be protected at all.

In order to ensure that fares of the future WCR will be reasonable, the Democratic Party believes that they should be subject to monitoring by the Legislative Council. Therefore, we support the amendment moved by the Honourable WONG Wai-yin. I hope that Honourable Members can take account of the transport needs of the 800 000 residents who will be using the WCR and those people crossing the border.

These are my remarks.

MR LEE WING-TAT (in Cantonese): Mr Deputy, a number of my colleagues from the Democratic Party have expressed their views on the question of the North-west Railway. I would like just to add three points.

First, the matter has given rise to much controversy and the Kowloon-Canton Railway Corporation (KCRC) and the Government should take initial responsibility. I have been following the progress of the North-west Railway project for the past few years — from the early stage of consultation to the development strategy study and from implementation to the present debate. I feel that the KCRC must take prime responsibility in this matter. Responsibility can be subsumed under two heads: First, since the Government's announcement that the North-west Railway be made the primary project in the Railway Development Strategy Study, the KCRC has been giving less than sufficient information to this Council and the public. In February this year, some of my colleagues from the Democratic Party and myself had a meeting with the chairman of the KCRC to ask him of the consultancy contracts and other matters. The impression I got was that the KCRC did not think it was then an opportune time to disclose the relevant information and so they withheld it. At the present stage, it would appear that the KCRC is being forced to account for itself. This way of doing things is not good at all. Secondly, the change in costs for building the railway has caused doubt as well as shock among the public and the Legislative Council. Of course, there are a multiplicity of reasons for this, including the change of route and the question of reserves. But all this cannot eliminate people's misgivings. What has been weighing rather heavily on my mind is whether the KCRC and the Government will later start a bargaining process in respect of the question of capital injection. The so-called "new quotation" gives people the impression that it was "blown up". This might be a bargaining chip to ask for a greater amount of capital injection from the Government. If this is indeed the case, it would be most unfortunate. Of course, I hope this is not the case. But my impression is that this is indeed the case. Therefore I maintain that what the KCRC has been doing in regard to this matter is inadequate.

The Honourable SIN Chung-kai has already discussed the Government's responsibility in this matter and I shall not repeat it. The KCRC is wholly owned by the Government. The Government cannot at the present stage pass the buck to the KCRC because two government officials sit on the KCRC board. At the same time, throughout the process, the KCRC and the Government have held numerous discussions. Yet, as things now stand, it would not help to point an accusing finger at the KCRC and the Government. What is most important is to find out how to carry on with the project.

Mr Deputy, the next point I am going to make concerns the worry that we

have. This matter is purely a question within the economic and transport domains. I believe no political party or Member will object to the construction of the North-west Railway. In fact, the construction and costing of the Northwest Railway should be a matter of concern to every Hong Kong taxpayer and the responsibility of every Legislative Council Member. My personal impression is that the Chinese side never, until very recently, expressed any opinion with regard to this project, from the moment it was included in the Railway Development Study and then debated in 1993. Nor have I heard views expressed by members of the Preliminary Working Committee or the Preparatory Committee in respect of the project. It was not until around May this year that Mr CHEN Zuoer openly stated that he thought the building cost of North-west Railway too high. Then, during May and June, Preparatory Committee members attacked with one voice the project's high costs. Of course, it is a good thing for the Preparatory Committee to express concern about the North-west Railway, because that means they are concerned about the rights and interests of Hong Kong people. But sometimes I feel that they paid no attention to the project three years ago, two years ago, one year ago or half a year ago; and it was only after Mr CHEN mentioned it that they have now paid attention to the question of high costs.

No matter whether it is subjective conjecture or an objective fact, this gives people the impression that whenever the Chinese side expresses an opinion in respect of a matter, the Preparatory Committee will follow up with an attack on the matter in question. Is this a good thing as far as Hong Kong people are concerned? Of course, I would loathe to see the Preparatory Committee or the Chinese side use economic or livelihood issues as a chip to attack the British Hong Kong Government or Governor PATTEN. Who will eventually suffer from this? I hope friends on the Chinese side and members of the Preparatory Committee are genuinely eager to have the North-west Railway built as soon as possible at a reasonable cost and based on the concept of cost effectiveness. I hope they will not take this project as a political chip to attack their rivals with. Our Financial Secretary was reported to have indignantly referred to some people as "eunuchs" during a private conversation. I do not know if I got it right when I read the report in the newspaper. Yet I wish, of course, no one would play the role of a eunuch because one would have to be castrated. Anyway, I hope those who are concerned about this matter will not turn it into a focal point for a Sino-British row because this will mean sacrificing the interests of residents in the north-west region.

Mr Deputy, lastly, I would like to talk about how a decision should be arrived at in respect of this project. Many say the matter should be passed to the Preparatory Committee who should discuss it with the Chinese side. I would not object to briefing them because the project will straddle 1997. But I am of the view that, in any event, it will not be the Chinese side, but Hong Kong people, who will foot the bill for this project. Therefore, in principle, Hong Kong people should have the most say in this matter. At present the Hong Kong Government and the Legislative Council are having numerous discussions. The Government also briefs the Preparatory Committee and the Chinese side. But if our core view as a community is to take the economic burden of Hong Kong people, particularly residents in the north-west region, as a prime factor for consideration in arriving at a decision, I believe it will be possible to find common ground. If we put off making a decision, I am worried this project will be further delayed. I understand the Chief Executive designate will be chosen at the end of this year. He will be responsible for all aspects of government after 1997. I think the Hong Kong Government and the Transport Branch should need to keep him informed in an appropriate way with regard to this matter because he will be the one who will be at Hong Kong's helm for a considerable length of time.

Thank you, Mr Deputy.

DEPUTY PRESIDENT: I now invite Mr NGAN Kam-chuen to speak on the amendment to his motion. You have five minutes to speak on the amendment, Mr NGAN.

MR NGAN KAM-CHUEN (in Cantonese): Mr Deputy, in regard to the amendment moved by the Honourable WONG Wai-yin, I would like to raise two points on which we differ in principle.

First of all, I have to point out that Mr WONG Wai-yin's deletion of all the wording in the original motion is merely an attempt to hoodwink people. As a matter of fact, the few words that he wants to delete most are "step up discussions with the Chinese Government on matters relating to the project". When Mr WONG Wai-yin criticized the Chinese Government for interfering with the construction of the Western Corridor Railway (WCR) and the

Preparatory Committee for politicizing the WCR project, he seemed to have shifted part of the responsibility for the delay in construction on to the Chinese side. This can be clearly seen from his article in *Ming Pao Daily News* on 2 July. I totally cannot accept his view. Besides, I have to point out that to avoid negotiation with the Chinese Government is not only a short-sighted but also an irresponsible attitude. The original motion urges the Hong Kong Government to step up discussions with the Chinese Government on matters relating to the project. In fact, this is in line with the objective of completing the WCR as soon as possible. Besides, we also reckon that stepping up discussions with the Chinese Government is the crucial factor to the early completion of the WCR. The Governor has noted that the final decision on the construction of the WCR will be made by the future Hong Kong Special Administrative Region (SAR) Government and Chief Executive. This way of saying it is actually buck-passing and shirking of responsibility. The amendment moved by Mr WONG Wai-yin to the original motion seems to have silently consented to the viewpoint of the Governor, opining that there should not be any discussions with the Chinese Government. He cannot see that the Hong Kong Government should, with a positive attitude, study the issues involved in the WCR project as far as it can and decide on its construction as soon as possible. This is what we regard as a highly responsible attitude. To make the early construction of the WCR possible, co-operation and discussions with the Chinese Government are inevitable. At present, the Hong Kong Government's delay in deciding on the construction of the WCR with various kinds of excuses is, in fact, trying to avoid discussions with the Chinese Government. Therefore, Mr WONG Wai-yin's amendment, reprimanding the Government for delaying the construction of the WCR on the one hand while neglecting the crucial condition of discussions with the Chinese Government on the other, is self-contradictory indeed.

Secondly, the amendment proposes that the fares of the future WCR should be subject to monitoring by this Council. I personally think that the mere control of fare increases is not an effective monitoring mechanism in relation to public transport operations. The Legislative Council should, of course, put forward its views on issues concerning public transport businesses and services on behalf of the public. However, if Mr WONG thinks that by getting hold of the veto power in regard to fare increases alone he can improve services, I believe that he does not really understand the real situation of Hong

Kong. At present, public transport services in Hong Kong are operating according to commercial principles, and this also applies to the WCR. The Hong Kong Government will not give any financial subsidy to the operation of these public transport services. Therefore, the problem that we actually have to face is to ensure that there is a fair and reasonable environment for operation and also to ensure the provision of good quality service. In order to attain the above targets, the monitoring work in respect of the WCR should be under the responsibility of the executive authorities together with a relatively independent non-political organization, so that the actual operation concerned will not merely reflect the short-term political objective. Hence, in order to control the fare increase of the WCR, we should first start with formulating quality control standards and service targets, as well as strengthening the function of the Transport Advisory Committee, instead of using the sort of political adjudication advocated by Mr WONG.

To sum up the above, the amendment moved by Mr WONG has the following features. Firstly, it deviates from the important condition of having discussions with the Chinese Government and is only vainly talking about the construction of the WCR at an early date. Secondly, by using political adjudication, it alters the monitoring mechanism in regard to fare increase of public transport services to a great extent, thus adding some uncertain factors to the construction of the WCR. All these will adversely affect our striving for an early completion of the WCR. I, therefore, call upon Honourable Members to oppose the amendment moved by Mr WONG Wai-yin.

Mr President, I so submit.

SECRETARY FOR TRANSPORT (in Cantonese): Mr Deputy, first of all, I am grateful to the Honourable NGAN Kam-chuen for initiating this motion debate on the Western Corridor Railway (WCR), and to Members who have spoken on the subject. Queries were raised, criticisms were made and suggestions put forward by Members but I would like to respond to two points in particular. I think, in fact, all Members would like to see the early completion of the WCR. They also hope that the railway, upon completion, would represent good value for our money. I can assure you, Mr Deputy, that the Administration shares

Members' views on these two points.

Mr Deputy, I wish to explain the Administration's views on three main areas. First, the Government's commitment regarding this railway. Second, whether the Government is dragging its feet on this issue. Third, how to improve understanding, communication and consultation.

The WCR has always been a priority project for the Government. Upon completion, the three services provided by the railway, namely a passenger service between the North-west New Territories (NWNT) and the urban area, a cross-border passenger service and a freight service, will certainly help to provide the much needed transport capacity to the NWNT, ease road congestion and enhance our transportation links with China. We are thus committed to embarking on all necessary planning and preparatory work with a view to the speedy implementation of the project.

On the make-up of the railway, I would like to reassure the Honourable Mrs Miriam LAU and the Honourable Mrs Selina CHOW that the Government has always envisaged the WCR to be a freight/passenger line. There is no data in all the studies conducted between the late 1980s and the present to prove otherwise.

There have been comments that the Government is not serious about proceeding with the project, or that we are delaying its implementation. Neither is true. If one looks at how the Government has handled the entire project, it will become clear that we are going through a process, not delaying the project or process.

As the Honourable CHOY Kan-pui pointed out, the Government had already recognized the need for a new railway in the NWNT back in the late 1980s. In 1991 the Government commissioned a study on the development of the territory's railway network to establish a blueprint for its expansion. In 1993 we conducted an extensive public consultation exercise based on the study. In 1994 the Government announced the comprehensive Railway Development Strategy (RDS). The WCR is one of the three priority projects in the RDS.

In January 1995, the Government invited the Kowloon-Canton Railway Corporation (KCRC) to submit a proposal for the construction and operation of

the WCR. In response to this invitation, the KCRC conducted a feasibility study and submitted a proposal to the Government in November.

The scheme proposed by the KCRC is in general accordance with that laid down in the RDS. However, based on the comments put to us during the consultation exercise, the KCRC recommended that the railway be extended from Tuen Mun North to Tuen Mun Town Centre.

As regards the timetable for the WCR project, the Government hopes to complete the assessment of the KCRC's submission and conduct further studies as well as negotiations with various sectors within this year. We aim to arrive at a view on the KCRC's proposal by the end of the year, to be followed by preparing and finalizing the terms of a project agreement in 1997, completing all necessary consultations leading to approval of the project before 1998 and commencing construction in 1998. It has been said that the Government did not appear to have taken any action upon receipt of the KCRC's submission. As a matter of fact, a WCR Project Steering Committee was set up within the Government this year and the KCRC's proposal is being carefully studied by a number of task groups.

The Honourable Albert HO and the Honourable WONG Wai-yin have asked for a team to be set up to deal with land resumption matters. The Government has, in fact, already set up a team under the Lands Department to look into land-related matters including land acquisition. Furthermore, with the assistance of engineering consultants, the employment of which was approved by the Finance Committee, we are examining the technical aspects of the KCRC's submission and all financial issues. How the Government will monitor the progress of the project in conjunction with the KCRC and other departments concerned during the course of construction will naturally form part of our future study.

The cost of the project was a question brought up by a number of Members. I shall answer their queries briefly here.

The KCRC have estimated that the project cost of the WCR, which is built partly in tunnels, partly on embankment and partly on elevated viaducts, would be about $75 billion in "money of the day" terms.

On this figure alone, there has been concern that the KCRC's cost

estimates are substantially higher than the estimates given in the document published by the Government in December 1994. These two figures cannot, however, be viewed in the same light.

The cost estimate in the Government's 1994 RDS was $32 billion at 1994 prices without taking into account the "money of the day" factor. That estimate, in "money of the day" terms, is $54 billion.

The KCRC's cost estimate for the WCR at $75 billion in "money of the day" terms has allowed for changing the scope of the project, such as building a new extension, as well as project reserves and financing costs, which are not included in the 1994 RDS.

I should nevertheless stress again that $75 billion is still only an estimate by the KCRC at this stage. The Government is conducting more detailed studies to obtain a more accurate assessment of the costs that might be involved. After in-depth discussions, this figure may need to be adjusted. Cost-effectiveness will be the main consideration in the Government's study to ensure that future users of the railway will believe that they are getting good value for their money.

It was queried why the Government employed a separate team of consultants to study the KCRC's proposals. The proposals put forward by the KCRC involve many technical and complex details. Before allowing the project to proceed, the Government has the duty to vet these details. There are also implementation and interface issues affecting other Government and private sector projects which the KCRC might not be aware of when it drew up the proposals. After receiving the KCRC's proposals, the Government has the duty to identify the problems, examine them and come up with resolutions. This can be a job for either civil servants or consultants but since the railway projects is a one-off project, it is not cost-effective for the Government to separately recruit additional staff to form a study team for the job. Hence the Government decided to employ consultants and this was approved by the Finance Committee in 1995.

Why is the Government so cautious in handling this project? This is because the Government wishes to ensure that the WCR project is a cost-effective one, that undertaking it will not create a problem for the Government before or after the transfer of sovereignty in 1997 and that the railway will bring real benefits to the region it serves, at fares that are affordable

to those who will be using it daily.

A series of consultations have been undertaken by the Government, including the consultation exercise subsequent to the completion of the Railway Development Study in 1993 and consultations with various district boards, port operators and commercial bodies. Consultations are now being held with a special committee set up by this Council. We will continue with this work so that members of the public will gain a better understanding of the WCR project and the Government will receive more feedback from the public when the project commences.

On the question of consultation with the Chinese side, we have, since 1993, kept the Chinese side of the Joint Liaison Group (JLG) informed about the development of our railway planning work. We last briefed the Chinese side on the subject of the WCR in February 1996 and provided them with two sets of the KCRC's WCR proposal on 13 June. On 14 July, I shall brief the Economic Sub-Group of the Preparatory Committee with a team comprising the Chairman of the KCRC and his colleagues.

To conclude, I would reassure this Council that it is the Government's firm intention to press ahead with the planning of the WCR and strive for its early completion. In doing so, we shall ensure that the progress and expenditure of the project are stringently monitored and controlled and that the project is implemented in the most cost-effective manner.

The Government is able to give its support to the motion moved by the Honourable NGAN Kam-chuen, although I would question his choice of words in commenting on the construction and resumption cost as estimated by the KCRC.

As regards the amendment proposed by Mr WONG Wai-yin, I dispute his contention that the Government has been delaying the construction of the WCR without any regard for the traffic congestion problem faced by residents in the NWNT and hope Members will appreciate my justification for doing so after listening to what I have said.

Mr Deputy, as I have stated earlier, the WCR has always been a priority project for the Government and our position has never changed. We are pressing ahead with the necessary planning and preparatory work with a view to

the project's early completion. It is our hope that the railway will help to resolve the traffic problems faced by residents in the NWNT.

Thank you, Mr Deputy.

THE PRESIDENT resumed the Chair.

Question on the amendment put.

Voice vote taken.

THE PRESIDENT said he thought the "Noes" had it.

Mr CHEUNG Hon-chung and Mr Albert HO claimed a division.

PRESIDENT: Council shall proceed to a division.

