

# OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 19 December 2001

The Council met at half-past Two o'clock

## MEMBERS PRESENT:

THE PRESIDENT

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

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

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

DR THE HONOURABLE DAVID CHU YU-LIN, J.P.

THE HONOURABLE ALBERT HO CHUN-YAN

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

THE HONOURABLE LEE CHEUK-YAN

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

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

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

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

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

THE HONOURABLE NG LEUNG-SING, J.P.

THE HONOURABLE MARGARET NG

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

THE HONOURABLE JAMES TO KUN-SUN

THE HONOURABLE CHEUNG MAN-KWONG

THE HONOURABLE HUI CHEUNG-CHING, J.P.

THE HONOURABLE CHAN KWOK-KEUNG

THE HONOURABLE CHAN YUEN-HAN, J.P.

THE HONOURABLE BERNARD CHAN

THE HONOURABLE CHAN KAM-LAM

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

THE HONOURABLE LEUNG YIU-CHUNG

THE HONOURABLE SIN CHUNG-KAI

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

DR THE HONOURABLE PHILIP WONG YU-HONG

THE HONOURABLE WONG YUNG-KAN

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

THE HONOURABLE HOWARD YOUNG, J.P.

DR THE HONOURABLE YEUNG SUM

THE HONOURABLE YEUNG YIU-CHUNG, B.B.S.

THE HONOURABLE LAU KONG-WAH

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

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

THE HONOURABLE AMBROSE LAU HON-CHUEN, G.B.S., J.P.

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

THE HONOURABLE CHOY SO-YUK

THE HONOURABLE ANDREW CHENG KAR-FOO

THE HONOURABLE SZETO WAH

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

THE HONOURABLE LAW CHI-KWONG, J.P.

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

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

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

THE HONOURABLE LI FUNG-YING, J.P.

THE HONOURABLE HENRY WU KING-CHEONG, B.B.S.

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

THE HONOURABLE MICHAEL MAK KWOK-FUNG

THE HONOURABLE ALBERT CHAN WAI-YIP

THE HONOURABLE LEUNG FU-WAH, M.H., J.P.

DR THE HONOURABLE LO WING-LOK

THE HONOURABLE FREDERICK FUNG KIN-KEE

THE HONOURABLE IP KWOK-HIM, J.P.

THE HONOURABLE LAU PING-CHEUNG

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

THE HONOURABLE MA FUNG-KWOK

**MEMBERS ABSENT:**

THE HONOURABLE CYD HO SAU-LAN

THE HONOURABLE LAU CHIN-SHEK, J.P.

THE HONOURABLE WONG SING-CHI

**PUBLIC OFFICERS ATTENDING:**

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

THE CHIEF SECRETARY FOR ADMINISTRATION

THE HONOURABLE ANTONY LEUNG KAM-CHUNG, G.B.S., J.P.

THE FINANCIAL SECRETARY

THE HONOURABLE ELSIE LEUNG OI-SIE, J.P.

THE SECRETARY FOR JUSTICE

MR MICHAEL SUEN MING-YEUNG, G.B.S., J.P.

SECRETARY FOR CONSTITUTIONAL AFFAIRS

MR CHAU TAK-HAY, J.P.

SECRETARY FOR COMMERCE AND INDUSTRY

MR NICHOLAS NG WING-FUI, J.P.

SECRETARY FOR TRANSPORT

MR DOMINIC WONG SHING-WAH, G.B.S., J.P.

SECRETARY FOR HOUSING

MR LAM WOON-KWONG, G.B.S., J.P.  
SECRETARY FOR HOME AFFAIRS

MR STEPHEN IP SHU-KWAN, G.B.S., J.P.  
SECRETARY FOR FINANCIAL SERVICES

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

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

MRS FANNY LAW FAN CHIU-FUN, J.P.  
SECRETARY FOR EDUCATION AND MANPOWER

MRS CARRIE YAU TSANG KA-LAI, J.P.  
SECRETARY FOR INFORMATION TECHNOLOGY AND BROADCASTING

MS SANDRA LEE SUK-YEE, J.P.  
SECRETARY FOR ECONOMIC SERVICES

MR THOMAS YIU KEI-CHUNG, J.P.  
SECRETARY FOR HEALTH AND WELFARE

### **CLERKS IN ATTENDANCE:**

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

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

MRS JUSTINA LAM CHENG BO-LING, ASSISTANT SECRETARY  
GENERAL

MR RAY CHAN YUM-MOU, ASSISTANT SECRETARY GENERAL

**TABLING OF PAPERS**

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

Subsidiary Legislation/Instruments	<i>L.N. No.</i>
Film Censorship (Amendment) Regulation 2001.....	266/2001
Designation of Libraries (No. 4) Order 2001.....	267/2001
Electronic Transactions (Exclusion) (Amendment) Order 2001.....	268/2001
Commodities Trading (Trading Limits and Position Limits) (Amendment) (No. 4) Rules 2001 .....	269/2001
Matrimonial Causes (Amendment) Rules 2001.....	270/2001
Merchant Shipping (Local Vessels) (Conduct of Inquiries) Rules .....	271/2001
Antiquities and Monuments (Declaration of Historical Buildings) Notice 2001 .....	272/2001
The Ombudsman (Amendment) Ordinance 2001 (30 of 2001) (Commencement) Notice 2001 .....	273/2001
Public Health (Animals and Birds) (Chemical Residues) Regulation (L.N. 146 of 2001) (Commencement) Notice 2001 .....	274/2001
Harmful Substances in Food (Amendment) Regulation 2001 (L.N. 148 of 2001) (Commencement) Notice 2001 .....	275/2001
Public Health (Animals and Birds) (Amendment) Regulation 2001 (L.N. 218 of 2001) (Commencement) Notice 2001 .....	276/2001

Public Health (Animals and Birds) (Animal Traders)  
 (Amendment) Regulation 2001 (L.N. 219 of 2001)  
 (Commencement) Notice 2001 ..... 277/2001

Food Business (Amendment) Regulation 2001  
 (L.N. 220 of 2001) (Commencement)  
 Notice 2001 ..... 278/2001

#### Other Papers

No. 42 — Police Welfare Fund  
 Annual Report 2000/2001

No. 43 — The Accounts of the Lotteries Fund 2000-01

No. 44 — Report on the Administration of the Fire Services Welfare  
 Fund together with the Director of Audit's Report and  
 Audited Statement of Accounts for the year ended 31  
 March 2001

No. 45 — Fortieth Annual Report by the Social Work Training Fund  
 Trustee for the year ending on 31 March 2001

No. 46 — Emergency Relief Fund  
 Annual Report by the Trustee for the year ending on 31  
 March 2001

No. 47 — Hong Kong Housing Authority  
 Annual Report 2000/2001

No. 48 — Hong Kong Housing Authority  
 Financial Statements for the year ended 31 March 2001

Report of the Bills Committee on Kowloon-Canton Railway Corporation  
 (Amendment) Bill 2001

Report of the Bills Committee on Banking (Amendment) Bill 2001

**ORAL ANSWERS TO QUESTIONS**

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

**Selection of Tenants of Cyberport**

1. **MR ABRAHAM SHEK:** *Madam President, when the Cyberport project was announced in early 1999, the Administration claimed that the project aimed "to create a cluster of leading information technology (IT) and services companies and a critical mass of professional talents in Hong Kong in the shortest possible time". Also, it was reported in November 2001 that the Government now aims to fill the Cyberport with a balanced mix of large and medium-sized, local and international IT firms. In this connection, will the Administration inform this Council of:*

- (a) *the measures in place to ensure that the tenant selection process is open and transparent;*
- (b) *the measures to ensure that the selected tenants are indeed leading companies committed to developing new and leading-edge applications of IT; and*
- (c) *the respective up-to-date numbers of tenancy applications made by large, medium-sized, local and international companies?*

**SECRETARY FOR INFORMATION TECHNOLOGY AND BROADCASTING:** Madam President,

- (a) Companies interested in becoming Cyberport office tenants are required to submit formal applications on the basis of a standard application form. This application form and its accompanying guide to applicants, which were promulgated in April this year, have been widely distributed to local and overseas IT companies. An electronic version is also readily available at our websites.

Each of the applications is put to the Committee on Admission of Cyberport Office Tenants (CACOT) for consideration. This



Committee comprises seven core members, including a local member who is Prof Charles KAO; three international members who are Dr Jeremy FAIRBROTHER from Cambridge University, Prof John O'CALLAGHAN from Australian National University and Prof Victor ZUE from Massachusetts Institute of Technology; and three technical members who are the Director-General of Telecommunications, Director of Information Technology Services and Director of Lands.

We have promised the applicants that the information provided in connection with their applications will be treated in the strictest confidence by us and used only for the processing of the applications. We will, therefore, not discuss individual applications publicly. However, the mechanism for selecting the Cyberport office tenants has been widely publicized, both locally and overseas. We have presented the mechanism to the Information Infrastructure Advisory Committee which comprises members from the academia, IT industry and other business sectors. We have also made various presentations to the IT companies and IT associations. The mechanism is generally accepted to be open and transparent.

- (b) A company applying for office space at the Cyberport needs to provide sufficient information to satisfy the CACOT that its Cyberport operation will fit in with the Cyberport which, as stated in the guide to applicants, is a technology-themed project with its focus on IT, information services, multimedia content creation and related sectors. With this in mind, our seven core CACOT members consider each of the applications on its own merits.
- (c) The Cyberport will open in phases between early-2002 and end-2003 to provide altogether about 110 000 sq m of office space to accommodate over 100 companies. We have so far received 72 applications from companies interested to move into the various phases of the Cyberport development.

We have made it clear in our guide to applicants that companies of varying sizes and at different stages of development are welcome, subject to their Cyberport operations fitting in with the profile of the Cyberport project as I have just referred to in part (b) of my reply.

It would not be particularly meaningful to classify the 72 applicant companies into large or medium-sized companies. Even if we were to make such an attempt, the results could well be misleading, bearing in mind that the size of an applicant company itself could well be different from the scale of its Cyberport operation. For example, a large company which applies for a modest office space at the Cyberport could be wrongly classified as a small-sized company if we were to take into account only the scale of its Cyberport operation.

**MR ABRAHAM SHEK:** *Madam President, I would like to ask the Secretary how many of these 72 applicant companies are existing Hong Kong companies and how many are new companies attracted from overseas?*

**SECRETARY FOR INFORMATION TECHNOLOGY AND BROADCASTING:** Madam President, we do not have a breakdown in respect of where these companies come from or whether they are already operating in Hong Kong. The important point is that we want to attract companies of different sizes and at different stages of development to operate in the Cyberport, as long as they fit in with the theme of our Cyberport project.

**MR NG LEUNG-SING** (in Cantonese): *Madam President, the "September 11 incident" has brought about relative changes to all economies worldwide. With regard to the Cyberport project, have corresponding changes be made to the leasing conditions as a result of the "September 11 incident", or has its rate been thus affected?*

**SECRETARY FOR INFORMATION TECHNOLOGY AND BROADCASTING** (in Cantonese): Madam President, we have been watching closely the effect of the "September 11 incident" on us. Luckily, up to now, demand has still surpassed supply in the leasing of offices of Phase I of the Cyberport project. We are therefore cautiously optimistic.

**MR BERNARD CHAN** (in Cantonese): *Madam President, the Secretary mentioned in the main reply that there were 72 applications. Among the companies applying for office space at Phase I, what businesses are they mainly engaged in, how much capital are they planning to invest in Hong Kong and how many job opportunities can be created?*

**SECRETARY FOR INFORMATION TECHNOLOGY AND BROADCASTING** (in Cantonese): Madam President, in respect of office space at Phase I, we have attracted companies of different categories and activities, engaging in such businesses as IT, multimedia content creation and information services, and so on. In general, these companies meet our requirements. As regards their amount of investment, this is not one of our conditions for application. We only require the companies concerned to provide certain information to ensure that they have a certain amount of operating fund and that their businesses are consistent with the theme of the Cyberport. Thus, we do not have information comprehensive as such.

**MS AUDREY EU** (in Cantonese): *Madam President, the Government said it hoped to attract some first-class IT services companies; it also said that it hoped to attract large, medium and small-sized companies of different categories. However, we learned from part (c) of the main reply that the Government had originally expected to attract 100 companies but so far, only 72 rental applications have been received. If the Government hopes to have a choice, the number of applicants must exceed that of rental units but it now appears that the former is less than the latter. May I ask the Government what measures it has taken to attract more rental applications so that it can have a choice to achieve the objective of bringing in large, medium and small-sized companies and top IT?*

**SECRETARY FOR INFORMATION TECHNOLOGY AND BROADCASTING** (in Cantonese): Madam President, just as I said in the main reply, since the Cyberport will be completed in phases, even if we have so far received only 72 applications, I believe we will continue to receive new applications so long as we can back it up with publicity and enhance its appeal. I would like to clarify that there is no deadline for applications. Furthermore, some companies may submit their applications only six months prior to the

completion of the Cyberport. I do not rule out the possibility that certain companies may think so.

As to Ms EU's question on what methods we have adopted to attract more tenants for offices at the Cyberport, we will continue with our promotional activities overseas; and as regards ancillary facilities for software development, we now have some multimedia test chambers and public facilities to attract small-scale companies to operate there. Moreover, in respect of training, apart from using the Cyberport for holding IT activities, we will also turn it into a convergence point of talents. We will be launching new programmes to this effect.

**MR LAU PING-CHEUNG** (in Cantonese): *Madam President, May I ask the Government if there is overlapping between the Cyberport and the Hong Kong Science and Technology Parks, particularly in respect of tenants and the pricing of rentals?*

**SECRETARY FOR INFORMATION TECHNOLOGY AND BROADCASTING** (in Cantonese): Madam President, I did not catch Mr LAU's supplementary question clearly. Is Mr LAU asking how this project overlaps with the Hong Kong Science and Technology Parks?

**MR LAU PING-CHEUNG** (in Cantonese): *Madam President, I would like to ask the Government if there is overlapping between the Cyberport and the Hong Kong Science and Technology Parks with regard to tenants and the pricing of rentals. If so, how will the Government effect co-ordination?*

**SECRETARY FOR INFORMATION TECHNOLOGY AND BROADCASTING** (in Cantonese): Madam President, there will be no overlapping because the two projects appeal differently to tenants. While the scope of the Hong Kong Science and Technology Parks is broader and can attract companies engaged in high technology other than IT, the Cyberport lays emphasis on IT, information services, multimedia content creation and other related sectors.

**MR SIN CHUNG-KAI** (in Cantonese): *Madam President, when the Cyberport was being promoted, the then Financial Secretary, who is now the Chief Secretary for Administration, once emphasized that the reason why the development of the project was handed over to Pacific Century CyberWorks (PCCW) was that PCCW's international network could bring some international organizations into Hong Kong for development. May I ask the Government how it will assess today whether PCCW could honour its then promise to the Government, that is, bringing in some international organizations to develop in Hong Kong?*

**SECRETARY FOR INFORMATION TECHNOLOGY AND BROADCASTING** (in Cantonese): Madam President, the answer is positive, because many tenants are coming to Hong Kong for development as a result of PCCW's promotional activities. PCCW has a definite responsibility to promote the Cyberport and bring in some new applicants.

**MR SIN CHUNG-KAI** (in Cantonese): *May I ask if the promise then made is being honoured? Has the Government assessed the situation?*

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

**SECRETARY FOR INFORMATION TECHNOLOGY AND BROADCASTING** (in Cantonese): Madam President, I do not have anything to add. We have mainly assessed whether PCCW has done its best to conduct promotional activities and bring in new tenants, and the answer is PCCW has been able to honour this promise.

**MR MA FUNG-KWOK** (in Cantonese): *Madam President, May I ask the Government if it has assessed how many staff will those 72 companies employ?*

**SECRETARY FOR INFORMATION TECHNOLOGY AND BROADCASTING** (in Cantonese): Madam President, as this is neither one of our requirements for the applicants nor a performance pledge which must be

honoured by them, we do not have the relevant data. For some newly established companies which have made their debut in Hong Kong, it is of course easier to estimate the number of their new employees; but in fact, some IT companies have been operating in Hong Kong, and some are only expanding their businesses. Thus, there is difficulty in estimating how many new employees there will be. However, making such estimations cannot achieve any special goals. Therefore, we focus our effort on attracting tenants to the Cyberport to engage in the core activities of the Cyberport.

**MR ERIC LI** (in Cantonese): *Madam President, I have no queries as to what the Government said in the last paragraph of part (a) of the main reply, emphasizing that the mechanism for application was open and transparent. However, the thrust of the question was that the Government should be open and transparent when making decisions and the final decision and result must also be open and transparent. With regard to this, I feel that there is absolutely no openness whatsoever. For example, in the case of some commercial buildings, the final tenancies have to go through the process of registration so as to make known the background, general business domains or even tenancy conditions, and so on, of those companies or corporations. Since the construction of the Cyberport involves the use of public money, then after the offices are leased, when will the Government — or will it — disclose the conditions for the tenants so that the public could know that the final decision of the Government lives up to its objective?*

**SECRETARY FOR INFORMATION TECHNOLOGY AND BROADCASTING** (in Cantonese): Madam President, once all tenancies have been properly signed and the tenants of the Cyberport have moved in, we will disclose the relevant information. At the present stage, because we have to respect the agreement made between us and the applicants, it is impossible to disclose the relevant information. However, the Government will regularly provide Members with the information required at the Panel on Information Technology and Broadcasting.

**MR ERIC LI** (in Cantonese): *Madam President, what I would like to ask is what kinds of information can be disclosed.*

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

**SECRETARY FOR INFORMATION TECHNOLOGY AND BROADCASTING** (in Cantonese): Madam President, the relevant information includes the names of the companies, the activities they are engaged in, and so on.

**DR RAYMOND HO** (in Cantonese): *Madam President, just now in responding to the Honourable LAU Ping-cheung, the Secretary said that the scope of the Hong Kong Science and Technology Parks was broader, thus the tenants generally would not only be engaged in IT. Does this mean that if an applicant engaging in IT wishes to move into the Hong Kong Science and Technology Parks, the authority will refer him to the Cyberport?*

**SECRETARY FOR INFORMATION TECHNOLOGY AND BROADCASTING** (in Cantonese): Madam President, it is difficult to say that we will definitely do so. In principle, we have in place a co-ordinating mechanism. My Bureau will from time to time hold co-ordinating meetings with the Hong Kong Science and Technology Parks to handle individual cases. For example, if a telecommunication company belonging to the IT field wishes to rent some areas to produce chips, then should it locate in the Cyberport or the Hong Kong Science and Technology Parks? Our answer may be the Hong Kong Science and Technology Parks. Nevertheless, we also have to respect the needs of the tenant itself. Anyhow, we do have a co-ordinating mechanism to handle individual cases.

**PRESIDENT** (in Cantonese): We have spent over 16 minutes on this question. This is the last supplementary question.

**MR JAMES TIEN** (in Cantonese): *Madam President, in drawing up the development plan for the Cyberport, the authority talked about IT. We are very much concerned about having real transfer of technology and talents; one of our concerns is that those companies will not just treat the Cyberport as a warehouse*

*for placing their hardware for sale. The Government mentioned in part (c) of the main reply that there were 72 applicants. If we ask for the details on each and every company, the Government certainly should not entertain us. However, if we ask about the average rental of the offices, it is only a reasonable question because if it costs only a few dollars or \$10 per sq ft, the companies will definitely turn the offices into warehouses. On the other hand, if it costs them more than \$20 per sq ft, we may then achieve real transfer of technology.*

**SECRETARY FOR INFORMATION TECHNOLOGY AND BROADCASTING** (in Cantonese): Madam President, our present rental is set at \$11 to \$13 per sq ft. It is after consulting senior real estate consultants and making references to the market situation that we came up with this rental.

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

### **FEHD's Policy on Live Chicken Retail Stalls**

2. **MR TOMMY CHEUNG** (in Cantonese): *Madam President, it is learnt that after terminating the tenancy of a live chicken retail stall, the Food and Environmental Hygiene Department (FEHD) will not let out the stall again for the same purpose. In this connection, will the Government inform this Council:*

- (a) *when the FEHD started to implement this policy, the number of stalls involved so far, and whether the purpose of the policy is to eradicate stalls selling live chickens;*
- (b) *whether the Hong Kong Housing Authority (HA) and the Hong Kong Housing Society (HS) have implemented the same policy for live chicken stalls under their management; if so, the number of stalls involved so far; and*
- (c) *whether the HA, the HS and the FEHD have implemented the same policy to stalls selling other types of fresh meat, seafood and vegetables under their management?*



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

- (a) Since its establishment, the FEHD has been committed to stepping up market management and improving the environmental hygiene and ventilation systems of markets. On the management of vacant stalls (including live poultry stalls), the FEHD will, generally, in the light of the situation of individual markets, consider the following factors before deciding on whether or not to offer the vacant stalls for public auction:
- (i) the number of stalls selling the same type of commodities and the overall business environment of the market;
  - (ii) the need for reserving vacant stalls for reprovisioning other stallholders affected by market improvement works or market demolition schemes; and
  - (iii) the need for making use of these vacant stalls to cope with market improvement works such as widening of passageways, extension of the size of individual stalls, and so on.

As regards poultry stalls, apart from the above considerations, the FEHD's target is to establish designated poultry zones to separate poultry stalls from other types of stalls, where practicable. This measure was introduced after the 1997 avian flu incident and implemented since June last year. This measure would not only improve the environmental hygiene of poultry stalls and reduce the over-crowding therein, but would also facilitate the installation of separate ventilation systems for poultry stalls. Therefore, whenever live poultry stalls or other types of stalls in the vicinity of poultry stalls are vacated, these stalls will not be immediately put forward for public auction. Up to now, a total of 72 poultry stalls and 33 stalls of other types have remained vacant for the purpose of establishing designated poultry zones.

- (b) The maximum number of live poultry stalls in markets managed by the HA and the HS is eight and two respectively. By contrast,

there is a maximum of 36 live poultry stalls in one single FEHD market, which is a far greater number than those in HA and HS markets. Besides, the average size of individual poultry stalls in markets managed by the HA is bigger, and the average area of each poultry stall is about 25 sq m while that of a poultry stall in an FEHD market is 20.2 sq m. As such, our priority is to improve the overcrowding situation of poultry stalls managed by the FEHD and to gradually separate them from other stalls. In parallel, we have started discussions with the Housing Department (HD) to explore whether the same measure should be introduced to live poultry stalls in markets managed by the HA. But the final decision will be made by the HA. As regards markets managed by the HS, there are a total of four poultry stalls in three markets, hence there is no need to set up designated poultry zones.

- (c) This measure applies only to poultry stalls and is not applicable to other stalls in HA, HS and FEHD markets.

**MR TOMMY CHEUNG** (in Cantonese): *Madam President, the Secretary has not answered clearly whether it is a new policy to terminate the tenancy and forever suspend the licence of a live chicken stall which has violated the regulation, aiming to ban live chicken stalls from appearing in Hong Kong markets? The Secretary did not answer this question.*

**SECRETARY FOR THE ENVIRONMENT AND FOOD** (in Cantonese): Madam President, I have already pointed out in part (a) of the main reply what steps we would take when there are vacant stalls in FEHD markets before deciding on whether or not to offer the vacant stalls for public auction. In fact, on the question of whether the FEHD has terminated the tenancies of any poultry stalls, I can inform Members that the FEHD has not terminated the tenancies of any poultry stalls over the past two years. In addition, I have explained earlier that the purpose of introducing this measure is definitely not to phase out live poultry stalls, thus vacant stalls available in future will no longer be offered for public auction. I have just clearly explained that our objective is to improve the existing environmental hygiene of poultry stalls, reduce overcrowding, and hope that the poultry stalls and other stalls could be separated, where practicable.

**MR LEUNG FU-WAH** (in Cantonese): *Madam President, in the last paragraph of part (a) of the main reply, the Secretary mentioned that 72 poultry stalls and 33 stalls of other types have remained vacant for the purpose of establishing designated poultry zones. This measure will involve markets managed by the HA and the HS. May I ask the Secretary the actual total number of this type of live chicken stalls that have been reduced throughout the territory as a result of the implementation of this policy?*

**SECRETARY FOR THE ENVIRONMENT AND FOOD** (in Cantonese): Madam President, I have pointed out earlier in the main reply that the maximum number of live poultry stalls in markets managed by the HA and the HS is only eight, but there is a far greater number of similar stalls in markets managed by the FEHD than those in HA and HS markets. In addition, I have also pointed out that the average size of individual poultry stalls in HA and HS markets is bigger than that in markets managed by the FEHD. Therefore, the overcrowding situation is not as serious as that in FEHD markets. In fact, there are only four stalls selling live chickens in three HS markets. Thus, there is actually no need to implement this measure in these markets. As regards whether this measure has been implemented in HA markets, we have already started discussions with the HD. However, I have also stated that HA markets do not have such a great need as FEHD markets, so whether this measure will be implemented or not must depend on the ultimate decision made by the HA. Therefore, the 72 poultry stalls, that is, the figure provided by me just now, are those which have remained vacant just for the purpose of establishing designated poultry zones in FEHD markets.

**MR FRED LI** (in Cantonese): *Madam President, in part (a) of the main reply, the Government stated that to separate poultry stalls from other types of stalls can help improve the environmental hygiene of poultry stalls, and it is one of the measures to prevent the recurrence of avian flu. However, the Secretary mentioned in the main reply that designated poultry zones would only be established, where practicable. Does that mean this measure is not practicable in many FEHD markets? If it is not practicable, how can the Government prevent the recurrence of avian flu and make further improvements?*

**SECRETARY FOR THE ENVIRONMENT AND FOOD** (in Cantonese): Madam President, according to the information I have at hand, 74 out of the 81

FEHD markets have stalls selling live chickens. The FEHD estimated that most of them, that is, 46 out of the 74 markets, can establish designated poultry zones. For the remaining markets, around four will be demolished and 17 will have technical problems in establishing designated poultry zones. Currently, poultry designated zones have been successfully established in seven relatively new markets. However, although the establishment of designated poultry stalls can further improve environmental hygiene and prevent the recurrence of avian flu, we have actually implemented a series of measures, apart from this one, to prevent an outbreak. One of the most important measures is to set one day each month as the market-cleansing day in all markets starting from this summer. In addition, around two to three weeks ago, the Legislative Council passed the legislation to segregate every step in the flow of selling and handling live chickens and quails. Therefore, as I have said, to establish designated poultry zones is only one of the measures which seek to prevent avian flu. In those markets where designated poultry zones cannot be established, we will take proactive actions to improve environmental hygiene, reduce the overcrowding situation, and expand the size of poultry stalls where practicable.

**MR WONG YUNG-KAN** (in Cantonese): *Madam President, in point (iii) of part (a) of the main reply, the Secretary mentioned that market improvement works would be carried out to extend the size of stalls. I think it will take a long time to complete all this. Can the Secretary inform us the time required to complete the whole project of extending the size of stalls?*

**SECRETARY FOR THE ENVIRONMENT AND FOOD** (in Cantonese): Madam President, while we improve the environmental hygiene of markets and establish designated poultry zones, we also have to consider the impact on the trade, particularly the stall owners currently operating in the markets. In fact, as regards the measure mentioned by me just now, we could only improve the situation of the other stalls step by step when stalls become vacant in markets, especially poultry stalls. Therefore, at the present stage, we can hardly estimate how long it will take approximately to improve the environmental hygiene of markets and reduce the overcrowding situation through natural wastage. However, I find it necessary to balance the needs in those two aspects, that is, the environment must be improved on the one hand; and current stall owners will not be greatly inconvenienced on the other. I think we should balance the interests of both.

**MR HOWARD YOUNG** (in Cantonese): *Madam President, according to the Secretary's remarks, it appears that to resolve overcrowding and improve the environment in markets is a policy. As such, has the Secretary considered obviating the need to wait for stall owners alone to return their stalls before implementing this measure? Has the Secretary considered speeding up the implementation of this measure such as purchasing licences from stall owners, so that the relevant measure can be implemented immediately without having to wait for a long time? Has the Secretary considered doing this?*

**SECRETARY FOR THE ENVIRONMENT AND FOOD** (in Cantonese): Madam President, we actually have considered different options. However, under the current circumstances, we think the proposal presently adopted by us is more desirable. However, insofar as Mr YOUNG's suggestions are concerned, we will consider discussing them with stall owners at the regular meetings concerning market management.

**DR LO WING-LOK** (in Cantonese): *Madam President, in part (a) of the main reply, the Secretary mentioned that 72 poultry stalls and 33 stalls of other types had remained vacant. May I ask the Secretary how many live poultry stalls there will be ultimately in these markets after the reduction as planned? And how long does it take to complete this project?*

**SECRETARY FOR THE ENVIRONMENT AND FOOD** (in Cantonese): Madam President, in respect of the second supplementary question raised by Dr LO, I have already pointed out in my reply to the Honourable WONG Yung-kan that since we are establishing designated poultry zones purely through natural wastage, we cannot possibly estimate the time required to complete this project. As regards how many live poultry stalls there will be ultimately, we are now handling this with a more flexible approach, that is, in the light of the situation of individual markets. Regarding the 46 markets mentioned by me earlier which are technically feasible to establish designated poultry zones, our current practice is to specify some designated areas first in these markets, and as far as possible set up some buffer areas between these designated zones and stalls selling other types of commodities. However, we currently do not have a specific figure in

respect of how many vacant live poultry stalls ultimately will not be offered for public auction, because it depends on the progress of the project.

**DR TANG SIU-TONG** (in Cantonese): *Madam President, in part (b) of the main reply, the Secretary mentioned whether there is a need to introduce the same measure to live poultry stalls in HA markets will be decided ultimately by the HA. Given that the establishment of designated poultry zones is so important, why can the FEHD, as a government department responsible for the food and environmental hygiene of Hong Kong, not extend the same treatment to all by requesting the HA to take actions according to government policy?*

**SECRETARY FOR THE ENVIRONMENT AND FOOD** (in Cantonese): *Madam President, I have just explained clearly that poultry stalls in FEHD markets and HA markets are different in such aspects as operation, distribution, size, overcrowding situation and number. Due to various historical reasons, we consider it imperative to implement these measures in FEHD markets. However, we opine that the urgency of implementing these measures in HA markets is not as strong as in FEHD markets. Since the urgency to prevent avian flu and improve environmental hygiene in HA markets is not as strong, we consider it possible to allow the HA to make the ultimate decision on its own. However, as the stalls in HA markets have obtained the Fresh Provision Shop Licences, thus the criteria adopted by the FEHD in supervision are the same as those used in supervising FEHD markets.*

**PRESIDENT** (in Cantonese): *We have spent more than 17 minutes on this question. We shall now move onto the third question.*

### **Education for Children Granted Temporary Stay in Hong Kong**

3. **MISS MARGARET NG** (in Cantonese): *Madam President, at present, primary and secondary schools are required to obtain the approval of the Education Department (ED) before they can admit children who have been granted temporary stay in Hong Kong by virtue of Recognizance Forms issued by the Immigration Department (ImmD). Moreover, the ED will consult the Director of Immigration (the Director) before making a decision in this respect,*

*and will grant approval only when the Director raises no objection. It has been reported that almost a hundred applications for admission of such children to school have been rejected. In this connection, will the Government inform this Council:*

- (a) of the numbers of such applications for admission to school received by the ED in each of the past four school years and so far in the current school year and, among these applications, the respective numbers of those which have been approved and rejected;*
- (b) whether it has tightened up the criteria for vetting and approving such applications in the wake of its request for interpretation of the relevant provisions of the Basic Law by the Standing Committee of the National People's Congress (NPCSC); if so, of the details; if not, the reasons for the Administration approving many such applications in the past but rejected lots of applications now; and*
- (c) of the legal provisions on which the Administration bases its requirement that approval of such applications for admission to school is subject to the prerequisite that "the Director raises no objection", as well as the legal provisions on which the Director bases his decision to turn down such applications; and whether it has assessed if the rejection of such applications contravenes Article 28 of the Convention on the Rights of the Child which provides for the right of the child to education?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, to answer the Honourable Margaret NG's question, it is necessary for me to explain the background underlying our policy and laws that are relevant to the question of whether children who are illegal immigrants or overstayers enjoy the right to attend schools in Hong Kong.

Immigration control is aimed at persons who, whilst they do not have the right to enter or remain in Hong Kong, seek to enter or remain for purposes such as visiting relatives, sightseeing, business, employment or study. An essential element for maintaining the integrity of our immigration control is that after entering Hong Kong for one purpose, such persons cannot change that purpose at will. Therefore, visitors who entered Hong Kong for sightseeing or to visit

their relatives shall not therefore work or become students at our schools during their stay without the requisite permission from our immigration authorities.

The control does not deny a child his right to education. That right does not, however, mean that a child has the right to enter any territory he chooses for the purposes of study. For example, Hong Kong residents who want to study overseas all have to apply for the appropriate student visas from the immigration authorities of the countries of their choice.

Thus, under our laws visitors are prohibited from working or becoming students at our schools during their stay in Hong Kong. This condition of stay also applies to overstayers, *viz* those who stay in Hong Kong beyond the stipulated limit of lawful stay. Contravention of a condition of stay, as well as aiding and abetting a contravention, are offences, for which the maximum penalty is a fine of up to \$50,000 and imprisonment for up to two years. The relevant legal provisions include section 41 of the Immigration Ordinance, regulation 2 of the Immigration Regulations and section 89 of the Criminal Procedure Ordinance.

Much has been made of the significance of the form of recognizance held by the mainland children in question. The purpose of a recognizance is to allow the person entering into it to be released pending further removal proceedings. It does not give the person any additional legal rights such as the right to work in Hong Kong or to become a student at our schools. An overstayer who holds a form of recognizance remains an overstayer under our laws.

Against the above policy and legal background, the Government has for a long time been exercising flexibility, on a strictly case by case basis, in handling applications for admission to our schools by children on recognizance where humanitarian or compassionate grounds exist, such as where it is foreseen that the removal of the child is unlikely to take place for an extended period of time.