PRESIDENT: Members may wish to be reminded that they are now called upon to vote on the question that the amendment moved by Mr WONG Wai-yin be made to Mr NGAN Kam-chuen's motion. Will Members please register their presence by pressing the top button and then proceed to vote by choosing one of the three buttons below?

PRESIDENT: Before I declare the result, Members may wish to check their votes. I think we are still one short of the head count.

MR MOK YING-FAN (in Cantonese): Mr President, my button is not working.

PRESIDENT: Try again, press the presence button.

MR MOK YING-FAN (in Cantonese): I vote for the amendment.

PRESIDENT: Does it work now?

PRESIDENT: The result will now be displayed.

Mr Martin LEE, Mr SZETO Wah, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin, Mr LEE Cheuk-yan, Mr Andrew CHENG, Mr Albert HO, Dr LAW Cheung-kwok, Mr LAW Chi-kwong, Mr Bruce LIU, Mr MOK Ying-fan, Mr SIN Chung-kai, Mr TSANG Kin-shing, Dr John TSE, Mrs Elizabeth WONG and Mr YUM Sin-ling voted for the amendment.

Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr LAU Wong-fat, Mr Edward HO, Mrs Miriam LAU, Dr LEONG Che-hung, Mr Eric LI, Mr Henry TANG, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, Miss Christine LOH, Mr James TIEN, Mr CHAN Kam-lam, Mr CHAN Wing-chan, Miss CHAN Yuen-han, Mr Paul CHENG, Mr CHENG Yiu-tong, Mr CHEUNG Hon-chung, Mr CHOY Kan-pui, Mr David CHU, Mr IP Kwok-him, Mr Ambrose LAU, Mr LEE Kai-ming, Mr LO Suk-ching and Mr NGAN Kam-chuen voted against the amendment.

Miss Margaret NG abstained.

THE PRESIDENT announced that there were 25 votes in favour of the amendment and 27 votes against it. He therefore declared that the amendment was negatived.

PRESIDENT: Mr NGAN Kam-chuen, you are now entitled to your final reply

and you have three minutes 56 seconds out of your original 15 minutes.

MR NGAN KAM-CHUEN (in Cantonese): Mr President, first of all, I would like to thank those Members who have spoken on the issue and those who voted against the amendment.

The Honourable Mrs Miriam LAU from the Liberal Party pointed out in her speech earlier on that to raise the issue of monitoring the ticket price now will complicate matters. The most important thing, on the other hand, is to seek a lower construction cost. I agree and support this view.

Some Members, especially those from the Hong Kong Association for Democracy and People's Livelihood (ADPL), mentioned the need to re-study the route of the railway. But I think this would cause delay to the development of the railway. I think the present route had been discussed openly in the past and was considered to be beneficial to the development of the North-west New Territories. It will foster economic growth and make up for deficiencies in the development of the urban area. So I cannot endorse the ADPL's viewpoint. In the past we already had arguments on the various routes and further debates will only waste our resources. I hope the Government can publicize information concerning other proposals as soon as possible so that disputes concerning various routes can come to an end. After that, the Government should implement the project immediately and the project should be completed in a most cost-effective way.

In addition, I also support the Honourable Mrs Selina CHOW's opinion that the Secretary for Transport should correct the past mistakes as soon as possible and overcome any obstacles affecting communication with the Chinese side as we think that support from the Chinese side is the key to an early implementation of the Western Corridor Railway (WCR) project.

At the beginning of my previous speech, I pointed out that I hope the Secretary for Transport can have a clear grasp of what prompted the present motion. From the Secretary's speech, I can clearly understand two main points, that is, all Members wish to see an early implementation of this project and that it should be worth the price we pay for. We are in total agreement on these points. I hope the Government can bear in mind these points and at the end of the day the Secretary can ensure the railway is constructed in the most cost-effective way.

I hope these points can all be realized in the construction of the WCR in the future.

Thank you, Mr President.

Question on the motion put and agreed to.

AMENDMENTS TO THE BASIC LAW

DR YEUNG SUM to move the following motion:

"That this Council urges the Chinese Government to amend the Basic Law as follows:

(a) the removal of the restriction that members of the Legislative Council may not introduce bills relating to government policies except with the written consent of the Chief Executive, as stipulated in Article 74 of the Basic Law; and

(b) the removal of the restriction that the passage of bills and motions introduced by any individual members of the Legislative Council shall require a simple majority vote of each of the two groups of members present, as stipulated in Annex II of the Basic Law,

so as to achieve the target that the executive authorities shall abide by the law and shall be accountable to the legislature, as stipulated in the Joint Declaration.

DR YEUNG SUM (in Cantonese): Mr President, I move that the motion set out under my name in the Order Paper be adopted.

Mr President, from the time the drafting of the Basic Law commenced, the various democratic bodies in Hong Kong have participated actively in the drawing up of the Basic Law and the subsequent consultation process, in the hope that with the return of sovereignty in 1997 and the end of colonial rule, the concepts of "one country, two systems", "Hong Kong people ruling Hong Kong" and "a high degree of autonomy" can be put into practice.

In the 1980s, the democratic camp in Hong Kong formed the Joint Committee on the Promotion of Democratic Government aimed at fighting for a democratic Basic Law which would give Hong Kong a democratic political system. At that time, we held that a Basic Law in line with the needs of Hong Kong must be able to fulfill the following four basic principles in accordance with the Sino-British Joint Declaration:

1. While China regains its sovereignty over Hong Kong, "a high degree of autonomy" must be firmly established in the Hong Kong Special Administrative Region (SAR) so that the concept of "Hong Kong people ruling Hong Kong" can be fully implemented.

2. A truly democratic political system must be established on the basis of the separation of powers and checks and balances, with universal and equal political rights for the people of Hong Kong.

3. Judicial impartiality and independence, as well as basic human rights and freedom, must be safeguarded under the rule of law.

4. A smooth transition must be ensured.

Although the Basic Law was already promulgated in 1990, we still maintain the same position and continue to urge the Chinese Government to amend the Basic Law as soon as possible so that the principles mentioned just now can be truly realized.

The motion I move today, which calls for amendments to those Basic Law provisions that restrict the exercise of powers by the future SAR Legislative Council, is aimed at holding the executive branch accountable to the legislature, a spirit enshrined in the Joint Declaration.

This motion is part of our package of proposals on amending the Basic Law, and deals mainly with the functions and operation of the legislature.

My remarks will centre around the role and function of representative government in Hong Kong in the transition period, and analyze the important role of the legislature in easing social conflicts, promoting open government and fostering democratic participation. Thence it will be pointed out how the restrictions imposed by the Basic Law on the SAR Legislative Council will

weaken the functioning of representative government in Hong Kong. The Honourable Martin LEE will recapitulate the drafting process of the Basic Law to point out that the procedure of voting by groups laid down in Annex II is actually a "reincarnation" of the "one Council, two chambers" scheme, which aimed to curb and weaken the powers of the legislature. The Honourable CHEUNG Man-kwong will respond to the Honourable David CHU's amendment by stating the Democratic Party's overall position regarding the amendment of the Basic Law. The Honourable Albert HO will respond to the amendment proposed by the Honourable Bruce LIU from the Hong Kong Association for Democracy and People's Livelihood, expressing the Democratic Party's stand on the procedures for amending the Basic Law.

Mr President, under the colonial constitutional system, powers are concentrated in the executive authorities. Before direct elections were held for the Legislative Council in 1991, the legislature was simply a rubber stamp, and the Governments of China, Britain and Hong Kong have consistently maintained that the so-called "executive-led" system must be upheld. According to the Chief Secretary's reply to Members' questions in March 1996, the term "executive-led" as understood by the Hong Kong Government has the following meanings:

1. Under the principle of the separation of powers, there is an executive-led government with the executive, legislature and judiciary performing different and independent roles but would check, balance and support one another at the same time.

2. The executive is responsible for formulating and implementing policies, and providing various services to the community.

3. In short, the Government proposes and the legislature disposes.

From the historical development of Hong Kong's political system, it is seen that the "executive-led" system has taken different forms at different times. The 1970s saw an age of executive autocracy, during which the separation of powers was virtually non-existent. At that time, the only development was the emergence of consultation politics as a response to the 1967 riots. In the 1980s, the principle of the separation of powers was still not adopted, and under the guise of "consensus politics", the legislature was manipulated by the executive. It was only in 1991 when direct

elections were introduced for the Legislative Council that the legislature took the formal step toward autonomy, thus the emergence of the separation of powers in the true sense of the term. From the point of view of political development, since the colonial status of Hong Kong will come to an end with the return of its sovereignty to China in 1997, it should logically go further along the path of democratization by enhancing the monitoring role and function of its legislature.

However, as can be seen from the Basic Law, China has laid down various barriers for the future political development of the SAR.

The first barrier is the restriction on the number of directly elected seats, which will be limited to only 30 even in the third Legislative Council of the SAR. The procedures for the formation of the SAR Legislative Council will not be decided until 2007, and they must obtain the endorsement of a two-thirds majority of members in the Council and the consent of the Chief Executive. That being the case, even though public opinion may well support full-scale direct elections at the time, it will not be easy to obtain the necessary endorsement and consent.

The second barrier is the curtailment of the legislature's powers. With respect to the introduction of bills by members of the SAR Legislative Council, Article 74 of the Basic Law imposes many new restrictions not currently found. The written consent of the Chief Executive is required before bills relating to government policies can be introduced by individual members. This amounts to depriving members of their right to introduce bills because most bills are related to government policies.

The third barrier is the "reincarnation" of the "one Council, two chambers" proposal. Apart from limiting the increase in the number of directly elected seats, the scheme can be seen from the voting procedures laid down in Annex II. As long as the executive can exert its influence over either of the two groups of members (that is, half of the functional constituency members and half of those returned by geographical constituencies through direct elections or by the Election Committee) just by controlling one-quarter (15) of all members in the Council, then it can veto any motion, bill and amendment moved by members. This will

safeguard the executive to a great extent, but will drastically slash the legislature's powers in monitoring the executive.

What this means in effect is that even if a member moves a bill not relating to government policies (which, of course, is a highly unlikely event), it is still doomed to be negatived during the final stage of voting by groups.

The whole set of rules designed for the functioning of the SAR legislature after 1997 can hardly realize the spirit of having the executive accountable to the legislature. Such a design has only one aim: off-setting the effects of more elected elements in the legislature through a curtailment of its authority. In brief, the purpose is to suppress public opinion through a carefully designed mechanism.

Since the introduction of directly elected seats in the Legislative Council in 1991, we have witnessed the growing maturity of parliamentary politics in Hong Hong, with the Legislative Council gradually assuming the role of a representative of public opinion and a watchdog of government policies. This is largely attributable to the efforts made by Members of this Council who belong to different political parties, though many of our political views do differ. We can see that Members' motions and amendments have played a significant supervisory role regarding many major public policies and livelihood issues.

The three bills on equal opportunities introduced by the Honourable Ms Anna WU in the past, though eventually negatived, did at least force the Government to start tackling the issue, and to take the initiative of introducing the Sex Discrimination Ordinance.

The Honourable Miss Christine LOH's attempt to draft a code of access bill, though failed to reach the stage of introduction in the Legislative Council, still succeeded in forcing the Government to adopt Codes of Access for information in nine of its departments in 1995.

I believe that Members can still remember the Honourable LAU Chin-shek's angry resignation, which was prompted by the Government's withdrawal of the Employment (Amendment) Bill following its passage with amendments through the Second Reading. In the end, the Government was forced to raise the ceiling of long service and severance payments.

The Honourable TAM Yiu-chung's Public Officers (Variation of Conditions of Service) (Temporary Provisions) Bill was carried, and the Government had to abandon the original change of conditions of service and re-open negotiations with the staff side.

The Immigration (Amendment) Bill drafted by the Honourable LEE Cheuk-yan and the Honourable Michael HO, aimed to halt the importation of labour, eventually succeeded in forcing the Government to withdraw the General Labour Importation Scheme, and to revise the maximum quota under the Supplementary Labour Importation Scheme to 2 500 workers.

Quoted just now are simply some examples to show how Member's Bills and amendments have succeeded in forcing the Government to improve its policies. However, they already suffice to illustrate that Members' right to introduce bills is very significant in terms of the role to monitor the Government. This is not the individual success of any particular Member or political party. Rather, it is the achievement of the legislature as a whole. So, how can we give it up so easily?

Since powers in Hong Kong are concentrated in the hands of the Government under the executive-led system, the executive branch may fail to respond to the needs of society. The bureaucratic hierarchy of the Government also tends to lower its efficiency. So, apart from supplementing the inadequacy of the Government, Member's Bills can also urge the executive to respond appropriately to major social policy issues.

Since 1991, we have witnessed a transformation of the legislature in the overall political context of Hong Kong. In sum, the legislature is performing a significant role in the community of Hong Kong in terms of the following:

1. *Easing social conflicts and confrontation.*

   During the past more than one decade of the transition period when Hong Kong went through a time of political changes and economic restructuring, no social turmoil has occurred in the territory. I

think this is attributable to the significant harmonizing role played by the legislature, which has served to balance different interests and give vent to different opinions. In the case of labour importation, for example, when unemployment got worse and public resentment raged high, this legislature successfully forced the Government to revise its policies, thus easing a social conflict.

2. *Orienting the Administration towards an open government.*

Since the legislature possesses some real powers (few as they are, though), the Government is therefore bound to respond to the legislature's demands and seek public support as a means of counter acting the pressure from Members. In the course of doing so, the executive must make public its decision-making process and the relevant information, hence significantly enhancing the Government's transparency. I think most Members would agree to this point.

However, there is grave concern that the pre-1997 status and role of the legislature will be placed under serious threats after 1997. Such threats stem basically from the Chinese Government's long-standing scepticism about representative government so that it has created various barriers to curtail the powers of the future legislature.

The threats to be faced by the SAR Legislative Council after 1997 include the following:

1. An alteration of the electoral system which will split up the legislature into various rival factions: It has always been the intention of the Chinese side to alter the existing electoral system and replace it with proportional representation or "multi-seat-single-vote" system so as to prevent the formation of a majority coalition or the emergence of a majority party. I am convinced that under the electoral system "tailored-made " by the Chinese side, the future Legislative Council will be severely divided. The biggest winner will be the executive authorities because they can more easily manipulate the Legislative Council.

2. The method of voting by groups laid down in Annex II of the Basic Law, coupled with a divided legislature, will let us foresee the future executive authorities getting their own ways without fear of any checks. All they need is to muster the support of one quarter of the members in a rivalry-ridden legislature, and they can thwart the motions moved by the other members.

3. The more rigorous restrictions imposed by Article 74 of the Basic Law on the introduction of bills by members is tantamount to tying up their hands. What kind of a legislature will it be if it cannot legislate?

When the powers of the SAR Legislative Council after 1997 are curtailed so that it can no longer monitor the executive, Hong Kong will face greater crises. With a more powerful executive and a less effective legislature after 1997, the Legislative Council can no longer play the role of easing social conflicts. I believe by that time social confrontations in Hong Kong will intensify.

As we all know, in preparing for the formation of the SAR Government, the Chinese side is basically trying to enlist the support of the industrial and commercial sector. In the future, when the interests of this sector are involved, government policies will be more prone to influence from this sector. Since even the post of Chief Executive is likely to be filled by a businessman, the executive will pay more heed to the interests of capitalists than it would before 1997.

What is more, the power of appointing the Chief Executive and his or her team of officials for the transitional period has been held by the Chinese side ever since preparation started on the formation of the SAR Government. It is therefore questionable whether the executive can maintain its autonomy without becoming a rubber stamp or puppet after 1997.

Under such a situation, and with the powers of the legislature curtailed and public opinion suppressed, social conflicts will manifest themselves in the form of more radical social movements when government policies fail to balance the different interests in society and the legislature cannot effectively perform its monitoring and checking role.

Finally, Mr President, let me reiterate that the proposals to remove the restrictions on members' right to introduce bills imposed by Article 74 of the Basic Law and to abolish the procedure of voting by groups contained in Annex II of the same law is made for the sake of the future development of the Hong Kong legislature. The ultimate aim is to realize the principle of holding the executive accountable to the legislature for the purpose of maintaining social stability.

Honourable colleagues, what we are seeking to do today is aimed at promoting the forward development of the Hong Kong legislature. We may hold different political views, but I believe none of us will like to see parliamentary politics in Hong Kong sink into oblivion after 1997, or to see the legislature, which symbolizes the development of representative government in Hong Kong, lose its lustre and gradually wither away from the minds of the people.

With these remarks, I beg to move.

Question on the motion proposed.

PRESIDENT: As Members have been informed by circular on 29 June, Mr Bruce LIU and Mr David CHU have separately given notices to move amendments to this motion. As there are two amendments to the motion, I propose to have the motion and the two amendments debated together in a joint debate.

MR MICHAEL HO (in Cantonese): Mr President, under Standing Order 4B(1) relating to the attendance of public officers in sittings, the Governor, in exercising the power conferred on him by the Royal Instructions, can designate public officers to attend sittings of the Legislative Council. May I ask whether the Secretary for Transport is designated by the Governor to attend this sitting today and be prepared to respond later on in this motion debate?