Under the existing arrangement which dates back to the mid-1990s, where an application for admission to our schools is put forward by a child on recognizance, the Director will give his advice to the Director of Education who will, having regard to such advice and any other relevant considerations, consider whether arrangements can be made to admit the applicant to schools in Hong Kong strictly on a case by case basis. In cases where the child concerned is so admitted, no question of prosecutions for either the offence of breaching the



condition of stay prohibiting him from becoming a student at our schools, or of aiding and abetting a breach of that condition of stay, would arise.

The relevant laws, policy and arrangements enable us to comply with applicable international conventions, including the United Nations Convention on the Rights of the Child. The complexity of the issues involved does not allow me to set out the full details here. Suffice it to say that the right to education under the international conventions applicable to Hong Kong is not an absolute right and can, for example, be subject to statutory limitations including the conditions of stay in our immigration laws.

As regards the number of applications received in each of the past four school years and the current school year, the figures are as follows:

<i>School Year</i>	<i>Applications received</i>	<i>Arrangement for Admission Made</i>
1997-98	655	487
1998-99	299	284
1999-2000	354	206
2000-01	238	43
Total	1 546	1 020
September to November 2001	104	24

It should be noted that there are in Hong Kong 187 children on recognizance whose applications for admission to our schools have not been supported. Since the beginning of December 2001, another 14 applications have been filed with the Government. However, the allegation that many of the 187 children have been denied formal schooling for as long as five years is unfounded. In fact, 183, or 98%, have only applied to attend schools since March 2000. More specifically, 135, or 72%, have made their applications since the beginning of this year, and among them 84 have only done so since August 2001.

It is also untrue that they are all involved in protracted right of abode litigation. In fact, only four are parties to the litigation relating to the Concession Scheme which started in May 2000 and is currently awaiting the final

judgement of the Court of Final Appeal (CFA). Another 56 claimants have had their applications for leave to bring judicial review rejected by the Court of First Instance, and are now appealing to the Court of Appeal against the decision to refuse leave. The remaining 127 children are not involved in any ongoing litigation at all.

Whilst the Director has not supported most of the applications submitted since March 2000, he has not changed or tightened his considerations. When considering whether there are humanitarian or compassionate grounds for supporting a particular application, a consideration of the Director has always been whether it is foreseen that the removal of the applicant is unlikely to take place for an extended period of time, having regard to relevant circumstances, for example, the prevailing state of applicable laws. This has been the practice of the Director both before and after March 2000.

Given the passage of time since some of the cases were first examined, the Director would now proceed to review each of the 187 cases in which the application of a child on recognizance for admission into schools has not been supported. Pursuant to the existing arrangement, the Director will give his advice to the Director of Education who will, having regard to the advice and to any other relevant considerations, consider whether arrangements can be made to admit an applicant to schools in Hong Kong strictly on a case by case basis.

It is too early to tell how long that review will take. Nor can we prejudge its outcome. It must however be stressed that if the review leads to arrangements being made for an applicant's admission to schools, such arrangements should not be construed as implying that permission has been granted by the Director for the applicant to remain in Hong Kong for education, or an undertaking by the Director that removal proceedings would not be instituted or continued.

**MISS MARGARET NG** (in Cantonese): *Madam President, the so-called legal basis advanced by the Secretary has been refuted by several members of the legal profession on a number of occasions. The only new point in the main reply is found in the penultimate paragraph, where the Secretary said that all of the 187 cases in which the application had not been supported would each be reviewed. Can the Secretary explain the criteria adopted for the review and whether the old*

*position, so that these children will not be allowed to attend school when the review is being conducted, and after a period of review, the position of not supporting the cases will again be maintained?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, first of all, I am aware that in the past two weeks, some members of the legal profession have expressed different views. However, the legal position I explained just now is based on the opinions provided to us by the Government Counsel after thorough consideration. The Government Counsel also pointed out that some overstayers or visitors had been prosecuted or convicted for breach of some other conditions of stay, such as taking up employment, and the relevant rulings had been upheld by the Court of First Instance.

As to the review, since the relevant exercise is under the charge of the Director rather than me, the Director will give his advice to the Director of Education after reviewing the cases on individual merits. Of course I am in no position to predict the outcome of the review. As to the criteria adopted by the Director when conducting the review, I have mentioned just now that for many years, against the above policy and legal background, the Director would consider whether special humanitarian or compassionate grounds existed to justify the application for admission to our schools put forward by individual children on recognizance, such as where it was foreseen that the removal of the child was unlikely to take place for an extended period of time, as well as the legal position at that time.

**PRESIDENT** (in Cantonese): Honourable Members, there are 11 Members waiting to ask supplementaries, so please be as concise as possible when asking supplementaries.

**MR JASPER TSANG** (in Cantonese): *Madam President, the Secretary pointed out in the main reply that when considering whether to approve children on recognizance to attend school, one of the factors was whether the removal of the child was unlikely to take place for an extended period of time. May I ask the Secretary how long on average these children on recognizance remain in Hong Kong? Why are there so many people on recognizance remaining in Hong Kong for such long periods of time?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, how long each of the child concerned has to remain in Hong Kong before being removed depends on individual circumstances and whether litigation is involved, and litigation can also be classified into many types. I have also explained in the main reply that in fact only four children were parties to the litigation relating to the Concession Scheme. These cases, such as those of SIN Hoi-chu and NG Siu-tung, are important cases and their hearings started in May last year and the CFA should have by now heard the cases. I am not a member of the legal profession, but I reckon as a layman, the Court should be able to deliver its judgement in one or two months' time. Of course, we cannot remove these people involved in litigation immediately. After the final ruling is delivered, if the Administration loses the cases, we will consider the course of action to be taken; but if the Government wins, we will make arrangements for these children to leave the territory as soon as possible. Regarding children who are not involved in litigation, such as adopted children, the CFA delivered a judgement in July in relation to the legislation on adoption stating clearly that adopted children do not have the right of abode in Hong Kong. We will actively make arrangements for their removal. Furthermore, regarding younger children, such as those between three to six years of age, since the co-operation of their parents cannot be secured, there is some difficulty in arranging for their removal, since we cannot simply let Immigration Officers take these children to the Lo Wu Immigration checkpoints, hand them over to Public Security Bureau officers and consider the removals effected. We have to obtain the assistance of the parents of the children concerned and ideally, the children should be accompanied by their parents or relatives and arrangements should be made for their relatives on the Mainland to receive them in order for the children to be removed in a human manner. If the assistance of the children's parents or relatives cannot be secured, difficulties in removal will arise. Nevertheless, the Director is in active negotiations with the mainland authorities currently to find a solution to the problem. We expect that in the great majority of the cases, the overstayers concerned can be removed within a reasonable period of time.

**MRS SELINA CHOW** (in Cantonese): *Madam President, my supplementary is in fact quite similar to that asked by the Honourable Jasper TSANG.*

*According to the 11th paragraph of the main reply, there are 56 children who keep seeking judicial review of their cases, while difficulties seem to exist in*

*removing 127 children. This gradually evolves into the situation described in the subsequent paragraph — their period of stay in Hong Kong becomes longer and longer. May I ask whether their persistence in seeking judicial review or refusal to co-operate will result in their remaining in Hong Kong for a rather long period of time and as a result, make it necessary for them to attend school? It seems they did not choose to do so, because if they were on the Mainland, they would be able to attend school; but here in Hong Kong, in view of such a situation of their own making, what can the Government do? Since we are handling the matter according to law, why cannot the Government do something?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, I have pointed out in the main reply that 56 children claiming the right of abode have applied for leave to bring judicial review, but they are not involved in litigation relating to the Concession Scheme. The problem is that at present, at least 10 mainlanders come to Hong Kong each day to claim the right of abode. If the Director wants to remove them, they will apply for leave to bring judicial review and The Parents' Association to Fight For the Right of Abode of their Legitimate Children in the Mainland will also issue letters advising them that if they seek judicial review, they can extend their stay in Hong Kong, and the fee required is just \$1,045. Concerning this kind of cases, for example, those involving children who came to Hong Kong recently, since the farther from the date of interpretation of the Basic Law their time of arrival is, the weaker their cases on grounds of the period of concession are, their application will normally be rejected by the Court of First Instance. However, after their applications are rejected, they can lodge an appeal once, but since the CFA has not yet made a final judgement on the Concession Policy, all appeal cases have been adjourned. We believe that after the CFA has delivered a ruling on the cases of NG Siu-tung and SIN Hoi-chu, these cases can then be dealt with easily. Since the relevant legal proceedings have not yet been concluded, it is not possible for us to remove these children. As to the remaining 127 children, since firstly, the children are young and their parents refuse to co-operate, and secondly, since the ImmD has to make preparations for action, they are still awaiting removal.

Nevertheless, I agree with the view expressed by the Honourable Mrs Selina CHOW that the issue of attending school is an offshoot of the right of abode and removal issues. In order to solve this problem, we should arrange

for the children to return to the Mainland under lawful circumstances as soon as possible. In fact, these children applying for the right of abode can wait for the results of the hearings on the Mainland, instead of waiting to see if they can obtain the right of abode and receiving education at the same time in Hong Kong.

**MR CHEUNG MAN-KWONG** (in Cantonese): *Madam President, according to the main reply, March 2000 is an important threshold deciding whether these children holding forms of recognizance can attend school. Before March, the majority of them could go to school, while the great majority of those children who applied after March could not go to school. If we look at the figures provided by the Government again, 195 of them were refused admission to schools after March 2000. One of the reasons for not allowing them to go to school is probably it was expected that they were unlikely to remain in Hong Kong for an extended period of time, therefore they could not attend school. However, one and a half years have elapsed since March 2000. If it turns out that these children have remained in Hong Kong for one and a half years or even longer, it is precisely owing to the Government's error of judgement at that time that these children were not allowed to attend school. In that case, has the Government's action deprived these children of their right to education in these one and a half years? Can one and a half years be considered a long period of time? If the Government thought at that time that the children would leave the territory very soon and therefore did not allow them to go to school, then in retrospect, would it admit that a wrong decision was made?*

**SECRETARY FOR SECURITY** (in Cantonese): *Madam President, no matter before or after March 2000, the criteria adopted by the Government are the same, that is, to consider removing the children within a reasonable period of time as far as possible, as well as the prevailing state of applicable laws. Of course, after March 2000, one of the factors considered by the Director is that the position of law has become clearer, since an interpretation of the Basic Law was given by the NPCSC on 26 June 1999, and on 3 December, the CFA also acknowledged the effect of the interpretation and the law became even clearer. Therefore, at that time the Director believed in good faith that it was possible to arrange for the removal of these children very soon. However, we also admit that despite the lapse of such a long period, these children still cannot be*

removed because the legal proceedings of some of the cases have not yet been concluded. In view of this, the Director is willing to review some of the cases.

**PRESIDENT** (in Cantonese): Mr CHEUNG, has your supplementary question not been answered?

**MR CHEUNG MAN-KWONG** (in Cantonese): *Madam President, the Secretary has not answered my supplementary. If the Director assumed at that time that these children would leave very soon and did not allow them to go to school, but in retrospect, since one and a half years have elapsed and still they are not enrolled into any school, was the decision made at that time an error in judgement which has resulted in the deprivation of the children's right to education in these one and a half years? It must be noted that these children are all of school age and a disruption of one and a half years is a very serious matter .....*

**PRESIDENT** (in Cantonese): Mr CHEUNG, you only have to repeat the part not answered by the Secretary.

**MR CHEUNG MAN-KWONG** (in Cantonese): *Thank you, Madam President.*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, I cannot say that the Director has made an error in judgement, since he made the judgement in good faith according to the circumstances at that time, and one cannot make a generalization that all children have been denied the opportunity to receive education. As I have pointed out in the main reply, in fact many of the children submitted their applications only last year or a few months ago. Some of them are only four or five years old, and more than a year ago, they had yet to reach the school age, or the Director was not even aware that these children existed. It was only in last year or this that they made the request to attend school. How can we place the blame on the Director?

**PRESIDENT** (in Cantonese): Honourable Members, we have spent more than 22 minutes on this question. I know that some Members are disappointed at not being able to ask supplementary questions, but I cannot allow any more questions.

We shall now proceed to the fourth question.

### **Setting up of Free Trade Zone**

4. **MISS EMILY LAU** (in Cantonese): *Madam President, recently, the executive authorities announced that they had proposed to the Central People's Government setting up a regional free trade zone (FTZ) which covered the Mainland and the Hong Kong Special Administrative Region (SAR). In this connection, will the Administration inform this Council of:*

- (a) *the details of the proposal;*
- (b) *the trades that are likely to derive benefits from the setting up of the FTZ; and*
- (c) *the likely timing for setting up the FTZ?*

**MR LEE CHEUK-YAN** (in Cantonese): *Madam President, I would like to raise a point of order.*

**PRESIDENT** (in Cantonese): Do you wish to raise a point of order?

**MR LEE CHEUK-YAN** (in Cantonese): *Madam President, under Article 64 of the Basic Law, the executive authorities shall answer questions raised by Members of the Legislative Council. However, it is apparent that the main reply of the Secretary has not answered the main question at all. Given that the details of the proposal have nothing to do with any confidential matter, I would like to know whether the President will make a ruling and request the Secretary to prepare another main reply? As far as the main question is concerned, it is apparent that the Secretary has not answered anything at all.*



**PRESIDENT** (in Cantonese): Mr LEE Cheuk-Yan, please sit down first. The Rules of Procedure of the Legislative Council are voted and made by Honourable Members, and as the President of the Legislative Council, I preside at meetings of the Council in accordance with the Rules of Procedure. However, the Rules of Procedure should not be in contravention of the Basic Law. With regard to your point of order, I now rule that the way in which the Secretary for Security has answered the question is not in contravention of the stipulations of the Rules of Procedure.

Mr LEE, it is not the time to argue about the Basic Law. So please cease the discussion on the Basic Law, as everyone understands your point.

**MR LEE CHEUK-YAN** (in Cantonese): *Madam President, I am not saying the Secretary for Security, I am talking about the Secretary for Commerce and Industry.*

**PRESIDENT** (in Cantonese): Mr LEE, you mean that there are problems with the main reply of the Secretary for Commerce and Industry, but as the Secretary for Commerce and Industry has not answered this question yet, so if you have any queries, please raise your supplementary after he has answered the question.

**SECRETARY FOR COMMERCE AND INDUSTRY** (in Cantonese): Madam President, the Government has been actively exploring various ways, under the framework of the World Trade Organization (WTO), to further strengthen trade and economic ties between the Mainland and the SAR, and has proposed to the Central People's Government the establishment of a FTZ between the SAR and the Mainland.

As the Central People's Government has yet to agree to the proposal in principle, it would be premature to comment on the details referred to in the Honourable Emily LAU's question.

**MISS EMILY LAU** (in Cantonese): *Madam President, I am totally disappointed that the Secretary has answer my question in such a way. I am*

*disappointed not because I have not got an answer, but because he said that the Central People's Government has yet to agree to the proposal in principle. I do not understand why the executive authorities would say, despite certain proposals have been made public, they cannot explain them to the Legislative Council since they may not be accepted in full. Exactly because of this reason, the Honourable LEE Cheuk-Yan has just referred to Article 64 of the Basic Law in order to elucidate that the executive authorities should be accountable to the Legislative Council and answer questions raised by Members of the Legislative Council.*

*May I ask the Secretary, if the executive authorities will not explain matters before the Legislative Council as long as they are not approved? Is this the policy of the Government? In other words, it is not necessary for the executive authorities to comply with Article 64 of the Basic Law and be accountable to the Legislative Council?*

**SECRETARY FOR COMMERCE AND INDUSTRY** (in Cantonese): Madam President, perhaps it was because I had intended to give a succinct answer that I did not make the explanation in greater details. In fact, up to now, the proposal put forward to the Central People's Government is only a proposal in principle, which does not include any details. As a result, any comment on the details would be premature.

**MR JAMES TO** (in Cantonese): *Madam President, I wonder if the Secretary for Commerce and Industry can further explain if the so-called proposal in principle mentioned by him is a proposal put forward to the Central People's Government that contains only the five words of "Setting up Free Trade Zone", in which no content is included at all? Is it just as simple as that? If that is the case, I believe the public would be extremely surprised and shocked.*

**SECRETARY FOR COMMERCE AND INDUSTRY** (in Cantonese): Madam President, my answer is that what the Honourable James TO has said is pretty correct. However, the public should not be shocked because things involved in a FTZ have been specified by provisions of the WTO. As a result, it is not just an empty proposal.

**MR LEE CHEUK-YAN** (in Cantonese): *Madam President, if the proposal just contains the five words, can the Secretary then further explain what the meaning of "under the framework of the WTO" is? Just as the Secretary has said, despite the fact that the proposal only contains these five words, it seems that the entire world understands the whole thing. Can the Secretary further explain what it does encompass?*

**SECRETARY FOR COMMERCE AND INDUSTRY** (in Cantonese): Madam President, I do not mean that the whole world understands all this. I only mean that, as far as the Central People's Government is concerned, it will not have difficulty in understanding our proposal just because there are only five words. It is because the Central People's Government has just joined the WTO after 15 long years of negotiations, they certainly know the contents of the provisions of the WTO.

Perhaps I did not explain very clearly when replying the supplementary of Miss Emily LAU, I would like to elaborate on it now. Under normal circumstances, if we propose anything to any trade partner, and if no consensus in principle has been reached, then we should by convention avoid public discussion, otherwise, it would be unfair to the trade partner on the one hand, and will not be favourable to constructive mutual discussions in future on the relevant issue on the other. As a result, it is only a convention, it is not something we should make a fuss about. The WTO allows the signing of free trade agreement between two or more single customs territories, but some fundamental requirements should be met. With respect to the trade in goods, Article XXIV of the General Agreement on Tariffs and Trade (GATT) stipulates that GATT is part and parcel of the WTO, and that duties and other restrictive regulations of commerce should be eliminated with respect to substantially all the trade between the constituent territories of the union or at least with respect to substantially all the trade in products originating in such territories. With respect to trade in services, Article V of the General Agreement on Trade in Services (GATS) prescribes that the agreement should have substantial sectoral coverage and should provide for the absence or elimination of substantially all discrimination either at the entry into force of that agreement or on the basis of a reasonable timeframe. Furthermore, the WTO also prohibits contracting parties to impose extra trade barriers and tariffs on non-contracting parties

because of the drawing up of the agreement (the free trade agreement), that is, there should not be extra trade barriers or tariffs imposed on third countries.

**MISS CHOY SO-YUK** (in Cantonese): *Madam President, may I ask the Secretary when and to which department the proposal was made?*

**SECRETARY FOR COMMERCE AND INDUSTRY** (in Cantonese): Madam President, I have explained in the main reply that the Government has been actively exploring various ways, and the proposal on FTZ is one of the ways. In the past two to three years, officials of the SAR, including the Chief Executive and the Financial Secretary, have made various proposals in principle to officials of the Central People's Government on different occasions, which include the so-called "free trade agreement" proposal. As to when and to whom was such proposal made, I do not have the information to facilitate my reply to Honourable Members.

**DR RAYMOND HO** (in Cantonese): *Madam President, recently, I have watched Mr LONG Yongtu, the Chinese chief negotiator with the WTO, on television in Beijing discussing with the people of Beijing the complexities of the WTO agreement. We have also learnt from the media that only nine people in China actually understand the content of the WTO agreement. The Secretary mentioned in his main reply that "the Government has been actively exploring various ways, under the framework of the WTO, to further strengthen trade and economic ties between the Mainland and the SAR", does the Government really understand the WTO agreement, and is it able to put forward an accurate proposal on FTZ to the Central People's Government according to the proposal on FTZ which is reportedly proposed by the local business sector? If the Legislative Council is able to reflect the views of the public, then the Legislative Council also wishes to know whether the proposal put forward to the Central People's Government by the SAR Government is really suitable for the development of Hong Kong? Does the Secretary think that he is duty-bound to explain that to the Legislative Council, or to give the Legislative Council a chance to discuss the relevant proposal?*

**SECRETARY FOR COMMERCE AND INDUSTRY** (in Cantonese): Madam President, I think Ir Dr the Honourable Raymond HO has looked down upon officials of the SAR Government. In fact, when the GATT was founded in 1947, Hong Kong was virtually one of its members. We signed the GATT in 1947 before it came into effect by 1948. Despite Hong Kong was a British colony, Hong Kong was a separate customs territory ever since then, therefore Hong Kong was separate from the United Kingdom. As a result, since 1948, Hong Kong has been enjoying the privileges and obligations under the GATT, and has been fulfilling the relevant obligations and enjoying the privileges. By 1986, after a consensus between the Central People's Government and the British Government had been reached in the Sino-British Joint Liaison Group, the then GATT was formally notified that under the provisions of the GATT, Hong Kong should maintain two status, the first one was that Hong Kong would continue to be a separate customs territory, and the second one was that Hong Kong would have autonomy in foreign trade relations policy. Under those circumstances, both sides did agree that Hong Kong was not only a substantive member, but also a nominal member. By the time the Uruguay Round ended in 1994, I signed the treaty on behalf of the Hong Kong Government. Consequently, Hong Kong became the founding member of the WTO in 1995. In the past decades, colleagues in the Government have comprehensive knowledge about the GATT and the WTO, therefore they are extremely experienced. For that reason, I have to repeat that Dr Raymond HO has really looked down upon us.

With regard to the question of whether the FTZ proposal is suitable for the condition of Hong Kong or in the interest of Hong Kong, I have just explained that the proposal put forward to the Central People's Government was only a proposal in principle, which did not include any details. Certainly, if the Central People's Government accepts our proposal in principle and we come to an agreement, then we can commence the relevant studies. In due course, the Government will definitely conduct an extensive consultation exercise on the business and industrial sector, including the professional sector, and account to the Legislative Council and listen to views of Honourable Members.

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

**DR RAYMOND HO** (in Cantonese): *Madam President, I would like to thank the Secretary for his efforts in explaining to us so as to make us have confidence in the Government. I have confidence in the Government, however, the Secretary has not answered my supplementary on whether the Government has the responsibility to explain to the Legislative Council the proposal put forward to the Central People's Government, with a view to allowing the Legislative Council to reflect views of Honourable Members and the public?*

**SECRETARY FOR COMMERCE AND INDUSTRY** (in Cantonese): *Madam President, perhaps Dr Raymond HO did not catch my points very clearly, or perhaps my Cantonese was not pure enough. I have reiterated twice, and I am going to repeat it the third time that the proposal of the Government did not include any details. If there are no details, how can I present the details to Honourable Members for discussions?*

**MR HENRY WU** (in Cantonese): *Madam President, there are three "one's" in the main reply of the Secretary, which make up 111 words. In the brief reply of the Secretary, he mentioned that the Government has proposed to the Central people's Government on the establishment of the FTZ in the past. Does it mean that the Government is revisiting the proposal? If the answer is yes, then what is the difference between the old proposal and the current one?*

**SECRETARY FOR COMMERCE AND INDUSTRY** (in Cantonese): *Madam President, perhaps the Honourable Henry WU has confused about the time, but I do not quite understand what Mr Henry WU means by "the old" proposal. However, I can say that concerning the FTZ proposal in principle, the SAR Government has only proposed it once to the Central people's Government, therefore I have no comment on the supplementary of Mr WU, because we have proposed it only once, therefore we are unable to make any comparison.*

**MISS EMILY LAU** (in Cantonese): *Madam President, even if it is a proposal in principle, may I still ask what difficulty the Secretary observes in the implementation of this principle? What kind of difficulty should be resolved before the FTZ can be established?*

**SECRETARY FOR COMMERCE AND INDUSTRY** (in Cantonese): Madam President, this supplementary carries a hypothesis, that is, if the Central Government agrees with us in principle on the establishment of a FTZ. Madam President, since such a hypothesis is not tenable, I therefore do not wish to make any speculative response.

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

### **Appointment of Members to Advisory or Policy Committees of Public Organizations**

5. **MR MICHAEL MAK** (in Cantonese): *Madam President, last month, the Hospital Authority (HA) appointed the members of its Public Complaints Committee (PCC) for a new term. It was reported that one of the senior members was not re-appointed because he had often openly criticized the medical professionals as defending one another. In this connection, will the Government inform this Council if it knows whether public organizations:*

- (a) *will consider factors such as the political background, religion, occupation and education level of the candidates when making appointments to their advisory committees or policy committees;*
- (b) *will take into account the criticisms of the organization concerned by the members during their term of office, when deciding on whether to re-appoint them; if so, of the specific criteria used to assess the criticisms; if not, how they ensure that there would be no retaliation against the making of criticisms; and*
- (c) *have any measures to enhance the transparency of their appointment mechanisms?*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, my reply to the Honourable Michael MAK's question is as follows:

- (a) Statutory public organizations normally have independent power to set up different advisory and policy committees according to their

needs to assist them in performing statutory and other functions. In considering appointments to these committees, the organizations concerned will, taking into account the functions and operational requirements of individual committees, appoint members of the community with appropriate ability, expertise, experience, integrity and commitment to public service. Factors not related to the above considerations, such as political background, religion, and so on should not be taken into account.

- (b) Statutory public organizations have full autonomy in deciding whether incumbent members should be re-appointed upon the expiry of their terms. These organizations will in general consider factors such as the performance of the members at the committee and their contributions, their attendance at meetings, their participation in relevant discussions and activities, their commitment to public service and the overall length of their terms. As Hong Kong has long been an open and free community, the public organizations would agree that members should give their personal views honestly. Hence, there should be no retaliation against the making of criticisms.
- (c) Statutory public organizations should explain directly to the public the appointment mechanism adopted for their committees when necessary. The Government agrees that these organizations should improve the transparency of their appointment mechanism provided the measures do not infringe the privacy of individual members.

**MR MICHAEL MAK** (in Cantonese): *Madam President, in paragraph (a) of the main reply, the Secretary said the organizations would appoint members with appropriate ability, expertise, experience and integrity. He, however, left out the representativeness of the relevant person, especially the person's representativeness in the sector, such as his being popularly elected. Will the Secretary inform this Council whether the omission to consider that representativeness causes the voice of the sector to be ignored?*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, what I mentioned just now are just some general conditions. If the relevant person



has done similar work and possesses representativeness, his expertise and experience will be considered. I trust these conditions should have covered the case mentioned by Mr MAK.

**MR ANDREW CHENG** (in Cantonese): *Madam President, the Honourable Member raised the question because one or two senior members of the PCC were not re-appointed and these two persons did criticize the work of the PCC and the HA. As far as the conditions and criteria for re-appointment is concerned, will the Secretary inform this Council how the Government will clear itself of suspicion that it tends not to re-appoint those "trouble-makers" who, while in office, criticized the structure and the work of the Government? Will the Secretary inform this Council what criteria are in place to convince the public that the Government will not do that?*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, for appointment of members to committees under the HA, the Government cannot answer the question on its behalf. But in general members of committees in the Government are pluralistic. I have worked for the Government for 27 years and have joined numerous committees. I have met committee members who criticized us harshly and very often these people were appointed for extended periods.

**PRESIDENT** (in Cantonese): Mr CHENG, has your supplementary question not been answered?

**MR ANDREW CHENG** (in Cantonese): *Madam President, the Secretary has not answered my supplementary question at all. Perhaps let me rephrase my supplementary question to see if the Secretary understands it before he replies. When the time comes to consider re-appointment, some members may be re-appointed repeatedly for extended periods because they had previously been low-keyed and co-operative. However, some other members might have made harsh criticisms frequently, bringing difficulties to the work of Policy Bureaux. Such members are often quickly ruled out for re-appointment. Thus, the community may feel suspicious about the re-appointment decisions made by the Government. Will the Secretary inform this Council what criteria there are in*

*order to tell the public the Government will not cover up members who support the Government?*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, I have explained in detail the factors we have to consider in general in making appointments of members to committees. The most important principle is to appoint the most suitable person. "Suitable" means possessing the ability, expertise, experience, integrity and commitment to public service. Undeniably, some people make their opinions known to the Government in a low-keyed way, while some may choose to air their views about government policies to others in a high profile. Criticisms and opinions are just what the Government wants to solicit from members in appointing them. Though I cannot speak for all committees, my personal experience is that we have to consider those factors mentioned in paragraph (a) of my main reply in making re-appointments. We never stopped re-appointing someone because he had made harsh criticisms against the Government. With 27 years of experience in public service, I can give a definite answer to the Honourable Andrew CHENG's supplementary question.

**DR LO WING-LOK** (in Cantonese): *Madam President, the Honourable Michael MAK referred to a specific case, but the answer provided by the Secretary is about general principles. Will the Secretary inform this Council of the terms of reference of the PCC in detail? What criteria for appointment to the PCC are being adopted under the terms of reference of the PCC?*

**PRESIDENT** (in Cantonese): Which Secretary would like to answer this supplementary question? Secretary for Health and Welfare.

**SECRETARY FOR HEALTH AND WELFARE** (in Cantonese): Madam President, let me give a detailed explanation in respect of the PCC. Under section 13 of the Hospital Authority Ordinance, the HA may establish committees for the better performance of its functions. The PCC is one of the committees under the HA. Its main duty is to act as an appeal mechanism to deal with public complaints against the HA. The PCC is a final mechanism of

appeal. So, in appointing members to it, the HA would like to have broad representativeness from the members and to have more members from the public. The HA would like to include people from different trades in the PCC, such as people who are concerned about the interests of the patients, and people from the religious, medical care, legal and social work sectors. The HA will conduct periodic reviews on the PCC. In fact, in September this year, the HA conducted a review. Former members just ended their terms of office in the end of November and new members were appointed in the beginning of December.

Previously, there were eight members in the PCC. Two of them, the Chairman and the convenor of the investigation subgroup, have the longest period of service and were re-appointed to the current PCC because the HA deemed it necessary to have continuity in service. On the other hand, it is necessary to make some changes in membership to obtain balanced views. Hence, three members were not re-appointed this time and they were those with the longest service among other members, each having served for over four years. The three members came from the medical care sector, the religious sector and one of them was a businessman.

However, the HA would like to have more participation from people of various trades in the community. Thus, not having re-appointed the three members mentioned above, the HA appointed eight persons to the PCC. Among them are one person from the nursing sector, one from the religious sector (an active person in community affairs), one from the medical care sector, a District Court Judge, a person from the banking sector, a person from the accounting sector (also an active person in community affairs), one from the social service sector and a businessman (also a person-in-charge of a mutual aid organization for cancer patients). The HA feels, and we agree, that replacing the three persons not re-appointed with these eight people on the whole adds representativeness to the PCC and participation from the community.

**MR FRED LI** (in Cantonese): *Madam President, will the Government inform this Council what mechanism there is for determining the type of public organizations whose lists of persons to be appointed to their consultative committees have to be ultimately endorsed by the Chief Executive and whether the Chief Executive has the power to add names to or delete names from the lists?*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, the question of which level of officials is appropriate for determining appointments to committees is left to the Policy Bureaux. Under normal circumstances, we will consider letting the highest level decide if the relevant committee is a high level policy committee, that is, decision will be left to the Chief Executive. However, most of the time, heads of Policy Bureaux or even departments are delegated with sufficient powers to appoint members to committees.

**MR FRED LI** (in Cantonese): *Madam President, I asked about the existence of a mechanism. I am not sure if the Secretary has answered my question because I still do not have a firm idea about the existence of a mechanism. At the moment, it seems an individual makes the decisions.*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, I pointed out that decisions are made by the respective Policy Bureaux in the light of the nature and importance of the committees.

**MISS EMILY LAU** (in Cantonese): *Madam President, in paragraph (b) of the main reply, the Secretary said that statutory public organizations have full autonomy in deciding whether incumbent members should be re-appointed upon the expiry of their terms. Will the Secretary inform this Council whether that referred to the persons at the top of the hierarchy of the organizations? Or do the governing committees of the organizations make the decisions?*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, there are many kinds of statutory public organizations. By and large, it all depends on what committees they are as prescribed by the law and which authority is responsible for appointment matters, as stipulated in the law. Therefore, it is difficult for me to provide details to my answer to that question. In paragraph (b) of the main reply, I was referring to the autonomy of the organizations, which means that appointment of members may be made without having to seek approval from the Government.

**MR MICHAEL MAK** (in Cantonese): *Madam President, just as the Secretary said, in the appointment mechanism in statutory public organizations, Policy Bureaux submit the proposed name list to the Chief Executive. I am not sure if the Chief Executive would endorse the name lists wholesale, acting like a "rubber-stamp". Will the Secretary inform this Council whether the appointments list is determined by the head of a Policy Bureau alone or would all relevant persons, such as persons from the respective sectors, be consulted before appointment? Who will be consulted?*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, I would like Members to be clear about one point. The appointment of members to a managing body or a management framework and what is asked about in this question are two different things. The question is about the appointments to committees under statutory public organizations. If Mr MAK would like to enquire about appointments to management organizations of statutory public organizations, he must first refer to the relevant laws to find out the official designated to make an appointment. If the law stipulates that a relevant Policy Bureau or even that the Chief Executive is designated to make an appointment, we have to consider the same conditions as those outlined in paragraph (a) of my main reply. In fact, if it is the Government that makes the appointment, we have issued very clear guidelines to the relevant Policy Bureaux for reference. These guidelines contain all of the conditions outlined by me just now.

**MR MICHAEL MAK** (in Cantonese): *Madam President, the Secretary has not answered my supplementary question. I asked whether people in the respective sectors would be consulted.*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, in appointing members to some of the committees, the committees may consult the relevant sectors and even allow them to elect members. Thus, I cannot give an answer to cover all situations. It all depends on the requirements of the law. For example, many members of the Hong Kong Arts Development Council are elected by the sector. Furthermore, there are laws that state that representatives in some committees must be nominated by the relevant sector before appointment by the Government. Thus, different scenarios will arise in this subject,

depending on the relevant provisions of the laws governing the statutory organizations.

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

### **Co-operation Plans for New Airport in Guangzhou**

6. **MR HUI CHEUNG-CHING** (in Cantonese): *Madam President, the Guangzhou New Baiyun Airport (GNBA), which is being built to the scale of an aviation hub, will soon come into operation. It has been reported that some mainland experts predict the air freight market in the Pearl River Delta, including Hong Kong, can only sustain one aviation hub. Regarding the co-ordination of passenger and cargo handling capacities of the GNBA and the Hong Kong International Airport (HKIA), will the Government inform this Council whether:*

- (a) *it has assessed the short-term and long-term impact of the commissioning of the GNBA on the growth of passenger and cargo throughput of the HKIA; and*
- (b) *the SAR Government has held discussions with the Guangdong Provincial Government with a view to formulating streaming and co-operation plans for the two airports; if so, of the details?*

**SECRETARY FOR ECONOMIC SERVICES** (in Cantonese): Madam President, the Government and the Airport Authority (AA) have been monitoring the development of other major airports in the region and the trend in the aviation market to assess the possible impact on the HKIA. We believe that China's accession to the World Trade Organization (WTO) will generate considerable growth in the region's external trade which will in turn generate additional demand for air transportation. According to the air traffic forecasts of the Airports Council International, the demand for passenger and cargo air services in the Asia-Pacific Region will grow at an annual rate of 5% and 6% respectively over the next 20 years. Therefore, we expect both the HKIA and the new Guangzhou airport to benefit from this growth in demand and to have their own scope for development.

The HKIA has world-class hardware facilities and efficient passenger/cargo handling capabilities. It also has an extensive air services network, high flight frequencies as well as comprehensive and efficient supporting services and facilities. At present, 65 international airlines operate about 3 850 scheduled flights every week between Hong Kong and 130 destinations worldwide. Such an extensive air services network and efficient supporting services and facilities will require time to establish. In the short term, the opening of the new Guangzhou airport should not have a significant impact on the growth of passenger and cargo traffic at the HKIA.

In the longer term, the development of other airports in the Pearl River Delta will create a more competitive market environment for the HKIA. We realize that we need to continuously enhance our competitiveness in order to attract more passengers and cargo to use the HKIA as a hub. To this end, the Government and the AA have formulated appropriate policies and measures, such as to continue with the progressive liberalization of our air services market, to further improve the HKIA's passenger/cargo handling facilities and to increase connectivity with the Pearl River Delta, to reinforce the position of Hong Kong as an international and regional aviation centre.

The HKIA and other airports in the Pearl River Delta, including the new Guangzhou airport, have different competitive advantages which if well coordinated, could be complementary. To this end, the AA has been in contact with the relevant mainland authorities to explore co-operation possibilities. The AA also took the initiative to organize a forum involving the five airports in the Pearl River Delta in July this year. The aim of the forum was to strengthen communication among the airports and to explore beneficial co-operation opportunities in areas such as passenger/cargo handling, airport business and operation and staff training. Two task forces have also been set up after the forum to undertake joint business promotion on the international market and to provide mutual assistance during emergency/crisis situations. As the discussion is still in the exploratory stage, no concrete co-operation plan has been developed yet.

**MR HUI CHEUNG-CHING** (in Cantonese): *Madam President, in the third paragraph of the main reply, the Secretary indicated that the Government would have appropriate policies to enhance our competitiveness. I do support this idea. However, the operational costs of the HKIA are really higher than that of*

*mainland airports, the efficiency of which has been upgrading. May I ask the Secretary whether the HKIA has any plans to reduce its passenger and cargo handling charges?*

**SECRETARY FOR ECONOMIC SERVICES** (in Cantonese): Madam President, first of all, I would like to talk about the policies and measures that we have taken to enhance the competitiveness of Hong Kong. With regard to the progressive liberalization of air rights, recently, it has often been said that we should liberalize the fifth freedom rights. In fact, ever since the commissioning of the new airport, we have been actively liberalizing air traffic rights. As regards supporting facilities, Honourable Members may have learned from newspapers or heard at Panel on Economic Services meetings that there is a development plan for our airport up to 2020.

As for competitive advantages, let me just mention one or two examples. Firstly, there are 65 airlines in Hong Kong, out of which, three are local airlines and six are mainland airlines; and of the 130 destinations, 92 are international destinations while 38 are mainland destinations of our country. Compared to the present Guangzhou airport, we have 65 international airlines while Guangzhou has only 17, out of which seven are its own mainland airlines. As regards scheduled flights, we have 92 international flights while Guangzhou has 17 overseas scheduled flights. I have cited this example to illustrate the competitive advantages of Hong Kong. We would continue to maintain our competitive advantages so that they would be continuously developed.

The second example is on price issues. In fact, not all airport levies are charged by the AA alone. Apart from taking off and landing charges, there are also a lot of other freight-forwarding administrative charges, and the relevant arrangements are made between freight-forwarding units and cargo owners with reference to airport operations. Of course, this is the decision of the relevant freight forwarders. I also understand that on the one hand, they are required to invest in the latest technology, enhancing their efficiency and quality of service, so that our airport can maintain the competitive advantages of being fast and accurate, while we also hope to be competitive in pricing on the other.

**MS MIRIAM LAU** (in Cantonese): *Madam President, the greatest competitive advantage of our air transportation industry is, apart from the fact that we have*



*hardware facilities of international standards, we also have high flight frequencies — as many as 3 850 scheduled flights weekly. However, with continuous improvements in mainland airports, their hardware facilities are now comparable to those of Hong Kong. As the Honourable HUI Cheung-ching said earlier, our fees are really high. Under such circumstances, is the Government worried that there will be less scheduled flights to Hong Kong, thus undermine in our competitive advantages, or at least, we will not be as competitive as before? In this regard, does the Government have any longer-term plans to ensure that the number of our scheduled flights will at least maintain the status quo, or even continue to increase?*

**SECRETARY FOR ECONOMIC SERVICES** (in Cantonese): Madam President, first of all, we are very mindful of liberalizing air traffic rights, and we also hope that the number of flights and destinations will continue to grow. Moreover, we also understand that in order to become a hub, we must have a strong and expanding cohesive force. Apart from flights, our supporting facilities also play a very important role in this. I would like to take this opportunity to cite another example. The AA has already granted approval for the development of a logistics centre, in the hope that it can be completed and start operation in 2003. Furthermore, in order to expand and extend this cohesive force, Members may have heard that we have plans to invest and set up an exhibition centre at the airport. Such supporting measures are made to consolidate our position as a hub and make Hong Kong more attractive to inward trade and passengers as a place of transit.

In the main question, Mr HUI Cheung-ching asked whether we would continue to hold discussions with relevant authorities and whether our counterparts in Guangdong have any plans. Here, I would like to introduce a question on mechanism and legislation. The existing Airport Authority Ordinance provides that the AA can only provide airport-related services at the HKIA and its immediate vicinity. So, if plans for co-operation with other airports in the Pearl River Delta area are to be implemented in the future, the AA should be allowed to expand its sphere of activities. In this connection, the AA has proposed that the Chief Executive should make an order under the Airport Authority Ordinance to expand its sphere of activities. We have consulted the Panel on Economic Services in October in relation to this proposal. I hereby urge Honourable Members to support this order when it is presented to the Legislative Council for negative vetting early next year, because without this

order, any arrangements that the AA may have made will have no statutory backing.

**MR AMBROSE LAU** (in Cantonese): *Madam President, in the third paragraph of the main reply, the Secretary said the HKIA's passenger/cargo handling facilities will be further improved and ..... I am sorry, what I really want to say is, the Secretary said in the fourth paragraph of the main reply that the AA has been in contact with the relevant mainland authorities to explore co-operation possibilities. It also took the initiative to organize a forum involving the five airports in the Pearl River Delta in July this year, but no concrete co-operation plan has yet been developed. May I ask the Secretary whether it will consider implementing a specific co-operation plan through a more effective and direct official communication channel, such as establishing a standing committee under the Hong Kong-Guangdong Co-operation Joint Conference?*

**SECRETARY FOR ECONOMIC SERVICES** (in Cantonese): Madam President, as regards airport management, we think it would be better for such matters to be handled by airport management units because the airports under discussion are all operated and managed according to commercial principles. As regards co-operation among the airports, it would be best if the airports can work with each other. However, if the need arises, we will also liaise with the relevant government authorities and our counterparts in other parts of Guangdong Province, so as to support the proposals of the AA and other airports.

**MR HENRY WU** (in Cantonese): *Madam President, at the end of the second paragraph of the main reply, the Secretary said "the opening of the new Guangzhou airport should not have a significant impact on the growth of passenger and cargo traffic at the HKIA". This shows that the Government has actually made an assessment. Ms Miriam LAU also said earlier that the hardware facilities of the new airport should be very advanced and by no means inferior to Hong Kong. And, as mentioned in the main reply, with China's accession to the WTO and development of Guangdong Province, it is anticipated that the flight frequencies of the new airport will be greatly increased. However, the Government said in its main reply that the new airport should not have a significant impact on the HKIA. Will the Secretary tell us what kind of data has*

*the Government actually got on the new airport, such as information on the kind of hardware facilities that are available at the new airport or the passenger/cargo handling capacities of the new airport, to enable it to give such a reply?*

**SECRETARY FOR ECONOMIC SERVICES** (in Cantonese): Madam President, when we look at the airports in the region, we should not only look at the Guangzhou airport but also the other three airports. Let me first talk about the new Guangzhou airport. According to our information, Phase I of the new Guangzhou airport should be commissioned in 2003 and it is believed that by then its yearly passenger handling capacity will be about 58% of that of the HKIA, that is, 25 million to 27 million passenger trips. Its designed passenger handling capacity, that is, its maximum handling capacity is about 80 million passenger trips, and this is 8% less than that of the 87 million passenger trips of our airport. We understand that the maximum freight throughput of the new Guangzhou airport is 1 million metric tons while that of our airport is 3 million metric tons. However, we have already started to build nine more cargo aircraft landing structures and will continue to expand our cargo handling facilities. The freight capacity of the HKIA will eventually reach 9 million metric tons. Furthermore, we understand that the figure for the Guangzhou airport in this area is about 2.5 million metric tons, that is, about 28% of that of the HKIA.

Furthermore, I have also talked about the air services network earlier. This network will certainly continue to develop. From the standpoint of Hong Kong, we would certainly develop our air services network continuously and actively.

In fact, we also have to look at the situation of airports in the neighbourhood. Briefly speaking, the freight throughput of the Shenzhen airport is 200 000 metric tons in 2000 compared to our freight throughput of 2.27 million metric tons and 8 800 metric tons of the Zhuhai airport. Furthermore, we have also looked at the freight throughput of Macao and its figure for last year is 70 000 metric tons. Therefore, compared to these airports, Hong Kong still enjoys a leading position and we must continue to actively consolidate this position. Members may have therefore learned that the AA has proposed many development plans and it is anticipated that these development plans can be carried on until after 2020. At the same time, we have also

invested resources to continue to improve our aviation management initiatives at the airport. When the number of taking off and landing at our airport increases, apart from additional manpower, we must also bring in a new technology, so that we can continue to maintain the good reputation we enjoy internationally on high safety standards, while the frequency of our flights increases.

**DR RAYMOND HO** (in Cantonese): *Madam President, in the fourth paragraph of the main reply, the Secretary for Economic Services talked about the problem of co-ordination and competition between the HKIA and other airports of the Pearl River Delta. She pointed out that the AA has been in contact with the relevant mainland authorities and two task forces have been set up after the forum in July this year, but the only responsibility of these two task forces is to jointly promote businesses in the international market. May I ask the Secretary, as regards the issues of joint discussion, co-ordination and competition, if there are other channels or other formal task forces for carrying out such work?*

**SECRETARY FOR ECONOMIC SERVICES** (in Cantonese): Madam President, after the forum in July, the AA and the relevant mainland authorities will hold a second meeting in March next year and both parties are now exchanging information. At the moment, both parties can discuss the proposals in detail and exchange information at the level of the airport forum. Once specific proposals and blueprints have been drawn up, we are very happy to assist in their promotion through other channels. However, Madam President, I would like to reiterate that though both parties will not meet until March, we must amend the existing Airport Authority Ordinance, so as to allow the AA to implement its plans on co-operation with other airports in the region.

**PRESIDENT** (in Cantonese): This Council has spent more than 17 minutes on this question. Last supplementary question.

**MR HUI CHEUNG-CHING** (in Cantonese): *Madam President, may I ask the Secretary when the second forum will be held after the forum in July this year?*

**SECRETARY FOR ECONOMIC SERVICES** (in Cantonese): Madam President, the next forum is planned for March next year.

**PRESIDENT** (in Cantonese): Question time ends here.

## **WRITTEN ANSWERS TO QUESTIONS**

### **Measures to Control the Spread of Legionnaires' Disease**

7. **DR LO WING-LOK** (in Chinese): *Madam President, by the end of last month, there were three cases of Legionnaires' Disease (LD) this year whereas there were only two such cases last year. Subsequent to the receipts of reports, the departments concerned took water samples at various places for testing and discovered that some of those from the water cooling towers of water-cooled air conditioning systems (WACS) contained a high concentration of Legionella pneumophila. In this connection, will the Government inform this Council:*

- (a) *whether it has assessed if the risk of the public being infected by LD is increasing; if it is so, of the reasons for that;*
- (b) *of the measures in place to prevent the growth and spread of Legionella pneumophila, and whether such measures are backed up by legislation; and*
- (c) *whether there are differences in regulating the WACS installed in government buildings and those in private buildings; if so, of the details?*

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

- (a) LD is rare in Hong Kong. Up to date, there have only been 15 cases since 1994. Only one to three cases are reported each year with an annual average of less than two. The incidence rate was only 0.1 to 0.5 per million population. Therefore, there is no evidence showing that the risk of the public being infected by LD is increasing.
- (b) The Prevention of Legionnaires' Disease Committee first published in 1994 the Code of Practice for the Prevention of Legionnaires' Disease. Taking into account the experience and evolving

knowledge of other countries in the past years, a revised Code of Practice was published in 2000 to provide the building owners, building management agents and building services practitioners with practical guidelines for the design, installation, operation and maintenance of air conditioning and water systems for the effective control and prevention of LD.

At present, Hong Kong has an effective infectious disease surveillance system. Since March 1994, LD has been specified as a notifiable disease under the Quarantine and Prevention of Disease Ordinance (Cap. 141). All notified cases will be thoroughly investigated by the Department of Health and the Electrical and Mechanical Services Department jointly to identify the source of infection and take steps to prevent the spread of the disease. The home, workplace and other places visited by the patient during the incubation period will be investigated to identify aerosol generating water systems, such as cooling towers, showers and fountains. The maintenance records of the relevant systems will be examined, and samples will be taken for laboratory testing. Advice on the disinfection and maintenance will be given to the system owner, and follow-up investigation will be carried out after disinfection of the system. If the source of infection of LD can be confirmed, appropriate actions will also be taken under the relevant existing ordinance.

- (c) At present, there is no difference in regulating the water-cooled air conditioning systems in government buildings and those in private buildings.

### **Protection of a Historical Building in Tuen Mun**

8. **MR LAU WONG-FAT** (in Chinese): *Madam President, will the Government inform this Council whether it will consider preserving the building in Tuen Mun which was constructed in 1936 and used to accommodate Tat Tak College in the late 1940s, and declaring it as a statutory monument?*

**SECRETARY FOR HOME AFFAIRS** (in Chinese): Madam President, the building of the former Tat Tak College is situated in Tuen Mun. Built in 1936, it was originally used as a private villa. It became the school premises of Tat Tak College between 1946 and 1949 and was subsequently used for private purpose.

The Government is now actively negotiating with the property owner with a view to arriving at a mutually acceptable arrangement to preserve the building of the former Tat Tak College *in-situ*. Once an agreement is reached, the Government will consult the Antiquities Advisory Board on the declaration of the building as a monument.

### **Use of Forged Identity Documents to Open Bank Accounts**

9. **MR ERIC LI** (in Chinese): *Madam President, will the Government inform this Council whether:*

- (a) *the number of cases involving the use of forged identity documents to open bank accounts has been on an upward trend in the past three years; and*
- (b) *the respective designs of the identity documents can help and facilitate banks in establishing the authenticity of these documents?*

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

- (a) The number of offences involving the use of forged identity cards and travel documents against banks or financial institutions is provided below:

<i>Year</i>	<i>Use of forged identity cards against banks or financial institutions</i>	<i>Use of forged travel documents against banks or financial institutions</i>
1998	20	1
1999	20	6
2000	28	12
2001	19	7
(January to November)		

The number of such cases remains consistently low in the past three years. The police do not maintain separate statistics on the cases in which bank accounts are opened by people using forged identity documents.

- (b) Identity cards issued by the Immigration Department, which are normally used by Hong Kong residents for opening bank accounts, contain easily identifiable security features such as watermarks, security lines, rainbow and spiderweb patterns, multi-colour graphics and ultra-violet safeguards. Other identity documents such as Hong Kong Special Administrative Region passports also contain identifiable security features including optical variable device, security lines, watermarks, intaglio and micro-printing. These features can facilitate banks and other financial institutions in establishing the authenticity of the identity documents of their clients.

To help banks and financial institutions better understand the different types of identity documents and their security features, the Immigration Department provides briefings to their staff upon request. Such briefings may cover security features which can be detected through the naked eyes and features usually found on forged identity documents. When suspicious identity documents are encountered, the staff concerned should contact the Immigration Department via its Investigation Hotline at 2824 1551.

The existing form of identity card was introduced in 1987. It will be replaced by a more sophisticated form of identity cards in mid-2003. The new identity card will be chip-based and incorporate state-of-the-art security features (for example, laser engraving technology for personalization of data) to make forgery and impersonation difficult. The Immigration Department will advise banks and financial institutions of such features at an appropriate time.



**Emission of Smoke from Diesel Vehicles**

10. **MR ANDREW CHENG** (in Chinese): *Madam President, regarding the emission of smoke from diesel vehicles, will the Government inform this Council:*

- (a) *of the number of diesel vehicles on which emission tests were conducted on the spot by the police and the number of them which failed the tests, in each of the past two years;*
- (b) *whether it has issued guidelines on the testing procedures and methods to front-line police officers conducting the tests; if so, of the contents of the guidelines; if not, the reasons for that; and*
- (c) *whether it has received complaints or reports about diesel vehicles emitting more smoke after the installation of diesel catalytic converters; if so, of the relevant figures for last year and the reasons for these vehicles emitting more smoke?*

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

Madam President,

- (a) The number of diesel vehicles suspected to be emitting excessive smoke and tested by the police on the road and the number of vehicles that had failed the tests over the past two years are set out below:

<i>Year</i>	<i>Number of vehicles tested</i>	<i>Number of vehicles which failed the tests</i>
2000	9 533	6 955
2001 (January to November)	3 911	2 331

- (b) Police officers responsible for operating the smoke testing equipment have to complete an internal training course before they

will be allowed to operate the equipment. They are also required to follow the testing procedures (at Annex) prescribed by the equipment supplier in operating the equipment.

- (c) Between September 2000 and October 2001, the Government implemented a programme to provide financial assistance to encourage owners of pre-Euro light diesel vehicles to retrofit their vehicles with particulate reduction devices. During that period, about 4 700 vehicles that participated in the programme chose to retrofit their vehicles with diesel catalytic converters. Up to 6 December 2001, the contractor concerned had received 29 complaints against smoke emissions from vehicles that had been retrofitted with the diesel catalytic converters. The contractor had thoroughly examined these vehicles and found that the diesel catalytic converters were working properly and that the vehicles concerned were emitting smoke because they had not been properly maintained. For example, the air or oil filters of some vehicles had not been promptly replaced while the fuel injectors of some suffered from excessive wear and tear.

Annex

#### Smoke Testing Equipment Operating Procedures:

1. Switch on the smoke testing equipment. Start the engine of the vehicle to be tested. Let the engine run until it reaches normal operation temperature. Press the vehicle accelerator to the floor three times in order to remove any soot remaining in the exhaust pipe.
2. Clamp the test tube of the smoke testing equipment onto the exhaust pipe of the vehicle.
3. When the "READY" signal of the testing equipment is on, press the vehicle accelerator to the floor quickly, keep the engine running at a high speed until the "READY" signal is off, release the accelerator and then let the engine return to idling state.

4. Repeat Step 3 above several times. A stable figure indicating the average of the last three emission tests will appear on the screen.
5. After the test is completed, remove the test tube and press the "PRINT" key to print out the test result.

### **Providing Low-interest Loans to Negative-equity Owners Funded by Issuing Bonds**

11. **MR KENNETH TING** (in Chinese): *Madam President, to alleviate the financial burden of "negative-equity" owners, will the Government inform this Council whether it will consider issuing bonds which offer a higher yield than the time deposits interest rates offered by banks, so as to absorb idle money which may then be lent as low-interest loans to such property owners?*

**SECRETARY FOR FINANCIAL SERVICES** (in Chinese): Madam President, the proposal for the Government to issue bonds which offer a higher yield than the time deposits interest rates offered by banks, and lend the money so absorbed as low-interest loans to negative equity owners is, in essence, asking the Government to use public money to subsidize such persons. As we have pointed out before, using public money to assist those in negative equity will create moral hazards and bring about financial risks to the Government. It would be imprudent to adopt such an approach.

To relieve the burden of persons in negative equity in repaying their mortgage loans, the Hong Kong Monetary Authority has earlier on issued a guideline to banks permitting the offer of refinancing residential mortgage loans to homeowners in negative equity of up to 100% of the current market value of the mortgaged property. At the same time, some banks have indicated that applications for re-scheduling of mortgage loans will be dealt with on a case-by-case basis, including extension of repayment period, offer of preferential interest rates, or repayment of interest first and principal later. Some banks have also set up dedicated teams or telephone hotlines to handle applications for re-scheduling of mortgage loans in negative equity.

**Statistics on Legionnaires' Disease**

12. **MISS CHAN YUEN-HAN** (in Chinese): *Madam President, two cases of Legionnaires' Disease (LD) in October were reported to the Department of Health (DH). The Electrical and Mechanical Services Department (EMSD) subsequently collected water samples for testing and found that some samples collected from cooling towers of water-cooled air conditioning systems contained a high concentration of Legionella pneumophila. In this connection, will the Government inform this Council:*

- (a) *of the following in each of the past three years,*

  - (i) *a breakdown of the number of persons infected with LD by their place of residence;*
  - (ii) *the number of persons who died of LD;*
  - (iii) *the number of water samples found to contain Legionella pneumophila by the DH; and the number of these samples collected from cooling towers; and*
  - (iv) *the number of site checks on cooling towers conducted by the EMSD; and the number of reminders issued to the persons-in-charge concerned for contravention of the Code of Practice for Prevention of Legionnaires' Disease; and*

- (b) *whether it will introduce legislation to monitor the operation and maintenance of such cooling towers; if it will, of the legislative timetable; if not, the reasons for that?*

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

- (a) (i) *In the past three years, the breakdown of the number of persons infected with LD in each year by their place of residence are shown below:*

<i>Year</i>	<i>Number of Infected Person</i>	<i>Place of Residence of the Infected Person</i>
1999	1	Central and Western District
2000	1	Kwai Tsing
	1	Kowloon City
2001 (January to November)	1	Central and Western District
	1	Tseung Kwan O
	1	Kwun Tong

For all the above cases, there is no evidence to confirm the sources of LD.

Hong Kong has an effective infectious disease surveillance system. Since March 1994, LD has been specified as a notifiable disease under the Quarantine and Prevention of Disease Ordinance (Cap. 141). From 1994 to 1998, there were a total of nine cases. Only one to three cases were reported each year with an annual average of less than two. These were comparable with the figures in the past three years.

- (ii) In the past three years, all patients had recovered and there were no persons who died of LD.
- (iii) In the past three years, all the six cases reported were caused by *Legionella pneumophila* serogroup 1. During the investigation of these cases, eight out of 43 samples were found to contain *Legionella pneumophila* serogroup 1, including seven water samples from water cooling towers and one swab from a water cooling tower. The breakdown by year is shown below:

<i>Year</i>	<i>Water Sample</i>	<i>Swab</i>
1999	0	0
2000	4	0
2001 (January to November)	3	1

Although legionella organisms were found in cooling towers, there was no evidence showing that these legionella organisms were associated with LD.

- (iv) In the past three years, the number of inspections on cooling towers by the EMSD and the number of reminders issued are shown below:

<i>Year</i>	<i>Number of Inspections</i>	<i>Number of Reminders</i>
1999	0	0
2000	5	4
2001 (January to November)	9	4

The EMSD will collaborate with the DH to investigate the LD cases. Advice will be provided on the maintenance and disinfection of the relevant cooling towers and water systems, and follow up the cases.

- (b) At present, the Prevention of Legionnaires' Disease Committee has published the Code of Practice for the Prevention of Legionnaires' Disease to provide the building owners, building management agents and building services practitioners with practical guidelines for the design, installation, operation and maintenance of air conditioning and water systems. There are some 12 000 existing cooling towers in Hong Kong. The EMSD has appointed a

contractor to tighten the inspection work in end 2001. If the cooling towers are found to be contaminated, advice will be given to the cooling tower owners to carry out cleansing and disinfection. The EMSD will also follow up the cases. It is anticipated that the inspection of the 12 000 cooling towers will be completed by end 2002.

Hong Kong has an effective infectious disease surveillance system. LD is also rare in Hong Kong. The incidence rate is only 0.1 to 0.5 per million population, which is very low. There is no evidence showing that the risk of the public being infected by LD is increasing. Nevertheless, we will carry out reviews from time to time and further tighten the control measures when necessary.

### **Teacher-student Ratios of Aided Schools**

13. **MR YEUNG YIU-CHUNG** (in Chinese): *Madam President, will the Government inform this Council:*

- (a) *of the respective average teacher-student ratios, the number of students per class and the number of teaching periods per teacher per week in aided secondary and primary schools at present;*
- (b) *how these figures compare with those five years ago and the corresponding figures in advanced countries in Europe and America as well as those in the neighbouring countries or regions; and*
- (c) *whether it will consider reducing the number of teaching periods per teacher per week by a quarter; if it will, of the additional resources required per year; if it will not, the reasons for that?*

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

- (a) The Education Department (ED) conducts annual surveys to gather statistics on the number of students, teachers and teaching periods per teacher. Since the data for the 2001-02 school year is still

being processed, the latest information ED has is statistics for the 2000-01 school year.

According to the survey results for the 2000-01 school year, the average teacher-student ratio, class size and the number of teaching periods per teacher for aided secondary and primary schools are as follows:

	<i>Primary School</i>	<i>Secondary School</i>
Average teacher-student ratio	1:22.0	1:18.5
Average class size	33.6	37.3
Average number of teaching periods per teacher	29 per week	28 per week/cycle <sup>(Note 1)</sup>

- (b) The average teacher-student ratio, class size and the number of teaching periods per teacher for aided secondary and primary schools in Hong Kong in the 2000-01 school year as compared with the corresponding figures five years ago are as follows:

	<i>1995-96 school year</i>	<i>2000-01 school year</i>
Teacher-student ratio		
Primary school	1:23.8	1:22.0
Secondary school	1:20.5	1:18.5
Average class size		
Primary school	33.7	33.6
Secondary school	38.1	37.3

<sup>(Note 1)</sup> The timetable of some secondary schools is on a weekly (that is, five days) basis while others are on a cycle (ranging from six to 10 days) basis. Data provided by secondary schools may refer to the number of teaching periods per week or per cycle. The ED does not have a breakdown on the number of schools adopting a weekly or a cycle basis. Since a cycle has more days and thus teaching periods, this will inflate the average number of teaching periods.



	<i>1995-96 school year</i>	<i>2000-01 school year</i>
Average number of teaching periods per teacher		
Primary school	29 per week	29 per week
Secondary school	29 per week/cycle	29 per week/cycle <sup>(Note 2)</sup>

Since different countries have different interpretations of teacher-student ratio and class size, and adopt different calculation bases, it is difficult to make an objective and holistic comparison. According to the latest figures provided by the United Nations Educational, Scientific and Cultural Organization (UNESCO), the average teacher-student ratio and class size of primary and secondary schools in Europe, America and neighbouring countries are as follows:

<i>Country</i>	<i>Average teacher-student ratio (1999 data)</i>	
	<i>Primary School</i>	<i>Secondary School</i>
China	1:23	1:17
Japan	1:29	1:16
Korea	1:29	1:21
Singapore	1:25	1:19
United Kingdom	1:23	1:17
United States	1:17	1:14

<i>Country</i>	<i>Average class size (1999 data unless otherwise specified)</i>	
	<i>Primary School</i>	<i>Secondary School</i>
China <sup>(Note 3)</sup>	---	---
Japan	27.3	32.7 <sup>(Note 4)</sup>

<sup>(Note 2)</sup> As mentioned in Note 1 above, since some secondary schools adopt the cycle basis and that the ED did not compile statistics on the number of secondary schools switching to the cycle basis in the past five years, there will be limitations of comparing the figures of the 1995-96 and 2000-01 school years direct.

<sup>(Note 3)</sup> Data is not available.

<sup>(Note 4)</sup> Only data on junior secondary classes is available.

<i>Country</i>	<i>Average class size</i>	
	<i>(1999 data unless otherwise specified)</i>	
	<i>Primary School</i>	<i>Secondary School</i>
Korea	35.4	42.6
Singapore	37.2	34.7
United Kingdom	26.8	22.1
United States <sup>(Note 5)</sup>	24.1	23.6

The UNESCO has not collected data on the number of teaching periods per teacher per week.

- (c) The Government understands that teachers have heavy workload and has therefore invested considerable amount of resources in recent years to enhance the support for schools and increase the number of teaching staff. Measures to reduce teachers' workload and enhance teachers' capacity include:

- Providing schools, starting from the 2000-01 school year, with a Capacity Enhancement Grant (up to \$300,000 per secondary school and \$550,000 per primary school) to hire outside services and/or staff outside the permanent staff establishment. The recurrent expenditure of this initiative is about \$510 million. The grant for secondary schools will be increased by 50% starting from the 2002-03 school year. The maximum amount of grant will increase from \$300,000 to \$450,000. Additional annual expenditure will be over \$70 million.
- Creating an additional graduate teacher post for each primary school starting from the 2002-03 school year to provide leadership in curriculum development. The total annual expenditure will be \$400 million.
- Providing a grant for enhancing student guidance and counselling services in primary schools starting from the 2002-03 school year. Schools may procure student guidance

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<sup>(Note 5)</sup> Only 1993-94 data is available.

services, educational psychology services or social work services, in accordance with their individual needs. The annual expenditure is \$120 million.

- Introducing progressively the Native English-speaking Teachers (NET) and the English Language Teaching Assistants (ELTA) schemes to primary schools. Our ultimate objective is that each primary school will have one NET or ELTA. In the 2002-03 school year, we have set aside \$200 million for recruiting over 400 NETs or ELTAs.

If the number of teaching periods per teacher per week/cycle is to be further reduced by a quarter, we estimate that about 6 300 and 5 600 additional teachers will be required for secondary and primary schools respectively. Based on the average salaries of a certificated master/mistress and graduate master/mistress, the additional recurrent expenditure required will be nearly \$4 billion. This has not yet taken into account resources required for teacher training. Also, we have to bear in mind the limited capacity of teacher training places. Hence, a more pragmatic approach is to first implement measures to reduce teachers' workload mentioned in the above paragraph.

### **Provision of Banking Services in New PRH Estates**

14. **MR ALBERT CHAN** (in Chinese): *Madam President, I have learnt that no bank branches or automatic teller machines (ATMs) are available in the shopping malls of many new public rental housing (PRH) estates, including those with a capacity to accommodate 20 000 to 30 000 residents, causing inconvenience to the residents of the PRH estates concerned. In this connection, will the Government inform this Council:*

- (a) *whether the Housing Department (HD), when designing the shopping malls of new PRH estates, will reserve space for the setting up of bank branches and installation of ATMs; if so, of the details; if not, the reasons for that; and*

- (b) *of the HD's measures to encourage banks to install ATMs in the shopping malls of new PRH estates to meet residents' need for banking services, when no banks have shown any interest in providing services there ?*

**SECRETARY FOR HOUSING** (in Chinese): Madam President, it is the established practice of the Housing Authority to designate, as far as possible, shopping premises at prominent and convenient locations with high pedestrian flow in shopping malls of public housing estates for providing banking facilities. The Housing Authority invites tenders for banking premises through newspaper advertisements or direct mail, and negotiates directly with banks and financial institutions for the setting up of ATMs. Site visits for and meetings with interested banks and financial institutions are arranged. Whether the premises are taken up depend on their own commercial decision.

### **Curb on Upward Trend of Bankruptcy Cases**

15. **MRS SOPHIE LEUNG** (in Chinese): *Madam President, in view of the upsurge of bankruptcy cases in recent years, will the Government inform this Council of the policies or measures the authority concerned will adopt, subject to the principle of not affecting free market operation, to assist banks in assessing accurately the repaying ability of loan applicants when vetting their applications, such as allowing banks to exchange more comprehensive credit information on their customers, so as to curb the upward trend of bankruptcy cases and safeguard the overall credit rating of banks in Hong Kong?*

**SECRETARY FOR FINANCIAL SERVICES** (in Chinese): Madam President, it is the policy of the Hong Kong Monetary Authority (HKMA) that Authorized Institutions (AIs) should put in place effective and stringent credit assessment as well as risk management measures to ensure the quality of bank loans and protect their credit ratings. All AIs should adopt prudent principles in issuing credit cards and extending personal loans to applicants.

We are very concerned about the recent upsurge of bankruptcy cases. The HKMA and the Official Receiver's Office have been maintaining a close dialogue with the Hong Kong Association of Banks (HKAB), the Privacy

Commissioner, the police and other relevant government departments over the past few months to consider measures to tackle the issue. The Financial Services Bureau (FSB) also convened a high level meeting in September 2001 to discuss with the HKMA, the HKAB, the DTC Association, the Official Receiver's Office, the police and the Office of the Privacy Commissioner for Personal Data how to facilitate banks to assess more accurately the repayment ability of applicants in evaluating loan applications, and to curb the upward trend in bankruptcy cases. Measures which the meeting agreed to take include securing more disclosure of credit data information in respect of bankrupts as well as those who have lodged a petition for bankruptcy; taking enforcement action against those who have abused the system; and sharing more consumer credit data among AIs. Since consumer credit data sharing is currently confined mainly to negative data, as permitted under the Privacy Commissioner's Code of Practice on Consumer Credit Data (Code), the HKMA is discussing with AIs how to exchange more comprehensive consumer credit information with a view to identifying effective ways to improve AIs' risk management measures. Upon receipt of the HKAB's proposal, the HKMA will take up the matter with the Privacy Commissioner and the Consumer Council.