PRESIDENT: We have been advised that the public officer designated by the

Governor to attend at this particular motion is the Secretary for Constitutional Affairs, but that does not bar the Secretary for Transport from attending at the sitting.

PRESIDENT: Council shall now debate the motion and the amendments together in a joint debate. I will call upon Mr Bruce LIU to speak first, to be followed by Mr David CHU; but no amendments are to be moved at this stage. Members may then express their views on the main motion as well as on the proposed amendments listed on the Order Paper.

MR BRUCE LIU (in Cantonese): Mr President, the Association for Democracy and People's Livelihood (ADPL) basically accepts the Basic Law as the mini-constitution of the Hong Kong Special Administrative Region (SAR) under the "one country, two systems" formula. However, the ADPL has reservations with regard to some of the provisions in the Basic Law and is of the view that these provisions should be amended. We also agree with the two amendments to the Basic Law proposed by Dr the Honourable YEUNG Sum. The Honourable MOK Ying-fan of the ADPL will elaborate on this point later on.

The ADPL agrees that the Basic Law need to be amended. However, since the promulgation of the Basic Law in 1990, the ADPL has held fast to its view that amendments to the Basic Law should not be proposed until after it has come into force in 1997. This, we feel, is an important principle.

First, Article 150 of the Basic Law lays down the procedure for introducing amendments to the Law. And the provisions in the Law, including the amendment procedure, will not take effect until 1 July 1997. Therefore, if we want to proceed on a sound legal basis and follow the prescribed procedure in amending the Basic Law, we must wait until after 1997 and introduce amendments according to the statutory procedure. This way of doing it will be consistent with the principle of the rule of law. And the rule of law will precisely be the foundation for success of the principles of "one country, two systems" and "Hong Kong people ruling Hong Kong" after 1997.

Secondly, if we want to amend the Basic Law before 1997, it will not be

possible for the Hong Kong SAR to propose it because the SAR has not yet been set up. The only possible way to go about it, before the Basic Law comes into force, would be for the National People's Congress (NPC) to propose an amendment motion on its own. To let the NPC take the initiative would be tantamount to inviting the Central Government to interfere in the internal affairs of Hong Kong before 1997. This would not be consistent with the spirit of "one country, two systems" and "Hong Kong people ruling Hong Kong". If the Basic Law is to be amended before 1997, how would the NPC decide which articles should be amended? In what manner should consultation be carried out in Hong Kong? How would a body of mainstream views among the various sectors of our society be formed and crystallized having regard to the political polarization that now plagues Hong Kong? If the Chinese Government should announce today that the Basic Law would be amended before 1997 and invite Hong Kong people to submit proposals, I believe Hong Kong people and all political parties would fall over themselves to put forward their lists of amendments. They would be vying with one another for audience and each would have its own views to express. Amendments proposed would definitely be more than the two covered in the present motion today. At least, the ADPL would propose to amend the timetable set out in the Basic Law with regard to constitutional development in order to hasten the pace of democratization. I believe that, with less than a year to go before 1997, it would not be easy to reach a consensus as to how the Basic Law should be amended having regard to the wide disparity of views that exists in our society.

Moreover, the ADPL is of the view that amendments to the Basic Law should be proposed by the SAR after 1997, that is to say, it will be for the SAR to exercise the executive power. This is also an important principle as well as a political need. I have the following two reasons to give:

First, if it be necessary to amend any of the Basic Law provisions relating to the SAR's internal affairs, the amendments should be proposed by the SAR. Only in so doing would it be consistent with the spirit of "one country, two systems, a high degree of autonomy, and Hong Kong people ruling Hong Kong".

When this Council debated "one country, two systems" last week, the Honourable Martin LEE of the Democratic Party urged the Chinese Government not to interfere with the internal affairs of the SAR. This plea, I believe, would cover the plea to the Chinese Government not to take the initiative in amending any of the Basic Law provisions relating to the internal affairs of Hong Kong. However, today Dr YEUNG Sum of the Democratic Party is asking the Chinese

Government to amend the Basic Law. Although no timeframe is mentioned in the motion, yet I believe it would cover the possibility of amendments being introduced before 1997. Would this not be an invitation to the central authorities to interfere in the internal affairs of the SAR? Would this not be self-contradictory, with today's proposal overruling last week's proposal? Would this not be inconsistent with the spirit of "one country, two systems, a high degree of autonomy, and Hong Kong people ruling Hong Kong"?

Secondly, amendment proposals drawn up by the SAR Government would more readily secure the acceptance and support of Hong Kong people.

According to the procedure prescribed under Article 159 of the Basic Law, amendment proposals from the SAR shall need to be consented to by two thirds of the members of the Legislative Council of the SAR and the Chief Executive of the SAR and passed by two thirds of the NPC deputies of the SAR; and before a proposal for amendment is put on the agenda of the NPC, the Committee for the Basic Law of the SAR shall study it and submit its views. Therefore, relatively speaking, this process of gestation of views and proposal of amendments by Hong Kong people would be more consistent with the culture and ethos of Hong Kong society and more readily accepted and supported by Hong Kong people than would be the case if the process were to be initiated by the central authorities.

Let us suppose that one day China's NPC or the State Council suddenly exercises its power of amendment and puts forward a proposal to amend Article 22 of the Basic Law relating to the policy and procedures of entry into and exist from the SAR so that the process in respect of entry and exit by Chinese mainland nationals will be handled wholly by the central authorities, what will become of the SAR then? The immigration policy of the SAR is within the domains of the SAR's internal affairs. Proposals for amendment should be initiated by the SAR, not the central authorities. Even if the Chinese Government has a good motive and the amendment would, objectively speaking, be beneficial to Hong Kong if passed, Hong Kong people would not necessarily be grateful. They might harbour the misunderstanding that the central authorities, in proposing the amendment, have been partial and succombed to the lobbying by some financial consortia. In the event, a good thing would be misinterpreted as a bad thing.

In sum, if provisions in the Basic Law relating to the internal affairs of the SAR, including constitutional development, the rights and obligations of Hong Kong people and the well-being of the SAR economy, are to be amended, the amendment proposals should emanate from the SAR, not from the central authorities. Only in so doing can the spirit of "one country, two systems" and "Hong Kong people ruling Hong Kong" be achieved.

Mr President, I so submit.

MR DAVID CHU: Mr President, Moses received the Ten Commandments from God after 40 days and nights at Mount Sinai. American delegates convened for five months in Philadelphia and conceived their Constitution. We surpassed them both. Our Basic Law took five years, 60 sessions, innumerable hours of deliberation and the detailed consultation with the Hong Kong public to create. I cannot for the life of me see why we must get the document changed with fewer than 365 days to go before it comes into effect.

The Basic Law is not just any law but a supreme statement of principles. The covenant spells out three fundamental relationships. The first of these is the relationship between our individual selves and the Hong Kong Special Administration Region (SAR) Government; the second is that between the SAR Government and the Central Government, and the third is that between the people of Hong Kong and the international community.

Because the Basic Law also defines our rights and obligations, it affects each and every person here in a most direct and personal way. Not only is the Basic Law vital to the Chinese south of Shenzhen River, it is significant for those to the north as well as those in Macau and Taiwan whose reunification with the mainland shall be partly modelled on the SAR.

Therefore, any change to the Basic Law has wide-ranging and important ramifications and cannot be moved lightly, on a whim, or for partisan reasons. This is why we have to uphold the Basic Law just as Christians must abide by the Ten Commandments and Americans must respect their Constitution.

Our Basic Law is not a dead letter but a living charter which evolves as we progress. The American Constitution's first 10 amendments, known collectively as the Bill of Rights, were not adopted until after much soul searching and four

years after the original document had been in effect. We should be just as careful.

How can we pledge to uphold the Basic Law while wanting to change its major principles. If we were to have the Basic Law changed so easily without giving it a chance to prove its worth, what is to prevent the sovereign from doing the same?

I believe no fundamental change to the Basic Law is needed because I agree with its principles: a high degree of autonomy for the SAR except for matters of defence and foreign affairs, recognition of the International Covenant on Civil and Political Rights, an independent Judiciary, a balance between the executive and legislative arms, a prudent but never intrusive government, a free and tolerant community that lives by its creed of success.

Those of us in public office must act according to the Basic Law's tenets. But the document is not a rigid doctrine. We may exercise our judgement and apply the Basic Law through realistic legislation to suit the prevailing circumstances. Our judges shall interpret the ordinances we enact according to their impartiality, good sense, perception of social norms and their feel for the public mood. Those mechanisms are already at work in the present adaptation of the Letters Patent and Royal Instructions.

The Basic Law is crucial to the stability of Hong Kong. Any attempt to undermine it is a direct challenge to the foundation of our institutions. I stand by the Basic Law and by the Chief Executive's authority which must not be compromised. This is why I find the original motion today seriously flawed and thus totally unacceptable.

I invite my fellow legislators to support my amendment and in doing so express their willingness to uphold the Basic Law which assures us a high degree of autonomy and Hong Kong people ruling Hong Kong under one country, two systems.

Thank you, Mr President.

MR NGAI SHIU-KIT (in Cantonese): Mr President, everyone knows that the Basic Law is the "mini-constitution" of the Hong Kong Special Administrative Region (SAR) after 1997. Whether the spirit of "one country, two systems" and "Hong Kong people ruling Hong Kong" will be genuinely realized and whether the stability and prosperity of the future SAR are best assured it depend, most importantly, on the endeavours of both China and Hong Kong to respect and safeguard the Basic Law, making a concerted effort to put it into practice.

However, Dr the Honourable YEUNG Sum and his group of Democratic Party members have been consistently antagonistic towards the Basic Law. Now, they are openly advocating and clamouring for the amendment of the Basic Law according to their own wishes.

First, Dr YEUNG Sum's motion presents a deliberate distortion of the wishes of the people. One could not have forgotten the drafting process of the Basic Law years back, and it took four years and eight months to complete. During this period of time, the parties concerned met three times in Hong Kong and another three times in Beijing to discuss, revise and improve the Basic Law, incorporating a diversity of opinions from the people of Hong Kong as a whole, reflecting the demands of the general public and fully upholding the principles which ensure a democratic and open society. Now Dr YEUNG Sum seeks to amend the Basic Law under the pretext of "democracy", a move which completely neglects the efforts made by those Hong Kong people who participated in the drafting of the Basic Law and shows no respect for the demands of the public. This is not only a ludicrous political farce, but is also totally unreasonable and illegitimate as the so-called democrats are already brandishing their swords to slash indiscriminately the Basic Law even before it takes effect.

If we can still remember the strenuous process involved in the drafting of the Basic Law when the provisions were revised again and again for many times, in order to meet the wishes of the people, we will see that this motion simply is unreasonable and meaningless. Pioneer democrat and reformist Mr LIANG Qichao said in his article *On the Power to Make Laws*, "What is the objective of a state? The answer is to make laws." It clearly shows that law-making is a manifestation of state sovereignty and this is a matter of profound solemnity. As Legislative Council Members, our duty is to ensure that laws are enacted properly. Regrettably, despite the fact that the Basic Law has yet to be formally put into force and that its effectiveness has yet to be seen, Dr YEUNG Sum

hastily adopts such frivolous attitude, ignoring the most fundamental and solemn procedure of law-making and rashly implanting distrust in the minds of the public. Apart from revealing his intent for political confrontation in his move, indeed, it serves no other purpose. This is really regrettable.

As a matter of fact, the motion of Dr YEUNG Sum is neither reasonable nor legitimate, whether it is taken as a matter of simple logic or considered from the pragmatic perspective. Indeed, no one can say that the Basic Law is perfect, but the Basic Law, which is the fundamental code of law, is in line with the overall interest and aspiration of the people of Hong Kong. In order to cater for the actual needs in future, the Basic Law has, in the meantime, a sound mechanism for amendment, with a stringent procedure. However, the reality before us is that when the Basic Law has yet to be put into practice and when the Committee for the Basic Law, in which Hong Kong people will play a part, has yet to be established, Dr YEUNG is asking the Chinese Government to amend the Basic Law. Is he not asking the Chinese Government to breach the Basic Law unilaterally? What exactly is his legal basis? What is his ulterior motive? This is profoundly interesting.

Over the years the executive-led system has all along been effective in Hong Kong. The Government formulates policies to effect its governance according to the actual needs of society, catering for the interests of various sectors in the community and using the available resources according to priorities. This is entirely the duty of the executive authorities. On the other hand, the legislature is responsible for scrutinizing bills tabled by the Government, and for monitoring and questioning the Government over its policies. Such principle of division of labour between the executive authorities and the legislature is what the provision of the executive authorities being accountable to the legislature, as stipulated in the Basic Law, actually refers to. But if things are interpreted according to their logic, members of the future SAR legislature will be given a free hand to arbitrarily propose Member's Bills relating to government policies, in which case the policy-making process of the executive authorities will be interrupted and the procedure for the implementation of policies will be disrupted. As a result, government policies cannot be carried out smoothly. Dr YEUNG Sum has wrongly distorted the Basic Law and created confusion and anxieties among members of the public. His purpose is simply to resurrect his ideology in new guise, attempting to revive the demons of a mechanism in which the legislature takes the lead. No wonder there have been deliberate attempts in recent years to drastically increase the powers of the legislature to attain this purpose.

The implementation of the Basic Law provides a reliable guarantee for democracy, people's livelihood and the rule of law in the future SAR. In the remaining days of the transitional period, the people of Hong Kong should join forces with compatriots in the Mainland to seriously learn and get to know the Basic Law, thereby bringing about a closer and a higher level of cross-boarder relationship. This is the only way whereby the long-term interests of Hong Kong and the aspiration of the public to live and work in contentment in Hong Kong will be achieved. To tarnish and distort the Basic Law and to spread alarmist talks will only create unrest and anxieties in the community. This, indeed, deserves severe condemnation.

Mr President, with these remarks, I oppose the motion and support the amendment of the Honourable David CHU.

MR LAU WONG-FAT (in Cantonese): Mr President, the Basic Law of the Hong Kong Special Administrative Region (SAR) is a solemn document which upholds the Joint Declaration and puts into practice the principles of "one country, two systems" and "Hong Kong people ruling Hong Kong". In drafting the Basic Law, the Basic Law Drafting Committee extensively consulted various sectors of the community in Hong Kong. Discussions were held over and over again and it took five years for the drafting work to complete. The Basic Law has specifically provided for and given adequate assurance to a high degree of autonomy in Hong Kong. It has also ensured that our present system and the way of life will remain unchanged for 50 years.

Certainly, all constitutions and laws can be amended if the circumstances so warrant. The Basic Law is no exception. Indeed, the Basic Law has stipulated in detail the conditions and procedures for making amendments to the Basic Law.

Article 159 of the Basic Law provides that "Amendment bills from the Hong Kong Special Administrative Region shall be submitted to the National People's Congress by the delegation of the Region to the National People's Congress after obtaining the consent of two thirds of the deputies of the Region to the National People's Congress, two thirds of all the members of the Legislative Council of the Region and the Chief Executive of the Region." It also states that before a bill for amendment to the Basic Law is put on the agenda of the National People's Congress, the Committee for the Basic Law of the SAR shall study it and submit its views.

The conditions required for making amendments to the Basic Law, obviously, do not exist prior to the establishment of the SAR. Besides, it is indeed unreasonable to suggest, at this stage, amendments to the Basic Law when the Basic Law has yet to come into effect. If changes can be made to the Basic Law arbitrarily before its implementation, the solemnity and integrity of the Basic Law will be impaired. More importantly, as the existing Legislative Council will not be part of the SAR establishment in future, it does not have the right to call on the Chinese Government to amend the Basic Law. Therefore, the motion to suggest amendments to the Basic Law here and now is not only a waste of time, but is also bound to be ineffective. However, I do not intend to comment on the original motion which seeks to amend the Basic Law. As I said earlier on, the conditions for the amendment of the Basic Law do not exist now so discussions in this respect are completely meaningless.

With these remarks, I oppose the motion and support the amendment of the Honourable David CHU.

MR MARTIN LEE (in Cantonese): Mr President, my speech will mainly focus on the arguments about the "one Council, two chambers" option in the course of drafting the Basic Law. It is because the existing provisions in Annex II of the Basic Law concerning the voting procedure of the Legislative Council of the Hong Kong Special Administrative Region (SAR) is actually a "reincarnated" version of the "one Council, two chambers" option proposed by Mr LO Tak-shing after the June 4th incident.

At the time when I was a member of the Basic Law Drafting Committee, there was no provision, in the first and second drafts of the Basic Law, on separate voting by two groups of members present. In regard to the mode of voting of the Legislative Council of the SAR, Article 74 of the first and second drafts had this to say: "Unless otherwise provided for in this Law, the passage of any bill or motion in the Legislative Council of the Hong Kong Special Administrative Region shall require the votes of more than one half of its members present".