The HKMA also wrote to AIs in September 2001 recommending the sharing of more data as permitted under the existing Code. These include credit application data which would be useful in addressing bankruptcy cases. In addition, the HKMA, the HKAB and the DTC Association made a joint submission to the Privacy Commissioner in October 2001 suggesting a revision to the Code to enhance the usefulness of such data by extending the retention period permitted under the Code.

### **Duties and Remuneration for Optometrists Employed by Hospital Authority**

16. **MISS CYD HO:** *Madam President, regarding optometrists employed by the Hospital Authority (HA), will the Government inform this Council whether it knows:*

- (a) *the number of optometrists currently employed by the HA;*
- (b) *the average and the longest waiting time for first appointments for optometry service in the HA clinics; whether the HA plans to recruit*

*more optometrists so as to shorten the waiting time; if it has no such plans, of the reasons for that;*

- (c) whether the HA plans to review the scope of duties of optometrists with a view to better utilizing its human resources; and*
- (d) the rationale for the starting and maximum salary points of the optometrists grade, which has an academic entry requirement of a four-year degree, being set at a lower level than those of some other allied health grades which require a three-year degree only; whether the HA plans to review the salary scale for optometrists with a view to setting it on a par with other grades with comparable academic entry requirements; if it has such plans, of the review timetable; if not, the reasons for that?*

**SECRETARY FOR HEALTH AND WELFARE:** Madam President,

- (a) The HA currently employs 26 optometrists.
- (b) Optometric service is provided as part of the integrated ophthalmic service in the HA's Eye Clinics. If necessary, referrals will be made by ophthalmologists for patients to receive optometric service after initial consultation. The current actual median waiting time for first appointment of ophthalmic specialist outpatient services is about two weeks. The HA's information system does not capture the waiting time for internal referrals among individual services within a specialty. The current manpower provision of optometrists is sufficient to meet service demand.
- (c) Taking into account the current development in the provision of services in various allied health professions and to further enhance the efficiency in service delivery, the HA is currently reviewing the roles and responsibilities of allied health professionals (including the optometrists) as part of its overall review of allied health professionals in the ophthalmic service. The review will, among others, identify opportunities for further enhancement in the contributions of optometrists to the HA's integrated eye service.

- (d) Differences in the starting and maximum salary points between the optometrist grade and other allied health grades can be attributed to the job requirements (such as job nature, entry qualification and working environment) and recruitment difficulties of the respective grades at the time of setting up these grades. The HA is conducting a review on allied health professionals in the ophthalmic service, and will look into the remuneration and entry qualification of allied health professions in 2002-03.

### **Place of Public Entertainment Licences**

17. **MR FRED LI** (in Chinese): *Madam President, an institution applying for a Places of Public Entertainment (PPE) licence pays a nominal licence fee of \$140 only, if it is recommended by the Director of Home Affairs or the Director of Education. Also, one of the conditions for granting a PPE licence is that the applicant must file a fire safety certificate issued by the Director of Fire Services which shows that the venue concerned meets the fire safety requirements, and the fee payable for the issuance of a fire safety certificate is \$825. In this connection, will the Government inform this Council:*

- (a) *of the number of applications for PPE licences, and the number of those recommended by the Director of Home Affairs or the Director of Education among the successful applications in the past three years;*
- (b) *of the criteria adopted for setting the fee payable for a fire safety certificate, and a detailed breakdown of the unit cost incurred in issuing such a certificate; and*
- (c) *whether it will consider reducing or waiving the fee for fire safety certificate payable by a recommended institution; if not, of the reasons for that?*

**SECRETARY FOR HOME AFFAIRS** (in Chinese): Madam President, my replies to the Honourable Member's question are as follows:

- (a) During the period from 1 January 1999 to 30 November 2001, a total of 2 557 applications for Temporary Places of Public

Entertainment Licences were received by the Food and Environmental Hygiene Department (FEHD) as the licensing authority authorized by the Secretary for Home Affairs. 2 309 temporary licences were issued, of which the number of applications recommended for nominal charging (at \$140 in the urban area or \$520 in the New Territories) by the Director of Home Affairs or the Director of Education is as follows:

Number of cases recommended by the Director of Home Affairs	1 341
Number of cases recommended by the Director of Education	41
Total:	1 382

- (b) In regard to the issuance of Fire Services Certificate (the Certificate) in relation to referrals from the FEHD for the application for Temporary Places of Public Entertainment Licence, the applicant is required to pay a fee of \$825 for the Certificate according to Regulation 3(4)(b) of the Fire Services Department (Reports and Certificates) Regulations (Cap. 95, sub. leg.). The above fee was based on the government policy that fees should in general be set at levels sufficient to recover the full cost of providing the services. In the costing exercise carried out in 1996, the cost for the issuance of the Certificate, including staff costs, departmental expenses, accommodation costs, depreciation, cost of services provided by other departments and administrative overhead. When the fee was implemented in 1997, we adopted a phasing-in approach for full cost recovery to minimize the impact on the public. The fee was initially set at \$825, with a cost recovery rate of 20%. However, as most government fees and charges have been frozen since February 1998, the above fee has not been revised since then.
- (c) There is no provision in the Fire Services Department (Reports and Certificates) Regulations (Cap. 95, sub. leg.) that empowers the Director of Fire Services to reduce or waive the fees for the issuance of the Certificate. Therefore, the Fire Services Department is unable to exempt those institutions, including welfare, charity or non-profit-making organizations, referred by the Secretary for



Home Affairs and Director of Education from full payment of the fee for the Certificate.

### **"CLP Lights Up Hong Kong" Event**

18. **DR RAYMOND HO** (in Chinese): *Madam President, with regard to the event "CLP Lights Up Hong Kong" which was launched on the 9th of this month, will the Government inform this Council whether it knows:*

- (a) how the Hong Kong Tourism Board (HKTB) as the organizer promotes this event;*
- (b) the number of tourists attracted to this event so far, and provide a breakdown by the tourists' country or place of residence; and*
- (c) if the HKTB plans to organize similar events in the coming year?*

**SECRETARY FOR ECONOMIC SERVICES** (in Chinese): Madam President, in April 2001, the HKTB launched a two-year marketing campaign for Hong Kong, entitled "City of Life: Hong Kong Is It!", and has been promoting it in all major source markets. The "CLP Lights up Hong Kong" is the first in a series of five mega events under this major campaign.

- (a) The HKTB started promoting the "CLP Lights Up Hong Kong" in April 2001 and will continue the promotional efforts until 26 February 2002 to cover the Christmas, New Year and Lunar New Year festive holidays.

The "CLP Lights Up Hong Kong" is being promoted through a variety of channels to cover all target groups.

The HKTB promotes the event in overseas markets through the Internet, presentations to local and overseas trade partners, promotion activities for overseas travel trade and consumers, and publications in various travel trade and consumer magazines. Specifically, extra effort has been put into promoting the event in the three key markets of mainland China, Taiwan and Japan through

road shows and promotional packages, and so on. The HKTB also tied the launch ceremony of the "CLP Lights Up Hong Kong" with the visit of more than 200 senior overseas travel executives and some 80 overseas media to Hong Kong. This visit is part of a marketing programme to showcase the glamour and charm of the "City of Life".

For visitors in Hong Kong, the event is publicized through themed decorations at the airport, the HKTB Visitor Information and Service Centres, hotels, and the MTR Airport Express. The promotional materials include banners, posters, leaflets, a video for hotel guests and a special "CLP Lights Up Hong Kong" events and activities guide.

For the local community, the spectacular launch of the "CLP Lights Up Hong Kong" with the Aqua Fantasia fountain show at the UC Centenary Garden in Tsim Sha Tsui East and the pyrotechnic display outside the Hong Kong Cultural Centre was broadcast live on television. In addition, a promotional video has also been produced to publicize the event. The HKTB also uses media functions and advertisements in both the print and the electronic media including radio and TV to spread the message.

The HKTB has created a number of new tours to capitalize on the "CLP Lights Up Hong Kong" event. These include the "Galaxy of Lights Tram Tour", the "Kowloon Hop On, Hop Off Sightseeing Bus Tour", the "Hong Kong Lights Up Tour" which includes the Aqua Fantasia fountain show, and the "Sunset Cruise" for Putonghua speaking visitors.

- (b) Based on information from the HKTB's travel trade partners, it is estimated that during the period, about 120 000 visitors will visit Hong Kong with tour groups which feature the "CLP Lights Up Hong Kong" programme in their itineraries. The majority of these tour groups are from mainland China, Taiwan and Japan; and some from Southeast Asia and South Korea. As regards individual travellers, it is difficult to estimate the number at this early stage.

As a mega event, the "CLP Lights Up Hong Kong" serves a dual purpose: to act as a special attraction to encourage more visitors to come to Hong Kong, and to encourage those already visiting to stay longer.

Surveys are being conducted during the period of the event to gauge the impact of this event, and to assess in particular, the number of visitors who have come to Hong Kong and/or have extended their length of stay to coincide with the event.

- (c) The HKTB's strategic plan is to sustain its efforts in the development of events and products for the benefit of the tourism industry. The HKTB will continue to leverage on the momentum created by the Christmas and Lunar New Year festive lighting put up by various sectors of the community, and repackage them with other events and programmes to attract more visitors to come to Hong Kong during this usually quiet period for the travel industry.

### **Concession Period for First Year Discount of Tenants Purchase Scheme**

19. **MR LAU KONG-WAH** (in Chinese): *Madam President, the Hong Kong Housing Authority has so far launched four phases of the Tenants Purchase Scheme (TPS). According to the information released by the authority concerned, public rental housing (PRH) tenants who purchase their flats within the first two years from the launch of each phase of the TPS are entitled to a discount, with a higher discount rate being offered within the first year. However, it is learnt that the concession period for the first year discount (FYD) in TPS Phase 4 launched in February this year is less than 12 months. In this connection, will the Government inform this Council:*

- (a) *of the beginning and expiry dates of the concession periods for the FYD in the first three phases of the TPS;*
- (b) *of the reasons for setting a concession period of less than 12 months for the FYD in TPS Phase 4, and whether it will consider extending that period to 12 months; and*

- (c) *whether a concession period of 12 months for the FYD will be set for the future phases of the TPS?*

**SECRETARY FOR HOUSING** (in Chinese): Madam President, the announcement and launch dates of the first four phases of the TPS and the expiry dates of the First Year Special Credit Period are as follows:

	<i>Announcement date</i>	<i>Launch date</i>	<i>Expiry date of First Year Special Credit Period</i>
Phase 1	22 December 1997	26 January 1998	31 December 1998
Phase 2	4 February 1999	19 March 1999	31 March 2000
Phase 3	6 January 2000	18 February 2000	31 December 2000
Phase 4	4 January 2001	14 February 2001	31 December 2001

For Phase 4, the estates for sale were announced in 1998 under a three-year rolling sales programme. Since tenants were also individually informed before the formal launch of sales to ensure that they would have sufficient time to make a decision, the Housing Authority does not plan to extend the First Year Special Credit Period.

The purpose of the First Year Special Credit Period is to encourage sitting tenants to make an early decision. The arrangement of allowing 10 to 12 months will continue for future phases of the TPS.

### **Compensation for Residents Suffered Losses Due to Flooding**

20. **DR TANG SIU-TONG** (in Chinese): *Madam President, regarding the assistance given to residents who suffered losses as a result of the flooding in the North West New Territories in June this year in seeking compensation from the relevant contractors of flood prevention projects, will the Government inform this Council:*

- (a) *of the contractors who should pay compensation to the affected residents, based on the findings of the Investigation Report on*

*Flooding in the New Territories and Tsuen Wan in June 2001 prepared by the Drainage Services Department (DSD);*

- (b) whether it knows the total number of compensation claims each of the flood prevention project contractors has received so far; if so, of the amount of claims involved in each case and the latest position in respect of the handling of these cases;*
- (c) of the party ultimately responsible for paying the compensation regarding those cases in which the contractors cannot be contacted because of closures of business or other reasons;*
- (d) of the government departments which are responsible for assisting the affected residents in seeking compensation and taking follow-up actions on the matters concerned; and*
- (e) of the government department to which residents who are not satisfied with the compensation arrangements may lodge appeal?*

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

- (a) In September the DSD has completed the Investigation Report on the flooding in June in the New Territories. The investigation shows that low-lying topography, inadequate drainage capacities of existing river channels, prolonged heavy rainstorms and high tide are the principal causes to the flooding in the New Territories. The report concluded that heavy rainfall with the rising tide on 9 June would have caused severe flooding even if no construction activities were taking place. The purpose of the investigation report was to find out the possible causes of the flooding. The intention was not to investigate into the contractual or legal responsibilities of any of the parties involved. As regards claims, it is necessary to follow the appropriate claim procedures in following up individual cases.
- (b) Since the flooding in June in the New Territories, two of the contractors in the flood prevention projects have received a total of

51 claims, amounting to about \$2 million. As the compensation involves the terms of the construction contracts and possible legal procedures, the contractors and the insurance companies are seeking legal advice to assess and deal with each compensation claim.

- (c) In case the contractors cannot be contacted as a result of closure of business or other reasons, this will not affect the validity of the contractor's insurance cover and claims which have been notified should continue to be assessed in accordance with the appropriate claim procedures.
- (d) The Territory Development Department and the DSD have forwarded the claims to the contractors and the insurance companies for assessment. The insurance companies will, if necessary, ask the residents to provide proof of their damage due to flooding as a result of construction activities. With regard to the claims, works departments will continue to monitor the progress, and request the contractors and the insurance companies to complete the assessment promptly, and to inform the claimants of the outcome. Notwithstanding this, the Hong Kong Special Administrative Region Government has in June and July made about \$6 million *ex-gratia* payments as emergency relief to those residents and farmers who were in difficulty.
- (e) The valuation and assessment of claims would involve the issue of legal liability. In case the residents were not satisfied with the compensation arrangement which may be offered to them or their claims are rejected, they may consider following up their claims with appropriate legal procedures.

## **BILLS**

### **First Reading of Bills**

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

**ADAPTATION OF LAWS BILL 2001****COPYRIGHT (AMENDMENT) BILL 2001**

**CLERK** (in Cantonese): Adaptation of Laws Bill 2001  
Copyright (Amendment) Bill 2001.

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

**PRESIDENT** (in Cantonese): Members, as the Chief Secretary for Administration is not in the Chamber, I now suspend the meeting and the Council will resume later.

4.25 pm

Meeting suspended.

4.30 pm

Council then resumed.

**Second Reading of Bills**

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

**ADAPTATION OF LAWS BILL 2001**

**CHIEF SECRETARY FOR ADMINISTRATION:** Madam President, I apologize for not being able to rise promptly on instruction. I was seriously engaged in or overwhelmed by some very serious discussions with Honourable Members. Do pardon me.

I move that the Adaptation of Laws Bill 2001 be read the Second time.

The Bill seeks to make certain amendments to terminology in the Prevention of Bribery Ordinance and the Independent Commission Against Corruption Ordinance, and a number of consequential amendments to other ordinances.

Schedule 8 of the Interpretation and General Clauses Ordinance sets out the principles for interpreting laws in force prior to 1 July 1997. This highlights the need to enact the Adaptation of Laws Bill 2001 to amend the terms used in the Independent Commission Against Corruption Ordinance and other related ordinances.

The Bill, when passed into law, shall take effect retrospectively, as from the date of the establishment of the Hong Kong Special Administrative Region (SAR). This does not contravene Article 12 of the Hong Kong Bill of Rights as set out in the Hong Kong Bill of Rights Ordinance.

Madam President, this Bill is necessary in bringing the relevant ordinances into conformity with the Basic Law and with Hong Kong's status as a SAR. It also obviates the need to make complicated cross-references to the Hong Kong Reunification Ordinance and the Interpretation and General Clauses Ordinance. I commend it to the Legislative Council for early passage into law.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Adaptation of Laws Bill 2001 be read the Second time.

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

## **COPYRIGHT (AMENDMENT) BILL 2001**

**SECRETARY FOR COMMERCE AND INDUSTRY** (in Cantonese): Madam President, I move that the Copyright (Amendment) Bill 2001 be read the Second time.

The Bill seeks to liberalize parallel importation of computer software.



Parallel importation means the importation without the permission of the copyright owner of a copy of a copyright work which was lawfully made elsewhere. Under the Copyright Ordinance, for a copyright work that has been published for less than 18 months, it is a criminal offence to import otherwise than for private and domestic use or sell a copy of that work which is an infringing copy by virtue of its parallel importation. The maximum penalty is \$50,000 per infringing copy and four years' imprisonment.

In general, the parallel importation or subsequent sale of a copy of a copyright work which has been published for more than 18 months will not attract any criminal liability but civil remedies, such as injunction, delivery up and damage, are still available to the copyright owner.

The Bill seeks to remove the above civil and criminal liabilities in relation to computer software. To liberalize parallel importation of computer software will increase competition and availability of products in the market, resulting in more choice and lower prices for consumers. This would especially help to ease the financial burden of small and medium enterprises in purchasing legitimate computer software.

The proposed liberalization is in line with our free-market philosophy and our policy to facilitate the free flow of genuine goods. It is also in step with the growing popularity of purchases through the Internet. During a public consultation in the middle of this year, the proposal was supported by this Council and the majority of the public.

The scope of the liberalization includes business computer software as well as software for educational and entertainment purposes but excludes — I repeat, excludes — products of movies, television dramas and music recordings which can be played in a computer.

The Bill also includes transitional provisions to apply the new law retrospectively to remove outstanding criminal liabilities related to parallel importation of and dealing in such software before the commencement of the new law. As regards civil liability, the copyright owner shall retain all their rights under the prevailing law in relation to infringing acts committed before the commencement of the new law.

Thank you, Madam President.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Copyright (Amendment) Bill 2001 be read the Second time.

The debate is now adjourned and the Bill referred to the House Committee.

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

**PRESIDENT** (in Cantonese): We will resume the Second Reading debate on the Kowloon-Canton Railway Corporation (Amendment) Bill 2001.

### **KOWLOON-CANTON RAILWAY CORPORATION (AMENDMENT) BILL 2001**

#### **Resumption of debate on Second Reading which was moved on 31 October 2001**

**PRESIDENT** (in Cantonese): Ms Miriam LAU, Chairman of the Bills Committee on the above Bill, will now address the Council on the Committee's Report.

**MS MIRIAM LAU:** Madam President, as Chairman of the Bills Committee on Kowloon-Canton Railway Corporation (Amendment) Bill 2001 (the Bill), I wish to report on the work of the Bills Committee.

The Bill seeks to separate the duties and functions of the Chairman and the Chief Executive of the Kowloon-Canton Railway Corporation (KCRC) by creating the office of the Chief Executive Officer (CEO) in the KCRC.

The Bills Committee has held a total of four meetings to discuss the Bill.

We understand that the proposed change has the full support of the KCRC Board and the executives of the KCRC.

We recognize that the intention of separating the functions and duties of the Chairman and the CEO is to put in place an effective governance structure to

ensure transparency, accountability and responsibility. With the expansion of the railway programme, there is a growing need to separate the strategic planning function and day-to-day management responsibility of the KCRC. By strengthening the independence of the KCRC Board and providing clear guidelines of reporting, there would be improved checks and balances over senior management.

In the course of scrutiny of the Bill, we have examined the benefits and changes to be brought about by the proposed separation of the functions and duties of the Chairman and the CEO. We have particularly focused on whether and how the new structure would address the wide public concern over the lack of checking of expenses on fringe benefits for senior staff of the KCRC as well as its decision to dispense with an open tendering system in the development of the northern part of the KCRC Hung Hom Station.

We agree that with the ongoing expansion of railway network and service, there is a need to further strengthen the corporate governance structure of the KCRC to ensure that both strategic planning and day-to-day management receive the undivided attention that they deserve. Upon the separation of the functions and duties of the Chairman and the CEO, the supervision of the wide range of tasks facing the KCRC will be more effective. The Chairman, separate from the executives, will strengthen the independence of the Board and hence its ability to discharge its supervisory functions. The CEO can devote full attention to the day-to-day management of the railway operation and implementation of committed railway projects. The proposed separation is also in line with the universal trend in good corporate governance.

We have examined the demarcation of responsibilities between the Chairman and the CEO and whether there is a need to define the duties and functions of the Chairman and the CEO in the Bill. We accept the Administration's view that it might not be appropriate to set out in the Bill the duties and functions of the Chairman and the CEO so as to retain the flexibility to determine and fine-tune the relationship between the Board (led by the Chairman) and the executives (led by the CEO) to suit the changing operational needs and corporate governance practices.

In view of the heavy responsibilities of the Board, we have examined whether it is viable for a part-time Chairman to supervise the senior management

of the KCRC in an effective manner, and exercise objective judgment on corporate affairs.

We are assured by the Administration that for the time being, a part-time Chairman would suffice, given the workload of the Chairman and the common practice in the business sector. We note that the Board is the ultimate legal authority within the KCRC. All corporate powers are exercised by or under the authority of the Board. To help oversee specific aspects of the KCRC's operations, a number of committees are formed under the Board. These committees review and make recommendations to the Board on various matters. In discharging his duties, the Chairman would receive support from the KCRC and the Government. There are also established procedures to avoid possible abuse of power by the senior management. The Board also retains the power to dismiss the CEO, if considered justified, subject to the approval of the Chief Executive of the Hong Kong Special Administrative Region (SAR).

Notwithstanding the Administration's explanation, some of us remain of the view that a part-time Chairman could be easily manipulated by the senior management of the KCRC or the Government, rendering him not able to exercise objective judgement on corporate affairs and discharge his supervisory functions in an effective manner. They suggest that the controlling shareholder (that is, the Government) should provide professional support to the Chairman so that he would be able to act independently towards the policy objectives of the controlling shareholder and work for the interests of the general public.

We are also concerned about the quality of the Chairman and the appointment criteria to be adopted by the Administration, which will have a bearing on the ultimate performance of the Chairman. Some of our members consider it difficult for the Administration to find a high calibre person who will be willing to devote so much time to such great responsibilities at an honorarium of about \$30,000 per month.

On the remuneration of the CEO, we have examined the factors to be considered by the KCRC in determining the remuneration of its CEO. We note that the remuneration will be determined with regard to the level of responsibilities and the expertise and experience of the job. It will also be in line with the remuneration of comparable jobs in the market so as to compete for talent with the private sector. Upon separation of the duties and functions of the Chairman and the CEO, the remuneration of the new CEO would be suitably

adjusted downward. The total financial commitment of the remuneration of the Chairman and the CEO would not be greater than the existing one for the Chairman-cum-Chief Executive.

We welcome the Administration's acceptance of our proposal to include a new provision in the Bill, requiring the Chairman and the CEO to attend meetings of committees and subcommittees of the Legislative Council upon request to enhance accountability.

As regards the KCRC Board, we have also taken the opportunity to examine the effectiveness of appointing Policy Secretaries to the Board to play a monitoring role, particularly in the course of fare determination and in monitoring the KCRC's spending. We are informed that similar to other KCRC Board members, the Secretary for Transport and the Secretary for the Treasury are required to act honestly and in good faith for the benefit of the KCRC and exercise a reasonable standard of skill and care in the performance of their powers. The functions of the Board are jointly exercised by all members of the Board. As such, the Secretary for Transport and the Secretary for the Treasury have the same roles and responsibilities as other Board members.

The Bills Committee is not convinced of the Administration's explanation. Many members believe that the Secretary for Transport and the Secretary for the Treasury, being the Government's representatives on the KCRC Board, should perform a monitoring role to oversee the KCRC's affairs for the purpose of safeguarding the public interests. They should also be held accountable to the Legislative Council for any serious policy failure and mismanagement in the KCRC. We consider the monitoring of statutory bodies worth pursuing. However, as the matter falls outside the scope of the Bill, it has to be pursued at some other forums.

Nevertheless, we are pleased to note that the Administration agrees to review the size and composition of the Board, taking into account the need to include more members, for example, representatives from green groups and grass-roots organizations, as well as Members of the Legislative Council, to ensure a balanced composition of the Board to handle its activities. The Administration has agreed to report to the Panel on Transport in one year's time.

Madam President, we are in support of the Bill and the Committee stage amendments to be moved by the Administration. We also note that the

Honourable Andrew CHENG has given notice to move Committee stage amendments to require the Chief Executive of the SAR to consult the Legislative Council on matters relating to the terms and conditions of the appointment of the CEO, and the KCRC to publish the remuneration, including the salary and other benefits, of the CEO in its annual report.

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

**MR ANDREW CHENG** (in Cantonese): Madam President, the Government proposes to separate the duties and functions of the Chairman and the Chief Executive of the KCRC, with the intention of strengthening the corporate governance structure of the KCRC. The Democratic Party and I support the Government's proposal. Therefore, we will support the motion and the Committee stage amendments put forward by the Government. During the meetings of the Bills Committee, members also requested that there must be a stipulation in the law requiring the Chairman and the Chief Executive Officer (CEO) of the KCRC to attend meetings of committees and subcommittees of the Legislative Council upon request in order to enhance the Corporation's accountability. After repeated discussions, the Government agreed to move a Committee stage amendment to that effect. Since this has been the Democratic Party's long-standing demand and does not contradict the concept of strengthening the corporate governance structure of the KCRC proposed by the Government, we are more than delighted to support the amendment. On behalf of the Democratic Party, I will move two amendments at the Committee stage later on. The purpose of moving these two amendments is basically to state our wish that through this amendment exercise, the Government can strengthen the corporate governance structure and the governance culture of the KCRC. We hope that the impression left to us by the KCRC in the past as an independent kingdom with an extremely low level of transparency can be redressed by various means, thus enhancing its accountability to the public.

Between 14 to 16 December, the Democratic Party conducted a survey and 1 034 members of the public were successfully interviewed through the voice phone. According to the findings of the survey, 78.5% of the respondents deemed that the remuneration and benefits for the Chairman and the CEO of the KCRC should be disclosed to the public. And 77.4% of the respondents viewed

that the Chief Executive should consult the Legislative Council before appointing the Chairman and the CEO of the KCRC. Therefore, we will move an amendment later on to require the Chief Executive to consult the Legislative Council on the terms and conditions of the appointment of the CEO of the KCRC. In other words, we are not asking this Council to intervene in the Government's appointments. Instead, we only hope that a mechanism can be established so that before making the appointment, the Government can consult the Legislative Council on the terms and conditions of the appointment of the relevant person, including the remuneration package, so that members of the public can also have an opportunity to discuss the matters concerned.

As far as the present information about the remuneration for the CEO of the KCRC is concerned, it is obvious that we are merely searching for a concept inside a black hole. We have no idea of what is the level of remuneration for the CEO of the KCRC, and can only make some guesses on basis of the information provided in the annual report. On this matter, we also think that the Government acts as stealthily as the KCRC. As a public utility wholly owned by the Government and a public mass carrier with over 1 million passenger trips daily, we reckon that the information on any moves taken by the KCRC in future in regard to increasing the level of remuneration and benefits, and even extending the employment contract of the CEO, should be disclosed, as public interest is at stake. On the appointment of the CEO of the KCRC, the Government should allow the Legislative Council access, through certain channels, to information on the employment terms and conditions, remuneration and benefits offered, and then hold discussions. Therefore, in the second amendment, we request that the remuneration and benefits for the CEO of the KCRC should be disclosed. As I mentioned not long ago, presently in the annual report of the KCRC, only the range of remuneration for the senior management of the KCRC is listed. This obviously can neither satisfy the demand of the public nor help in enhancing the transparency of the operation of the KCRC.

While the general public in Hong Kong are tightening their belts, facing a reduction of their salaries, we however see that both the KCRC and the Government are protecting the high-paid CEO, creating a high-paid position of CEO and an independent kingdom. Earlier on, the KCRC even blatantly submitted an application of fare increase to the Legislative Council. This has inevitably given the public an impression that the KCRC has become an

avaricious executive structure. We think that there is an absolute need to request the Transport Bureau to amend the existing Ordinance so that the remuneration and the benefits for the CEO of the KCRC can be disclosed for public discussion, while public opinions can also be relayed to this Council. As such, the Government can hopefully understand that what the public need is a mass transit carrier which has a high level of transparency and can really serve the public, instead of a corporation which is avaricious, where the senior management can have salary increases continuously, and which asks for fare increase either every year or periodically. If we do not have clear information about the remuneration for the management of the KCRC, whenever it submits any application on fare increase, it is very likely that we will be kept in the dark and cannot make any fair analysis or comments.

I hope that Members will discuss and debate on the amendments that we are going to move, and also hope that Members can give their support to the amendments.

As a matter of fact, during the meetings of the Bills Committee, there were two issues of enormous concern to me. One is whether the separation of the two posts is attributable to the previous mistakes made by the KCRC leadership, while the other one is whether new members should be added to the KCRC Board.

In the property development of the northern part of KCRC Hung Hom Station, the KCRC made a very inappropriate and biased decision by giving the contract to Cheung Kong (Holdings) by way of single tender. This granting of the right of property development by way of private agreement is not only disregard of public interest, but also unfair to the other corporations intent to developing that area. Nevertheless, after making this mistake, the KCRC made another. It is because the KCRC has not signed any contract whatsoever in regard to the agreement. And thus when Cheung Kong (Holdings) withdrew from the project, not only did the KCRC suffer loss in time, but it also could not get any compensation in financial terms. The Long Valley incident is another example. The leadership's under-assessment of the environmental protection work leads to delay in the completion of the Lok Ma Chau Spur Line. This reflects that the KCRC has committed a number of errors in decision-making. This is reflected in the reasons stated by the Government in the Legislative Council Brief when submitting this Bill, "..... demands from the KCRC



Board ..... vigilance in public relations handling towards the general public, the lending institutions and the environmental lobby. We believe that it is difficult to achieve optimal results by concentrating these two sets of daunting responsibilities on one single KCRC officer." Between the lines, the Government has very indirectly and subtly expressed its many dissatisfactions with the senior management of the KCRC in policy-making. I, therefore, hope that the Secretary for Transport can respond in person whether there have ever been any human errors in the development of the Hung Hom property.

Another issue of concern to me is about the representativeness of the KCRC Board. If this Bill is passed, the composition of the Board will be increased from nine members to 10 members due to the separation of the posts. However, during the deliberations of the Bills Committee, I realize that no one in the KCRC Board has knowledge in environmental protection or can represent the public. Among the members in the existing Board, there are only those representing interests of the professional and commercial sectors. The Democratic Party and I consider that this kind of composition must be improved, as railway development has great impact on environmental protection. The services of railway transport affect the living patterns of millions of members of the public. If the Board is devoid of any members with professional knowledge in environmental protection and members representing public opinions on the services of the KCRC, the Board may not be able to make comprehensive consideration in policy-making. As regards the Long Valley incident mentioned earlier or the KCRC's proposal of fare increase a few months ago which gave rise to an enormous outcry, they clearly show that the KCRC management lacks knowledge on environmental issues and a feel for public opinions, and that the assessments have not been conducted thoroughly. Hence, I am very glad that the Government has made an undertaking to the Bills Committee that the size and the composition of the KCRC Board will be reviewed. But I hope that when the Secretary for Transport makes his speech later on, he can restate this undertaking in this Chamber and then I can really rest assured.

Madam President, I so submit.

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

**MR LAU KONG-WAH** (in Cantonese): Madam President, there is a Chinese saying that says: "Domains under heaven, after a long period of division, tends to unite; after a long period of union, tends to divide." This description fits well the post of Chairman and that of the Chief Executive Officer (CEO) of KCRC. Past experiences show that the posts were staffed by two different persons. Later, it was found that the arrangement had caused many problems, including difficulties in the co-operation between the two persons and in the control of the CEO by the Chairman. For some time thereafter, the two posts were separated, hoping problems would thus be solved. However, problems were detected after the separation and so the two posts merged and were manned by one person. This arrangement has survived tests for more than 10 years. Now, the Government may feel that if the two posts were manned by one person, even the Government itself cannot control that person some of the time.

After the Long Valley saga and the development at Hung Hom, the Government may notice that the same person donning two hats at the same time may not get the job done best and hence it tabled the Bill before this Council now. Madam President, perhaps you may remember that the tabling of the Bill was rather unexpected. We had not been notified at all beforehand. The Democratic Alliance for Betterment of Hong Kong (DAB) has been hoping that for a statutory organization like the KCRC, the Chairman and the CEO should be taken up by two persons. We would therefore support the Bill as submitted by the Government. Perhaps this will give the public the impression that whether the two posts are separated or not, the Government must have a reason for its decision. Of course, we do not want a merging again in future, because we find it to be best for the Chairman to take up the role of a leader and a monitor. This applies to the Airport Authority (AA), the Urban Renewal Authority and the KCRC in the years to come. Next, our attention will turn to the MTR Corporation Limited (MTRCL). At a meeting to scrutinize the Bill, the Transport Bureau indicated that it would undertake to deal with the separation of the posts of Chairman and CEO of the MTRCL. Madam President, what is now left is the question of whether the chairman may in future take up the role of a leader and control the entire administrative structure in the corporation. This is the most important issue.

To the KCRC, the duties of the Chairman are very important. He has to direct the overall strategy, monitor finance and be responsible for personnel duties such as the change of staff. At a meeting, I asked the question: What are

the criteria for the KCRC Board Chairman? The Government cited three criteria: firstly, he should have sufficient knowledge, experience and ability in leading the operation of an organization like the KCRC, that is, leadership; secondly, he should be of a high calibre and broad outlook to guide KCRC in setting long-term business strategies; and thirdly, he should be able to devote sufficient time to discharging his duties. Madam President, this last point is quite difficult to achieve. What is meant by "sufficient time" and will there be "sufficient time" in future? If I have to find a part-time chairman to control a full-time CEO and a large organization, I would be worried that the future CEO would not be able to discharge his duties. I think it is a waste to work part-time as a CEO with a part-time attitude, treating the job as an honorary post. So, I think the CEO post in future should not be honorary but one with practical duties to discharge.