However, when the final draft of the Basic Law was completed in 1990, both the Honourable SZETO Wah and I had already withdrawn from the Drafting

Committee and the said provision in Article 74 had also disappeared and been replaced by the existing Annex II. This is what the Democratic Party regards as a provision to suppress and undermine the monitoring authority of the legislature and the "reincarnated" version of the "one Council, two chambers" option.

I believe most of the Members of this Council will also remember that when Mr LO Tak-shing proposed the "one Council, two chambers" option, the community at large and the Hong Kong members of the Drafting Committee were overwhelmingly against the option.

After the June 4th incident in 1989, the number of Hong Kong members on the Drafting Committee dwindled from 23 to 18. Among them, 11 members sent a joint letter to the Chinese Government asking to enhance the democratic element in the political system and arguing against the "one Council, two chambers" option.

Being caught in this dilemma, the Chinese Government bypassed the Drafting Committee and negotiated with the British Government directly about the political system, the only part which had yet to be settled in the Basic Law. This story was later verified by the seven diplomatic letters between the then Foreign Secretary of the British Government, Mr Douglas HURD, and the Foreign Minister of China, Mr QIAN Qichen, disclosed by both sides during the Sino-British row triggered off by the political reform package proposed by Governor PATTEN.

In regard to the "one Council, two chambers" option, since there was a strong response from the community at large in Hong Kong, the Chinese Government thus adopted a covert approach by deleting the provision in Article 74 concerning the procedure for voting on bills and motions in which a simple majority vote of the members present is required, and then "reincarnated" the "one Council, two chambers" spirit in the second paragraph of Annex II of the Basic Law so as to achieve the goal of suppressing and undermining the authority of the Legislative Council of the SAR.

Mr ZHOU Nan, Director of the New China News Agency, during an interview with the *Time* magazine recently, said that there would be more, and

not less, rights of democracy and freedom for the Hong Kong residents after 1997 than before. He remarked that, during the 100-odd years of British rule, there was actually no democracy at all for Hong Kong.

Honourable Members, all of you understand and are familiar with the Standing Orders and procedures of this Council. Please make a comparison and see whether, in terms of parliamentary powers and functions, we are now being vested with more power, or indeed less, than that to be granted under Article 74 and Annex II of the Basic Law.

I always have this question in mind: Why is it that a colonial government would grant more powers to a colonial legislature but that such powers would, on the contrary, be emasculated after the handover of Hong Kong to China? Every time when the Chinese Government propagates "one country, two systems" and the Basic Law, they will usually say, "Tomorrow will be better". Now there is even a fund with a similar name called Hong Kong Better Foundation. Mr ZHAO Ziyang, the former Premier of China, once asked, "What are you Hong Kong people afraid of ?" I think the answer is very clear: "We are afraid that the Communist Party will say one thing and do another. Tomorrow will be even worse!"

Mr President, a Member just mentioned the power of amendment stipulated in Article 159 of the Basic Law. In the third paragraph, it is stated that: "Before a bill for amendment to this Law is put on the agenda of the National People's Congress, the Committee for the Basic Law of the Hong Kong Special Administrative Region shall study it and submit its views." He asked as this Committee for the Basic Law of the SAR had yet to be formed, then how could it put forward any amendment? I heard of this remark before. It was made by Director LU Ping. As a matter of fact, he forgot the article preceding Article 159. That is, in Article 158 concerning the power of interpretation of the Basic Law, the last paragraph states that: "The Standing Committee of the National People's Congress shall consult its Committee for the Basic Law of the Hong Kong Special Administrative Region before giving an interpretation of this Law." The Committee for the Basic Law of the SAR is also mentioned here. Now officials of the Chinese Government always say what will be and what will not be in line with the Basic Law. If they are not interpreting the Basic Law, how can they say what is or what is not in line with the Basic Law? Since the Committee for the Basic Law of the SAR has not yet been formed, how can these officials have the power of interpretation? How can they give any interpretation?

Therefore, I hope that Members will not accept everything said by Director LU Ping. Please look at Article 158 yourself. Both of the above Articles mention the Committee for the Basic Law of the SAR. If it is stated in one Article that the Basic Law cannot be amended without that Committee while the other one states that no interpretation can be given without that Committee, I hope that Members will not echo the views of other people as this will only make a laughing-stock of ourselves.

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

MR IP KWOK-HIM (in Cantonese): Mr President, the success of Hong Kong today is attributed to the public's compliance with the law. This is exactly the rule of law that Governor PATTEN has consistently stressed. We should always go by "the rule of the game" in all cases.

I do not know whether Dr the Honourable YEUNG Sum accepts the Basic Law or whether he, like the Honourable LEUNG Yiu-chung, simply does not recognize the Basic Law. In any case, the Democratic Alliance for the Betterment of Hong Kong (DAB) takes exception to Dr YEUNG's proposal to amend the Basic Law before 1 July 1997. The DAB is of the view that amendments can be made in the light of the prevailing circumstances and the reality in Hong Kong subsequent to the implementation of the Basic Law after 1 July 1997. However, Article 159 of the Basic Law must be strictly observed in the process of amendment.

Mr President, Article 159 of the Basic Law has stipulated in clear terms that the power to propose bills for amendment to the Basic Law shall be vested in three parties, namely the Standing Committee of the National People's Congress, the State Council and the Hong Kong Special Administrative Region (SAR). In suggesting that proposals to amend the Basic Law should be made by the Hong Kong SAR, the Honourable Bruce LIU seems to have lost sight of the power vested in the two other institutions and this constitutes a violation in the provisions in the Basic Law.

Both Dr YEUNG Sum and Mr Bruce LIU proposed the deletion of Article 74 of the Basic Law as well as the provision in Annex II in respect of separate votings on Member's Bill and Motion. I would like to produce, in the first place,

some statistics for reference of both Members. The drafting of the Basic Law and the consultation process took four years and eight months to complete. During this period of time, two consultation exercises were conducted and a total of 6 000-odd submissions were received from over 72 000 people. This fully illustrated that extensive consultations had been held and opinions were canvassed from a wide range of sectors in the community in the formulation of the Basic Law. Therefore, every provision of this "mini-constitution" of the SAR was drawn up fastidiously and was absolutely not drawn up behind closed doors. If both Members still persist in holding their views, let me try to express the views of the DAB from the perspective of jurisprudence.

Mr President, the Governor is the highest authority in charge of all policies of the Hong Kong Government prior to the reversion of sovereignty in 1997 but after 1 July 1997, the SAR Chief Executive will take over as the highest authority. The DAB does not see any justification for removing the requirement that Members should obtain the written consent of the Chief Executive before proposing bills and motions relating to government policies. Furthermore, when the Basic Law was being drafted, the then Governor was also President of the Legislative Council, and Members were required to seek the ruling of the President of the Legislative Council before proposing bills and motions. It is exactly the spirit of this provision to ensure that bills and motions relating to government policies as proposed by Members are beneficial to the community as a whole and that they do not carry any charging effect. I believe that this is the power that an executive-led government must possess. As to the removal of the requirement of separate votings on Member's Bills and motions as stipulated in Annex II, I must stress again that the DAB agrees to amendments being made in the light of the development and needs of society subsequent to the implementation of the Basic Law after 1997. We do not see any reason for making amendments before 1997 when the Basic Law has yet to come into effect.

Both Members opined that these amendments should be made to the Basic Law in order to achieve the target that the executive authorities shall abide by the law and be accountable to the legislature, as stipulated in the Joint Declaration. It is the view of the DAB that such target can be achieved without amending the Basic Law because so far as this target is concerned, Article 64 of the Basic Law has stipulated clearly that "The Government of the Hong Kong Special Administrative Region must abide by the law and be accountable to the Legislative Council of the Region: it shall implement laws passed by the Council

and already in force, it shall present regular policy addresses to the Council; it shall answer questions raised by members of the Council; and it shall obtain approval from the Council for taxation and public expenditure." In this connection, it is very difficult to see why both Members relate the discussion on the amendment of the two provisions to the system that the executive authorities should be accountable to the legislature. It seems that the Committee on the Promotion of Civic Education should seriously review the effectiveness of its work on the promotion of the Basic Law. The DAB has always spared no effort to promote the Basic Law. On Monday we distributed to people in the streets the Basic Law in booklets that the DAB published. We also undertake to hold 52 residents' meetings to promote the Basic Law in the 52 weeks of the coming year with a view to enhancing people's understanding of the Basic Law.

Mr President, in less than a year's time the sovereignty of Hong Kong will be reverted to China. This does not only concern a small group of people, but also involves the 6 million people of Hong Kong as a whole. In order to attain a smooth transition, thereby unveiling a new page of history, and put into practice the Basic Law and "one country, two systems" successfully, the 6 million people of Hong Kong must be united, making a concerted effort to build up a consensus and strengthen communication and co-operation with the Chinese Government with a view to safeguarding the long-term interests of Hong Kong and China. The DAB calls on all citizens of Hong Kong to adopt a positive and pragmatic attitude to greet the return of Hong Kong to China. It is hoped that every and each citizen of Hong Kong, disregarding the role he plays in society, will positively do his bit by fulfilling his obligations to facilitate the establishment of the SAR. This is the most meaningful thing to do in the run-up to the return of Hong Kong to China.

With these remarks, I oppose the original motion and the amendment of Mr Bruce LIU.

MISS MARGARET NG: Mr President, I believed I express the sentiment of many people in recognizing the Basic Law as a compromise, the acceptance of which is strategically necessary, but morally and intellectually deeply dissatisfactory. This accounts for our fundamental ambivalence about the Basic Law. On the one hand, we would like to urge for the amendment of the least satisfactory parts of it at the earliest stage possible. On the other hand, the need

to hold the powers that be to the letter and spirit of the Basic Law and not to derogate from it, makes us hesitate to muddle the message. Some people also fear that, since the Basic Law presents the resolution of an extensive and passionate debate, to re-open the debate may not be to the advantage of our side.

Mr President, I do not believe that any of the above considerations need make the amendment of the Basic Law a taboo subject. It is always proper for us, out of a sense of public duty, to examine the law which has been enacted, particularly in view of what has come to light since its enactment, firstly, to stop any mischief discovered; and secondly, to make improvements which are obviously safe and desirable for the better governing of Hong Kong.

The Basic Law was promulgated in April 1990. That is more than six years ago. It is not surprising that parts of it, in the light of the experience of these six years, have been shown to be unsuitable, and should be considered for amendment in the careful and thorough manner usual to the process of law.

Mr President, in my view, there is nothing wrong at all for Dr YEUNG Sum to propose today's motion. Indeed, the motion shows careful thought and a high degree of forbearance. He has scrupulously refrained from exploiting this occasion to ride any democratic hobby horse. Instead, he has confined his subject to two provisions which would affect the effective functioning of the Hong Kong legislature immediately after 1 July 1997. The nature of his proposal, taken in its true spirit, is non-partisan. The use of Member's Bills and the method of voting on them do not only affect democrats, but all legislators.

Mr President, I support my honourable friend's proposal with respect to Article 74 of the Basic Law, the last sentence of which reads:

> "The written consent of the Chief Executive shall be required before bills relating to government policies are introduced."

At present, there is no such restrictions on bills on grounds only that they relate to "government policies". As a matter of principle, society should progress towards greater democratization. This, indeed, is the overall spirit of the Basic Law. A restriction like this cannot be justified. Moreover, if an

executive-led colonial government does not require such a restriction, how can it be argued that the Special Administration Region (SAR) Government would need to do so?

It is the proper function of the SAR legislature to be concerned in overseeing the decision and administration of public policies. Article 73 makes that very clear. The introduction of Member's Bills is a legitimate, and sometimes the only effective, way of achieving the purpose. To enjoin the legislature to carry out a function but deny it of a legitimate and effective means to do so is plainly untenable.

Mr President, in fact, the second sentence of Article 74 is also unduly restrictive. While I raise no issue with bills relating to public expenditure, the restriction on bills which relate to "political structure or the operation of the government" is another matter. As it is written, Members cannot, either individually or jointly, introduce bills in these areas.

"Political structure" is a very wide and undefined term. "Operations of the government" is even wider. Deprive members of the legislature the right to introduce bills in these areas, and you render Member's Bills almost sterile.

Such a move is unjustified. The fundamental political structure of the SAR is bound by the Basic Law, and therefore cannot be changed without an amendment of the Basic Law by the National People's Congress. There is, therefore, no possibility of changing the political structure in any significant way locally and by Member's Bills. If the concern is that, allowed too wide a scope, Member's Bills may clutter up the legislative timetable and make administration ineffective, the matter can, and should, be dealt with by reasonable time-sharing between government bills and Member's Bills should the need arise.

Ambiguity is created by the terms "operations of the government" and "government policies", for they are both so vague as to permit a great deal of overlapping. This is bound to cause confusion. Some may argue that since "government policies" are bound to affect "operations of the government", both will be put outside the scope of Member's Bills.

Such a result clearly weakens the legislature greatly in its task of protecting the public interest. The removal of existing powers of the Hong Kong legislature undermines confidence. And insofar as the legislature, as stipulated in the Basic Law, is elected by Hong Kong people, it also undermines

the principle of "a high degree of autonomy for Hong Kong". Article 74 should, indeed, be amended as soon as possible.

The third paragraph of Annex II puts further obstacles in the way of the Member's Bill to be passed, even after it has been introduced. It does so by artificially dividing the legislature into two groups: Members returned by functional constituencies, and Members returned by geographical constituencies and the Election Committee. This rests on the assumption that Members' positions are determined by the method by which they are elected, which has been shown to be unfounded by this Council. This restriction is likewise untenable and cumbersome without justification, and should be removed.

Mr President, the mechanism provided in Article 159 makes it very difficult, in law, for any amendment of the Basic Law before 1 July 1997. Dr YEUNG Sum's motion does not specify the time. I read it as leaving that open. Clearly, the intention is as soon as possible, so that the SAR legislature will not have to function, or function for long, under those restrictions. But amending any legislation of such fundamental importance on such an important issue as the power of the legislature demands wide consultation and meticulous consideration. All this takes time. It is not too soon to start the discussion now.

On this basis, I consider the amendment proposed by the Honourable Bruce LIU unnecessary but fair enough, and I am prepared to support both Dr YEUNG's motion as well as Mr LIU's amendment.

Thank you, Mr President.

MR AMBROSE LAU (in Cantonese): Mr President, on the question of amendments to the Basic Law, Article 159 of the Basic Law has stipulated in clear terms that the power to propose bills for amendments to the Basic Law shall be vested in the Standing Committee of the National People's Congress (NPC), the State Council and the Hong Kong Special Administrative Region (SAR). It also stipulates that before a bill for amendment to the Basic Law is put on the agenda of the NPC, the Committee for Basic Law of the SAR shall study it and submit its views. Before 1997 when the SAR has yet to be established and when the Committee for the Basic Law has yet to be instituted, the conditions necessary for the amendment of the Basic Law simply do not exist. As these

conditions will only exist after 1997, why do we have to trap ourselves in a blind alley when we can actually find a way out?

Mr President, the Hong Kong Progressive Alliance is of the view that when the Basic Law is formally put into practice upon the establishment of the SAR, amendments can be made in the light of the prevailing circumstances then according to the procedure of amendment as stipulated in Article 159 of the Basic Law. So far as the spirit of the rule of law is strictly observed, there will be a solution for all problems that need to be tackled. The solution is the rule of law and there will be proper procedures for us to follow. However, if we ignore the rule of law, we will certainly be taking a way which makes all our efforts futile, and we will be coming up against a brick wall.

Mr President, the Basic Law manifests the principle under which the executive authorities and the legislature check and balance each other while our system remains an executive-led government. This has taken into consideration the prevailing circumstances of Hong Kong. The Basic Law has conferred on the SAR legislature even greater powers than what this Council has before 1997. For instance, Article 52 of the Basic Law stipulates that the legislature can force the Chief Executive to resign under certain statutory circumstances. But the constitutional system of the British Hong Kong Government does not contain similar provisions so the term of the Governor is completely determined by the British Government. Article 73(9) of the Basic Law, which empowers the legislature to impeach the Chief Executive, is another example since the existing Legislative Council does not have this power. Further, under Article 49 of the Basic Law, the power of the Chief Executive to dissolve the legislature is only relative, but the Governor now has absolute power to dissolve the Legislative Council. These provisions in the Basic Law ensure the legislature will have checks and balances over the executive authorities. Given the fact that the Chief Executive has important political status and powers and any move made by the Chief Executive will have a significant bearing, the legislature, under the Basic Law, is empowered to check and monitor the powers of the Chief Executive. In this regard, the Legislative Council before 1997 is simply no match for the future legislature. Before 1997, the Letters Patent and the Royal Instructions enable the Governor to have all powers to himself and put him in a position superior to the executive authorities, the legislature and the judiciary.

Mr President, the Basic Law ensures the legislature checks and balances the executive authorities and provides for the power of the executive authorities

to, in turn, restrain the legislature, facilitating co-operation between the two under an executive-led system. Under the circumstance, the executive authorities and the legislature of the SAR can properly perform their respective functions in accordance with the law and this will facilitate the operation of the political structure of the SAR. While the legislature can check and balance the powers of the Chief Executive, it does not mean that the legislature can exercise such powers on behalf of the Chief Executive. The fourth item of the 13 items of powers and functions of the Chief Executive as set out in Article 48 of the Basic Law reads, "to decide government policies and to issue executive orders". It shows that the power to decide government policies is vested in the Chief Executive. In this connection, Article 74 of the Basic Law provides that Members of the Legislative Council may introduce bills in accordance with the provisions of this law and that the written consent of the Chief Executive shall be required before bills relating to government policies are introduced. This provision is completely in keeping with the statutory powers and functions of the Chief Executive. If Members of the legislature may introduce bills relating to government policies without the consent of the Chief Executive, this will mean that it is Members of the legislature who will decide on government policies, not the Chief Executive.

Mr President, as the fundamental code of law of the future SAR, the Basic Law contains profoundly serious and interlocking provisions. If the provision requiring Members of the legislature to obtain the consent of the Chief Executive before introducing bills relating to government policies is removed, the entire Chapter IV entitled "The Political Structure" of the Basic Law will have to be amended. Therefore, in considering any amendment to the Basic Law after 1997, we also have to be cautious not to let trivialities obscure the substance of the matter.

Mr President, the requirement that the passage of bills and motions introduced by any individual Members of the Legislative Council shall require a simple majority of each of two groups of Members present voting separately, as stipulated in Annex II of the Basic Law, is in line with the method of formation of the legislature before 2007 as provided in the Basic Law. Its purpose is to encourage a balanced participation from all sectors in the community and to attain a harmonious equilibrium in the relationship among different interests groups. According to the Basic Law, the SAR will have to decide on its own after 2007 whether the legislature will be fully composed of Members returned by direct election. If a full direct election is to be introduced for the legislature

at that time, it will, therefore, be unnecessary to require Members to vote in two separate groups on bills and motions introduced by individual Members of the legislature. The mechanism for amendments as stipulated in the Basic Law is set out fastidiously, reflecting the solemn status of this fundamental code of law of the SAR. For this reason, our attitude towards the Basic Law should also be as solemn and serious as the Basic Law itself.

Mr President, I so submit.

MR ALBERT HO (in Cantonese): Mr President, I will focus on the amendment moved by the Honourable Bruce LIU of the Association for Democracy and People's Livelihood (ADPL) in my speech today. The amendment of the ADPL consists of two parts. The first part spells out the principle and position, stating that the procedure for amending the Basic Law will only take effect after 1997 and that in order to uphold the spirit of "one country, two systems" and "Hong Kong people ruling Hong Kong", amendments to the Basic Law should therefore not be made until after 1997. The second part of the amendment elaborates on the position as stated in the first part, proposing that amendments as specifically suggested in the original motion be made to the Basic Law only after 1997.

The original motion of the Democratic Party seeks to focus the discussion on the amendment of Article 74 of the Basic Law and proposes the deletion of the provision requiring "voting by two separate groups in the legislature" and those that undermine individual Members' right to introduce bills independently in the legislature. It is because these provisions run counter to the democratic monitoring mechanism and the principle that the executive shall be accountable to the legislature. On the face of it, the amendment of the ADPL, as elucidated by Mr Bruce LIU, seems to be in concordance with the spirit of the original motion. Nonetheless, requirements in respect of the procedure and the time of amending the Basic Law are added in the amendment, thus placing the original motion within the framework of the amendment mechanism as prescribed in the Basic Law. In proposing the original motion, the Democratic Party does not demand that amendments to these two provisions in the Basic Law must be made before 1997. Given that amending these two provisions is different from the selection of the Chief Executive or the formation of the legislature in that both the Chief Executive and the legislature will, subsequent to the selection or formation processes, serve a term of several years and will have a significant bearing on the future, we can consider making the amendments after 1997. This

is not the primary concern.

We are most strongly opposed to the ADPL's declaration in the first part of its amendment that the Basic Law can be amended only after 1997 and that it will violate the rule of law and will constitute an act devoid of legal basis if the Basic Law is amended now. My view is that in putting forth this argument the ADPL has, in fact, mixed up two issues. It has confused the legal issue of whether the Basic Law can be amended before 1997 with the political or policy issue of whether amendments should be made before 1997.

Now let us look at the legal aspect first and here, I would like to respond, in passing, to the views of the Honourable Ambrose LAU and the Honourable IP Kwok-him. Indeed, we consider it very obvious that the Basic Law can be amended before 1997. At present, no mechanism for amending the Basic Law is in place because the Basic Law has yet to come into effect and naturally, the requirement for an amendment mechanism is not legally binding. In this connection, many people are of the view that the National People's Congress (NPC) can amend the Basic Law in the same manner as it amends general national laws. Obviously, this view, I think, may be contentious. Such being the case, an alternative is to put into effect Article 159 of the Basic Law, which concerns amendment to the Basic Law, at an earlier date through the enactment of laws by the NPC with a view to introducing a mechanism to effect amendments, in which case amendments can be made by making use of the right to introduce amendment bills vested in the Chinese side through the NPC. Therefore, amending the Basic Law is not, in any sense, inconsistent with the rule of law. Nor is it devoid of legal basis. This is legally plausible. Similarly, the Committee for Basic Law can also be established to submit its views.

Yet, we would like to emphasize that although we can do it this way, it does not mean that we should, as a matter of course, adopt this approach as the only means. The Democratic Party would stress that if amendments are to be made in 1997, they should be made only with the mandate of the Hong Kong people. Then, how can we secure the mandate of the Hong Kong people? The Democratic Party is of the view that the current elected Legislative Council can reflect the opinions of the people of Hong Kong. It can introduce amendments on behalf of the people of Hong Kong for consideration by the Chinese side. Besides, we also consider it completely acceptable, and may even suggest, that

amendments should be introduced only with a majority of public support obtained in a referendum participated by all legitimate voters in the territory.

On the question of whether the Basic Law should be amended, the ADPL opines that opinions are now divided and there is no mainstream opinion. Indeed, I find this very surprising. As a representative of the democratic camp, the ADPL has gone so far as to say that they hold such views on account of the diverse opinions. Do they actually think that they will not be representing the wish of the public if they put forward proposals for amendment by democratic means and hence, they can treat the matter rather lightly and leave it for future discussion? We think that this is precisely the view that they are holding. They hold that opinions are now divided and so the best way to deal with the matter is to leave it for future discussion. It is because after 1997, "one country, two systems" will be upheld and "Hong Kong people ruling Hong Kong" will be manifested. At the same time, opinions will not be too divided by then. Mr President, this is mainly because after 1997, the system will not reflect the different views of various sectors in the community and there will only be one single view. Meanwhile we are concurrently facing a situation where the fully-elected Legislative Council will be replaced by a provisional legislature. How can any amendment be expected to get passed with a two thirds majority vote from members of a legislature which does not have sufficient democratic elements — be it the provisional legislature, or the first or second legislature, or to get the consent of the Chief Executive, who is in effect an appointed one? For this reason, is it not wishful thinking or even unrealistic expectation of the ADPL to appeal to and even rely on such an undemocratic system to introduce amendments, reflect the wish of the people of Hong Kong and uphold the spirit of "one country, two systems"? I personally feel that this may be a manifestation of misguided loyalty.

Mr President, in a number of previous debates the ADPL moved amendments to motions proposed by Members of the democratic camp, including the Honourable LEUNG Yiu-chung and the Honourable Miss Emily LAU, to put those motions within the framework of the Basic Law. Their purpose was very simple. It was not important to them whether their amendments were carried or not, as their amendments were invariably negatived on all such occasions. They mainly sought to find an excuse not to support our motions. I think they have adopted the same old ploy today so as not to support the motion of the democratic camp. Our feeling is that they do so to avoid taking a political stand

and draw a distinct line between themselves and Members of the democratic camp over political issues. Judging from their attempt to sit on the fence and their ambiguous position, we are very doubtful about their sincerity and credibility, in particular, their sincerity and credibility in supporting democracy.

Mr President, with these remarks, I urge Members to support the original motion. Thank you.

PRESIDENT: Mr FUNG, please state your point.

MR FREDERICK FUNG (in Cantonese): May I ask whether a Member can raise a point on the sincerity and credibility of other Members?

PRESIDENT: I will make a ruling at the sitting next week. I have to listen to the tapes.

MR ALLEN LEE (in Cantonese): Mr President, the original motion of Dr the Honourable YEUNG Sum today calls for amendments of the Basic Law now by deleting Article 74 and Annex II, in particular the provision relating to bills introduced by members of the legislature. The amendment of the Honourable Bruce LIU seeks to effect the change after 1997.

The Liberal Party has the following five-point fundamental position. First, the Basic Law was formulated subsequent to a long process of consultation with various sectors of Hong Kong as well as careful deliberation, and after the parties concerned met three times in Hong Kong and three times in Beijing. I was a Member of the Executive Council when the Basic Law was being drafted and I can say that during the entire drafting process, the British side had participated actively and put forth a lot of views. Otherwise, the way the Basic Law was designed would not have been said to cater for the "through train". The subject of this debate today is not the "through train" and I do not wish to dicuss again the reasons why there is no "through train" now for I think it is meaningless to do so. The Basic Law was formulated following such a long process of consultation and was the result of over four or close to five years' work. Now that some Members of this Council are calling for its amendments. Can the Basic Law be amended so rashly? This is the first point.

The second point of our fundamental position is that the Basic Law is the constitution of Hong Kong after the reversion of the sovereignty of the territory in 1997. Now, it is proposed that the National People's Congress (NPC) should make amendments prior to the implementation of this constitution. Indeed, according to Article 159 of the Basic Law, the NPC is the only authority empowered to amend the Basic Law. However, have Members thought clearly about the consequences of calling on the NPC to amend the Basic Law now? How will this Council react if the NPC proposes to make some other changes? Therefore, it is not a question of authority to make amendments. In this case it is making amendments that suit those Members. However, have they ever thought about making those amendments which suit the Chinese side? For this reason, we resolutely oppose the amendment of the Basic Law before it is put into force.

Thirdly, the Basic Law has, in fact, provided for a mechanism for amendments to be made. If, subsequent to the implementation of the Basic Law, the legislature discovers problems or the Basic Law is not found to be implemented smoothly, amendments can be made in accordance with the mechanism provided in Article 159 of the Basic Law. The procedure is set out in very clear terms. Therefore, although the Basic Law is the constitution of Hong Kong, if problems are found after it has been put into practice and members of the then legislature consider amendments necessary, making amendments is still a move that conforms to the Basic Law.

Fourthly, in respect of the Honourable Bruce LIU's amendment, Mr LIU may have a good intention in suggesting that, while these two provisions do warrant amendment, it is improper to call on the NPC to make amendments now and we had better make a decision for the future legislature and leave the matter for future discussion. But my feeling is that it is inappropriate for the existing Legislative Council to decide for the future legislature on an amendment of the Basic Law.

Lastly, I think the people of Hong Kong should be convinced that the Basic Law is vitally important to Hong Kong. Why is the Basic Law formulated? It is meant to put into practice the principles of "one country, two systems", "Hong Kong people ruling Hong Kong" and "a high degree of autonomy". Given the difference, which is a world of difference, between the system in mainland China and that of ours in Hong Kong, the Basic Law thus has a great length with a total of 160 articles plus a number of annexes. If we compare it with the constitutions of countries elsewhere, we will see that there is

no constitution as lengthy as the Basic Law because the Basic Law has established the rights of the citizens, which is basically not a common feature of other constitutions. Then why is the Basic Law so long? It is mainly because of the wish to practise the principle of "one country, two systems". Therefore, the Basic Law has provided for our system and the way how the goal of "Hong Kong people ruling Hong Kong" can be achieved in future. I think it is most important to implement the Basic Law, and the Liberal Party supports this spirit and approach.

For these reasons, the Liberal Party opposes the amendment of Mr Bruce LIU and the original motion of Dr YEUNG Sum.

MR LO SUK-CHING (in Cantonese): Mr President, actually we are bewildered by this motion debate which is proposed by Dr the Honourable YEUNG Sum. Whether we agree with Article 74 of the Basic Law and the provisions in Annex II, we cannot see how these two provisions go against the objective of requiring the executive authorities to abide by the law and be accountable to the Legislative Council. As to the voting procedure of "one Council, two voting groups" as stipulated in Annex II, it concerns the procedural rules in the internal operation of the Legislative Council. So, what has it got to do the stipulation that the executive authorities must abide by the law, and the accountability of the executive authorities to the Legislative Council? Does it mean that the executive authorities will not abide by the law and will not be accountable to the Legislative Council if Honourable Members have to obtain the consent of the Chief Executive when proposing a Member's Bill? The answer is just the opposite. Article 64 of the Basic Law has stipulated that the Government of the Hong Kong Special Administrative Region (SAR) must abide by the law and be accountable to the Legislative Council. The accountability as set out in the Joint Declaration has been incorporated in the Basic Law and become statutory provisions. They include four aspects: the SAR Government shall (1) implement laws passed by the Legislative Council and already in force; (2) present regular policy addresses to the Council; (3) answer questions raised by Members of the Council; and (4) obtain approval from the Council for taxation and public expenditure.

The Basic Law basically provides a political framework in which the three powers, namely the legislative, executive and judicial authorities, are separated, with checks and balances among each other. Although the Basic Law has provided for an executive-led government, this does not mean the executive branch is superior to the Legislative Council, and this does not contravene the checks-and-balances mechanism under which the executive authorities must be

accountable to the Legislative Council.

Mr President, it is impossible for any law to be forever applicable in an ever-changing society. Therefore, some legal provisions may need to be amended or even repealed. However, this has to go through an established legal procedure and this is the cornerstone of the spirit of the law. The Basic Law has also stipulated a legal procedure for its amendment. At present, the SAR is not yet established and the Basic Law is not yet in force. It is simply impossible to amend the Basic Law according to this established procedure. If the Basic Law has to be amended now, only the National People's Congress can have this power, and this will deprive Hong Kong people of the opportunity and the right to participate. Some Hong Kong people, including a few colleagues in this Council, always emphasize "Hong Kong people ruling Hong Kong" and "a high degree of autonomy", and they are afraid the Chinese side will interfere with the internal affairs of Hong Kong. However, they have throttled the right of participation by Hong Kong people in requesting the Chinese Government to amend the Basic Law now. It is indeed an irony. If someone requests the Chinese Government to amend the Basic Law because it cannot suit his legislative purpose or his interests today; and other people also request the Chinese Government to amend the Basic Law on the basis of their positions and interests some other day, while Hong Kong people are ignored in this process, how can Hong Kong have "a high degree of autonomy"? If the Basic Law, as the mini-constitution of Hong Kong, is so easily ignored, in what way can its status and dignity be maintained?

Mr President, four years and eight months were spent on the drafting and the consultation of the Basic Law, and members of the Consultative Committee of the Basic Law came from different classes and sectors to benefit from all opinions. It was a very representative body. Two drafts were prepared and two consultation exercises were conducted resulting in more than a hundred places being amended before a consensus was reached. Also, more than 40 opinion polls were conducted by different groups and people in society and their ideas were all accepted. Even some of the views of the British Government were included. It can be said that the Basic Law meets the expectation of most of the Hong Kong people and it can harmonize the interests of different sectors and it is also endorsed by the international community. Therefore, the Basic Law is a sound mini-constitution, I urge all of you to support the Basic Law, so that Hong Kong can have a smooth transition.

Mr President, these are my remarks.

MR YUM SIN-LING (in Cantonese): Mr President, today, there have been repeated references to the drafting of the Basic Law, and to the fact that it took almost five years and numerous meetings for the Basic Law to be finalized. It is supposed to be a document produced with meticulous care and patience and should not therefore be haphazardly amended. But the two major drawbacks as pointed out by Dr the Honourable YEUNG Sum show that on the face of it the Basic Law gives Hong Kong people democracy but in effect in stifles democracy. Perhaps those who drafted the final version of the Basic Law knew very little about democracy but a lot about flattery. They have also forgotten that the Basic Law is supposed to set an example for the reference of the Taiwan people. As it is, the Basic Law is anti-democratic. It can succeed only in turning the Taiwan people away, thereby hindering the future reunification of China.

It is the duty of this Council to enact laws, and to monitor public expenditure and government policy. As everything will remain unchanged for 50 years, so will the functions of the legislature. Since one of the main duties of the legislature is to monitor government policy, Legislative Council Members need to propose bills whenever they are aware of the aspirations of the public for such to be done. The Chief Executive should not be given the power to veto in order to protect the executive organ. He should not, for reasons of sloth, negligence or insufficient understanding, let the executive authorities use him to obstruct Legislative Council Members when they put forward bills catering to the needs of the public. Members are just proposing bills, which have to be repeatedly discussed by all Members to pull in collective wisdom before being adopted. We have no reason to believe that the collective wisdom of Legislative Council Members is not as good as decisions that are made by the Chief Executive after consulting with just a few officials from the Policy Branches and are without the support of public opinion. Therefore, I support the first amendment proposed in the motion of Dr YEUNG Sum to minimize the chance of public opinion being stifled.