The Transport Bureau told us that, very soon, a Chairman would be appointed because the contract of the incumbent CEO would expire shortly upon which a new Chairman would emerge. I hereby advise at an early date the prospective Chairman to refer to the past experience of the KCRC and read a report prepared by the Legislative Council. This is a very interesting report, released by the Legislative Council after investigating into the chaos at the new Hong Kong International Airport at Chek Lap Kok. At the time, we were very much concerned about the relation between the part-time Chairman and the full-time CEO of the AA. Madam President, let me read out a point we made in the report for reference by the new Chairman of the KCRC. We thought the Chairman of the AA was "misled by the AA Management on various occasions. He was therefore not able to have objective assessment of whether the new airport would be ready for safe, smooth and efficient operation on Airport Opening Day," and "should be held responsible for not having taken effective action to supervise the AA Management but instead, allow himself to be manipulated ....." This was a very important episode in history and it taught us a good lesson because the report obviously told us if the Chairman did not have sufficient time to monitor and did not have the ability to supervise, he would invariably be manipulated. Therefore, I very much hope the new Chairman of the KCRC can think over this point carefully before accepting the job, which is not honourary but carries with it a responsibility.

To assist the Chairman and the public in supervising the operation of the KCRC, I think we may provide assistance in three ways so that the Chairman would not be alone in handling the colossal task. Firstly, among members of the Board, there are indeed the bureau officials. The Secretary for Transport

and the Secretary for the Treasury are members of the KCRC Board. They first joined the KCRC Board in 1995. Apparently, at the time, it was implied that the Secretary for Transport was *ex officio* to ensure the transport policies were carried out in the interest of the public. In addition, the Secretary for the Treasury also sits on the KCRC Board in order to monitor the financial operations to ensure that they safeguard not only the interest of the company but also the interest of the public as public funds are involved.

Madam President, it is a great pity that past experience and incidents tell us that the two Secretaries have not been performing well enough in the Board. On the one hand, we do not know what they have done due to a low transparency of the Board. On the other hand, I remember that at a previous meeting, the Secretary for Transport, Mr Nicholas NG (who is present today), told me he was just a director and decisions were made collectively and so he might not be able to comment on or disclose details, in answer to my question about the finance of the KCRC. Thus, I am of the opinion that the Secretary should not act simply as a so-called director; he should act as a representative for taxpayers, for the Government and for the public in the Board, carrying out monitoring duties. We feel that we should have done better in past years. Therefore, I think the role of the two Secretaries should be enhanced in future, in particular, in carrying out their monitoring functions.

I wish to reiterate that the Secretary for the Treasury is one of the three members in the KCRC Audit Committee, which is very important. A duty of the Audit Committee could be to regularly review the annual accounts. Thus, if problems arise in the financial operations of the KCRC in the future, the Secretary for the Treasury will have to account them to the public. This is the first point, which is that we think the two Policy Secretaries should take up the monitoring responsibility.

The second point is about an amendment by the Government in the current exercise to the effect that provisions be clearly written down in the law for the KCRC Chairman and its CEO to attend meetings when requested by the Legislative Council to answer questions raised by us. Of course, my understanding is that in future meetings, both the Chairman and the CEO should make disclosures and provide explanations to the Legislative Council about all matters relating to public interest, with the exception of matters related to commercial tenders and commercial interests. In this connection, we hope we can act as a second guard.

Finally, updating the membership of the KCRC Board can serve to help the Chairman. Indeed, at a meeting of the Bills Committee, all parties and groups unequivocally indicated that Board member must not be overwhelmingly representatives from the business sector. There must be representatives from green groups, the grassroots and the Legislative Council. At the time, the Government agreed to provide an answer within a year. I very much hope the Government can look into the issue of membership of the KCRC Board immediately after completing its work on the appointment of the Chairman.

Madam President, I hope the above recommendations may fill a gap left over from the past. The DAB supports the Bill put forward by the Government. Thank you, Madam President.

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

(No Member responded)

**SECRETARY FOR TRANSPORT** (in Cantonese): Madam President, the Kowloon-Canton Railway Corporation (Amendment) Bill 2001 seeks to strengthen the governance structure of the Kowloon-Canton Railway Corporation (KCRC) and help it to meet future challenges effectively. The Bill mainly covers:

- (1) the repeal of the original provision that makes the Chairman also the Chief Executive Officer (CEO) of the KCRC;
- (2) the creation of the office of CEO who shall be a member of the Board;
- (3) the transfer of certain executive functions from the Chairman to the CEO;
- (4) the provision that the power of the KCRC to appoint, suspend or dismiss the CEO shall be subject to the approval of the Chief Executive.

The KCRC currently operates the East Rail and the Light Rail which serve about 10%, or 1.1 million passenger trips, of the daily public transport ridership. Upon the commissioning of the West Rail in 2003, the patronage of the KCRC is expected to rise sharply by 30%. The daily patronage of the Kowloon-Canton Railway (KCR) is projected to reach 2.4 million to 3.2 million passenger trips by 2011.

On network expansion, the KCRC will put four railway projects already commenced into implementation in the next few years. They are West Rail Phase I, Ma On Shan to Tai Wai Rail Link, Tsim Sha Tsui Extension and Sheung Shui to Lok Ma Chau Spur Line. During the same period, the KCRC will also have to plan for the implementation of three projects conceived in the Railway Development Strategy 2000, namely Kowloon Southern Link, Port Rail Line and Northern Link. Furthermore, the KCRC has taken part in the bidding for the Sha Tin to Central Link and may bid for the Regional Express Line in the future.

The mammoth development programme demands from the KCRC Board vision to conduct constant review of its development and policies as well as strategic planning. On the other hand, the active implementation of the relevant construction projects and the provision of an efficient and reliable rail service to a rapidly expanding patronage will be exacting tasks for the KCRC executives. It is therefore necessary for the functions and duties of the Chairman and the CEO of the KCRC to be separated to ensure that both strategic planning and day-to-day management receive due and undivided attention.

The Chairman, separate from the executives, will strengthen the independence of the Board and hence its ability to discharge its supervisory functions. The Government is convinced that the separation of the functions and duties of the Chairman and the CEO will better enable the KCRC to provide quality transport service for the public.

The separation of the functions and duties of the Chairman and the CEO is in keeping with the global trend in good corporate governance. It is also the model in major public corporations such as the Airport Authority, the Urban Renewal Authority and the Mandatory Provident Fund Schemes Authority.

The Bill was submitted to this Council on 31 October 2001. Under the leadership of Ms Miriam LAU, the Bills Committee has conducted detailed and in-depth scrutiny of the Bill. Thanks to the efforts and enthusiasm of Ms LAU

and other members of the Bills Committee, this Council has been able to resume the Second Reading debate of the Bill today. I would like to extend my heartfelt gratitude to them here.

In the course of scrutiny, the Government has, apart from introducing a technical amendment, complied with Members' request by proposing the addition of clause 3A to provide for the attendance of the Chairman and the CEO of the KCRC at the meetings of the committees and subcommittees of this Council. I will further elaborate on the background and spirit of the Amendment Bill later on when introducing clause 3A.

Mr Andrew CHENG has separately proposed Committee stage amendments to the terms and conditions of the appointment of the CEO of the KCRC and the publication of the remuneration and benefits of the CEO in the annual report of the KCRC. The Government opposes these two amendments. I will explain in detail why the Government opposes the two amendments when it comes to the debate with respect to the amendments.

Madam President, I would like to respond to the proposal raised by several Members regarding whether the Government will consider expanding the membership of the KCRC Board to ensure diversified membership. With regard to this issue, we have made an undertaking in the Bills Committee that a review will be conducted in the coming year to study indepth the proposal made by Members.

I commend the Bill to Members. Thank you, Madam President.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the Kowloon-Canton Railway Corporation (Amendment) Bill 2001 be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Kowloon-Canton Railway Corporation (Amendment) Bill 2001.

Council went into Committee.

### **Committee Stage**

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

### **KOWLOON-CANTON RAILWAY CORPORATION (AMENDMENT) BILL 2001**

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Kowloon-Canton Railway Corporation (Amendment) Bill 2001.

**CLERK** (in Cantonese): Clauses 1, 2, 4, 5 and 7.

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

(Members raised their hands)

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

(No hands raised)

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



**CLERK** (in Cantonese): Clause 3.

**SECRETARY FOR TRANSPORT** (in Cantonese): Madam Chairman, I move that clause 3 be amended, as set out in the paper circularized to Members.

The amendment is technical in nature. Accepting the advice of the Legal Advisor of the Legislative Council, the Government has agreed that the Chinese translation of the expression "assigned to" in the English version be amended.

The amendment is supported and endorsed by the relevant Bills Committee. I implore Members to support the amendment.

Thank you, Madam Chairman.

*Proposed amendment*

**Clause 3 (see Annex I)**

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Clause 3 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

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

**MR ANDREW CHENG** (in Cantonese): Madam Chairman, I move that clause 6(1) be amended, as set out in the paper circularized to Members.

Madam Chairman, the amendment seeks mainly to require the Chief Executive to consult the Legislative Council in advance on matters relating to the terms and conditions of appointment of the Chief Executive Officer (CEO) of the Kowloon-Canton Railway Corporation (KCRC). According to the amendment in the original Bill, the future CEO will be appointed by the KCRC with the prior approval of the Chief Executive. Apart from the candidate, the terms and conditions of appointment are also matters that are subject to approval.

First of all, I would like to invite Members to note the wordings of the amendment, as I wish to stress that the amendment is not intended to seek any say in the choice of candidate by the KCRC as its future CEO. My concern is on what terms and conditions will the Chief Executive give his prior approval to

the appointment of the CEO by the KCRC. For example, when specifying the terms and conditions for the appointment of the CEO, the responsibilities, the term of contract, the remuneration or other benefits of the CEO should also be specified. I believe that the KCRC, as a public corporation, maintains rather high standards and has high expectations with regard to its requirements on the CEO. Similarly, the public and the Legislative Council also have high expectations on the CEO of the KCRC. Will the general public find the service provided by the KCRC satisfactory under the leadership of the CEO? Moreover, since the CEO is responsible for the day-to-day management of the rail operation of the KCRC, which has a great bearing on public interest, the terms and conditions of appointment will materially affect and define the work of the CEO. Therefore, the Democratic Party believes that the Government should allow some room for consultation with the Legislative Council on matters relating to the terms and conditions of appointment, and in this process examine whether these terms and conditions are appropriate, too generous or too harsh.

In fact, if we make a comparison, the importance of the post of CEO of the KCRC is indeed no less than that of directorate grade staff in the Government. When the Government intends to create a directorate post, the relevant panels of the Legislative Council will discuss the responsibilities, remuneration, benefits, and so on of the post, and they even have to decide whether or not to approve the creation of the post by the Government. Therefore, the present amendment is a very moderate proposal. What we are seeking is only an opportunity of consultation — let me stress that it is an opportunity of consultation that we are striving after.

Just as was pointed out just now in the report tabled by the Chairman of the Bills Committee, the separation of the functions and duties of the Chairman and the CEO of the KCRC seeks to put in place an effective governance structure to ensure the transparency, accountability and responsibility of the KCRC. We believe this amendment and another amendment to be moved later will further this objective. As stated in the Bills Committee report, the reason for the KCRC proposing the separation of the functions and duties of the Chairman and the CEO is to improve the checks and balances on the senior management. Therefore, we believe that it is certainly a positive sign and development to introduce these internal and mutual checks and balances through the separation arrangement, since this measure can prevent any abuse of power by any individual. In this connection, we can also exercise external checks and balances to prevent abuse of power by any organization and the Government.

This amendment, which proposes that the Legislative Council be consulted on the terms and conditions of appointment, is precisely made on this rationale of checks and balances, with a view to preventing the KCRC or the Government from formulating conditions that are too harsh or generous in recruiting a new CEO.

Some Members pointed out to me that no precedent could be found with regard to consulting the Legislative Council on such matter. Of course, there is no provision in the existing legislation requiring the Chief Executive to consult the Legislative Council beforehand on matters relating to the appointment of senior executives of public bodies. However, I hope Members will not forget that we passed a motion last week on how best the monitoring of public bodies can be enhanced, so as to foster a culture of accountability in them. Since the Kowloon-Canton Railway Corporation (Amendment) Bill 2001 is now being dealt with by us, this is an opportune moment and a chance for us to effect monitoring of these bodies. Therefore, I hope Honourable colleagues will support this amendment moved by the Democratic Party, so that we can work towards this goal.

Madam Chairman, I so submit.

*Proposed amendment*

**Clause 6 (see Annex I)**

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

**MR LAU KONG-WAH** (in Cantonese): Madam Chairman, on behalf of the Democratic Alliance for Betterment of Hong Kong (DAB), I would like to comment on both amendments proposed by Mr Andrew CHENG.

The disclosure of the remuneration of the CEO of the KCRC is mentioned in the latter half of Mr Andrew CHENG's amendment. We believe that the annual reports of KCRC have already followed the practice of listed companies in setting out the remunerations of the senior management. Although no specific figures are given, a general range is listed. Take last year as an example, the annual remunerations of the KCRC senior management were in the

region of \$6.01 million to \$6.5 million. From this, I already have a general idea of how much their remunerations were. Whether they are reasonable or not is a matter of opinion. However, I do not see the need to know whether the actual amount is \$6.1 million or \$6.2 million either, therefore we consider that on this point, no amendment is necessary.

Secondly, concerning the issue of consultation mentioned by Mr Andrew CHENG just now, I am still of the opinion that although the Legislative Council has to perform certain roles, in the final analysis it is not the executive, nor is it responsible for appointing the CEO. Rather, this is the responsibility of the KCRC Board. Therefore, ultimately, it is the KCRC Board that has to assume the relevant responsibility. For these reasons, we do not support these two amendments.

Thank you, Madam Chairman.

**MS MIRIAM LAU** (in Cantonese): Madam Chairman, I am speaking on behalf of the Liberal Party. The Chairman allowed Mr LAU Kong-wah to comment on both amendments together just now, so I would like to do the same.

Madam Chairman, the Liberal Party considers that the two Committee stage amendments proposed by Mr Andrew CHENG seem to target only the KCRC, and not merely the KCRC, but an individual, a particular person in the KCRC.

Madam Chairman, according to the Listing Rules, listed companies must disclose the total of their employee remunerations, as well as a general analysis of the remunerations of their five highest-paid employees in their annual reports. The KCRC has adopted the same disclosure standard and will disclose the remuneration of its newly appointed CEO according to the same standard.

Listed companies are accountable to their shareholders, therefore their standard of disclosure should offer the highest degree of transparency, even so, only a general analysis of the remunerations is required. However, the amendments proposed by Mr Andrew CHENG require the disclosure of every cent of the income received by the CEO and his remuneration will also be subject to consultation and discussion in the Legislative Council, comments by the public, and so on. These requirements have gone even further than the Listing Rules.

On the other hand, the Listing Rules require the disclosure of the general amount of remunerations of the five highest-paid employees rather than that of the CEO alone. Why do the amendments target the CEO alone? Is this because, as I have said just now, the amendments target only an individual rather than the issue itself? In addition, major statutory bodies such as the Hong Kong Monetary Authority, the Airport Authority, the Hospital Authority and the Mandatory Provident Fund Schemes Authority have all adopted disclosure practices similar to that of the KCRC. Why do the amendments target only the KCRC, and one person?

Since listed companies have already adopted a standard with transparency and statutory bodies including the KCRC have also adopted the same standard, the Liberal Party considers it unnecessary to set a new standard specifically for the KCRC and its prospective new CEO.

By the same token, that is, that of not targeting any individual, we do not consider it necessary to include a provision requiring the Chief Executive to consult the Legislative Council on matters relating to the terms and conditions of appointment of the CEO of the KCRC, since we did not require the Chief Executive to consult the Legislative Council in respect of the appointment of the CEOs of other statutory bodies either. In the past, the Chief Executive did not do so, nor were other statutory bodies required to do so. Nevertheless, we can see that other statutory bodies are operating in a quite satisfactory manner, and neither Members nor the Legislative Council have any special views on their operation.

Therefore, we cannot help but ask these questions. Why do we have to target the KCRC and one person in particular? Why do we have to move these amendments and prescribe these requirements?

Although we consider it unnecessary to target the KCRC, in particular its CEO in all sorts of ways, and "cook up" some provisions especially for the KCRC, it does not mean that we are giving up our right to monitor the performance of the KCRC. Since members of the KCRC Board include government officials, I have requested in my speech during the Second Reading debate that the two government officials should discharge their responsibilities of monitoring the KCRC operations for the public. Therefore, the Government must strengthen the monitoring role of these officials to ensure that the KCRC manages its existing railways well and implement its new railway programmes properly.

With these remarks, Madam Chairman, I oppose the two amendments proposed by Mr Andrew CHENG.

**MR ERIC LI** (in Cantonese): Madam Chairman, I speak in my personal capacity. However, I believe several non-affiliated Members will share similar views with me.

The spirit of this Bill seeks to strengthen corporate governance, and I fully subscribe to this general direction. However, it is undeniable that the accounting profession has found it rather strange that while the Bill demands the functions and duties of the Chairman and the CEO of the KCRC be separated and the posts be held respectively by two persons, the Bill in connection with the transaction of futures on the contrary sets out that the Chairman and the Chief Executive Officer must be the same person. The Government has adopted different approaches in respect of the two Bills. Although the nature of the Bills is different, we still find it somewhat strange. I think we had better leave this matter for more detailed explanation during discussions on the Bill relating to the futures exchange.

Last week, a debate on the governance of these statutory bodies was conducted in this Council. I mentioned in my speech the role of the Government as a major shareholder but not in the capacity of the Government. I thought that the Government should consider how to enhance the role played by independent directors appointed by it (especially government officials such as those serving on the Board of the KCRC), and opined that the Government should render more support and assistance to these directors. At that time, I also mentioned that it was necessary for the senior officer concerned to be accountable to the Legislative Council in future in such aspects as financial management, spending, and discharging the duty as a so-called corporate citizen (I cannot think of a Chinese translation for this term off the cuff). As regards how we should deal with the inclination of votes, I think it is open to discussion and the situation can also be improved. The points just made also fall outside the scope of the Bill and I already stated them at the motion debate on the last occasion, so I shall not repeat them here. Although I still wish to raise these points, I will not propose any amendments in this connection.

Insofar as Mr Andrew CHENG's amendment is concerned, I fully agree with the remarks made by Ms Miriam LAU. Therefore, I shall not repeat too much. However, I think that Mr Andrew CHENG's amendment is demanding the Government to play a role beyond that of a major shareholder. Perhaps, he has regarded the KCRC somehow as a public department run by the Government, or even made it sound like one. It is because what he demands of the KCRC has surpassed the general statutory requirements governing listed companies. We have made enquiries with the Government thoroughly, and demanded government officials to explain whether the KCRC was an independent kingdom or what? Although the Government has maintained throughout the years that it has no plans to list the KCRC, eventually we are very pleased to hear that the Government has admitted at the Bills Committee that its ultimate objective is to enable the KCRC to operate commercially as a listing company, and this is the ultimate consideration.

According to the Government's statement, I should agree that if the KCRC is considered a business company, no amendments should be allowed in certain provisions of the ordinance which will cause the KCRC to appear as if it is a government department. Otherwise it will give the business sector a very confusing message and people will puzzle whether or not the KCRC is a public department, or a corporation operating in accordance with commercial principles, or a corporation that is neither fish nor fowl? If the KCRC lacks a clear identity, it will encounter more obstacles when securing loans or co-operating with other companies in the private sector. For example, private companies working with the KCRC, lending it money, setting out terms of a loan will be more demanding, causing its costs to increase.

The additional requirements on information and the demand to make the KCRC formally accountable to the Legislative Council, and so on, will make the KCRC bear some resemblance to a government department. I think so doing will ultimately do more harm than good to the image of the KCRC. Therefore, for the above reasons, I find it quite difficult to support Mr Andrew CHENG's amendment. I hope other colleagues will also cast the same vote as I do. Thank you, Madam President.

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



**MR ALBERT HO** (in Cantonese): Madam Chairman, I think you can also recall clearly that we have had a motion debate only last week in connection with the performance of statutory bodies. The spirit of the whole motion is very clear as we were concerned about the performance of many statutory bodies, thus we made a series of demands which included increasing transparency, enhancing accountability, and so on.

Last week, among the 25 Members who spoke, many of them expressed very strong views to criticize some statutory bodies, and one of such bodies was the KCRC. I am therefore very shocked after listening to the speeches delivered by some Members earlier. Ms Miriam LAU said that she did not have any particular comments. Perhaps, she did not listen to the motion debate at all last week. In fact, just by looking up the record of proceedings, we can find that many Members criticized the KCRC alone for being a club of retired senior government officials, top executives receiving enormous salaries, lacking transparency, and so on. In fact, it is fine even if people do not share the same views, but it cannot be said that colleagues of this Council do not have any comments on public organizations.

I opine that some of our colleagues should not handle things in a way just as the saying goes: "profess love of what they really fear". That is to say, when talking about dragons, everybody says they like them, and by this I mean increasing transparency and enhancing accountability are good, so everybody say they like them too. However, once the dragon veers its head, all people are scared to death. It would just be like, for example, Members changing their positions and refraining from supporting to the relevant bill when it emerges and for scrutiny whereby all Members have the power to scrutinize it and tell the Government specifically what should be done. This is absolutely not desirable because they have failed to uphold their principles.

Why have Members raised objections just now? Some people said it was a matter of technicality, but some said it was the so-called matter of principle. However, the principles put forward just now totally contradicted those expressed by us last week. Let me first take Ms Miriam LAU as an example. She asked why the amendment targeted only the KCRC and the CEO. Should we change the Amendment Bill to target the municipal councils, or to target the Hong Kong Monetary Authority? We cannot do this. Similarly, since the legislation only involves the issue relating to the CEO, do we have the power to

change the clause to enable consultation in relation to the remuneration or conditions of service of the five top executives? Nor can this be done. Madam Chairman, you would not allow us to make such an amendment either. Therefore, given the circumstances, we can only propose the amendment in this manner with the limited power vested in us.

I have to stress once again that the amendment proposed this time is very mild. All it demands is consultation only, whereas the point of concern is on the terms and conditions of service, and this is the most important. Only by so doing can we really realize the spirit of the motion passed by us last week, that is, adequate transparency and accountability can be ensured in respect of the terms of appointment, administrative measures, and so on. Otherwise, sufficient consultation and transparency are already lacking in the appointment of the CEO, how can we talk about a transparent pay adjustment mechanism? How can we talk about adjustments without taking these steps at the appointment stage? What is the point of regulating the mechanism?

Moreover, the Honourable LAU Kong-wah expressed earlier that the remuneration of the top executives in fact had already been disclosed. These are two issues. We are discussing the requirements in law. If the KCRC thinks that there is no problem in implementation, why does it object to turning the requirement into a statutory obligation? There is no conflict between them, and neither would such a requirement become an extra burden to the KCRC. What other problems do they have given that they already have in place a practice close to the requirements in law?

Madam Chairman, I think today in fact has given us a very good opportunity to genuinely implement and sincerely support the motion passed last week. Today is also a very special opportunity to allow me to exercise my power to demand specifically statutory bodies (especially a statutory body against which many people have expressed dissatisfaction) to enhance its accountability and transparency. Today is the time for us to exercise our power. We definitely should not give up or evade our responsibility totally when it comes to exercising the power. This would be very disappointing. I hope the several Members including the organizations represented by them can think carefully again the spirit of the motion moved by us last week, and consider carefully how they should vote. Thank you, Madam Chairman.

**MS MIRIAM LAU** (in Cantonese): Madam Chairman, I would like to clarify one point, that is, other statutory bodies mentioned by me earlier on in fact refer to the Mandatory Provident Fund Schemes Authority, the Airport Authority and the Hong Kong Monetary Authority. Insofar as these bodies are concerned, I have not heard any strong criticisms in respect of their operations. I only wish to clarify this point.

With regard to monitoring, I have made myself very clear in my speech earlier that monitoring should not be effected in this way. Rather, the two government officials appointed to the KCRC Board are obliged to monitor the corporation concerned or even other public utilities in the discharge of their duties. Thank you, Madam Chairman.

**Mr JAMES TO** (in Cantonese): Madam Chairman, I now recall that I was the first to propose at the Bills Committee that the terms and conditions for the appointment of CEO should be approved by the Legislative Council. I was then referring to the remuneration and terms and conditions of appointment, not the candidate. Later on, after a detailed study, we decided to revise it to a requirement of consultation remuneration. I think the Secretary or the Deputy Secretary will recall why changes were later made to issues raised at the Bills Committee. It is because we had carefully considered the issues raised by several Members earlier on, including the one just mentioned, that is, the existing requirements are even more stringent than the listing rules.

As such, I have to clarify that though the existing requirements may be more stringent than the listing rules, the Corporation is not yet listed. I also said that if the Corporation were to be listed in the future, our considerations might be different. When we say considerations might be different when the company is listed, we should also consider the provisions of the existing legislation. Some Members agree that certain requirements of the Bill are not even observed by listed companies, such as the requirement on requiring the Chairman or CEO to attend Legislative Council meetings to give explanations or answer questions, and so on. Which listed company will do so? The answer is none. The Honourable Eric LI said earlier that he supported this arrangement because it was proposed by the Secretary. I find this very strange. Mr Eric LI may ask that the same requirement be included if the Corporation is to be listed

in the future, and he may then say that the Ordinance can be amended. Of course, with the approval of Members, amendments may be introduced and perhaps I may even share the same views then. However, what we need to consider at the moment is how far we should go in respect of this requirement. Members should not just say that even listed companies are not required to do so, for this is not an answer.

I do not recall any case where the CEO candidate of any listed company has to be approved by the Chief Executive. Which company is required to do so? Even if there were such a case, the terms and conditions of appointment do not need the approval of the Chief Executive (of course, I am talking about listed companies). If this is the practice of the MTR Corporation Limited (MTRCL), this is still not common among other listed companies because they all possess certain special characteristics. Since the Corporation is not yet listed, we do not have to go into details for there will certainly be different considerations when it is to be listed. I agree to this point and in the course of our discussions at the Bills Committee, I also knew what circumstances would call for different considerations.

On the other hand, as regards the Bill, please do not say or wrongly assume that the Legislative Council is targeting at any particular person. During our internal discussions, we were keenly aware that this was an institutional reform, though deep down in their hearts, Members (including myself) might think or we might have even openly voiced our dissatisfaction with Mr YEUNG's performance. However, I did not target at him personally when we scrutinized this Bill, for I understood that this Ordinance would be in force for some time, while the incumbent of the post may change, so our considerations should not be made with reference to the incumbent. If you ask me whether the Ordinance is tailor-made or who should be blamed if we really have to blame someone, then I only think that the Government has the greatest motivation. Why? Let us look back at the circumstances surrounding the scrutiny of the Urban Renewal Authority Bill. When the Bill was first submitted to the Legislative Council, the Government indicated that it would be the best if the CEO and the Chairman could be the same person, but now it says that should not be the case. It also said that after considering Members' advice, it thinks that the functions and duties of the two posts should be separated. The fact that the Government has hastily proposed this amendment at the eleventh hour under the existing circumstances plainly shows that it is targeted at a

particular person; because the Government desires that person to shoulder responsibility for the West Rail incident but cannot terminate his employment. When I was in the Ante-Chamber, some Members asked me why it was reported in the newspapers that the salary of that person would be reduced by 10%? I have to ask them to consider whether that person is asked to do a favour or whether it is the other way round? If he is asked to do a favour, then we should be most happy if his salary can be reduced by 10%. It is obvious that this is a tailor-made situation and the contract of that person is even renewed for two years. To put it more plainly, this is a situation where that person is asked to co-operate. If we say that a certain party should take the blame, I believe colleagues of the Legislative Council will not lack the political wisdom or intelligence to see what this is all about.

Furthermore, I am rather puzzled by what some Members said earlier. When the Bills Committee was scrutinizing the Bill, Members of the DAB were among the first to request that the remuneration of the CEO be disclosed. Now that we are going to prescribe this requirement in the amendment, but I am very surprised to learn that they think it is no longer necessary because such information has already been disclosed in the annual report of the Corporation. I believe that Members of the DAB had already read the relevant documents carefully and knew that such information was in the annual report. Then why did they make such a request? Were they asking questions in full knowledge of the answers? Perhaps, they have never intended to follow up on their request and have thus gone back on their words when we get down to working on the amendment for real. I am very puzzled indeed for I have never thought that the DAB will object to this part of the amendment. The DAB may have other considerations in relation to another part of the amendment for I am not sure whether or not they will think that it is related to the so-called different roles of the executive and the legislature. I still have to explore this issue.

If the Chief Executive were really required to appoint a Board under the Ordinance, then I would be happy to wash my hands of this issue. Since the Board would be responsible for everything, including the selection of a candidate for the CEO post and his terms and conditions of appointment, I no longer have to feel concerned and the Corporation is really totally independent. In that case, I think we would have other arguments on whether we should leave the Corporation alone, allow it to be independent or otherwise? However, if it should be left alone, it is strange that the Chief Executive can put a hand in the

affairs of the Corporation? Obviously, if the Government were asked to answer this question, it would certainly say that because public interest is involved.

After all, the Government is a major shareholder of the Corporation, and the two Secretaries are not the only persons who can exercise powers on behalf of the Government. Though the two Secretaries are appointed to certain posts in the Corporation, the Chief Executive may still have to look into the affairs of the Corporation. Neither the Legislative Council nor Legislative Council Members have any objections to this, otherwise Members would certainly query such provisions at the Bills Committee meetings. As far as I can recall, nobody has ever queried such provisions. If under certain circumstances, no matter how it is described, be it the exercise of administrative powers or consideration of public interests, why is it such a big sin if the Chief Executive is required to consult the Legislative Council before exercising this power? How can this be described as usurping the powers of the Chief Executive or naturally depriving the Corporation of its independence? I really hope that colleagues can respond to this.

The Chief Executive can exercise a lot of statutory powers and the Legislative Council can also invite him to talk to us. His role is clearly written in the law. Members of the public are major shareholders of the Corporation and it can be said that the Chief Executive is a representative of the public; however, the Legislative Council also has an enormous degree of representativeness and we may even say that it is greater than that of the Chief Executive for he is only returned by 800 people. As regards matters concerning the people's livelihood, why are there are so many different voices in the Legislative Council (though the eight parties can reach a consensus on certain issues)? This is mainly because Members have to defend public interest, otherwise, why should we be putting pressure on the Chief Executive and asking him to pay more attention to this area?

Like the fabled YE Gong who claimed to love dragons while he was actually afraid of them, some Members have acted inconsistently and the Honourable Albert HO has just spoken on this phenomenon. Given the opportunity to scrutinize this Bill now, we can add these provisions to allow the Legislative Council to play a more important advisory role. At the same time, we can also require the Chief Executive to consult the Legislative Council before he exercises such powers (by consultation, I am simply referring to the terms and

conditions of appointment, not the selection of candidate). The Democratic Party is worried that some Members may be suspicious of our motive, therefore, we have specifically deleted any references to the selection of candidate. Since we realize that the decision on the choice of candidate is outside the scope of the appointment system, we have voluntarily drawn a line. My only concern is after all public funds are used in making appointments. Frankly speaking, with the exception of one case, no reference to the choice of candidate will normally be made during our discussions at the Establishment Subcommittee meetings. The only exception was the time when we discussed the appointment of a D8 officer for we had already known who would take up the D8 post before the request for creating that post was submitted. That was an unprecedented case and everyone knew whom the post was tailored-made for at that time. With the exception of that case, we have never come across a similar situation. What we want to ask now is: Under the existing social conditions, operating conditions and nature of the Corporation and with competition from similar companies, what terms and conditions should be offered for that post before suitable candidates can be attracted? The consultation requested by us is in fact only a procedure we adopt in playing our monitoring role and carrying out our monitoring duties.

I hope Members can change their mind and support the amendment by the Democratic Party.

**MR LAU KONG-WAH** (in Cantonese): Madam Chairman, the Honourable James TO is usually very agitated when he speaks, and his memory is so much affected that he fails to recall what has actually happened.

At one of the Bills Committee meetings, we asked the Government to provide information on the remuneration of the CEO and senior officers of the KCRC, so that we could compare it with that of other statutory organizations such as the Airport Authority, Hospital Authority, and so on. I did make such a request at that time and subsequently, the Government provided us with the said information. The figures quoted by me earlier, that is, the remuneration of the CEO of the KCRC ranges from \$6.01 million to \$6.5 million has been taken from that source. This is the information requested by us at that time, so Mr TO should first make out what has actually happened.

As regards what Mr Albert HO said about whether there are any so-called contradictions, I have not made any self-contradictory or conflicting remarks. I mainly feel that since we know that the remuneration of the CEO ranges from \$6.01 million to \$6.5 million, there is no need for us to know whether the actual remuneration is \$6.3 million or \$6.4 million. I do not think that it is necessary and the DAB still upholds this view.

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

**MR ALBERT HO** (in Cantonese): Madam Chairman, I just wish to speak briefly. First, in the debate last week, colleagues expressed dissatisfaction not only with the KCRC, but also many statutory bodies including those mentioned by Ms Miriam LAU. All these have been put down on the record of meetings. More than 20 Members spoke last week, which is unusual and that showed dissatisfaction was strong. That means Members were strongly dissatisfied with the Mandatory Provident Fund Schemes Authority, the Hong Kong Monetary Authority and many other bodies. I agree that it is an overall issue, which we are not prepared to deal with today. So, I hope colleagues can support us and request that the Government deal with the issue, in the way mentioned in our amendment today so that the transparency and accountability of the statutory bodies can be enhanced; and the relevant remuneration and benefits in the terms and conditions of appointment should be accounted to the Legislative Council or the Legislative Council should be consulted on the formulation of a new remuneration system. This is the first point.

As my second point, I would like to stress that disclosure alone is not enough, that is, voluntary disclosure alone is not enough. This time we have proposed an amendment just to show our desire to achieve a good and innovative model, which, if passed, may be reference for the Government when it wishes to make laws of regulation on other companies, like the KCRC, which are wholly owned by the Government, so that these companies may know which model to follow in their operation. I think this requirement will not affect in any way the future operation of these companies carried out on present principles. There will be no detectable effect on them.

In summary, I would like to stress I fail to see why some Members felt big problems could arise if we supported enhanced transparency and accountability.



Mr LAU Kong-wah said just now he had not advanced any contradictory or conflicting arguments, but he was unwilling to support us when we demanded implementation of the specific proposals. Why?