As provided in Annex II of the Basic Law, in passing bills introduced by individual Members votes from Members of two different groups have to be separately counted. Thus functional constituencies may actually possess the power to veto motions passed by Members returned by direct and indirect

election. That is to say, Members with weaker public support can reject motions passed by those Members with stronger public support. We understand that in communist countries, there is the so-called "democratic centralism". The way votes are counted separately may be termed "democratic slantism", which favours slanting towards the group with less public support, and which is what we find unacceptable. So, I also support the second amendment proposed in the motion of Dr YEUNG Sum.

The Honourable Bruce LIU said he was agreeable to Dr YEUNG Sum's proposed amendments but hoped that everything would be done in accordance with the rules laid down by the Chinese side. In other words, public opinion may be collected first before 1997 and then given to the post-1997 Legislative Council to move an amendment. This is not workable in theory, because the chance of success is even smaller. But this is not an issue for us. In our strive for democracy, what we need is the effort and determination to strive for what we want. This in the long run is good for the democratic process.

Therefore, I support the original motion of Dr YEUNG Sum and the amendment of Mr Bruce LIU.

Thank you, Mr President.

MR MOK YING-FAN (in Cantonese): Mr President, I will speak on the accountability of the executive authorities of the future Hong Kong Special Administrative Region (SAR) to the legislature.

Article 74 of the Basic Law provides that the written consent of the Chief Executive shall be required before bills relating to government policies can be introduced by members of the legislature; and Annex II provides that the passage of bills and motions introduced by individual members of the SAR Legislative Council shall require a simple majority of each of two groups of members voting separately. These two requirements have seriously compromised the principle that the executive authorities shall be accountable to the legislature as stipulated in the Joint Declaration and Article 64 of the Basic Law. As regards these two points:

(1) The requirement of the written consent of the Chief Executive for members of the Legislative Council to introduce a Member's Bill will undoubtedly accord too much power of discretion to the Chief Executive and create a lopsided situation where the executive power falls on one side only. As a result, the legislature cannot bring public opinion into reality, nor can it check and balance the executive authorities through legislation. Consequently, it will be very difficult to implement the policy of "Hong Kong people ruling Hong Kong with democracy".

(2) The requirement for bills or motions introduced by individual members of the Legislative Council to be voted by two groups of members separately will lead to a situation where if a bill supported by one group is negatived because the other group votes it down, the group that loses will blame the other group. As a result, members of the two separate groups will become antagonistic to each other, thereby aggravating conflicts in the Council. On the other hand, if the various interest groups in the community cannot make their own demands known and have them realized through lawful procedures, they will be forced to take such radical actions as street struggles outside the establishment. This will become a time-bomb in our society.

Compared with the existing system, the provisions in the Basic Law pertaining to the introduction of motions by members of the SAR Legislative Council are far too restrictive. Therefore, there are two directions in which amendments should be made:

(1) To replace the arrangements stipulated in Article 74 of the Basic Law with the existing system; or

(2) To amend the Article so that Member's Bills relating to public expenditure must be jointly introduced by no fewer than one tenth of all members of the Legislative Council.

As for the system which requires separate votings by two groups of members, it should also be replaced by the present arrangement which requires a simple count of votes by all members.

To sum up, the Hong Kong Association for Democracy and People's Livelihood (ADPL) is of the opinion that to really implement the policy of "Hong Kong people ruling Hong Kong with democracy", the relevant requirements stipulated in Article 74 and Annex II of the Basic Law must be amended as soon as possible after 1997 so that the principle that the executive authorities must be accountable to the legislature can be put in full effect.

Mr President, in his speech delivered just now the Honourable Albert HO has particularly raised the question of sincerity and credibility to the ADPL. Both the ADPL and myself have great reservations about what he has said. I believe that if we have an agreement and ideal about democracy, we all should agree on one thing, and that is: We may all have different ideals about democracy but, like a good novel, some may express it in writing, some may make it into a film and some may express it in painting. I think that we are all heading towards the same goal in different routes and by different approaches. However, some people feel that if we do not follow them to make a film, then we are not supporting their good novel. It is just like some people has accused us of always in disagreement with the Chinese Government because we think it is overweening. Is that true democracy? I have great doubt myself. Therefore, I believe that true democrats should tolerate different views and different thoughts. Hence, I very much regret what Mr Albert HO has just said. Thank you, Mr President.

MR CHEUNG MAN-KWONG (in Cantonese): Mr President, I would like to talk about the amendment of the Honourable David CHU. Mr David CHU is a very interesting Member, I can see some black humour in his amendment because he describes the Basic Law as a document full of vitality.

I then wonder what does it mean by vitality? Vitality should be a force which will continue to develop rather than regress. For example, from the angle of living organisms, their evolution process will go on continuously and human beings are the products of evolution. From crawling to standing erect, or from having a tail to having no tail, the evolution of man is a very long process. Man appeared during this long process, but this does not mean every man will remain the same after his birth. It is because there is a retrogressive phenomenon in biology called atavism. For instance, a "hairy child" was found in China many

years ago, and he was as hairy as a gorilla. What was the reason for this phenomenon? It was a reversion to the state of ancient ancestors. He was a human being actually, but his body was all covered with hair and this phenomenon is called atavism. Atavism or retrogressive phenomenon is very rare in biology, but it is not a rare phenomenon in politics and such things occur quite often.

For instance, concerning Member's Bills as stated in the Basic Law, as long as it does not have a charging effect or involves diplomatic agreements of the sovereign power, a Member's Bill can be proposed in this Council at present. In the Basic Law, however, the provision in this respect is certainly a regressive phenomenon. Since the Basic Law has stipulated that the consent of the Chief Executive must be obtained for any Member's Bill, if the Bill is against the policy of the Government, it will be indeed very difficult to obtain his consent. Under such circumstances, how can we describe the provisions in the Basic Law as progressive and forward-looking, how can we say that it has vitality? Actually, the Basic Law only possesses retrogressive power, it is a degenerating force. What are the detrimental effects of this degeneration? Since all Member's Bills have to first obtain the written consent of the Chief Executive, the vested powers of this Council will be emasculated. Secondly, even when Member's Bills are laid before the Legislative Council, they have to go through a voting mechanism twice. This will allow the Chinese side or the future Special Administrative Region (SAR) Government to divide and rule our elected Legislative Council, or an appointed Legislative Council in disguise, or a split Legislative Council. Finally, the passage of the Bills is extremely difficult in two votings and public opinion will thus to be sacrificed. Why do we still protect the retrogressive provisions in the Basic Law under such circumstances?

Many elected Members in this session, including Members from the Democratic Alliance for the Betterment of Hong Kong (DAB), the Democratic Party, the Confederation of Trade Unions and so on, have proposed some Member's Bills in the hope to change the Government's policy. Indeed, who was the first one to propose a Member's Bill? It was Mr TAM Yiu-chung of the DAB. The Bill he proposed was to correct a mistake the Government made in its change of policy relating to the terms of employment of expatriate civil servants, and he gained unanimous support in the Legislative Council. Therefore, whether Member's Bill is a good channel and whether it can really reflect public opinion, the answer is in the affirmative. We can use Member's Bills to oppose the colonial Government this year, so why can we not use Member's Bills if we have to oppose some unreasonable policies of the SAR Government in the future? As a legislature, as members of the legislature and

as a political party, why do we have to agree to emasculate Members' power in such a way, and why do Members have to go through so many obstacles when exercising this power and ultimately still have to face strong and solid opposition? I really do not understand.

Someone says the Basic Law should not be amended arbitrarily. Four years were spent on extensive consultations for the Basic Law, he says, so how can it be amended arbitrarily? However, please do not forget, the proposal of "one Council, two chambers" by Mr LO Tak-shing was certainly not mentioned during the four years of consultations. The proposal of "one Council, two chambers" was only raised in August 1989, but it became the "one Council, two voting groups" stipulation in Annex II of the Basic Law in April 1990. Under such circumstances, how can you say that it passed through a long consultation period of four years? Although it was only a few months' time, the proposal of "one Council, two chambers" already met serious opposition, so how can it be said to have gone through an extensive consultation and need no amendment? Another opinion is that since we only have one year to go, what is the point of amending? Actually, it is not true that only one year is left. This unreasonable "one Council, two voting groups" proposal has been there frozen for six years. During these six years, the Legislative Council has gone through great changes. Many Member's Bills were passed and they affected the Government's policies effectively. Why detailed amendments cannot be incorporated in the Basic Law in order to benefit society in the end? Mr David CHU said, "God decreed the Ten Commandments and the Christians have to follow." But he is not aware that the God who interprets the Basic Law is constantly changing the right to interpret the Basic Law. When this is being done, he asks at the same time the Legislative Council of Hong Kong not to make any amendment to the Basic Law. It is actually an unfair comparison and also an unfair scale of power. In fact, the interpretation of the Basic Law changed drastically in those four years. The definition of election changed; and the definition of freedom of speech changed because of the stipulation in Article 23 of the Basic Law concerning the prohibition of advocating two Chinas. Human rights or the existing laws which were not to be changed originally have been amended now, and the definition of act of state has also changed in the context of the rule of law. The Chinese Government gave many explanations to amend the Basic Law, but at the same time it has warned Hong Kong people not to touch or amend the Basic Law. It is actually taking advantage of Hong Kong people and treating them like idiots.

Therefore, under such circumstances, Mr President, the black humour of Mr David CHU should not be considered as normal. I therefore oppose his amendment. Thank you, Mr President.

MR PAUL CHENG: Mr President, the Basic Law is not just any law, it is an enshrinement of principles and policies promised to the people of Hong Kong — to maintain Hong Kong's prosperity and stability, to maintain our way of life and the standard of living our community enjoy. Milton FRIEDMAN, the renowned economist used Hong Kong as the perfect example of what a truly capitalistic society can achieve. We are the envy of the world.

No agreement or law is absolutely perfect, but the Basic Law, in my view, provides an excellent foundation for Hong Kong's future. If we start pushing for change now, we may end up setting a precedent for other parts which are even more important to also be changed.

As we all know, the Basic Law will only be implemented on 1 July 1997. We should see how it works before trying to tinker with it.

The motion calls on the Chinese Government to amend. I thought we are all keen to see that the future Special Administrative Region (SAR) Government be given a high degree of autonomy under the "Hong Kong people ruling Hong Kong" concept. The SAR Government should be the entity to initiate the process if future amendments were deemed necessary.

I, therefore, strongly condemn the motion before us as an exercise in total futility. I am sure the people of Hong Kong expect their legislators to devote their time more to constructive and worthwhile endeavours.

Besides, as one of the more elderly Members in this Council, I wish we do not have to spend so many late nights here on Wednesdays.

With these brief remarks, may I remind those fellow Members who have yet to speak that it is not mandatory for them to use up the full seven minutes allocated to each of them.

Let us all have a reasonably early evening so that we can get enough sleep and be more alert tomorrow to do something useful for Hong Kong and our

fellow citizens.

Thank you, Mr President.

MISS CHRISTINE LOH: Mr President, I am sure the Honourable Paul CHENG will be pleased that I am not going to use up the seven minutes of my allotted time. I just wish to say that I believe Hong Kong people accept the Basic Law as the constitution of the Hong Kong Special Administrative Region, and that it would come into effect only on 1 July 1997. However, that does not mean they endorse each and every provision as the Honourable David CHU is asking us to do.

As the Honourable Miss Margaret NG said, the Basic Law reflects compromises amongst its drafters, many of which cry out for amendment in due course. I also agree with her that there is no harm in discussing which articles need amendment sooner rather than later. After all, the Basic Law is a long and complex piece of legislation. It was for this reason that I published my own thoughts on the Basic Law's problematical areas last September. I would like to see much more public discussion about how the Basic Law should be implemented and also areas for future amendment.

On the two specific points in the motion, I agree with both of them for the reasons that have already been eloquently articulated by Miss NG. Many Members argued that no amendments should be, or can be, made before 1997 because the Basic Law only comes into effect on 1 July 1997. Talking about possible amendments is surely not the same as inviting China to interfere in Hong Kong's affairs. With respect, Dr YEUNG Sum's motion leaves it open as to when amendment should take place. This sensible flexibility however provoked the Honourable Bruce LIU's amendment to state clearly that amendment would only take effect after 1997. Like Miss NG, I find Mr LIU's amendment unnecessary, but fair enough.

Mr President, I will not support Mr David CHU's amendment and will support Mr LIU's amendment as well as Dr YEUNG's original motion.

MR CHAN KAM-LAM (in Cantonese): Mr President, the drafting of the Basic Law of the Hong Kong Special Administrative Region (SAR), which commenced

in 1985, was completed in 1990 with wide participation of the Hong Kong people.

Four years and eight months were spent on the drafting of the Basic Law and numerous seminars were organized during that period. Members of the Basic Law Consultative Committee had expressed their opinions in groups on matters relating to the Basic Law and the Basic Law Consultative Committee had also introduced its meet-the-public scheme to collect opinions of the Hong Kong people. We can thus see that the formulation of the Basic Law has actually involved the full participation of the Hong Kong people.

Mr President, as a constitutional document, the Basic Law has provided a very stringent mechanism for amendment, so as to allow appropriate adjustments after broad discussions and a consensus reached during the implementation stage as and when necessary.

Today, Dr the Honourable YEUNG Sum proposes to amend the Basic Law before its implementation. I think that is a bit too hasty. He is definitely not aiming at the problems of Article 74 of the Basic Law and the provisions in Annex II. His aim is to completely deny the Basic Law. Otherwise, why did the so-called democrats burn the Basic Law in the past? Was it merely because they were not satisfied with these two provisions? I think these people certainly have to give a clear account to the public!

In fact, any person who is familiar with the Basic Law will understand that the Basic Law has clearly set down the procedures for amendment, and I believe the mover of today's original motion is also well-versed with the Basic Law.

The procedures for amendment are clearly stated in Article 159 of the Basic Law and it provides that before a bill for amendment to this Law is put on the agenda of the National People's Congress, the Committee for the Basic Law of the SAR shall study it and submit its views.

The mover of the original motion has ignored the procedures laid down in the Basic Law, and he has even requested this Council to urge the Chinese Government to amend the Basic Law. I think he does not respect the law, nor is he acting responsibly. He is also wrong in principle.

Firstly, this Council obviously is in no position constitutionally to directly

request the Chinese Government to amend the Basic Law before 1997. Moreover, the wording of the motion are such that there is no mention of the timing and method of amending the Basic Law. If Dr YEUNG Sum feels that the Chinese Government can amend the Basic Law anytime on its own, I believe Dr YEUNG has to provide a clear explanation and state that the Democratic Party has no objection whatsoever.

However, the Honourable Albert HO has just proposed a way, and he does not think that the Basic Law can only be amended after 1997. Mr HO even says that the Basic Law can be amended on the basis of public opinion. Let us think for a while. Public opinion is now very often greatly distorted, and even the Democratic Party sometimes does not follow it. So how can public opinion be used as the basis to amend the Basic Law?

Dr YEUNG Sum and the Honourable CHEUNG Man-kwong have also quoted examples in the past of how a Member's Bill could be used to monitor the performance of the Administration when it gained the support of this Council. I think they can rest assured, as there is no need to be worried. No matter under what circumstances, Members have to respect and trust each other and carry out their responsibilities. Whether the Bills are introduced by the Government or by Members, they will be passed as long as they are the good ones. If not, they will definitely be negatived. This Council has seen numerous examples in the past. I believe they are very clear about this.

Mr President, the Democratic Alliance for the Betterment of Hong Kong (DAB) is strongly against amending the Basic Law before 1997, let alone inviting the Chinese Government to unilaterally amend the Basic Law now!

The Honourable YUM Sin-ling says that the provisions of the Basic Law will strangle democracy and he is afraid that reunification with Taiwan will thus be affected. I think he can rest assured, because four years and eight months have been spent on the drafting of the Basic Law of the SAR and numerous consultations have taken place in Hong Kong before its completion. Mr YUM can tell our Taiwan compatriots about the formulation process of the Basic Law. We are pleased to see that the "one country, two systems" principle can serve as the model to solve the Taiwan problem for the reunification of China. The future Basic Law of the Taiwan Province of the People's Republic of China will certainly be accepted by our Taiwan compatriots.

Mr President, in this final year of the transitional period, the DAB urges

the Hong Kong people to act positively and work together along the track already laid by the Basic Law in order to build the future SAR.

These are my remarks.

MR FREDERICK FUNG (in Cantonese): Mr President, I speak in support of the Honourable Bruce LIU's amendment.

I think the original motion of Dr the Honourable YEUNG Sum has three contradictions. I will not talk about the two Articles which he proposes to amend because we agree with what he said about the two Articles. Concerning the three contradictions, one of them is that while the Honourable Martin LEE moved a motion last week to urge us to safeguard the "one country, two systems" policy in Hong Kong and to be wary of any Chinese interference, the motion this time requests the National People's Congress to amend some provisions pertaining to the internal affairs of Hong Kong. I really do not understand why such a contradiction has occurred.

The second contradiction is that many Members from the Democratic Party have expressed their distrust of China's ruling party, that is the Chinese Communist Party (CCP) in their speeches. They think China's ruling party (the CCP) is creating not only a puppet as the Chief Executive but also an appointed Legislative Council in disguise. On the other hand, they believe that the Chinese Government will amend the Basic Law on their behalf. How can they resolve this contradiction? While you do not trust them, you believe that they will amend the Basic Law for you. I find this contradiction very difficult to understand.

The third contradiction is about Article 159 of the Basic Law and I remember the issue is not something new. I also raised this issue in the past motion debates but the Honourable Albert HO does not even know about the fact. In 1988, some democrats in the Drafting Committee told the Hong Kong Association for Democracy and People's Livelihood (ADPL), "Concerning the Basic Law, we request that the Hong Kong Special Administrative Region (SAR) Government be given the power to propose bills for amendments." This is because according to the existing constitution, only the Standing Committee of the National People's Congress or the State Council can propose bills for amendments to the Chinese constitution. It is very exceptional to request that

the SAR Government be given the power to make amendment proposals, and to strive to make this power exclusive to the SAR Government, as this would ensure that the Standing Committee of the National People's Congress and the State Council would not amend the Basic Law for us.

Moreover, we still have the second safety valve. The democrats in the Drafting Committee reminded the ADPL at that time that, even if a bill (for amendment) is proposed by the Standing Committee of the National People's Congress or the State Council, the Committee for the Basic Law would still have the chance to discuss it and to submit its views. The Committee for the Basic Law mentioned by Mr Martin LEE just now is just the one referred to in the last paragraph of Article 158 and Article 159. During the process of discussions and consultations, Hong Kong people would definitely be informed, and they would have the opportunity to express their views or to oppose any unreasonable amendments or bills. Two members in the Drafting Committee asked the ADPL to support and stand firm on this issue at that time. The ADPL decided to support this issue in 1988 and we still stick to our decision now. I do not propose the amendment deliberately just to oppose Dr YEUNG Sum's motion; since it is a decision adopted by the ADPL in 1988. As Mr Albert HO was a member of the Joint Committee on the Promotion of Democratic Government, I believe he is aware that these suggestions were raised at that time. They may not admit that these suggestions were proposed in the past, but the ADPL insisted in 1988 that the Basic Law should not be amended before 1997. We amend the motion of Dr YEUNG Sum because we have to adhere to our past decision, and we do not oppose Dr YEUNG Sum just for the sake of opposing him. As Mr Bruce LIU has mentioned, this is a matter of principle and the two Articles are the very important mechanism to ensure "Hong Kong people ruling Hong Kong".

I hope Dr YEUNG Sum would later account for these three contradictions. Particularly, as he does not trust the Chinese ruling party (the CCP), why does he think they will amend the Basic Law on his behalf? If he thinks the CCP is creating a puppet as the Chief Executive, it should be plain to him that they would never amend the Basic Law.

I am very disappointed with Mr Albert HO's remarks. I have known Mr Albert HO for a long time and I even persuaded members of the ADPL not to compete with Mr Albert HO in the Legislative Council election. I was a bit angry at first, but I think I should not behave like Mr Albert HO. Therefore, I tell myself not to be angry. This is because I think I should not get angry, as the

accusations against me and the ADPL just now are not justifiable. If people say it is foolish to be loyal to the Basic Law, then I am foolish about a kind of law, a constitution and a system that are agreed upon by us. However, if the Democratic Party denounces the Chinese ruling party and the Chinese Government, while on the other hand believes that they will support their amendment to the Basic Law, is this not also a kind of foolishness? They are foolish about the CCP and I am foolish about the Basic Law. I would rather remain so if I have to choose between the two.

The ADPL once sought the co-operation of the Democratic Party to introduce amendments to some bills but they turned us down. If you had participated in past debates, you would have notice that I had never condemned the Democratic Party in the Chamber for not supporting us. The Chamber is a place for discussions. It does not matter whether there are different views or whether the views can be passed since all these motions will not have any binding effect no matter they are passed or not. They are only used to indicate your stances. Certainly, it is a good thing if we have a common stance but it really does not matter if we do not. Actually, different stances can serve to reflect the different aspects of our political culture, and I do not understand why they have to step on us.

Mr Albert HO says that we have changed, accusing us of opposing for the sake of opposing. However, I would like to tell you that I have not changed on several things. I have joined one political party only but Mr Albert HO has joined three. In 1988, the ADPL decided to support the mechanism in the two Articles of the Basic Law, and we have not changed our stance since then. If the democratic camp had also not changed, Dr YEUNG Sum and the Democratic Party should not have any ill-feeling when we insert the year "1997". In fact, it is Mr Albert HO who claims he does not have any ill-feeling, but I do not understand why he gradually becomes angry during the delivery of his speech. I hope Mr Albert HO will not equate his words to democracy and truth, and he should not accuse other people of not having integrity because he thinks he has integrity. If democracy means criticizing and condemning other people, the ADPL and I will definitely not advocate it. However, I think there is no need to spoil this motion because of the remarks of Mr Albert HO.

Among those Members who have delivered their speeches, some of them

are actually in support of the ADPL's amendment. On the contrary, I really hope Dr YEUNG Sum or the Democratic Party will consider supporting our amendment. It is because our amended version has a better chance to be passed. Why can the ADPL not support the Democratic Party? In fact, we have a burden on our shoulders and that is the decision adopted by the ADPL in 1988 and we have not changed our stance since then. We would like the Democratic Party to give it a second thought. I also hope the remarks made by Mr Albert HO were just an emotional outburst. Should there be no burden for the Democratic Party to bear when the amendment is to be made after 1997, I would like them to think about supporting the amendment of the ADPL.

Thank you, Mr President.

MR LEE CHEUK-YAN (in Cantonese): Mr President, today I will speak particularly in response to the amendment proposed by the Honourable David CHU. Now, Mr CHU has probably become "Mr Amendment" of the Legislative Council, but I believe he has proposed the amendment because of his very clear political line. I remember that when he first proposed a motion, he already expressed his stance of seeking to replace confrontation with co-operation and he hoped that the Hong Kong Government and the Chinese Government would co-operate. That is what Mr CHU has been advocating all along and his stance has not changed. The amendment proposed by him this time clearly indicates his wish to co-operate with the Chinese Government. However, what I am worried about is whether this kind of co-operation will be unconditional, whether this kind of co-operation will eventually make him a "hatchet man" of the Chinese Government or whether this will eventually become a kind of co-operation with the Central Government which will destroy the high degree of autonomy of Hong Kong. This is the most important problem with co-operation. If co-operation will result in the destruction of the high degree of autonomy of Hong Kong people, such co-operation will not be welcomed by the people of Hong Kong. The amendment proposed by Mr CHU this time makes one feel that his sole intention is to be a "hatchet man" of the Chinese Government or to destroy the high degree of autonomy of Hong Kong. Why do I say that? It is because the wording of his amendment has clearly indicated that the Basic Law has to be supported in its entirety and that there should be unconditional support without any criticism at all. Is the Basic Law something sacred and inviolable or are all of its provisions entirely correct?

I think the two provisions referred to by Dr the Honourable YEUNG Sum

today are particularly wrong. They are particularly wrong because the democratic process provided by the Basic Law does not tally with the high degree of autonomy that was promised for Hong Kong. There is actually no high degree of autonomy because if the legislature and the Chief Executive are not returned by popular elections, we can hardly say that there is "a high degree of autonomy" for Hong Kong. The Basic Law has all along imposed restrictions in this respect. Even though the matter will eventually be decided by the legislature in 2007, the motion will have to be carried by two thirds of the members of the legislature. However, if members of the legislature at that time are not returned by a popular election in the first place, I can hardly imagine that two thirds of its members will not follow the instructions of the Central Government. Therefore, the matter will eventually be decided and controlled by the Central Government. If it is controlled by the Central Government, we cannot say that there is "a high degree of autonomy". Earlier, Dr YEUNG Sum mentioned the right to move Member's Bills. Without the right to move Member's Bills, we Legislative Council Members feel that we cannot monitor the Government at all. If this power shall disappear after 1997, the legislature will eventually be reduced to a rubber-stamp and the power to monitor the Government will be severely reduced. I think whether that will happen will depend on what the current legislature, the Legislative Council before 1997, does now. Therefore, we think that if Mr David CHU wants others to support the Basic Law in its entirety, he is in fact co-operating with the Chinese Government to destroy the high degree of autonomy of Hong Kong and that will make it impossible for the people of Hong Kong to have independent thinking. I think it is most important for the people of Hong Kong to have independent thinking and not to follow Mr David CHU's advice of giving our complete support when they read the Basic Law themselves. That is the best thing to do.

Another problem relates to the entire drafting process of the Basic Law. In fact, generally speaking, the final drafting power rested with the Central Government and the right of participation of the people of Hong Kong was very limited in that it was confined to those appointed by the Central Government. Therefore, the difficulties or hardship of producing the Basic Law should actually not be given so much prominence. In the end, only those people of Hong Kong who were appointed by the Central Government could participate and it was not true that the general public could participate. To say the least, there was no referendum held. Earlier, the Honourable CHAN Kam-lam said that the whole process of producing the Basic Law can be made known to the people of Taiwan. I think that may perhaps drive them away and that may

frighten them. I think if they are not informed, they might still have some confidence, but if they are, they would have none at all.

Finally, I would like to mention one point. Mr David CHU said that the process of amending the Basic Law has been included, but actually that process can be described in three words, namely, "difficult, difficult and difficult". It is actually very difficult to amend the Basic Law, except by the State Council or the National People's Congress (NPC). It will be very difficult for the Hong Kong Special Administrative Region to amend the Basic Law. The reasons are very obvious. Members may have already mentioned them earlier on and I will not repeat them here. Article 159 of the Basic Law provides very clearly that any proposal to amend the Basic Law shall be submitted after obtaining the consent of two thirds of the deputies of Hong Kong to the NPC, two thirds of all the Members of the Legislative Council and the Chief Executive but the final power of amendment still rests with the NPC. How can any amendment be made? It will be very difficult to make any amendment unless the Central Government says it has to be amended. Therefore, considering that it is so difficult to amend the Basic Law and that there are so many provisions that restrict the participation of the people of Hong Kong, how can it be said that there is "a high degree of autonomy" for Hong Kong? Therefore, I think if any Member supports what Mr David CHU said, he or she is actually supporting the view that Hong Kong should not have "a high degree of autonomy". Thank you, Mr President.

MR LEE WING-TAT (in Cantonese): Mr President, I would only like to clarify, on behalf of the Democratic Party, a few points made by some Honourable colleagues. The first point concerns the question that it took more than four years to draw up the Basic Law during which time opinions swung back and forth from one end of the spectrum to the other. Some colleagues have already responded to this point. It is not just a matter of time. Sometimes it is not necessarily a good thing that a lot of time has been taken to do something, as is the case with products not welcomed by the customers. The question concerns, firstly, the organization. When the Drafting Committee for the Basic Law was formed, we, at least, thought that there were only a couple of representatives who were closer to the public. Many of the representatives were appointed by the Chinese Government and they did not represent the people. Many of the representatives belonged to the industrial and commercial sector. We doubt whether they could really reflect public opinion. I was elected as a representative to the Consultative Committee through the joint committee of

political groups and, during the discussions in the Consultative Committee, I realized that a lot of difficulties were encountered throughout the process. The opinions of the public were often suppressed and therefore, in terms of organization, it was not one with a substantial public opinion base. I doubt whether the Basic Law which this organization helped formulate can cater to the interests of the people of Hong Kong. It has been claimed that the time taken was too long, but what is most important is whether the opinions given were accepted or not. If the opinions were not accepted, the time schedule was only a means to specify "time" and it did not represent a process where public opinion was accepted. I can give an example showing that the opinions expressed at the time were not accepted. The Honourable Martin LEE, chairman of our party, mentioned the question of a "split" legislature. Many people evaded the question. The Honourable CHEUNG Man-kwong said that this idea was actually conceived and proposed after the incident on 4 June 1989 and the consultation which followed lasted for a very short time. In fact, among the remaining 18 Hong Kong representatives on the Drafting Committee, 11 of them (and we at least think that some of them are very conservative people) still considered the idea difficult to accept and they wrote a letter to object to it jointly. If those people thought that this idea was very good, why was it that the majority of the representatives on the Basic Law Drafting Committee and the Hong Kong representatives on the Committee objected to it? What was the public opinion base that they claimed? I really do not understand why people had to evade this question.

Secondly, the Honourable CHAN Kam-lam said earlier on that we completely rejected the Basic Law and we burnt the Basic Law. I hope Mr CHAN Kam-lam is not a factory owner who "puts labels" on others. What the democratic camp burnt were the two pages of the draft or the consultative version of the Basic Law which were about the political structure. Do not keep exaggerating and expanding on what others did. What we burnt was the part of the consultative version of the Basic Law which was about the political structure. Why did we burn it? We burnt it because it was not good. Was the action of burning it very strange? I do not think it was. In 1987, we burnt the lame duck which was a symbol of Hong Kong. What we burnt was not China; we only burnt the lame duck which was a symbol of the Governor who was a representative of the British Government. In 1987, at the time when we were lobbying for "direct elections in 1988", there was a Survey Office the Commissioner of which was Mr John CHAN. He said that "direct elections in

1988" were not supported by the public. We burnt that book as well. Why is it strange to burn things? When people think that their collective opinion has not been accepted by those in power and there is no channel for them to express their opinion or air their grievances, they will have no choice but to burn the consultative papers. I do not think that this is very strange behaviour. I am just stating the fact.

Earlier on, some Members criticized us and they questioned whether a proposal for amendment at too early a stage would mean disrespect for the Basic Law and whether such move would be against the rule of law. Many colleagues levelled their criticisms before hearing the analysis of one point by Members from our Party. The point is that we are proposing to make the amendments only when a base has been established and only on condition that there is a very strong public opinion. Actually, this has to be done not only before, but also after 1997. This is because the Democratic Party does not think that the mechanism provided by Article 159 of the Basic Law is necessarily one which is consistent with the wishes of the people of Hong Kong. First, the right to introduce a bill involves three groups of people, including the National People's Congress (NPC) deputies. We do not know whether the NPC deputies will be returned by popular election in the future and we do not know whether the deputies will be returned in a perfunctory manner by a Selection Committee composed of 400 people. We do not know whether decisions will be based on public opinion. Second, according to the Basic Law, it is obvious that it will be some time before the Chief Executive is elected by popular election and it will be doubtful whether the Chief Executive will be accepted and supported by the public. Third, according to the Basic Law, the legislature will not be returned by popular election before 2007. Therefore, we think that the most important principle is that amendment of the Basic Law should be made any time on the basis and with the support of public opinion. To the Democratic Party, this principle is far more important than Article 159 because the principle of the Article and the mechanism that it provides cannot guarantee that public opinion can be adequately reflected on every occasion.

Mr President, we knew that when we propose this motion, people will criticize us saying that we have no respect for the rule of law and the Basic Law. Why do we still want to propose it? That is because if we allow this system to develop, the power of our legislature or the Legislative Council to monitor the executive branch of government will be greatly reduced. Therefore, even though we are aware of the risk that labels will be put on us, we still want to propose this motion.

Thank you, Mr President.

MR HOWARD YOUNG (in Cantonese): Mr President, the motion today mainly consists of two tiers. The first is the amendment to the Basic Law and the relevant procedures, the second is the specific contents of the amendment.

First, concerning the issue of the amendment to the Basic Law, I think it is a matter of course that the Basic Law is not something that can never be amended, otherwise there would not have been the provision of an amendment mechanism in Article 159. However, I have reservations about proposing amendments to the Basic Law on the basis of individual political views and aspirations before 1997 when the Basic Law has not taken effect and so has not been given a chance to be tested through actual implementation to see whether it can suit the real situation of Hong Kong and function well. My reservations are not on this point alone. If we can propose an amendment to this article before the Basic Law is even implemented, it is possible that some Members may propose to amend another article in the next meeting or in the next session, and the Chinese side may propose to amend yet another article in the future. I think many of the provisions in the Basic Law are not perfect and cannot have the total approval of everyone. However, I feel that while accepting the Basic Law may be amended in the future, we can look into the matter at this stage. But I oppose the proposal to amend any part of the Basic Law before giving it a chance to be implemented and observing how it functions. I prefer to wait after the Hong Kong Special Administrative Region Government has started to function and the Basic Law has been implemented. By then, the people of Hong Kong, China and other countries in the world will be able to see the actual effect of the implementation. Subsequently, an overall review of all the provisions can be conducted to consider whether any of them should be adapted to suit the needs of the new era and then have them amended.