Moreover, Madam Chairman, it is said that the remunerations are disclosed in the annual reports. Indeed only salaries are disclosed. Are fringe benefits and other conditions disclosed? We do not know whether the disclosed information includes rental allowance. Can Mr LAU Kong-wah tell me whether rental allowance is included? Would rental allowance reach \$500,000 or \$1 million? Can I know the amount? I do not think he can tell me that! Are additional bonuses included? Are memberships of high-class clubs included? The memberships may be worth \$1 million to \$2 million. Are these included? Are any limousines provided for the relevant staff? Can Mr LAU tell me? If he cannot, he should have no reason not to support our amendment. Thank you, Madam Chairman.

**MR ERIC LI** (in Cantonese): Madam Chairman, I wish to put down clearly in the Official Record of Proceedings that I support the objective of this motion which seeks to improve the mode of governance of the KCRC.

Now I would like to respond to the remarks of Mr James TO and Mr Albert HO. In fact, if we criticize today's motion on the basis of the motion passed last week, then there must be some improvements. Please try not to say that Honourable Members do not support any improvements at all.

Of course, I have explained clearly a moment ago that what extent of improvement should be sought. Being the major shareholder of the company and a supervisory organ of a government department, the Government adopts different concepts of governance which have both pros and cons. I have mentioned earlier that the major shareholder of a company is entitled to exercise a certain degree of supervision or even the authority in selecting the CEO and his deputies. This should be the power of the major shareholder, as all companies limited by shares are operating under the same system. However, having the power does not necessary mean that the company should disclose all the remuneration and terms and conditions of appointment, for such disclosure can only do harm than good. I have explained earlier that from the perspective of the business sector, it will do no good to anyone. What can we do after disclosing the remuneration of the CEO? We can neither criticize him, nor can

we do any other things. Nevertheless, we should place emphasis on overall co-operation in whatever we do. If anyone wishes to obtain certain information about the company, or to collect certain news or data, he should possess a certain degree of supervisory power before the information can be useful to him. Otherwise, even that person obtains such information, it is not necessary favourable to the company.

At present, when shareholders approve the remuneration of these directors, they will usually not target a certain individual, instead, they will target the collective responsibility of the board of directors as a whole, therefore they will not aim at one or two individuals. I think we should act according to the tenet and principle, as it is the best mode of governance. Certainly, some people will argue that the pay scale of each Bureau Secretary and each grade of officers in the Civil Service are made public, but that is another story. We do not apply the same principle when we deal with the commercial world. Besides, if we only know the figures but we have no power to supervise these people, what good can we do? I think even if we make changes in the relevant legislation, there will still be no substantive improvement. I cannot help asking if we have ever thought of where the line should be drawn. What exactly is a major shareholder? What degree of supervision are we demanding? The same question exists in all government departments, regardless of supervisors or subordinates. Where should the line be drawn. Opinions may be different. We agreed to the present practice does not mean that we are satisfied with the present condition. Nor does it mean we do not support improving the mode of governance of such statutory organizations as the KCRC.

I wish to put this down clearly on the record. Please do not say that because we do not understand the amendments of Mr Andrew CHENG, therefore we are satisfied with the current condition and we do not support the amendment. I think this is absolutely not true. Thank you, Madam Chairman.

**MR LAU KONG-WAH** (in Cantonese): Madam Chairman, since Mr Albert HO mentioned the motion debate held last week, I would like to respond to this briefly.

I remember that the motion debate on the last occasion was moved by Mr Albert HO with two amendments to it. The first amendment was moved by the Honourable CHEUNG Man-kwong and the general idea was to delete the

reference to several statutory bodies; the second amendment was moved by Mr LAU Kong-wah and supported by all Members. Therefore, I am very clear about the spirit of the amendment. I remember clearly that in my amendment, the DAB took pains to amend the wordings in a certain part of the motion moved by Mr Albert HO, so as to delete the point concerning drawing reference from the pay adjustment mechanism of the Civil Service.

Why did this point matter? This is because although we think that problems have indeed arisen in the KCRC and it is necessary for some statutory bodies to make improvements in some areas, we do not think that they must return to a state of affairs comparable to that of the Civil Service or its structure. We believe that the public does not wish to see such a situation, nor do I wish to turn the clock back in respect of the structure of governance. Therefore, under such circumstances, we deleted that point from the motion last week on basis of this principle.

I think the same applies to today's amendments. We believe that we should not go too far. Improvements should be made where necessary, but I do not see why, between \$6.01 million and \$6.5 million, we have to be so nosy as to insist on knowing whether the actual amount is \$6.3 million or \$6.4 million. Is this what we call monitoring?

Madam Chairman, I think that insofar as the issue of monitoring is concerned, all Members clearly showed their support for the amendment moved by me in the motion debate of the Legislative Council held last week. I hope this has sufficiently demonstrated that our actions are basically consistent. Thank you, Madam Chairman.

**MR JAMES TO** (in Cantonese): Madam Chairman, I would like to respond to the remarks made by Mr LAU Kong-wah earlier, which have betrayed the flaws exactly. In his amendments to Mr Albert HO's motion, Mr LAU proposed "to devise for these bodies a pay and fringe benefits adjustment mechanism which is clear, transparent and acceptable to the public .....". The term "fringe benefits" was added by Mr LAU Kong-wah. In other words, how could the "fringe benefits" be seen in the present annual report? They could not be seen at all. According to the explanation of Mr Albert HO, perhaps Mr LAU suspected that something might be missing then. Since he is a more meticulous

person, he therefore added the term "fringe benefits" in his amendments. However, the annual report did not show those fringe benefits, so, what did Mr LAU really want? He did not only ask for transparency, he also asked for an adjustment mechanism for fringe benefits. However, now he said that it is not necessary because the annual report states that the range is from \$6.01 million to \$6.5 million, and that will be fine. I think this is unreasonable, as he moved the amendments which were agreed by us all. But now he goes back on his own words.

Furthermore, why did he talk about "remuneration acceptable to the public"? Nobody has commented on this, except Mr Eric LI who brought up the theories of shareholders and the governance of government departments. With his explanation, it is easier to distinguish the difference. However, as far as the present model is concerned, should the Government be considered a shareholder, or should the company be considered a government department, just because two ministerial level officials are appointed to its governing committee? Honourable Members should not forget one thing, that is, why we proposed the amendment. It is because the Chief Executive has to make certain decisions in respect of the board of directors. It is still unclear whether the Chief Executive in the board is a shareholder, or in the capacity of his own office, the Chief Executive. Eventually, with regard to certain important conditions of appointment, the Chief Executive has to approve them (if such terms and conditions are not important, it will not be necessary to seek the approval of the Chief Executive, or if they are important, then they must have to do with public interest.) Honourable Members should bear in mind that what he has to approve is not the remuneration of some other deputies or officers below the CEO, and he should be aware of the fact that the terms and conditions of appointment are significant.

As a result, this is good enough to answer the question raised by some Honourable Members, that is, why approval is needed for the remuneration of the CEO but not the remuneration of other senior staff. It has just been explained earlier that the issue has gone beyond the scope of the current amendment exercise, which the Chairman will not permit. In fact, with regard to legal provisions, we consider the approval of the Chief Executive in the appointment of the CEO is a matter of enormous import and significance. So what we want to do is to take part in it and play a monitoring role. In fact, I really wish to tell Honourable Members that if we have to draw a line, I also

agree that a line should be drawn, then there are numerous possibilities. But why should it be drawn to empower the Chief Executive to approve the terms and conditions of the appointment of the corporation's CEO, while the Legislative Council must not take part in the process, not even the least part? I hope an explanation can be given to us. Why should it should be done that way?

**MR ALBERT HO** (in Cantonese): Madam Chairman, first of all, Mr Andrew CHENG has not mentioned in his amendment about drawing reference from the pay mechanism of the Civil Service. Therefore, anybody may express his views from his own knowledge, business criteria or any other standards he considers reasonable. We only ask for a consultation mechanism. As to the standards for the consultation, we only have some standards for reference, we have not provided any obligatory standards. Therefore, concerning Mr LAU Kong-wah's point that they are opposed to drawing of reference from the pay mechanism of the Civil Service, in fact we have not made such a proposal.

Secondly, I think Mr LAU Kong-wah has not yet answered my question, that is, whether or not the other benefits are included in the \$6.01 million to \$6.5 million. Does he actually know they have been included or not? If he has no idea, can he tell me what are included in fringe benefit and how much they are? Is he satisfied now? Will it be fine with him just disclosing the range is \$6.01 million to \$6.5 million? If he is satisfied with that, does it mean that he actually cares very little about it and thinks that accountability and transparency can be achieved merely by articulating some remarks?

Thank you, Madam Chairman.

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

(No Member responded)

**SECRETARY FOR TRANSPORT** (in Cantonese): Madam Chairman, the amendment moved by Mr Andrew CHENG demands that the Chief Executive should consult the Legislative Council on matters relating to the terms and conditions of the appointment of the CEO of the KCRC.

The mode of operation of the KCRC is very clear. As provided in the Kowloon-Canton Railway Corporation Ordinance, the KCRC must operate on prudent commercial principles. And so the mode of operation of the KCRC is very clear indeed. When the Mass Transit Railway Corporation (MTRC) was listed, the Government stated clearly that the KCRC would be another possible candidate for public listing. Since the KCRC has to operate in a business environment, when it determines the remuneration packages of its executives including the CEO, considerations have to be made on the corporate governance structure of the Corporation, the level of responsibilities, and the expertise and experience required of the job. The terms and conditions offered by the KCRC to the CEO should be in line with the market in which the KCRC is competing for the talents required. The terms and conditions should be able to attract and retain persons of a suitable calibre, relevant experience and professional expertise to assume the post of CEO. As for the power of prior approval which the Chief Executive of the SAR is expected to retain in relation to matters concerning the appointment and dismissal of the CEO and the office-bearer's remuneration, they are not intended to be used to interfere with the normal operations of the KCRC. As the only shareholder of the KCRC, the Government has to ensure that the person appointed is capable of discharging the duties of a position of great importance as the CEO.

Owing to the reasons which I shall be giving later, the Government is of the view that it is not appropriate to introduce a procedure that requires the Chief Executive to consult the Legislative Council on matters relating to the terms and conditions of the appointment of the CEO of the KCRC. First, before submitting to the Chief Executive proposals on the terms and conditions of the appointment of the CEO, the KCRC Board should draw reference from the pay trends in the market to determine the remuneration package of the CEO. If the terms and conditions of the appointment of the CEO are put on the Legislative Council Agenda, that would change a commercial decision which is made with reference to practical commercial needs into a political process. Second, suppose public consultation is made in the Legislative Council, it would inevitably entail the disclosure of specific information on the remuneration and benefits of the CEO and once such sensitive commercial information is disclosed, grave and enormous impact will be created on the bargaining power of the KCRC when it negotiates the terms and conditions of appointment with the CEO candidates. It would also affect the competitiveness of the KCRC when it

competes with other business institutions in the manpower market for suitable candidates. Third, the disclosure of such terms and conditions of appointment will involve the personal data of the appointee. We should not overlook the privacy of the appointee. Fourth, the KCRC is one of the some 200 statutory bodies now existing, and the Legislative Council has not been involved in the formulation of the terms and conditions of appointment of the senior management of these bodies. Thus we do not think there are sufficient grounds to justify any special treatment with regard to the KCRC. In view of the above reasons, I implore Honourable Members to vote against the amendment. Thank you, Madam Chairman.

**MR ANDREW CHENG** (in Cantonese): Madam Chairman, the debate has been magnificent indeed. I was actually tempted to raise my hand earlier to claim the floor before the Secretary for Transport was called on to give his reply. But I thought since I would have this chance to speak again, I did not want to waste too much of Members' time. Two of my colleagues have specifically responded to the views of Mr LAU Kong-wah, Ms Miriam LAU and Mr Eric LI. But I really cannot refrain from speaking on this again, for I very much want to express my views on the remarks made by a number of Members in the debate. Their remarks made me feel that, in relation to the demand lodged by us in the past for exercising monitoring over statutory bodies and in relation to the wording, contents and spirit of the motion debated in the Legislative Council last week, we seem to have let slip a golden opportunity to make amendments. I think if we give up this opportunity, we are indirectly allowing one of those statutory bodies, namely, the KCRC, to remain as an independent kingdom.

I hope Ms Miriam LAU will appreciate that the first speech made by me earlier on the amendment did not, as I believe, give the impression that I was targeting at Mr YEUNG Kai-yin or the future CEO. The entire concept of this amendment proposed by the Democratic Party and me lays emphasis on enhancing the accountability of the KCRC. If there is anything that gives Ms Miriam LAU the impression that I was making it personal, it is probably because of our past criticisms against the KCRC outside the Legislative Council. Certainly, we have hurled criticisms at the KCRC before. But in this amendment, and given the constraints posed by the scope of the Bill, we cannot propose corresponding amendments to the entire management of the KCRC.

My colleagues already addressed this point earlier in the debate, so I will not repeat it here.

Madam Chairman, on the listing of the KCRC, I remember the Secretary for the Treasury, when giving her views in the Legislative Council in recent years, had remarked that the KCRC would not be listed in the foreseeable future, although it would remain a long-term goal. Insofar as this Bill is concerned, we asked the same question in the Bills Committee, and in my impression, the answer given then was also that the KCRC would not be listed in the foreseeable future.

Some of our colleagues silently support the Government's amendment to Schedule 1 to the effect that the appointment to the service of the Corporation of the CEO, and even the suspension and dismissal from the service of the Corporation of the CEO, shall require the prior approval of the Chief Executive. In the Bills Committee and in their earlier speeches, our pro-government colleagues have silently accepted that the Chief Executive can have such great powers. They do not have to cite the listing rules to argue against our amendment, for our amendment only requires the Chief Executive to consult the Legislative Council on matters relating to the terms and conditions of the appointment of the CEO, not on the candidates for appointment, and not on individual persons. Now that they are citing the listing rules to put pressure on us, saying that this is not allowed and that we have overstepping the listing rules. Mr Eric LI even went so far as to say that the KCRC would have problems in securing loans from banks in future if such an arrangement is put in place. I doubt if this understanding has actually taken the matter beyond what we are asking for.

I would like to ask a question. We have discussed the KCRC and the MTR Corporation Limited (MTRCL) before and they are, in fact, operating as semi-monopolies. Who will compete with the KCRC in the New Territories? I do not believe it will have any competitor. That being the case — Dr the Honourable David LI, the banker, is here and he has been listening to me very attentively — I would like to ask Mr Eric LI this: Will the banking sector have any misgivings whatsoever about extending loans to the KCRC and the MTRCL in the next 10 years, 20 years or 50 years? As it requires an investment of tens of billions of dollars, who will compete with such mass carrier networks as the KCR and the MTR? What problems will there be in securing loans? Do not



always say that consultation with the Legislative Council will affect their credit ratings. When they came before the Legislative Council in respect of their fare increase applications and when we raised objections, there were again people saying that we could not object their applications and alleging undue intervention by the Legislative Council. All I hope is that Members will not raise our amendment to the higher plane of principle.

Mr LAU Kong-wah even described our amendment as an overkill and too "nosy". I am really baffled by this. Then he thanked Mr James TO for citing the wording of the amendment in the last motion debate. Later, Mr Albert HO had repeatedly asked Mr LAU Kong-wah to respond but in vain; and I am still waiting for his response now. If he fails to respond, it would imply that what he has been doing is more of an overkill and is even "nosier". He demanded that all statutory bodies be required to do this in last week's motion debate in the Legislative Council, and insofar as this amendment is concerned, we are imposing the requirement only on the KCRC. Having worked with Mr LAU Kong-wah for years both inside and outside this Chamber, I understand that when it comes to transport issues in particular, very often when I level criticisms at the KCRC, his criticisms of the KCRC will be more severe than mine; when I ask the KCRC to be open and transparent, he will ask it to be more open and transparent. But on this amendment, he outrageously said that it is an overkill and that we are "nosy". But I think if it is in line with public interest, it will do no harm to be a bit "nosy". If the intention of being "nosy" is to serve public interest, then we ought to be even "nosier".

Earlier on the Secretary explained the reasons behind the Government's amendments. On the point that the Chief Executive's prior approval is required, the reason is that the Government, as stated very clearly by the Secretary, is still the sole and largest shareholder of the Corporation. It is the sole shareholder, not just the largest shareholder. When I said "still", it means that the KCRC has not yet been listed or privatized. The Government is still its shareholder, and it is still required to carry the considerable load of public interest. Therefore, the Chief Executive must have the power to decide on the candidates for the CEO of the KCRC, the terms and conditions of appointment, as well as the suspension and dismissal of the CEO. Such being the case, since the Legislative Council also has to look after so much public interest, and adding to this is the public expectation of us, why can we not be consulted on the terms and conditions of the appointment of the CEO?

The Government is practising executive hegemony and executive domination. I can forgive this — No, not that I forgive this, just that I can do nothing but to accept this. (*Laughter*) However, some Members have now opposed our amendment on the basis of the principle that they have consistently upheld. This, I think is absolutely unforgivable. We cannot be so untruthful. This is what we demanded in the past. While we have the power to realize it now, some of us have nonetheless given it up; and I am extremely dissatisfied with this. I know that despite these using rather strongly-worded statements, it is difficult to change the minds of those Members who have spoken. But the remarks made by us here will all be put on record. All we can do now is to wait and see how we can truly monitor these public bodies and what we can do to stop these bodies from continuing to be independent kingdoms that have been so categorically criticized by Members. Indeed, we are now facing an opportunity to be given powers to require these independent kingdoms to return to the right track, and to stop them from growing fat alone and from consistently asking for fare hikes.

In response to Mr Eric LI, I wish to say I understand that this amendment proposed by us now is not the best. But this amendment is proposed after repeated consideration, with a view to obtaining support from Members. We know that an amendment requiring those terms and conditions to be subject to the approval of the Legislative Council will not be passed. Initially, we did hope that the Chief Executive's power to grant approval can be transferred to the Legislative Council. But I knew dead sure that this would not be passed. We, therefore, went for the second best option, that is, consultation instead of approval. But unexpectedly, even this proposal is given a dressing down mercilessly. I thought we had reached a consensus after the many discussions that we had previously. But I have been too naive. I just hope that Members will not let slip this chance of making amendments. Otherwise, the KCRC and the other statutory bodies will be laughing up their sleeves and be allowed to remain as independent kingdoms. Thank you, Madam Chairman.

**MR JAMES TO** (in Cantonese): Madam Chairman, may I ask whether I can respond to the speech of the Secretary at the Committee stage?

**CHAIRMAN** (in Cantonese): Mr TO, Members may speak a number of times at the Committee stage, but Mr TO, please exercise more self-control. *(Laughter)*

**MR JAMES TO** (in Cantonese): Madam Chairman, in fact my role is to take care of anything that is missed out. At first I thought that Mr Andrew CHENG has missed out something, but now I feel that it is worthy to respond to the remarks of the Secretary. Although the Secretary spoke briefly, the scope involved was quite substantial, therefore it is necessary to respond to his remarks and have the views put down in the official record.

First of all, the Secretary said that if the matter was brought up to the Legislative Council for consultation, we might not be able to win over the best people in the market. As it is a very important point for consideration, therefore we should respond to it.

I wish to use a similar expression used by the Secretary for Commerce and Industry, Mr CHAU Tak-hay, in the question time when he answered the question of Dr Raymond HO concerning the WTO as a counter remark to the Government. He said, to the effect of "do not look down upon us officials", and I say, "do not look down upon the Legislative Council", do not think that we have no consideration for the importance of competing for talents in the manpower market. If the Chief Executive deems a certain price good enough to attract the necessary talent, when considering the terms and conditions of appointment, capable of managing such a sizable business or supervising such an enormous operational structure (that candidate has nothing to do with the Legislative Council at all), please try not to think that we do not understand all this. However, we have to explain it to the public. But we will not tell the public that we can only employ the best people with a price in the job market these days. If you ask me if it is really a must to recruit Mr Joseph YAM at some \$9 million in the present job market, I really have to say, "Excuse me, according to the information I have, it is absolutely not true." Honourable Secretaries and officials present in this Chamber may go out and ask the people around you about this question. Nonetheless, is it necessary to spend \$3 million or \$4 million on the annual remuneration of the CEO of KCRC? In fact, there should be a basis for the remuneration, but the Legislative Council has no

intention to put a hand in it. The only thing we ask the Government to do is to consult the Legislative Council, as we would only give our opinions. Please do not think that we will ask Mr TUNG to do this and that. This is not the case, and it is impossible. It would be best if we can recruit a talent with \$2. The Legislative Council is not amenable to reason, please do not look down upon us.

Secondly, the Secretary said that if that was the case, then the commercial consideration from the outset would become a political consideration when the Corporation was considering the candidates. In this connection, I have to ask: Do you think the Chief Executive needs not make any political consideration when he considers appointing a certain person, or what terms and conditions to offer, or if that particular person would agree to take up the job? He has to make the same consideration. Last week, we passed a motion, in which we asked: Given the entire community felt that the remuneration packages of so many statutory bodies were too high, should the Chief Executive not take that into consideration? He has to take that into consideration, but the question he has to consider is just how the balance should be struck. How much should we spend in order to recruit the suitable talents? What kind of talents could we recruit if we sacrifice the quality for price? The Legislative Council has to take the same questions into consideration, thus we cannot say that the Legislative Council only talks about politics, and Mr TUNG or the next Chief Executive talks nothing about politics at all. All of such talk is self-deceiving.

Lastly, with regard to personal information, the Secretary said the information will not be disclosed and will be kept confidential after Mr TUNG has looked through them. Is it not possible for the Legislative Council to do the same? We are now talking about the terms and conditions of the appointment. If any personal information is involved . . . . . I wish to tell the officials that in our Complaints Division, no matter how trivial the personal information are involved, we have to keep them in strict confidence. Up to now, has any Member made any attempt to disclose any personal information in the custody of the Complaints Division of the Secretariat or the entire Secretariat, no matter they are information on the complainants or such as the information of the tenants of the Wah Kai Industrial Centre? No such thing has happened before. How can we say that privacy will be disclosed after consulting the Legislative Council? If necessary, we can even conduct closed meetings, thus it can be seen that personal

information are absolutely confidential, as they are always under confidential cover. If the Secretary understands the operation of the Legislative Council, then please do not use this as an pretext to reject our request, or to say that any consultation in respect of the appointment will lead to a disclosure of personal privacy.

**MR LAU KONG-WAH** (in Cantonese): Madam Chairman, please allow me to further add a point or two. Earlier on two colleagues referred to an item included in the amendment to the motion debated at the last meeting. Now I have read it carefully and would like to say a few words on it.

The wording of last week's amendment reads "..... devise for these bodies a pay and fringe benefits adjustment mechanism which is clear, transparent and acceptable to the public". In my view, it is necessary to put in place such an adjustment mechanism, and it is also necessary for it to cover both the fringe benefits and pay. They are inseparable. However, the DAB has never demanded that all the details be made public. So, we have not asked that all the details be disclosed to the public. We only called for the setting up of such a mechanism. This is the first point.

The second point is that the responsibilities of the adjustment mechanism are still determined by the managing board of the body, rather by the Legislative Council, for this does not come under the latter's ambit. Thank you, Madam Chairman.

**CHAIRMAN** (in Cantonese): Does any Member or government official wish to speak again? Secretary for Transport.

**SECRETARY FOR TRANSPORT** (in Cantonese): Madam Chairman, I do not wish to speak again, but I wish to make a clarification here.

When Mr James TO quoted the points I had made in my speech, he distorted what I actually said, so as to give vent to his emotions. I am not going to correct him now, for I am sure that my actual arguments are already put down clearly in the Official Record of Proceedings. Thank you, Madam Chairman.

**MR ALBERT HO** (in Cantonese): I just wish to respond in relation to last week's amendment. Indeed, the amendment referred to the pay and fringe benefits adjustment mechanism. But if many of these statutory bodies do not even have their own conditions of service, there is no point in making empty talks on the adjustment mechanism. So, it is meaningful only when this adjustment mechanism is premised on a concrete basis.

Obviously, some people are trying to interpret the wording in a very narrow sense, in an attempt to defend their position today. But the question is: What is the overall spirit? It should be to enhance accountability and transparency, and these must be realized in the actual operation of these bodies. If even the most basic conditions are not made known to the public, and if we do not even demand disclosure of the most basic information, this mechanism will, in fact, be meaningless. Besides, the amendment did not mention that decisions would rest with the managing board. This is added by Mr LAU Kong-wah. Now we know that this mechanism actually has to be determined by the managing board. If the wording has to be given such a narrow interpretation, they should not have been so high-sounding in the first place.

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

(Members raised their hands)

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

(Members raised their hands)

Mr Andrew CHENG rose to claim a division.

**CHAIRMAN** (in Cantonese): Mr Andrew CHENG has claimed a division. The division bell will ring for three minutes.

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

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

Functional Constituencies:

Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Mr LAW Chi-kwong and Mr Michael MAK voted for the motion.

Mr Kenneth TING, Mr James TIEN, Dr Raymond HO, Mr Eric LI, Dr David LI, Miss Margaret NG, Mrs Selina CHOW, Mr HUI Cheung-ching, Mr CHAN Kwok-keung, Mr Bernard CHAN, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Timothy FOK, Mr Abraham SHEK, Mr Henry WU, Mr Tommy CHEUNG, Mr LEUNG Fu-wah, Dr LO Wing-lok and Mr IP Kwok-him voted against the motion.

Dr LUI Ming-wah and Miss LI Fung-ying abstained.

Geographical Constituencies and Election Committee:

Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Miss Emily LAU, Mr Andrew CHENG, Mr SZETO Wah, Mr Albert CHAN, Mr Frederick FUNG and Ms Audrey AU voted for the motion.

Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr TAM Yiu-chung, Dr TANG Siu-tong, Dr David CHU, Mr NG Leung-sing, Mr YEUNG Yiu-chung and Mr Ambrose LAU voted against the motion.

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

THE CHAIRMAN announced that among the Members returned by functional constituencies, 29 were present, four were in favour of the motion, 23 against it and two abstained; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 25 were present, 13 were in favour of the motion and 11 against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the motion was negated.

**CHAIRMAN** (in Cantonese): As Mr Andrew CHENG's amendment to clause 6 has been negated, I now put the question to you and that is: That clause 6 stand part of the Bill ..... I am sorry, Members. I must have a word with the Clerk.

**CHAIRMAN** (in Cantonese): Members, I am sorry that I had read the script too quickly. I owe the Clerk thanks for reminding me. Mr Andrew CHENG, you may now move the other amendment.

**MR ANDREW CHENG** (in Cantonese): Madam Chairman, I know that you want to go through it quickly, because you already know that this amendment stands a high chance of being negated. Anyhow, Madam Chairman, I move an amendment to add subclause (1A) to clause 6, as set out in the paper circularized to Members.

Madam Chairman, as I have prepared a speech, I have to read it out; and since Members have already spoken, let me just put up a last-ditch struggle. I would like to speak on the part on the disclosure of the CEO's remuneration.

Madam Chairman, this amendment seeks mainly to require publication of the remuneration, including the salary and other benefits, of the CEO in the annual report of the Corporation.



The main purpose of this amendment cannot be clearer. As the remuneration of the senior management of the KCRC lacks transparency, the Democratic Party and I hope to remedy this defect through this amendment. While we are unable to provide for the publication of the actual amounts of remuneration of the senior staff of the KCRC given the scope of the original Bill, it will still be a reasonable starting point if more information in relation to the CEO can be disclosed.

It has been the practice of the KCRC to publish only the range of remuneration of its senior staff. If we refer to its latest annual report, we will find that the annual remuneration of one person falls within the range of \$6 million to \$6.5 million. I believe it is the remuneration of the Chairman cum CEO of the KCRC, but this is purely our guess.

Since the KCRC is a statutory public body, its operational transparency is the greater the better. But insofar as the publication of information on remuneration is concerned, the KCRC is obviously going against this principle. The Democratic Party cannot understand why a public body's attitude should remain so sneaky and surreptitious when it comes to the disclosure of the remuneration of its leaders.

During meetings of the Bills Committee, the Government had written to the Bills Committee explaining why the remuneration of the Chairman cum CEO of the KCRC cannot be disclosed. To sum up, there are two reasons. First, this will involve the disclosure of personal data, and second, the existing practice is in compliance with the listing rules.

On the first reason, we think that the argument is not convincing. At present, the remuneration of civil servants is completely open. However, the KCRC, which is wholly-owned by the Government, can refuse to disclose the actual remuneration of its senior executives on the ground that personal data will be involved. Furthermore, our amendment does not call for the disclosure of the remuneration of all the staff of the KCRC. We only ask for the disclosure of that of the CEO, with the purpose of enhancing the public accountability of the KCRC.

The second reason is even more absurd, for it merely uses the listing rules as a shield. Up to the present moment, as mentioned by us time and again in the

debate, the KCRC is not a listed company. That the Government should use this as a reason to reject our demand is totally irrelevant and in so doing, the Government is also putting on a straitjacket itself. Even though the Government genuinely believes it to be a tenable reason, the requirement to be included in the rules is only a moderate one. Should public bodies not go further than listed companies; and is it not better for them to disclose more information, so as to build up public confidence in their operation?

Last month, the media reported that the senior management of the KCRC enjoys club memberships, limousines and yachts, and this has aroused considerable criticisms from the public. We think that if the senior management of the KCRC has been adequately aware of the need to enhance the Corporation's accountability, and if it can proactively explain all the perks enjoyed by its senior management rather than leaving them to a scoop by the media, the public would not have been so resentful at the KCRC. The case of the KCRC precisely reflects that the Government's monitoring of public bodies is too lax. If the law can provide for some basic requirements so that the objective of exercising monitoring over these bodies can be achieved to a minimum degree by legislation, I believe this is what members of the public would wish to see. Our amendment precisely points to this direction. We must stress that the amendment does not aim at imposing limitations on the KCRC. It only seeks to ensure that the KCRC meets the minimum requirement of being accountable to the public, in order to allay the concern of the public that public bodies are totally subject to no control at all.

With these remarks, Madam Chairman, I beg to move.

*Proposed amendment*

**Clause 6 (see Annex I)**

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

(No Member indicated a wish to speak)

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

**SECRETARY FOR TRANSPORT** (in Cantonese): Madam Chairman, though I have prepared a script, I did not refer to it earlier as the topic was not discussed. Now I would like to talk about this issue from the Government's position.

As regards the transparency in the disclosure of information on the remuneration of its executives, the KCRC has met the same stringent requirements for listed companies prescribed by the Stock Exchange of Hong Kong. Under the listing rules, public listed companies are required to disclose the total remunerations of the staff in their annual reports, as well as an analysis of the approximate remuneration of the five highest paid employees. The analysis sets out the remuneration received by the directors and the senior management in multiples of \$500,000. Despite the fact that the KCRC is not yet a listed company, in the annual report it publishes each year, it has adopted the stringent requirements laid down by the Stock Exchange of Hong Kong with respect to the remuneration of the executives. The Government is of the view that the disclosure arrangement adopted by the KCRC presently can strike a proper balance in maintaining transparency, and in protecting business information and the privacy of the executives. The KCRC will continue to provide information on the remuneration of the senior executives on the same basis. The Government therefore thinks that it is not advisable to legislate to direct the KCRC to disclose specific details on the remuneration and benefits of the CEO in its annual report. Thank you, Madam Chairman.

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

(Members raised their hands)

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

(Members raised their hands)

Mr Andrew CHENG rose to claim a division.

**CHAIRMAN** (in Cantonese): Mr Andrew CHENG has claimed a division. The division bell will ring for three minutes.

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

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

Functional Constituencies:

Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Mr LAW Chi-kwong, Miss LI Fung-ying and Mr Michael MAK voted for the motion.

Mr Kenneth TING, Mr James TIEN, Dr Raymond HO, Mr Eric LI, Dr David LI, Miss Margaret NG, Mrs Selina CHOW, Mr HUI Cheung-ching, Mr CHAN Kwok-keung, Mr Bernard CHAN, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Timothy FOK, Mr Abraham SHEK, Mr Henry WU, Mr Tommy CHEUNG, Mr LEUNG Fu-wah, Dr LO Wing-lok and Mr IP Kwok-him voted against the motion.

Dr LUI Ming-wah abstained.

Geographical Constituencies and Election Committee:

Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Miss Emily LAU, Mr Andrew CHENG, Mr SZETO Wah, Mr Albert CHAN, Mr Frederick FUNG and Ms Audrey EU voted for the motion.

Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr TAM Yiu-chung, Dr TANG Siu-tong, Dr

David CHU, Mr NG Leung-sing, Mr YEUNG Yiu-chung and Mr Ambrose LAU voted against the motion.

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

THE CHAIRMAN announced that among the Members returned by functional constituencies, 29 were present, five were in favour of the motion, 23 against it and one abstained; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 25 were present, 13 were in favour of the motion and 11 against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the motion was negatived.

**CHAIRMAN** (in Cantonese): As the amendment moved by Mr Andrew CHENG on clause 6 has been negatived. I now put the question to you and that is: That clause 6 stand part of the Bill. Will those in favour please raise their hands.

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): New clause 3A                      Addition.

**SECRETARY FOR TRANSPORT** (in Cantonese): Madam Chairman, I move that new clause 3A be read the Second time, as set out in the paper circularized to Members.

The senior management of the KCRC has been making positive responses to the requests by the Legislative Council to attend meetings of the committees and subcommittees of the Council. The Government made it clear on many occasions in the Bills Committee that when the posts of the Chairman and the CEO are separated, the senior management of the KCRC will still continue to attend the meetings of the committees and subcommittees of the Legislative Council in a positive manner. However, some members of the Bills Committee think that provisions should be added to the Bill so that the same can be invoked to compel the senior executives of the KCRC to attend the meetings in the event that they refuse to do so.