The second issue is the actual contents of the proposed amendment contained in this motion. I think the actual contents as proposed in fact touch on the argument of whether the Legislative Council should continue to be executive-led, and whether its ability to provide checks and balances has been weakened. I certainly think that we have to admit that the executive-led model adopted in the past years has contributed much to the success of Hong Kong. Without this model, Hong Kong would not have made so much progress. However, we cannot rule out the possibility that after the concept of "one country, two systems" has been put into practice and people gradually become more aware of their civil rights, the expectations of the public or even the politicians on the Government may change and the means of check and balance may take a new form. Therefore, I do not rule out that in time we may need to consider how the executive-led model should function and how an appropriate form of checks and balances could be attained. I think these issues can be examined in the future. However, similarly, I do not agree to make amendments at this time on this ground alone before there is evidence to prove that the arrangements do not work and that they will do harm to Hong Kong after they have actually been put into practice. Therefore, I support the Honourable David CHU's amendment.

DR YEUNG SUM (in Cantonese): Mr President, probably because I am more open-minded, I would often play a harmonizing role when the Democratic Party engages in negotiations or is involved in an argument. Concerning the Honourable Bruce LIU's amendment, I hope the Honourable Frederick FUNG will not take offence simply because of a remark from the Honourable Albert HO. Mr FUNG kept saying that he was not angry, but he spoke with an angry tone. However, I would like to tell him that the Democratic Party regrets that it cannot support Mr Bruce LIU's amendment. As the Party's spokesman on constitutional issues, I would like to obtain the four votes of support from them, but after careful thought, we cannot support the amendment mainly because of two reasons.

Mr President, firstly, because the amendment imposes strict limitations on all amendments to the Basic Law. It says, "since the amendment procedures for the Basic Law will only take effect in 1997", and so any amendment will have to be made after 1997. Mr President, I would like to explain why the Democratic Party cannot accept this argument. The Democratic Party has all along hoped that the first legislature and the Chief Executive will be returned by popular election. If the first legislature and the Chief Executive are to be returned by

popular election, a technical problem which will arise is that the Basic Law has to be amended before 1997. That was initially included in my motion. However, Mr President, your ruling was made on the ground that the same point had been raised when the Honourable Miss Emily LAU last time discussed the idea of a shadow government. I accepted your ruling and therefore my motion did not mention the return of the legislature and the Chief Executive by popular election. However, I believe Members will know that the stance of the Democratic Party is very clear. Since we are asking for the return of the first legislature of the Hong Kong Special Administrative Region (SAR) and the Chief Executive by popular election, obviously the Basic Law has to be amended before 1997. Therefore, if we try to obtain the four votes of support from the Hong Kong Association for Democracy and People's Livelihood (ADPL) to ensure a better chance for my motion to be carried, we would be violating the principle of having the first legislature of the SAR and the Chief Executive returned by popular election. We all know that it would have grave consequences because it is totally unthinkable for the Democratic Party to forgo the principle of having the first legislature of the SAR and the Chief Executive returned by popular election. Therefore, it is out of the question.

Another point we find unacceptable is the emphasis Mr Bruce LIU and the ADPL have laid on the need to make any amendment according to the mechanism provided in the Basic Law. Earlier on, the Honourable LEE Cheuk-yan and the Honourable LEE Wing-tat have mentioned the relative difficulty to amend the Basic Law according to the mechanism provided in Article 159 of the Basic Law because of the undemocratic way in which the legislature and the Chief Executive will be elected, and the National People's Congress has not been elected by popular election. Therefore, we hope that the Chinese Government will amend the Basic Law out of its respect for public opinion in Hong Kong. This is a way to get around the problem. Perhaps it is because the Democratic Party often hopes to get around on the principle of democracy that the Chinese side has regarded us as different from the ADPL. It may be due to a difference in our character, style or the level of adherence to one's principles. Therefore, after making this explanation, we have to say that we cannot support Mr Bruce LIU's amendment.

As for the Honourable David CHU's amendment, it is rather "comical" that he should regard the Basic Law as a document having a life of its own. The Honourable CHEUNG Man-kwong has demonstrated a good sense of humour by referring to his view as black humour. This is quite interesting. Perhaps Mr

CHU himself is a very interesting person too. I think it is good to have such a legislator in the transitional period to create a "comical" atmosphere in the middle of some more heated debates. When people read the Hansard in future, they may smile a knowing smile. However, it is really difficult for us to support the Basic Law in its entirety. If we can do that, we would not have to propose any amendment.

Therefore, to put it simply, we cannot support Mr Bruce LIU's amendment. However, I am very pleased that he supports the proposal to rule out the question of forming a "split" legislature and the restrictions on the right to move Member's Bills. We must give credit to the ADPL on these two points.

Thank you, Mr President.

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Mr President, Dr the Honourable YEUNG Sum's motion and the amendments proposed by the Honourable Bruce LIU and the Honourable David CHU have expressed Members' opinions on the provisions of the Basic Law concerning the operation of the legislature of the Special Administrative Region (SAR). I would like to explain the Government's stance in this respect.

The main theme of the motion concerns Article 74 of the Basic Law which restricts the right of Members to introduce bills and Annex II which provides for the voting procedures of the legislature of the SAR. Article 74 provides that "Members of the Legislative Council of the Hong Kong Special Administrative Region may introduce bills in accordance with the provisions of this Law and legal procedures. Bills which do not relate to public expenditure or political structure or the operation of the government may be introduced individually or jointly by members of the Council. The written consent of the Chief Executive shall be required before bills relating to government policies are introduced." Annex II provides that "the passage of motions, bills or amendments to government bills introduced by individual members of the Legislative Council shall require a simple majority vote of each of the two groups of members present: members returned by functional constituencies and those returned by geographical constituencies through direct elections and by the Election Committee". I would like to point out that the implementation and the amendment of the Basic Law should be left to the Chinese Government and the future government of the SAR of Hong Kong.

Chapter VIII of the Basic Law has clear provisions for the procedures for the amendment of the Basic Law. Any proposal to amend the Basic Law is closely related to the people of Hong Kong. The actual arrangements to consult the people of Hong Kong and the measures to deal with any proposal to amend the Basic Law should be decided by the Chinese Government and the future government of the SAR of Hong Kong.

Dr YEUNG Sum's proposal has brought up an important issue, namely, the relationship between the executive and the legislature. Here, I would like to emphasize two points. First, the "executive-led" model of government has all along been adopted by the Hong Kong Government. Over the years, this model has been effective and it has been accepted by the public. Second, in order to have an effective and responsible government, the executive and the legislature have to check and balance one another and support one another. The fourth paragraph in Annex I of the Sino-British Joint Declaration provides that "the executive authorities shall abide by the law and shall be accountable to the legislature" and this shows the importance of this principle. The Hong Kong Government has all along followed this principle before 1997, and it will continue to do so after 1997 in order to conform with the spirit of the Sino-British Joint Declaration.

The Basic Law provides a blueprint of Hong Kong's life-style after 1997. Everyone in Hong Kong hopes that the present life-style will remain after 1997. They hope that their freedom will be protected, the rule of law will remain and the competitiveness of the economy will continue to increase. These are the hopes of the people of Hong Kong and a manifestation of the principles of "one country, two systems", "Hong Kong people ruling Hong Kong" and "a high degree of autonomy". We certainly hope that these important principles will be put into effect in the process of implementing the Basic Law.

PRESIDENT: I now call upon Mr Bruce LIU to move his amendment to the motion.

MR BRUCE LIU's amendment to DR YEUNG SUM's motion:

> "To delete "this Council urges the Chinese Government to amend the Basic Law as follows:" and substitute with the following:
>
> ", since the procedures for amending the Basic Law will only take effect after 1997 and in order to uphold the spirit of "one country, two systems" and "Hong Kong people ruling Hong Kong", this Council considers that amendments to the Basic Law should be made after 1997 and that amendment proposals should be made by the Hong Kong Special Administrative Region; this Council also proposes the following amendments to the Basic Law after 1997:"."

MR BRUCE LIU (in Cantonese): Mr President, I move that Dr YEUNG Sum's motion be amended as set out under my name on the Order Paper.

Question on Mr Bruce LIU's amendment proposed and put.

Voice vote taken.

THE PRESIDENT said he thought the "Noes" had it.

Mr Frederick FUNG and Mr Bruce LIU claimed a division.

PRESIDENT: Council shall proceed to a division.

PRESIDENT: Members may wish to be reminded that they are now called upon to vote on the question that the amendment moved by Mr Bruce LIU be made to Dr YEUNG Sum's motion. Will Members please register their presence by pressing the top button and then proceed to vote by choosing one of the three buttons below?

PRESIDENT: Before I declare the result, Members may wish to check their votes. Are there any queries? The result will now be displayed.

Mr Frederick FUNG, Miss Christine LOH, Dr LAW Cheung-kwok, Mr Bruce LIU, Mr MOK Ying-fan, Miss Margaret NG and Mr YUM Sin-ling voted for the amendment.

Mr Allen LEE, Mrs Selina CHOW, Mr Martin LEE, Mr NGAI Shiu-kit, Mr SZETO Wah, Mr LAU Wong-fat, Mr Edward HO, Mrs Miriam LAU, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr CHIM Pui-chung, Mr Michael HO, Dr HUANG Chen-ya, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr Henry TANG, Mr James TO, Dr Samuel WONG, Dr Philip WONG, Dr YEUNG Sum, Mr Howard YOUNG, Mr WONG Wai-yin, Mr LEE Cheuk-yan, Mr CHAN Kam-lam, Mr CHAN Wing-chan, Miss CHAN Yuen-han, Mr Andrew CHENG, Mr Paul CHENG, Mr CHENG Yiu-tong, Mr CHEUNG Hon-chung, Mr CHOY Kan-pui, Mr David CHU, Mr Albert HO, Mr IP Kwok-him, Mr Ambrose LAU, Mr LAW Chi-kwong, Mr LO Suk-ching, Mr NGAN Kam-chuen, Mr SIN Chung-kai, Mr TSANG Kin-shing, Dr John TSE and Mrs Elizabeth WONG voted against the amendment.

Mr Eric LI and Mr LEE Kai-ming abstained.

THE PRESIDENT announced that there were seven votes in favour of the amendment and 43 votes against it. He therefore declared that the amendment was negatived.

PRESIDENT: Now that we have disposed of Mr LIU's amendment, Mr David CHU may move his amendment so that Members may take a vote on it.

MR DAVID CHU's amendment to DR YEUNG SUM's motion:

> "To delete everything after "That this Council" and substitute with the following:
>
> "endorses the Basic Law in its entirety, including the provision permitting future changes to this living document after its implementation and through extensive consultations with the Hong Kong people and the Chinese Government according to the prevailing circumstances and as the modern Hong Kong Special Administrative Region continues to advance"."

MR DAVID CHU: Mr President, I move that Dr YEUNG Sum's motion be amended as set out under my name on the Order Paper.

Question on Mr David CHU's amendment proposed and put.

Voice vote taken.

THE PRESIDENT said he thought the "Noes" had it.

Mr CHAN Kam-lam claimed a division.

PRESIDENT: Council shall proceed to a division.

PRESIDENT: I would like to remind Members that they are now called upon to vote on the question that the amendment moved by Mr David CHU be made to Dr YEUNG Sum's motion. Will Members please register their presence by pressing the top button and then proceed to vote by choosing one of the three buttons below?

PRESIDENT: Before I declare the result, Members may wish to check their votes. Are there any queries? The result will now be displayed.

Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr LAU Wong-fat, Mr Edward HO, Mrs Miriam LAU, Mr CHIM Pui-chung, Mr Eric LI, Mr Henry TANG, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, Mr CHAN Kam-lam, Mr CHAN Wing-chan, Miss CHAN Yuen-han, Mr Paul CHENG, Mr CHENG Yiu-tong, Mr CHEUNG Hon-chung, Mr CHOY Kan-pui, Mr David CHU, Mr IP Kwok-him, Mr Ambrose LAU, Mr LEE Kai-ming, Mr LO Suk-ching and Mr NGAN Kam-chuen voted for the amendment.

Mr Martin LEE, Mr SZETO Wah, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin, Miss Christine LOH, Mr LEE Cheuk-yan, Mr Andrew CHENG, Mr Albert HO, Dr LAW Cheung-kwok, Mr LAW Chi-kwong, Mr Bruce LIU, Mr MOK Ying-fan, Miss Margaret NG, Mr SIN Chung-kai, Mr TSANG Kin-shing, Dr John TSE, Mrs Elizabeth WONG and Mr YUM Sin-ling voted against the amendment.

THE PRESIDENT announced that there were 25 votes in favour of the amendment and 27 votes against it. He therefore declared that the amendment was negatived.

PRESIDENT: Dr YEUNG Sum, you are now entitled to your final reply and you have one minute 33 seconds out of your original 15 minutes.

DR YEUNG SUM (in Cantonese): Mr President, I believe the Honourable Paul CHENG is the happiest person today because he should be able to go home earlier. *(Laughter)*

Mr President, almost 20 Members have spoken on this motion. I would like to thank them because despite the fact that this is a rather narrow subject, 20 Members have expressed their opinions. On behalf of the Democratic Party, I would like to thank everyone. Mr Paul CHENG is very happy now. When

Members spoke, they often neglected the contents of my motion and they just said that the Basic Law could not be amended, that the period of consultation and the drafting process took a very long time and so on. However, try and consider that even under this colonial government, Member's Bills can be introduced in the Legislative Council without obtaining any written consent from any chief executive. After such a bill has been introduced, Members returned by functional constituencies and those returned by direct elections do not have to vote separately. Under a colonial government, the legislature still allows its Members to exercise their right to monitor the Government and to question the Government. With the return of sovereignty to our great motherland with the support of the people of China, the Legislative Council has gone so far as to try and create another closed system so as to prevent its Members from monitoring the operation of the Government. Why have Members not mentioned this aspect in their speeches? Why did they say that the Basic Law could not be altered merely because it had taken more than four years to draft? Is it true that it really cannot be altered? Is it true that if the Basic Law were amended, the Chinese Government would be unhappy and therefore we should not mention it? I think we should have discussions according to the facts and consider whether there is any practical value in the two issues raised. We have to "get off the train", but ZHOU Nan said that half of us would remain here. I believe half of us may. In the future, whenever you introduce a motion to amend the Government's motion, you will have to vote separately in two groups and then you will know how dreadful it will be. You would certainly feel awful. No one will express any political views then, not to mention playing the roles of legislative councillors. If the Basic Law is not amended according to my proposal, I dare say for certain that Members can play only a minimal role in the operation of the future Legislative Council. The Chief Executive and the executive authorities will basically exercise complete control over the legislature. Do not tell me then anything about the voices of the people, and reflecting public opinion. It sure cannot be done because of the restrictions imposed by the structure.

Second, there is no special mention of the time before or after 1997 in my motion, but there is something we have to do. For example, the Honourable Frederick FUNG has asked me about the many criticisms made by the Democratic Party of the Chinese Government .....

The digital timer showed 0133.

PRESIDENT: Dr YEUNG Sum, time is up.

Question on the original motion put.

Voice vote taken.

THE PRESIDENT said he thought the "Ayes" had it.

Dr YEUNG Sum and Mr TSANG Kin-shing claimed a division.

PRESIDENT: Council shall proceed to a division.

PRESIDENT: I would like to remind Members that they are now called upon to vote on the question that the motion moved by Dr YEUNG Sum be approved. Will Members please register their presence by pressing the top button and then proceed to vote by choosing one of the three buttons below?

PRESIDENT: Before I declare the result, Members may wish to check their votes. Are there any queries? The result will now be displayed.

Mr Martin LEE, Mr SZETO Wah, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Michael HO, Dr HUANG Chen-ya, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin, Miss Christine LOH, Mr LEE Cheuk-yan, Mr Andrew CHENG, Mr Albert HO, Mr LAW Chi-kwong, Miss Margaret NG, Mr SIN Chung-kai, Mr TSANG Kin-shing, Dr John TSE, Mrs Elizabeth WONG and Mr YUM Sin-ling voted for the motion.

Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr LAU Wong-fat, Mr Edward HO, Mrs Miriam LAU, Mr CHIM Pui-chung, Mr Frederick FUNG, Mr Eric LI, Mr Henry TANG, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, Mr James TIEN, Mr CHAN Kam-lam, Mr CHAN Wing-chan, Miss

CHAN Yuen-han, Mr Paul CHENG, Mr CHENG Yiu-tong, Mr CHEUNG Hon-chung, Mr CHOY Kan-pui, Mr David CHU, Mr IP Kwok-him, Mr Ambrose LAU, Dr LAW Cheung-kwok, Mr LEE Kai-ming, Mr Bruce LIU, Mr LO Suk-ching, Mr MOK Ying-fan and Mr NGAN Kam-chuen voted against the motion.

THE PRESIDENT announced that there were 23 votes in favour of the motion and 30 votes against it. He therefore declared that the motion was negatived.

ADJOURNMENT AND NEXT SITTING

PRESIDENT: In accordance with Standing Orders, I now adjourn the Council until 2.30 pm on Thursday, 4 July 1996.

Adjourned accordingly at twenty-two minutes to Eleven o'clock.