The Government pointed out many times in the Bills Committee that there are provisions in the existing legislation to address this concern of members. Under section 9(1) of the Legislative Council (Powers and Privileges) Ordinance, the Legislative Council or a standing committee thereof may order any person to attend before the Council or before such committee and to give evidence or to produce any paper, book, and so on in the possession or under the control of such person. Section 9(2) stipulates that the powers conferred by subsection (1) on a standing committee may be exercised by any other committee which is specially authorized by a resolution of the Council. As the Ordinance is applicable to all persons, so the matter of the senior executives of the KCRC attending the meetings of the committees and subcommittees of the Legislative Council should be a matter of course and to be dealt with according to that Ordinance. The Government has pointed out that if any provisions on compulsory attendance before meetings are added the Bill, that would be making a special treatment of the KCRC in law. In view of the excellent records of KCRC in attending meetings of the committees and subcommittees of the Legislative Council when invited, the Government is of the view that it is unnecessary to provide for any special treatment of the KCRC in law. However, after considering the strong views expressed by members of the Bills Committee in meetings, the Government agreed to move a relevant Committee stage amendment.

The Government's agreement to move the amendment is premised on the following. First, the Bills Committee admits that in respect of its attendance before Legislative Council meetings, the KCRC holds an excellent record and the Government trusts that the KCRC will continue to respond positively to requests from the Legislative Council to attend its meetings. As it is, the addition or otherwise of this provision will not make any substantial difference.

Second, the Government has been holding the view, and still does, that strictly speaking, it is not necessary to add such a provision to the Bill, for in the event of any problem arising in respect of the attendance of meetings, the matter can be dealt with under section 9 of the Legislative Council (Powers and Privileges) Ordinance. Third, as some Honourable Members pointed out in the meetings of the Bills Committee, when it becomes necessary to invoke the relevant provision, the committees and subcommittees should exercise the power vested by the provision in a reasonable and prudent manner. Fourth, the Legal Adviser of the Legislative Council explained in a meeting of the Bills Committee that under the relevant provision, the committees or subcommittees may request the Chairman or the CEO of the KCRC to attend the meetings and invitations are not necessarily extended to the two persons to attend the meetings both at the same time. We are of the view that unless it is absolutely necessary, the committee concerned should not require the two to attend meetings at the same time. Fifth, when the committees and subcommittees of the Legislative Council require the attendance of the Chairman and the CEO at their meetings, they would be given prior and sufficient notice and that a specific agenda will be drawn up to facilitate meaningful discussions.

In view of the above reasons, the Government agrees to propose this amendment. I implore Members to support the amendment. Thank you, Madam Chairman.

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That new clause 3A be read the Second time.

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

**MR ANDREW CHENG** (in Cantonese): Madam Chairman, I just wish to say a few words. On the earlier amendments, I had tit-for-tat exchanges with the public officer and other Members. Now, I rise to speak in the hope that the Government will appreciate that we are strongly supportive of this amendment by the Government.

The Government adopted a receptive attitude in the discussions of the Bills Committee and accepted the views of the Bills Committee. Regarding this

amendment which proposes that the CEO and Chairman of the KCRC shall comply with the request of the committees or subcommittees of the Legislative Council to attend their meetings, we consider it necessary to put our position on record to show that the Democratic Party does not always oppose the Government's proposals. Indeed, we will support reasonable amendments proposed by the Government. Thank you, Government. *(Laughter)* Thank you, Madam Chairman.

**MS MIRIAM LAU** (in Cantonese): Madam Chairman, as Mr Andrew CHENG has delivered a short speech, so would I.

Madam Chairman, the new clause 3A provides that the Chairman or CEO of the KCRC should comply with the requests of relevant committees and subcommittees of the Legislative Council to attend their meetings. The Bills Committee discussed the clause at its meetings and also supported this Committee stage amendment.

Now, I speak on behalf of the Liberal Party. The Liberal Party notes that clause 3A is really a very new clause first seen in the Urban Renewal Authority Bill only. To the understanding of the Liberal Party then, it was made at the request of the Government. But why? This is really no knowing. However, the other ordinances that regulate such statutory bodies as the Airport Authority, the Mandatory Provident Fund Schemes Authority, the Hong Kong Monetary Authority, and so on, do not have such a provision.

From the practical experience of us in the Panel on Transport, let me take public transport operators as an example, during the many years that I have known the Panel on Transport, at least for more than 10 years, we have invited the persons-in-charge of those public transport operators including the Chairman or CEO of the KCRC, the Chairman or CEO of the MTR Corporation Limited, or representatives of other corporations to attend meetings of the panels of the Legislative Council, never have they refused. As for the invitation on every occasion, they were also pleased to come and discuss with us the issues concerned. In this connection, there is no such question of their reluctance to attend meetings, thus requiring the addition of the clause to make attendance before the Legislative Council compulsory. However, after I have studied the



clause again, I can really describe it as a "powerless clause". The clause in fact states that the Chairman or CEO of the KCRC must attend meetings of any panel or committee of the Legislative Council if they are invited to do so. However, the clause has not prescribed any penalties, that is, even if they refuse to comply, the Legislative Council cannot punish them by way of any methods or in accordance with the clause, or find ways to make them present. In the end the Legislative Council will have to invoke section 9 of the Legislative Council (Powers and Privileges) Ordinance, as mentioned by the Secretary earlier, to summon them before us. In fact, there is a lot to say if I wish to. But in reality, do we need to use legal provisions in such measure? Past experience tells us that would be unnecessary. However, the Liberal Party feels that the addition of this clause will not do any harm. On this basis, the Liberal Party supports the amendment proposed by the Government. Thank you, Madam Chairman.

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

(No Member responded)

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

(The Secretary for Transport indicated that he did not wish to speak)

**CHAIRMAN** (in Cantonese): I now put the question to you as stated. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): New clause 3A.

**SECRETARY FOR TRANSPORT** (in Cantonese): Madam Chairman, I move that new clause 3A be added to the Bill. I implore Honourable Members to support the amendment. Thank you, Madam Chairman.

*Proposed addition*

**New clause 3A (see Annex I)**

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That new clause 3A be added to the Bill.

**CHAIRMAN** (in Cantonese): I now put the question to you as stated. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

**CHAIRMAN** (in Cantonese): Council now resumes.

Council then resumed.

**Third Reading of Bill**

**PRESIDENT** (in Cantonese): Bill: Third Reading.

**KOWLOON-CANTON RAILWAY CORPORATION (AMENDMENT)  
BILL 2001**

**SECRETARY FOR TRANSPORT** (in Cantonese): Madam President, the

Kowloon-Canton Railway Corporation (Amendment) Bill 2001

has passed through Committee with amendments. I move that this Bill be read the Third time and do pass.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Kowloon-Canton Railway Corporation (Amendment) Bill 2001 be read the Third time and do pass.

**PRESIDENT** (in Cantonese): I now put the question to you as stated. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Kowloon-Canton Railway Corporation (Amendment) Bill 2001.

**Resumption of Second Reading Debate on Bill**

**PRESIDENT** (in Cantonese): We will resume the Second Reading debate on the Banking (Amendment) Bill 2001.

**BANKING (AMENDMENT) BILL 2001****Resumption of debate on Second Reading which was moved on 4 April 2001**

**PRESIDENT** (in Cantonese): Mr Jasper TSANG, Chairman of the Bills Committee on the above Bill, will now address the Council on the Committee's Report.

**MR JASPER TSANG** (in Cantonese): Madam President, I now report on the deliberations of the Bills Committee on Banking (Amendment) Bill 2001 in my capacity of Chairman of the Bills Committee. The Banking (Amendment) Bill 2001 seeks to amend the Banking Ordinance (Cap. 155) in order to improve the operation of the Ordinance.

In the course of scrutiny, the Bills Committee noted that in order to enhance the Monetary Authority (MA)'s supervision of authorized institutions (AIs)' places of business, the Bill proposes to extend the existing definition of "local branch" to cover outlets at which AIs carry on banking business or any other businesses which incur financial exposures. For outlets at which AIs promote sales and service, the Bill proposes a concept of "local office" to capture such outlets, so that AIs are only required to notify the MA before opening such local offices. Given the limited number of such outlets in Hong Kong and that no sales transactions nor deposits will be made at these outlets, members question the need for the notification requirement. According to the Administration, it is very likely that this type of outlet arrangement will proceed in a larger scale. The notification requirement will enable the MA to know the locations of various local offices to ensure that business is conducted in a proper manner.

Given the rapid development of the banking industry, AIs have adopted various organization structures to facilitate business development. The existing definition of manager based on "reporting line" is no longer valid. The Bill proposes to revise the definition of "manager" to cover any person appointed by

an AI to be principally responsible for the conduct of the key businesses or affairs. Concerns have been raised on the revised definition that it will capture a broader spectrum of bank staff than the current definition, and that more persons, including some lower level executives, can be caught by the strict liability offences in the Ordinance.

According to the Administration, the amended definition is based on a functional approach and will capture those individuals who perform key functions in the AIs. Although these individuals may be at a lower level in the reporting hierarchy, their fitness and propriety is central to the safety and soundness of the AIs. Furthermore, the amended definition does not necessarily capture a broader spectrum of managers than the current definition. Based on the results of an earlier survey on seven selected AIs, the number of managers captured under the new definition is 66, compared with 105 under the existing definition, representing a reduction of 37%. To ensure that a person is aware of his being designated as a manager under the Ordinance, members proposed that AIs be required to give notice in writing to the person within 14 days of his appointment as a manager. The Administration accepted this proposal and will move a Committee stage amendment to this effect.

In respect of the relation between the revised definition and the penal provisions in the Ordinance, the Administration will move a Committee stage amendment to make it clear that prosecution for a strict liability offence will not necessarily be instituted against every director, chief executive or manager of an AI, and that the defendant merely needs to show that he has taken reasonable precautions and due diligence to avoid the commission of the offence. Secondly, the Administration will conduct a comprehensive review of all penal provisions in the Ordinance, particularly in respect of the application of strict liability offences, and consider whether any such offences should be changed into ordinary offences and whether the AI concerned will be made the "primary criminal" for any such offence under the Ordinance. The Administration will conduct extensive consultation on any radical changes induced by the review.

To avoid over-regulation and infringing on the autonomy of an AI in appointment of senior staff, the Bill requires AIs to maintain adequate systems of control to ensure the fitness and propriety of their managers. The regulator's role will be to verify whether AIs have in place adequate systems of control. In the event that a manager of an AI is found to be not fit and proper for his position as a result of ineffective systems for the selection of managers, the MA may

exercise his power to take remedial actions, such as issuing directions to enforce the removal of the manager whose conduct threatens the safety and soundness of the AI and/or jeopardizes the interests of depositors. The MA will issue a guideline setting out the key elements which AIs should include in their systems of control for recruitment of senior executives.

As the terms "advertisement", "document" and "issue" as defined under the Ordinance do not explicitly include the Internet or similar electronic channels, the Bill proposes to update the existing definitions of the terms and to introduce a new definition of "invitation" to cover advertisements issued through new technological means, in particular the Internet. It also proposes a new section to regulate those advertisements for deposits targeting at members of the public in Hong Kong.

Doubt has been cast on how to determine the "targeting" intention. According to the Administration, the MA will develop a guideline on the factors that should be considered in determining whether an advertisement is targeting at Hong Kong. Moreover, the MA will seek assistance from relevant overseas regulatory authorities in enforcing the provisions in respect of advertisements hosted overseas and targeting at Hong Kong. In the event that these overseas authorities are not co-operative or are unable to assist for whatever reasons, the MA will consider issuing a press release to clarify that the relevant advertisement is not in compliance with the statutory provisions and to remind members of the public to exercise extra caution in placing offshore deposits with such institutions.

Madam President, as the Administration has taken on board the proposals of the Bills Committee and will introduce Committee stage amendments, I recommend the resumption of the Second Reading debate on the Bill.

**DR DAVID LI:** Madam President, at the outset, may I declare my interest as an executive of an authorized institution.

This Bill represents an ad hoc grouping of several reforms to the Banking Ordinance. The main provisions include:

- what constitutes bank premises, and enhancing the supervision of such premises;

- regulating new forms of advertising for deposits, in particular advertising over the Internet;
- clarifying certain rules for establishing a local office by an overseas financial institution; and
- creating a system to ensure that bank managers are "fit and proper", while at the same time recasting the definition of "manager" according to job functions.

The Finance Functional Constituency recognizes the desirability and welcomes most of the provisions of this Bill.

However, while our Constituency supports the intention of the Bill to ensure that managers are fit and proper, there is considerable unease regarding the recasting of the definition of "manager". This change is not a mere cosmetic change to keep up with the times. It is a substantive change.

The Banking Ordinance currently casts managers as those who collectively have responsibility for the management of a bank, including the directors, the chief executive officer, and those over whom they have direct authority.

This legislation will expand the definition to include those at a lower rank, who have responsibility for only a certain segment of a bank's business.

Our concern is primarily with the penal provisions attached to the Ordinance, as this Bill will extend those provisions to these lower-ranked individuals. The penal provisions are strict liability offences. We understand that there are plans to conduct a review of the penal provisions of the Ordinance. This review will consider the application of strict liability offences, including whether any such offences should be changed into ordinary offences.

While we welcome this undertaking, our Constituency's position is that the two actions — the change to the definition of "manager" and the review — should have been carried out in tandem. This would have allowed us to consider whether the degree of sanctions to be imposed is indeed appropriate under the new circumstances, and to re-align them if not.

Therefore, we would express reservations in giving our full support to this provision in the Bill. And for this reason, I would abstain.

Thank you, Madam President.

**MR ERIC LI** (in Cantonese): Madam President, I also need to declare an interest. I am an independent non-executive director of a regulated bank. The passage of this Bill or otherwise has no implication on my duties, and I do not own any share of this bank. So, I really have no material interest, and I hope that you, Madam President, will allow me to continue with my speech.

In the interest of prudence, after making this speech, I will abstain in the vote, similar to the position of Dr David LI. In fact, what I am going to say was already covered by Dr David LI in his speech in great clarity. As a professional, I personally very much welcome the passage of this Amendment Bill to the Banking Ordinance, for the Bill in substance as well as its direction seeks to enhance corporate governance in the banking industry. Insofar as its general direction is concerned, I am absolutely supportive of the Bill.

However, like Dr David LI, I am also rather concerned about the expansion of the definition of "manager". In fact, the existing definition has already covered all controlling authorities having a direct influence on a bank as well as persons participating in its operation. It has been the spirit of the Ordinance that these persons should be responsible for the overall business of the bank and they, therefore, should bear collective responsibility. I think it is understandable to require them to bear such responsibility. The coverage of the new proposal actually holds some bank staff at middle rank or staff not in the top echelon liable. These people cannot possibly and will not participate in the overall decision-making of the company. They are responsible merely for specific duties or within the ambit of such duties. Now that they are suddenly required to bear collective responsibility for the bank, and their share of responsibility is by no means small. Worse still, they may even have to assume criminal liability. I do appreciate the concern of the Bills Committee on this issue, and we know that the Secretary for Justice will take account of public interest and make reference to the views of the Hong Kong Monetary Authority before making a decision as to whether prosecution will be instituted. But when legislation is made for regulatory purposes, I can only trust the Government that



it will not do anything that it should not do. The making of a bill for this purpose is not the most desirable approach.

With regard to the views of the banking industry, Dr David LI has indeed made them clear. In fact, the Government can have other statutory alternatives. It can exercise monitoring by way of licensing, which will preclude the problem of criminal liability. It can, as suggested by Dr David LI (and I believe this is also the wish of a larger number of banks), address the substantive guideline problem first to clarify how the regulatory authority and the Government will enforce the law, draw up clear proposals and conduct consultation with the industry before introducing amendments for enactment into law. This is more in line with the general legislative procedures and spirit. However, the Government has now taken pre-emptive actions by enacting legislation and passing the Amendment Bill prior to consultation and actual enforcement of the guideline. I believe Members know only too well that this is certainly not the most foolproof legislative approach.

Certainly, I think the banking industry has no reason not to trust the Government. I personally understand that the Government will act with caution when it is aware that there are problems. But to us legislators, we cannot monitor the future operation of this law, particularly about how the relevant guideline will be enforced, whether it is effective or not, the results of consultation, what decision the Government will make, and so on. The Legislative Council can only look on all these developments in a detached manner.

At the beginning of the meeting I said to Mr IP, Secretary for Financial Services, that we can only count on him now. If this Bill is passed today, we would be crippling ourselves and we could only look to the Secretary to keep the goal for us. I believe Mr IP, having listened to this, will carefully consider my views and will do his utmost in the discharge of his duties.

Thank you, Madam President.

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

(No Member responded)

**SECRETARY FOR FINANCIAL SERVICES** (in Cantonese): Madam President, first of all, I would like to thank Mr Jasper TSANG, Chairman of the Bills Committee on Banking (Amendment) Bill 2001, and other members of the Bills Committee. In the course of scrutinizing the Bill, they have thoroughly and efficiently examined its contents and given constructive views, which are useful to the Government in amending and improving the Bill.

During our discussions with the Bills Committee, some Members expressed the concern that the newly amended definition of "manager" might cover relatively junior executives in the management structure of a bank. According to the Bill, in the discharge of daily duties, a "manager" may be held liable for non-compliance by the institution with certain requirements of the Ordinance. They therefore requested the Government to deal with this carefully.

According to the definition in the Bill, "manager" refers to key personnel responsible for principal duties in an AI. The Bill also requires AIs to maintain adequate systems of control to ensure that fit and proper persons are appointed as managers, and this requirement is made a criterion for authorization of AIs.

The Monetary Authority has consulted the banking sector and will issue guidelines in this respect, clearly stating the major elements to be incorporated into the systems of control for senior executive officers, which should include a detailed description of the requirements of a fit and proper person in relation to the post of "manager". I am also grateful to Dr David LI and Mr Eric LI for their speeches delivered earlier. As mentioned by Mr Eric LI, we will consult the banking sector and consider their views carefully when drawing up the relevant guidelines.

Moreover, a survey conducted by the Hong Kong Monetary Authority earlier shows that the number of managers under the new definition will be smaller than that under the existing one. So Members can rest assured that the coverage of the new definition will not be unduly broad. The new definition is function-based and is more reasonable than the existing rank-based one. To ensure that a person who falls within the definition of "manager" clearly knows about his appointment, we will propose a Committee stage amendment later at the request by Members to require AIs to inform the person concerned after his appointment as manager that he has been so appointed.

I will also propose a number of other amendments at the Committee stage. These amendments have been discussed at meetings of the Bills Committee and given endorsement and support by the Bills Committee.

Madam President, I hope that Members will support the Banking (Amendment) Bill 2001 which seeks to improve the operation of the Banking Ordinance. Thank you, Madam President.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the Banking (Amendment) Bill 2001 be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Banking (Amendment) Bill 2001.

Council went into Committee.

### **Committee Stage**

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

**BANKING (AMENDMENT) BILL 2001**

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Banking (Amendment) Bill 2001.

**CLERK** (in Cantonese): Clauses 1, 3 to 16, 18, 19, 20 and 23 to 28.

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Clauses 2, 17, 21, 22 and 29.

**SECRETARY FOR FINANCIAL SERVICES** (in Cantonese): Madam Chairman, I move the amendments to the clauses read out just now, as set out in the paper circularized to Members. Since it is increasingly common for AIs to contract out some of their businesses to external service providers, we propose to amend the definition of "manager" in clause 2(a) to include these persons. At the same time, AIs may from time to time appoint persons to be managers on a temporary basis. However, according to new section 72B, AIs have to give notice on such appointment to the Monetary Authority regardless of the duration of appointment. To alleviate the reporting burden on AIs, we propose to amend clause 17 so that AIs shall be exempted from the notification requirement in respect of a manager appointed *bona fide* on a temporary basis. Besides, it is also proposed that AIs should give notice in writing to the manager within 14

days after the appointment, so that the person concerned will be informed clearly of such appointment.

Taking into account comments of the Bills Committee and the Hong Kong Association of Banks, that is, the amended definition of "manager" may be inconsistent with the existing penal provision, we propose to clarify the provision to the effect that any reference in this Ordinance to the commission of an offence for which every director, chief executive or manager of an AI shall be held liable means that one or more than one of any such person may be prosecuted. This amendment stipulates that in the event of prosecution for a strict liability offence, the decision will be made in accordance with the specific merits of the case. It does not necessarily mean that charges will be laid against every director, chief executive or manager of the AI. This amendment is contained in the amended clause 2(b) in the Committee stage amendments.

In order to strengthen the defence provision in the Banking Ordinance, we propose amending clause 21 by deleting the word "all" in section 126(1) of the Ordinance. With this, the defendant only has to prove that he has taken reasonable precautions and exercised due diligence to avoid the commission of such an offence, instead of having to prove that he has taken all precautions or steps which may be considered as reasonable to avoid the commission of this offence. This amendment will render the defence clause under section 126 more reasonable and more in line with our legislative intent.

The amendments to the wordings of clauses 22 and 29 seek to give the provisions greater clarity and better reflect the legislative intent.

The above amendments have all been discussed in detail by the Bills Committee. I hope all Members will support them.

Madam Chairman, I beg to move these amendments.

*Proposed amendments*

**Clause 2 (see Annex II)**

**Clause 17 (see Annex II)**

**Clause 21 (see Annex II)**

**Clause 22 (see Annex II)**

**Clause 29 (see Annex II)**

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Clauses 2, 17, 21, 22 and 29 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

**CHAIRMAN** (in Cantonese): Council now resumes.

Council then resumed.

### **Third Reading of Bill**

**PRESIDENT** (in Cantonese): Bill: Third Reading.

### **BANKING (AMENDMENT) BILL 2001**

**SECRETARY FOR FINANCIAL SERVICES** (in Cantonese): Madam President, the

Banking (Amendment) Bill 2001

has passed through Committee with amendments. I move that this Bill be read the Third time and do pass.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Banking (Amendment) Bill 2001 be read the Third time and do pass.

**PRESIDENT** (in Cantonese): I now put the question to you as stated. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Banking (Amendment) Bill 2001.

## **MOTIONS**

**PRESIDENT** (in Cantonese): Motions. Proposed resolution under the Interpretation and General Clauses Ordinance to amend the Chief Executive Election (Election Petition) Rules.

## **PROPOSED RESOLUTION UNDER THE INTERPRETATION AND GENERAL CLAUSES ORDINANCE**

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam President, I move that the Chief Executive Election (Election Petition) Rules be amended as set out on the Agenda.

The Rules were tabled at the Legislative Council on 21 November 2001. The relevant Subcommittee of the Legislative Council has completed scrutiny of the Rules. I would like to take this opportunity to express my gratitude to the Chairman, the Honourable IP Kwok-him, and members of the Subcommittee for their co-operation and efforts.

The amendments proposed by the Government are technical in nature and seek to improve the clarity of certain provisions.

Thank you, Madam President.

### **The Secretary for Constitutional Affairs moved the following motion:**

"That the Chief Executive Election (Election Petition) Rules, published in the Gazette as Legal Notice No. 241 of 2001 and laid on the table of the Legislative Council on 21 November 2001, be amended -

- (a) in section 9(2), by repealing "控罪" and substituting "指控";



- (b) in section 15 -
  - (i) in subsection (1)(b) and (c), by repealing "due to his death or otherwise";
  - (ii) in subsection (2), by repealing "the proceedings for a petition shall be" and substituting "a petition is".

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the motion moved by the Secretary for Constitutional Affairs be passed.

**MR IP KWOK-HIM** (in Cantonese): Madam President, in my capacity as Chairman of the Subcommittee on the subsidiary legislation relating to the Chief Executive Election I report to this Council the deliberations of the Subcommittee.

The Chief Executive Election (Election Petition) Rules set out the procedures for the lodging, trial, withdrawal and costs of election petitions questioning the election of the Chief Executive and matters ancillary to such election petitions.

I should like to briefly report on only two points.

Under Rule 15(1)(b) and (c), an election petition shall be regarded to have been withdrawn if the successful candidate cannot assume or ceases to hold the office of Chief Executive "because of death or otherwise". The Subcommittee notes that the relevant provisions of the principal ordinance have not specified the reasons for the returned candidate's failure to assume office. Besides, the grounds specified in the Rules for the Chief Executive to cease to hold the office appear to be not included in the reasons for the office of the Chief Executive becomes vacant as specified under section 4 of the principal ordinance. After consideration, the Administration has agreed to delete the words "due to his death or otherwise" from the Rules.

Under Rule 15(2), if an election petition is regarded to have been withdrawn upon the death of the petitioner, the solicitor acting for him or any respondent learning of the death shall file a notice of the death of the petitioner. Some members requested the Administration to explain the rationale for such an

arrangement. According to the Administration, since a petitioner does not necessarily have a relative or friend, no person is in a better position than his solicitor and the respondent to learn of the death of the petitioner in the earliest instance. The Administration has also advised that failure on the part of the solicitor or the respondent to file a notice of the death of the petitioner is not an offence. In fact, the filing of such a notice is not a prerequisite for the Registrar to publish the notice of withdrawal in the Gazette. The Administration's explanation is accepted by the Subcommittee.

Madam President, the Subcommittee supports the Rules and the amendments proposed by the Administration.

Thank you, Madam President.

**MISS MARGARET NG:** Madam President, the aim of the Resolution before this Council is to make minor drafting amendments to the Chief Executive (Election Petition) Rules. I have no objection against the amendments. Indeed, one of the amendments was suggested by me. However, I want to speak against certain defects of the Rules which the Administration has refused to deal with. I believe that these defects are serious.

The primary legislation, The Chief Executive Election Ordinance, safeguards the integrity of the election process to keep it fair, open and free from corruption. It, therefore, provides for a right to petition the Court for a determination that a person is not duly elected. The Rules are there to provide for the procedure whereby this right may be exercised. The undoubted requirements must be that the procedure is fair, and gives full effect to the rights under the Ordinance.

The legislative intent as manifested in the provisions of Part 6 of the Ordinance is that any challenge of the election results must be made and dealt with expeditiously within the requirement of justice. Section 34, in special, stipulates that a petition must be lodged within seven working days after the day on which the result of the election is declared.

However, these Rules go further. Rule 8 in effect requires the petitioner to apply by summons to a Judge at the time he files his petition, or within two days of it, to fix the date of the hearing, unless he obtains the Court's direction to

apply at a later date. At that stage, the petitioner has had very little time to prepare his petition, gather the evidence and consider his case. To challenge the Chief Executive Elect is a serious matter. He probably needs to instruct lawyers to advise and represent him. If so, he needs to give time to his lawyers to consider the matter and discuss it with him. The person that he challenges is almost certainly going to contest the petition with all the legal assistance necessary. The petition needs to be properly made from the start. How can he be in a position to ask for a trial date at that early stage, when he is not fully prepared and has not yet had the benefit of considered advice? What order for directions is he supposed to ask the Court to give for further procedures such as discovery and disclosure of documents? The difficulty is all the greater if one looks at section 32 of the Ordinance which specifies the grounds for petition. They include charges of corruption which cannot be made without strong evidence.

It is true that he can apply to the Court to postpone his application for date fixing. But this is itself a procedure which requires preparation or representation. He cannot assume the Court will easily give him the postponement that he wants. Further, if justice will generally require more time to be given, then why not allow more time in the Rules from the start? Why create an extra step, necessitating extra costs and distraction?

Yet Rule 8(2) allows the Chief Executive Elect to force the issue if, within the short time restriction, the petitioner fails to fix the date of trial. Never has such a rule been made that a person who brings proceedings is forced to argue his case before he can reasonably be expected to be ready. This built-in unfairness turns the petition into a mere formality, if not a travesty downright. The public will be forgiven for the impression that this Rule gives more protection to the Chief Executive Elect than the process of election.

Madam President, I am equally concerned about Rule 15 on the circumstances in which a petition is regarded as having been withdrawn. Rule (1)(b) and (c) in effect say that a petition is regarded to have been withdrawn if the Chief Executive Elect cannot assume office or, if he is also the incumbent, ceases to hold the office. One possibility is that he is not appointed Chief Executive by Beijing or is dismissed. In other words, when there is a good chance that he was unduly elected through an unfair or corrupt election.

It is all well and good if, in these circumstances, the petitioner withdraws his petition voluntarily. It is quite a different matter where he wishes to pursue it to the end, to nevertheless by law "regard" his petition as having been withdrawn. It is untrue and dishonest and does violence to plain language. I go further, I contend that it may well be *ultra vires* of the Ordinance and unlawful. It is true that section 40(d) empowers the Chief Justice to make rules to provide for "circumstances in which an election petition is regarded as having been withdrawn". But this power must be subject to the overall provisions of the Ordinance and the ordinary meaning of words. The Rules, as I have said earlier, are there to protect the procedure for the right of petition given by the Ordinance. Rule 15(1)(b) and (c) are not matters of procedure. They in effect curtail the right. They also undermine the purpose of the Ordinance in providing for the right to petition, which is for the protection of the process of the election itself, not only the result of the election. Even if it is not strictly *ultra vires*, as a matter of policy, a procedural rule should not be used in this way. Whether proceedings should be curtailed upon a Chief Executive Elect's failure to be appointed or an incumbent Chief Executive being dismissed from office is a matter of policy for the legislature to settle in the primary legislation, not through the backdoor of a rule of procedure of the Court.

Madam President, I intend by these remarks to show no disrespect to the Chief Justice. These Rules are clearly drafted by the executive and do not involve an exercise of judicial power. Indeed, had they been drafted by the Judiciary, one would not have expected to see so many drafting defects in the use of court procedural terms, only a few of which are caught in the amendments proposed by the Administration. I have pointed out inaccuracies and ambiguities, for example, in Rules 3 and 4, but to no avail. Such is the great hurry and these Rules are in reality of such complete irrelevance in a manifestly uncontested travesty of an election that nobody is interested to waste time in correcting them.

I confess that I, too, have succumbed under an attack of pragmatism, to the extent that I have not sought to trouble Honourable Members with any fruitless amendments of my own.

Madam President, since it is illogical for me to vote against the Administration's amendments which I do approve, or vote in favour which would have the implication of approval for the Rules after amendment, I shall have to abstain from voting. Thank you, Madam President.

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

(No Member responded)

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam President, Miss Margaret NG has made some suggestions and accusations with respect to certain provisions of the Rules a moment ago. I would like to take this opportunity to, on the one hand, reiterate the Government's position and, on the other, explain why the arrangements are made.

Miss NG started off by questioning the rationale of Rule 8 that requires a petitioner to apply to a Judge within two days after filing his petition to fix the date of the hearing. It is actually laid down in Rule 8 that a petitioner may, within two days after the filing of the petition or within such other period as the court may direct, apply to a Judge for a date, time and place to be fixed for the trial of the petition.

As the two-day period is not an absolute deadline, it should not cause any difficulties in practice. Where necessary and justified, the court can always extend the period for making such an application. I hope Honourable Members can understand that the time requirement in respect of the making of such an application is imposed for the purpose of helping expedite the processing of election petitions by the court.

I would also like to draw Members' attention to the fact that the time limit stipulated in Rule 8 with respect to the fixing of the date of trial is not the only time available to the petitioner. Under many circumstances, the petitioner can make preparations for the lodging of his petition well in advance. For instance, if a petitioner challenges the election result on the ground that his nomination was rejected by the Returning Officer, he may, after the making of such a decision by the Returning Officer, begin making preparations for the proceedings. It is not necessary for him to wait for the announcement of the election result before instituting legal proceedings. Therefore Honourable Members do not have to worry about that not enough time is allowed by the Rules. In addition, as mentioned by me earlier, the Court may extend the period if necessary.

Rule 15 provides for three circumstances in which petition is regarded as to have been withdrawn. First, upon the death of the petitioner or, where the petition is lodged by more than one petitioner, the death of the last remaining petitioner; second, where the elect returned at an election cannot assume the office of the Chief Executive upon a deadline fixed under section 11(3) of the Chief Executive Election Ordinance (CEEO); or third, where the elect returned at an election ceases to hold the office of the Chief Executive.

Miss Margaret NG was of the opinion that the petition should not be regarded as to have been withdrawn under the second and third circumstances since, in addition to addressing the result of the petition, the petitioner should be allowed redress, by way of election petition, for his grievances arising from the deficiencies of the election process.

In this connection, I have to explain that Rule 15(1)(b) and (c) were made pursuant to section 37 of the CEEO. Under the provision, the Court of First Instance may only rule whether a candidate was duly elected or not duly elected. It cannot declare that another candidate is elected. Members should be aware that the occurrence of the circumstances under Rule 15(1)(b) and (c) is no different from a court ruling that the successful candidate is not duly elected. Under these circumstances, it would be of no purpose to continue with an election petition as ultimately a re-election will have to be conducted to elect a new Chief Executive.

I also hope Honourable Members can understand that the election petition procedure is designed solely to deal with whether or not the person declared elected was properly elected. Even if an election petition is regarded as to have been withdrawn, the petitioner can still lodge his complaint through other channels. These may range from complaints to the Electoral Affairs Commission or civil action against another candidate or a Returning Officer. If corrupt or illegal practices are found in the election, the Independent Commission Against Corruption may, under the Elections (Corrupt and Illegal Conduct) Ordinance, take criminal actions against the offender.

Lastly, Miss Margaret NG considered the wordings used and certain provisions in Rules 3 and 4 not proper. I have to make clarification in this respect.

Rule 3 stipulates that the practice and procedure of the High Court shall apply to proceedings relating to an election petition. In practice, the provision will not have the effect of amending the practice and procedure in their general application.

The drafting technique we have adopted is "legislation by reference" which is not unusual in Hong Kong and other Commonwealth jurisdictions. The technique was developed for the purpose of avoiding similar lengthy procedural and administrative requirements.

As election petition proceedings instituted in respect of the Chief Executive Election are a new arrangement, guidelines must be provided to define the applicability of the High Court practice and procedure to this new arrangement. The phrase "..... as nearly as circumstances permit ....." in the Rule seeks to determine and clarify the extent to which departure is allowed in actual application.

Rule 4 provides for the application of the High Court Fees Rules to election petition proceedings. Similarly, it is reasonable for this provision to adopt "legislation by reference". The phrase "..... subject to all necessary modifications ....." in the Rule is necessary because the High Court Fees Rules make no reference to election petition proceedings under the Chief Executive Election (Electoral Procedure) Rules. It is therefore necessary to make minor revisions to the High Court Fees Rules to make them applicable to Rule 4. As the High Court Fees Rules will be subject to constant revisions, the flexibility vested by the phrase is indispensable.

Thank you, Madam President.

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

(Members raised their hands)

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

(No hands raised)

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

**PRESIDENT** (in Cantonese): Proposed resolution under the Pharmacy and Poisons Ordinance to approve the Pharmacy and Poisons (Amendment) (No. 5) Regulation 2001 and the Poisons List (Amendment) (No. 4) Regulation 2001.

### **PROPOSED RESOLUTION UNDER THE PHARMACY AND POISONS ORDINANCE**

**SECRETARY FOR HEALTH AND WELFARE** (in Cantonese): Madam President, I move that the motion, as printed on the Agenda, be passed. The motion seeks to amend the Poisons List Regulations and the Pharmacy and Poisons Regulations.

Currently, we regulate the sale and supply of pharmaceutical products through a registration and inspection system set up in accordance with the Pharmacy and Poisons Ordinance. The Ordinance maintains a Poisons List under the Poisons List Regulations and several Schedules under the Pharmacy and Poisons Regulations. Pharmaceutical products put on different parts of the Poisons List and different Schedules are subject to different levels of control in regard to the conditions of sale and keeping of records.

For the protection of public health, some pharmaceutical products can only be sold in pharmacies under the supervision of registered pharmacists and in their presence. For certain pharmaceutical products, proper records of the particulars of the sale must be kept, including the date of sale, the name and address of the purchaser, the name and quantity of the medicine and the purpose for which it is required. The sale of some pharmaceutical products must be authorized by prescription from a registered medical practitioner, a registered dentist or a registered veterinary surgeon.

The Amendment Regulations now before Members seek to amend the Poisons List in the Poisons List Regulations and the Schedules to the Pharmacy and Poisons Regulations, for the purpose of imposing control on a number of new medicines.



The Pharmacy and Poisons Board proposes to add seven new medicines to Part I of the Poisons List, and the First and Third Schedules to the Pharmacy and Poisons Regulations so that pharmaceutical products containing any of them must be sold in pharmacies under the supervision of registered pharmacists and in their presence, with the support of prescriptions.

In addition, one medicine is proposed to be added to Part I of the Poisons List so that pharmaceutical products containing the substance must be sold in pharmacies under the supervision of registered pharmacists and in their presence. Prescriptions are not required for this product.

The two Amendment Regulations are made by the Pharmacy and Poisons Board, which is a statutory authority established under section 3 of the Ordinance to regulate the registration and control of pharmaceutical products. The Board comprises members engaged in the pharmacy, medical and academic professions. The Board considers the proposed amendments necessary in view of the potency, toxicity and potential side-effects of the medicines concerned.

With these remarks, Madam President, I move the motion.

**The Secretary for Health Welfare moved the following motion:**

"That -

- (a) the Pharmacy and Poisons (Amendment) (No. 5) Regulation 2001;  
and
- (b) the Poisons List (Amendment) (No. 4) Regulation 2001,

made by the Pharmacy and Poisons Board on 26 November 2001 be approved."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the motion moved by the Secretary for Health and Welfare be passed.

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

(No Member indicated a wish to speak)

**PRESIDENT** (in Cantonese): I now put the question to you as stated. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

**PRESIDENT** (in Cantonese): Three proposed resolutions under the Mutual Legal Assistance in Criminal Matters Ordinance to approve Mutual Legal Assistance in Criminal Matters Orders.

First motion: Approving the Mutual Legal Assistance in Criminal Matters (Canada) Order.

### **PROPOSED RESOLUTION UNDER THE MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS ORDINANCE**

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, I move that the resolution to make the Mutual Legal Assistance in Criminal Matters (Canada) Order be passed by this Council.

The Hong Kong Special Administrative Region is fully committed to international co-operation in combating serious crimes. In this connection, we have embarked on a programme to establish a network of bilateral agreements with other jurisdictions on mutual legal assistance in criminal matters. These

agreements ensure reciprocity between the contracting parties and enhance international co-operation in the fight against transnational crime. We have so far signed 11 agreements with other jurisdictions on mutual legal assistance in criminal matters. These include Australia, France, New Zealand, the United Kingdom, the United States, Italy, South Korea, Switzerland, Canada, the Philippines and Portugal.

The Mutual Legal Assistance in Criminal Matters Ordinance provides the necessary statutory framework for implementing the mutual legal assistance arrangements and enables provision of assistance in the investigation and prosecution of criminal offences, which includes the taking of evidence, search and seizure, production of material, transfer of persons to give evidence and confiscation of the proceeds of crime.

Pursuant to section 4(2) of the Ordinance, the Chief Executive in Council has made three Mutual Legal Assistance in Criminal Matters Orders to implement the bilateral arrangements for mutual legal assistance in criminal matters with Canada, the Philippines and Portugal.

These three Orders specify the scope and procedures in relation to the provision of assistance. They also provide for safeguards of the rights of persons involved in criminal proceedings. These Orders are substantially in conformity with the provisions in the Ordinance. However, as mutual legal assistance practices vary from jurisdictions to jurisdictions, it is necessary to modify some of the provisions of the Ordinance to reflect the practice of the particular negotiating partner. These are necessary to enable Hong Kong to comply with its obligations in the particular agreements. The modifications have been summarized in the Schedule to each of the Orders.

A Subcommittee was set up to scrutinize the three Orders in October 2001. The Subcommittee met twice. At the meetings, the Subcommittee examined specific articles under individual Orders. I would like to thank the Chairman, Mr James TO, and other members of the Subcommittee for their careful examination of these Orders.

To strengthen our co-operation with other jurisdictions in criminal justice and international law enforcement, it is very important that these three Mutual Legal Assistance in Criminal Matters Orders are made to enable the relevant bilateral agreements to be brought into force effect.

I now invite Members to approve the making of the Mutual Legal Assistance in Criminal Matters (Canada) Order. I shall in a moment move resolutions to make the other two Orders.

Thank you, Madam President.

**The Secretary for Security moved the following motion:**

"That the Mutual Legal Assistance in Criminal Matters (Canada) Order, made by the Chief Executive in Council on 18 September 2001, be approved."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the motion moved by the Secretary for Security be passed.

**MR JAMES TO** (in Cantonese): Madam President, I rise to speak on the motion moved by the Secretary for Security in my capacity as Chairman of the Subcommittee on Mutual Legal Assistance in Criminal Matters (Canada) Order, Mutual Legal Assistance in Criminal Matters (Philippines) Order and Mutual Legal Assistance in Criminal Matters (Portugal) Order.

These three Orders set out the bilateral agreements on mutual legal assistance in criminal matters signed by the Hong Kong Special Administrative Region (SAR) with Canada, the Philippines and Portugal respectively, as well as the necessary modifications to the Mutual Legal Assistance in Criminal Matters Ordinance.

In studying the three Orders, the Subcommittee made comparison of the provisions of each Order with those of the model agreement on mutual legal assistance in criminal matters. The Subcommittee was particularly concerned about whether these agreements provide for adequate safeguards of the rights of persons involved in criminal proceedings, and which provisions therein are different from those of the model agreement.

In the course of scrutinizing the Canada Order, the Administration clarified the scope of assistance in respect of offences against taxation legislation. The Administration also explained to members in detail the safeguards provided

in the agreements to persons, who are required to give evidence, against self-incrimination.

With regard to the Philippines Order, the Subcommittee noted that both parties to the agreement shall provide assistance for recovery of pecuniary penalties in respect of offences. Reference to such penalties is also found in provisions dealing with restraint, forfeiture and confiscation of property. However, reference to the term "pecuniary penalty" is not found in agreements signed between the SAR and other countries.

The Administration has explained that the reference to pecuniary penalty is to reflect the fact that under the legal system of the Philippines, the confiscation of proceeds of crime is achieved by the making of pecuniary penalties. The SAR can only enforce pecuniary penalties for purposes of confiscating the proceeds of crime. Hence, the use of the term does not accordingly widen the scope of the agreement with the Philippines beyond that of the model agreement or other signed agreements.

The Subcommittee also noted that as the Filipino authorities had insisted on this modification, the arrangements pertaining to forfeiture or confiscation of property are, therefore, different from the provisions of the model agreement.

On the Portugal Order, the Subcommittee noted that the agreement is substantially the same as the model agreement.

Madam President, after detailed study, the Subcommittee considers the three Orders acceptable and supports the resolutions proposed by the Secretary for Security in this meeting today on the enactment of these three Orders.

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

(No Member responded)

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

(The Secretary for Security indicated that she did not wish to speak)

**PRESIDENT** (in Cantonese): I now put the question to you as stated. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

**PRESIDENT** (in Cantonese): Second motion: Approving the Mutual Legal Assistance in Criminal Matters (Philippines) Order.

### **PROPOSED RESOLUTION UNDER THE MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS ORDINANCE**

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, I move that the resolution to make the Mutual Legal Assistance in Criminal Matters (Philippines) Order, as printed on the Agenda, be passed by this Council.

I have explained earlier, in relation to moving the resolution to make the Mutual Legal Assistance in Criminal Matters (Canada) Order, the importance of making the Orders on mutual legal assistance in criminal matters. I would not repeat myself here and would invite Members to approve the making of the Mutual Legal Assistance in Criminal Matters (Philippines) Order.

Thank you, Madam President.

#### **The Secretary for Security moved the following motion:**

"That the Mutual Legal Assistance in Criminal Matters (Philippines) Order, made by the Chief Executive in Council on 18 September 2001, be approved."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the motion moved by the Secretary for Security be passed.

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

(No Member indicated a wish to speak)

**PRESIDENT** (in Cantonese): I now put the question to you as stated. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

**PRESIDENT** (in Cantonese): Third motion: Approving the Mutual Legal Assistance in Criminal Matters (Portugal) Order.

**PROPOSED RESOLUTION UNDER THE MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS ORDINANCE**

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, I move that the resolution to make the Mutual Legal Assistance in Criminal Matters (Portugal) Order be passed by this Council.

I invite Honourable Members to approve the making of this Order.

Thank you, Madam President.

**The Secretary for Security moved the following motion:**

"That the Mutual Legal Assistance in Criminal Matters (Portugal) Order, made by the Chief Executive in Council on 18 September 2001, be approved."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the motion moved by the Secretary for Security be passed.

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

**MEMBERS' BILLS****Resumption of Second Reading Debate on Members' Bill**

**PRESIDENT** (in Cantonese): Members' Bills. We will resume the Second Reading debate on the Mizuho Corporate Bank, Ltd. (Hong Kong Consolidation) Bill.



**MIZUHO CORPORATE BANK, LTD. (HONG KONG CONSOLIDATION) BILL****Resumption of debate on Second Reading which was moved on 5 December 2001**

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

(No Member indicated a wish to speak)

**SECRETARY FOR FINANCIAL SERVICES** (in Cantonese): Madam President, the Government welcomes the Mizuho Corporate Bank, Ltd. (Hong Kong Consolidation) Bill introduced by Dr David LI and The Bank of East Asia, Limited (Merger) Bill by Mr NG Leung-sing.

It is government policy to support the local banking industry to continue with its consolidation efforts to enhance its competitive edge and strengthen the stability of the banking system to ensure that the interests of depositors are suitably protected. We are of the view that the mergers covered by these two Bills are in line with the abovementioned policy and are conducive to maintaining the position of Hong Kong as an international financial centre.

Thank you, Madam President.

**DR DAVID LI:** Madam President, the representatives of the three banks covered by this Bill — The Dai-Ichi Kangyo Bank, Limited (DKB), The Fuji Bank, Limited (Fuji) and The Industrial Bank of Japan, Limited (IBJ) — have asked me to convey their personal thanks to you, Madam President, and to Members of the Legislative Council for the scrutiny of the Bill.

The Bill is desirable because it will make the process of consolidation of the local branches of the three banks transparent, open and certain. Under the Bill, the undertakings of the Hong Kong branches of DKB and IBJ will be transferred to Fuji, which subsequently will be renamed Mizuho Corporate Bank, Ltd.

As a consequence of this Bill, and the other steps being taken by the banks in connection with the consolidation, all those who have dealings with the local branches of the banks will have full confidence that all existing Hong Kong-law-governed obligations will continue to be honoured once the consolidation takes effect in accordance with the Bill. A smooth transition, as provided for under the Bill, is essential to the stability of the local banking system.

The global reorganization and consolidation of the Mizuho Financial Group will strengthen the Group. Consolidation of the Group's businesses in Hong Kong will, in turn, contribute to the prosperity of the Hong Kong financial market and assist in maintaining Hong Kong's status as an international financial centre.

Thank you, Madam President.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the Mizuho Corporate Bank, Ltd. (Hong Kong Consolidation) Bill be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

**PRESIDENT** (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections and by the Election Committee, who are present. I declare the motion passed.

**CLERK** (in Cantonese): Mizuho Corporate Bank, Ltd. (Hong Kong Consolidation) Bill.

Council went into Committee.

**Committee Stage**

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

**MIZUHO CORPORATE BANK, LTD. (HONG KONG CONSOLIDATION) BILL**

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Mizuho Corporate Bank, Ltd. (Hong Kong Consolidation) Bill.

**CLERK** (in Cantonese): Clauses 1 and 3 to 19.

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

(Members raised their hands)

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

(No hands raised)

**CHAIRMAN** (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections and by the Election Committee, who are present. I declare the motion passed.

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

**DR DAVID LI**: Madam Chairman, I move an amendment to clause 2, as set out in the paper distributed to Members. This amendment is technical in nature, and serves to clarify the Chinese text of the Bill. The amendment is being

proposed at the suggestion of the Legislative Council Legal Adviser, and has the full support of the banks concerned.

*Proposed amendment*

**Clause 2 (see Annex III)**

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

**CHAIRMAN** (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections and by the Election Committee, who are present. I declare the motion passed.

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

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

(Members raised their hands)

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

(No hands raised)

**CHAIRMAN** (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections and by the Election Committee, who are present. I declare the motion passed.

**CLERK** (in Cantonese): Preamble.

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

(Members raised their hands)

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

(No hands raised)

**CHAIRMAN** (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections and by the Election Committee, who are present. I declare the motion passed.

**CHAIRMAN** (in Cantonese): Council now resumes.

Council then resumed.

**Third Reading of Members' Bill**

**PRESIDENT** (in Cantonese): Members' Bill: Third Reading.

**MIZUHO CORPORATE BANK, LTD. (HONG KONG CONSOLIDATION) BILL**

**DR DAVID LI:** Madam President, the

Mizuho Corporate Bank, Ltd. (Hong Kong Consolidation) Bill

has passed through Committee with amendment. I move that this Bill be read the Third time and do pass.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Mizuho Corporate Bank, Ltd. (Hong Kong Consolidation) Bill be read the Third time and do pass.

**PRESIDENT** (in Cantonese): I now put the question to you as stated. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

**PRESIDENT** (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections and by the Election Committee, who are present. I declare the motion passed.

**CLERK** (in Cantonese): Mizuho Corporate Bank, Ltd. (Hong Kong Consolidation) Bill.

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

**PRESIDENT** (in Cantonese): We will resume the Second Reading debate on The Bank of East Asia, Limited (Merger) Bill.

### **THE BANK OF EAST ASIA, LIMITED (MERGER) BILL**

#### **Resumption of debate on Second Reading which was moved on 5 December 2001**

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

(No Member indicated a wish to speak)

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That The Bank of East Asia, Limited (Merger) Bill be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

**PRESIDENT** (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections and by the Election Committee, who are present. I declare the motion passed.

**CLERK** (in Cantonese): The Bank of East Asia, Limited (Merger) Bill.

Council went into Committee.

### **Committee Stage**

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

### **THE BANK OF EAST ASIA, LIMITED (MERGER) BILL**

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of The Bank of East Asia, Limited (Merger) Bill.

**CLERK** (in Cantonese): Clauses 1 to 18.

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

(Members raised their hands)

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

(No hands raised)

**CHAIRMAN** (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections and by the Election Committee, who are present. I declare the motion passed.

**CLERK** (in Cantonese): Preamble.



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

(Members raised their hands)

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

(No hands raised)

**CHAIRMAN** (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections and by the Election Committee, who are present. I declare the motion passed.

**CHAIRMAN** (in Cantonese): Council now resumes.

Council then resumed.

### **Third Reading of Members' Bill**

**PRESIDENT** (in Cantonese): Members' Bill: Third Reading.

### **THE BANK OF EAST ASIA, LIMITED (MERGER) BILL**

**MR NG LEUNG-SING** (in Cantonese): Madam President,

The Bank of East Asia, Limited (Merger) Bill

has passed through Committee without amendment. I move that this Bill be read the Third time and do pass.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That The Bank of East Asia, Limited (Merger) Bill be read the Third time and do pass.

**PRESIDENT** (in Cantonese): I now put the question to you as stated. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

**PRESIDENT** (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections and by the Election Committee, who are present. I declare the motion passed.

**CLERK** (in Cantonese): The Bank of East Asia, Limited (Merger) Bill.

## **MEMBERS' MOTIONS**

**PRESIDENT** (in Cantonese): Members' motions. Proposed resolution under the Interpretation and General Clauses Ordinance to extend the period for amending the Dutiable Commodities (Amendment) Regulation 2001, Dutiable Commodities (Amendment) Ordinance 2001 (19 of 2001) (Commencement) Notice 2001 and Dutiable Commodities (Amendment) Regulation 2001 (L.N. 248 of 2001) (Commencement) Notice 2001.

**PROPOSED RESOLUTION UNDER THE INTERPRETATION AND GENERAL CLAUSES ORDINANCE**

**MR KENNETH TING** (in Cantonese): Madam President, in my capacity as Chairman of the Subcommittee I move the motion printed under my name on the Agenda.

The House Committee agreed at its meeting on 30 November 2001 to form a Subcommittee to study the Dutiable Commodities (Amendment) Regulation 2001. Subsequently, at its meeting on 7 December the House Committee referred two related Commencement Notices, namely, the Dutiable Commodities (Amendment) Ordinance 2001 (19 of 2001) (Commencement) Notice 2001 and the Dutiable Commodities (Amendment) Regulation 2001 (L.N. 248 of 2001) (Commencement) Notice 2001, to the Subcommittee for scrutiny.

To allow time for the Subcommittee to scrutinize the Regulation and the two Commencement Notices, the Subcommittee decided that a motion should be moved by me to extend the scrutiny period of the three items of subsidiary legislation to the Legislative Council meeting on 9 January 2002.

I hereby urge Honourable Members to support this motion.

Thank you, Madam President.

**Mr Kenneth TING moved the following motion:**

"That in relation to the —

- (a) Dutiable Commodities (Amendment) Regulation 2001, published in the Gazette as Legal Notice No. 248 of 2001 and laid on the table of the Legislative Council on 28 November 2001;
- (b) Dutiable Commodities (Amendment) Ordinance 2001 (19 of 2001) (Commencement) Notice 2001, published in the Gazette as Legal Notice No. 255 of 2001 and laid on the table of the Legislative Council on 5 December 2001; and
- (c) Dutiable Commodities (Amendment) Regulation 2001 (L.N. 248 of 2001) (Commencement) Notice 2001, published in the Gazette as

Legal Notice No. 256 of 2001 and laid on the table of the Legislative Council on 5 December 2001,

the period referred to in section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) for amending subsidiary legislation be extended under section 34(4) of that Ordinance to the meeting of 9 January 2002."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the motion moved by Mr Kenneth TING be passed.

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

(No Member indicated a wish to speak)

**PRESIDENT** (in Cantonese): I now put the question to you as stated. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

**PRESIDENT** (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections and by the Election Committee, who are present. I declare the motion passed.

**PRESIDENT** (in Cantonese): Two motions with no legislative effect. I have accepted the recommendations of the House Committee as to the time limits on

speeches for the motion debates. Under the Rules of Procedure, I am obliged to direct any Member speaking in excess of the specified time to discontinue.

First motion: Strengthening co-operation with Guangdong in developing the logistics industry.

## **STRENGTHENING CO-OPERATION WITH GUANGDONG IN DEVELOPING THE LOGISTICS INDUSTRY**

**MR HUI CHEUNG-CHING** (in Cantonese): Madam President, I move that the motion, as printed on the Agenda, be passed.

Madam President, I agree very much with the Chief Executive's idea of vigorously developing our logistics industry espoused in the policy address presented by him in October this year. The logistics industry is in fact a trade-led industry geared for the punctual delivery of goods to clients through different modes of transportation, and value-added services may also come in during the transportation process where necessary. In this connection, speed and fast flow of goods are the most important requirements, and the sectors involved include import and export, transport, packaging, storage, wholesaling and retailing. The employment opportunities created will benefit not only professionals but also the working population engaged in businesses and trades, a number of service industries, and so on. The successful development of our logistics industry will certainly give a boost to the various trades and sectors in Hong Kong. On the other hand, since Guangdong is one of Hong Kong's most important hinterlands, we would certainly achieve twice the results with only half the effort if we could co-operate with Guangdong. That is why I have moved this motion to discuss the issue with regard to the following five aspects.

Firstly, as pointed out by the Administration in its reply to a question raised by me on 28 November, Hong Kong and Guangdong's external trade markets are very similar. Following China's accession to the World Trade Organization (WTO), freight traffic in Southern China will grow enormously to expand the room of development of the ports in the region. However, as indicated in the latest statistics released by the Government of the Special Administrative Region (SAR), in the period between January and October this year, while Guangdong Province has seen its aggregate import and export increase by 4.8% and 2.2% respectively, Hong Kong has suffered a decline of

3.9% and 4.8%. The fact that the exports of Hong Kong and Guangdong are developing in opposite directions tell us that the long-standing problem of overlapped cargo origins may give rise to harmful competition between the two places, doing no good to neither the Mainland nor Hong Kong.

Secondly, so far the logistics development strategies of the two places focus on their respective internal needs only. In addition to the vigorously developing ports of Yantian, Shekou and Chiwan, Yangjiang is also taking shape while the development of Hengqin is also in progress. Added to these is Hong Kong's Kwai Chung Container Port. So, there are indeed plenty of container ports Guangdong Province. But then, is such a trend of development not lacking in co-ordination, so much so that the ports are developing in their own different ways? Would it be possible that one day the ports just lie idle despite the world-class facilities they are all equipped with?

Thirdly, despite the fact that they are each other's neighbour and developing in the same direction, the two places rarely engage in joint projects. It was until July this year that the idea of jointly developing the logistics industry in Nansha was mooted. But so far the governments of the two places are at a loss as to whether the idea is feasible and what co-operation options to explore. If the co-operation between the two places should continue to develop at its usual slow pace, the ability of Hong Kong and Guangdong to seize the business opportunities arising from China's accession to the WTO would be impaired. What is more, the efforts to establish the Pearl River Delta (PRD) Region as the hub of the free trade zone proposed by China and the Association of South-East Asian Nations will also be adversely affected.

Fourthly, Hong Kong and Guangdong are co-operating not just to avoid harmful competition and waste of resources; a more important point is that the mainland and international competitiveness of the logistics industry in the PRD Region as a whole will also be enhanced as a result. At present, cargoes from Northern China can be exported to overseas markets through the container ports in Tianjin, Qingdao, and so on, whereas cargoes from cities in the Changjiang River Delta can be exported through Shanghai. As regards Fujian and other places along the southeastern coast, they can make good use of the vigorously developing trade connections between Xiamen and Taiwan. Thus, the transport link of the logistics industry in both Hong Kong and Guangdong may generally concentrate their room for development on only cities and provinces south of the

Changjiang River. If the two places should continue to focus on competing with each other to the neglect of the need to complement each other's edge, I am afraid the room of development would become increasingly small.

Fifthly, the success or otherwise of the co-operation between Hong Kong's logistics industry and its counterpart in Guangdong will affect not only over 100 000 jobs scattered in such industries as transport, express delivery, storage, and so on; the prosperity of the 90 000-odd import/export enterprises will also be affected.

Certainly, Hong Kong is a free port with simple import/export procedures, convenient bank financing, and a simple tax regime. Also, as Hong Kong is located at the centre of Asia, its container port is the busiest in the world, capable of handling an average of 35 containers per minute. At the same time, our airport, which has been elected as one of the world's best international airports, is also the world's busiest international freight airport. Moreover, while the PRD Region is the world's largest export zone, the trade volume in the Mainland is expected to increase considerably following China's accession to the WTO. So, we do have the timing and location advantages required to develop our logistics industry. Nevertheless, since developing our logistics industry will inevitably involve cross-boundary co-operation, even though the Airport Authority's idea of developing Nansha into a radiation station for the logistics industry in Hong Kong merits consideration, it is still necessary to secure the support of the Guangdong Provincial Government and to bring it in line with the interest of the logistics industry in Guangdong to make the co-operation between the two places long-lasting.

As a matter of fact, as the reform and opening up efforts of the Mainland continue to intensify and our country's successful accession to the WTO, the gap between the logistics development in Hong Kong and that of other cities in Guangdong Province has become increasingly small. As far as infrastructure is concerned, the new Bai Yun Airport in Guangzhou, which will commence operation shortly, is of an even larger scale than the Hong Kong International Airport. It is also the largest and best equipped civil aviation hub in China. Further still, a Pearl River Delta inter-city express rail connecting Guangzhou, Shenzhen and Zhuhai will be constructed in Guangdong in five years' time to link up the ports of these cities.

THE PRESIDENT'S DEPUTY, MRS SELINA CHOW, took the Chair.

It is true that Guangdong still compares unfavourably with Hong Kong in terms of import/export control and professional services at the present stage, yet because of its fairly good transport network and comparatively lower port handling charges, consignors exporting goods for factories set up by Hong Kong businessmen in the Mainland tend to have more and more goods directly exported through ports like Yantian, Shekou, and so on. During the period between January and October this year, while the container throughput of Yantian has increased by 25.7%, that of Kwai Chung has dropped 2.4%. Even though the total throughput of all the container ports in Shenzhen could only amount to 44% of Kwai Chung, but the developments in different aspects have demonstrated that Guangdong Province has risen to a level at which it can engage in co-operative projects with Hong Kong.

I just hope the SAR Government will expeditiously set up with the Guangdong Provincial Government a standing logistics co-ordination group under the Hong Kong/Guangdong Co-operation Joint Conference to look into ways to avoid duplication of port facilities or conflict of strategies. More importantly, this co-ordination group will help to integrate the ports in the two places to form mutually supplementary combinations with clear streaming. I also hope that the Economic and Trade Office to be set up shortly in Guangdong will not confine its function to collecting and disseminating information, but will actively liaise and encourage the governments and logistics industries of the two places to make specific improvements to the business environment as well as trade and economic issues relating to logistics.

In order to facilitate comprehensive co-operation with Guangdong, the co-operative projects must be of a mutually beneficial basis; besides, Hong Kong must also enhance its own favourable factors. In this connection, the SAR Government should expeditiously remove the barriers hindering the operation of the logistics businesses in both places, including the following aspects:

Firstly, the cargo clearance barriers must be removed. The SAR Government must promote co-operation with the mainland authorities to implement round-the-clock cargo clearance at all border control points on land. In addition, the Administration should also examine with the mainland authorities ways to enable all cargoes to make customs declarations and complete



customs procedures at the origin of shipment beforehand. Unless otherwise specified, cargoes which have completed all customs procedures can be directly transported through special accesses rather than queuing at border control points. Before the Shenzhen Western Corridor is completed for operation, the SAR Government should also construct more access links at the existing control points in Huanggang, Man Kam To and Sha Tau Kok. That way, the present congestion will be ameliorated significantly, thereby removing in effect the various barriers and enhancing the attractiveness of Hong Kong's logistics facilities.

Secondly, if we are to promote the development of the logistics industry, it is necessary that resources be first devoted to cross-boundary infrastructural projects. It is only when the cross-boundary infrastructural facilities are fitted to link with the transport facilities in Guangdong that the entire logistics process can be shortened. As the transportation and warehousing time is shortened, or further still, if the cargoes do not have to be stored in warehouses, costs will be reduced correspondingly. For example, when the Jingzhu Superhighway connecting Beijing and Zhuhai comes into operation next year, it will only take 12 hours for cargoes to be transported from Wuhan to Zhuhai. If the western part of Hong Kong and Zhuhai were linked by a channel bridge, in just half a day cargoes from Wuhan can be exported to overseas market through Hong Kong's airport or container terminal. As regards the proposed Lingdingyang Bridge connecting Zhuhai and Tun Mun, although it is not included in the 10th five-year plan of Guangdong Province, the SAR Government should continue studying the feasibility of the project together with the Zhuhai authorities concerned. If the western part of Hong Kong and Zhuhai are connected by infrastructure, goods from cities where there are tremendous investments by Hong Kong businessmen, such as Zhuhai, Zhongshan, Shunde, Jiangmen, Xinhui, and so on, may then stream this way. On the other hand, goods from provinces in Southwest China, including Guangxi, Yunnan, Guizhou, and so on, may also be directed to Hong Kong, thereby opening up more cargo sources for Hong Kong's logistics industry.

With regard to air transport, as Hong Kong is located in the centre of Asia, it only takes less than four hours' flight time to travel from Hong Kong to other major Asian countries. As far as population is concerned, about half of the world's population are living within five hours' flight range from Hong Kong. Among all the air cargoes handled, about 83% are shipped from the Hong Kong International Airport or shipped to it as the final destination. Of these goods, about 70% are estimated to be related to the Mainland. The economic activities

and freight between the Mainland and countries in the world are expected to increase visibly following China's accession to the WTO.

The Hong Kong International Airport is located at the estuary region of the PRD. This geographical advantage has provided a natural environment for us to develop intermodal sea, land and air transport services between the Hong Kong International Airport and the PRD. For this reason, Hong Kong must keep the facilities of its air cargo terminals abreast of the developments in information technology, enhance service standard and quality, develop air cargo terminals and expedite the development of a logistics centre at the airport. At the same time, the Administration should also expeditiously study the liberalization of the fifth freedom rights for freight traffic and enhance the freight and passenger transport streaming and connection arrangements between Hong Kong and airports in Guangdong. In short, improvement and development should be sustained to help maintain Hong Kong's position as Asia's airfreight centre.

Thirdly, the SAR Government should endeavour to reduce overall costs in Hong Kong. In this connection, the terminal fees charged by the container terminals in Hong Kong are twice as much as those payable in Shenzhen, while the handling fees charged by the Chek Lap Kok airport are six to eight times higher than those charged by the Baiyun Airport in Guangzhou. Moreover, the cost for midstream operation is by no means low either. For the long-term benefit of Hong Kong, the Government should open up more inexpensive land sites for operators and allow different operators to compete in the market, with a view to striking a balance between charge levels and service quality.

Fourthly, the coalescence of Hong Kong and Guangdong should also include integration in terms of information technology and human resources. I hope the Government will expeditiously establish a comprehensive technology platform for the air, land and sea transport sector and the storage industry in Hong Kong and Guangdong, with a view to improving the present chaotic situation where the logistics industries in the two places just operate separately in their own ways and enabling operators to exchange information, thereby enhancing the efficiency of the two places in streaming and connecting freights. Besides, the Government should also organize relevant training courses and recruit experts to train up the manpower resources engaged in the different links of the logistics industry.

Certainly, one of the effective ways to enable the successful coalescence of Hong Kong and Guangdong logistics is to make use of the market forces to encourage enterprises in Hong Kong and Guangdong to invest in each other's sea, land and air transport infrastructural facilities. It is only in this way that the strengths of the two places can be developed and given full play to more efficiently achieve the most cost-effective results.

Madam Deputy, speaking of promoting the co-operation between Hong Kong and Guangdong on logistics development, given Guangdong's enormous logistics demands, potentials and room for development, if Hong Kong's international connections as well as its sea and air transport facilities, which are among the best in the world, can be fully utilized to develop the PRD Region encompassing Hong Kong into a freight centre linking Southwest China and the world, we can avoid the risk of wasting enormous valuable resources on duplicated construction projects. What is more, through close co-operation Hong Kong and Guangdong will naturally develop into a large economy and eventually become a strong force in our country.

Madam Deputy, I so submit.

**Mr HUI Cheung-ching moved the following motion: (Translation)**

"That, as both Hong Kong and Guangdong have been vigorously developing the logistics industry in recent years but have rarely engaged in co-operative projects, in order to avoid harmful competition, this Council urges the Government to:

- (a) apart from studying the co-development of Nansha, explore more options with the Guangdong Provincial Government for strengthening co-operation and the streamlining of the logistics industry and co-ordinating more effectively the development objectives and strategies in both places;
- (b) as far as possible, accord priority in allocating resources for cross-boundary sea, land and air transport infrastructural projects and expeditiously remove the barriers hindering the operation of the logistics businesses in both places, including implementing round-the-clock cargo clearance for laden goods vehicles in other border control points, actively studying the construction of a bridge

connecting Hong Kong, Macao and Zhuhai, granting traffic rights for air cargo services as appropriate, implementing the streaming and connection of flight routes with the airports in the Pearl River Delta, and establishing a technology platform whereby Hong Kong and Guangdong can exchange logistics information; and

- (c) encourage enterprises in Hong Kong and Guangdong to invest in each other's logistics industry and infrastructural services relating to sea, land and air transport."

**DEPUTY PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the motion moved by Mr HUI Cheung-ching be passed.

**DEPUTY PRESIDENT** (in Cantonese): Mr SIN Chung-kai will move an amendment to this motion, as printed on the Agenda. The motion and the amendment will now be debated together in a joint debate.

I now call upon Mr SIN Chung-kai to speak and move his amendment.

**MR SIN CHUNG-KAI** (in Cantonese): Madam Deputy, I move that the Honourable HUI Cheung-ching's motion be amended, as printed on the Agenda.

Madam Deputy, the Democratic Party has proposed an amendment to delete "apart from studying the co-development of Nansha" from the motion because we have some divergent views on the development of Nansha by the Government and I wish to take this opportunity to share our views with the Government and Honourable colleagues.

First of all, I wish to state that the Democratic Party fully supports the development of the logistics industry in Hong Kong as it will further consolidate our status as a freight transport centre in the Asia-Pacific Region, and further promote the development of related service industries. In fact, quite a few neighbours in the Asia-Pacific Region such as Singapore and Taiwan have also proposed the development of the logistics industry with the objective of becoming a freight transport hub in the Region. To enhance our competitiveness, Hong Kong must co-operate with the Mainland because most

import and export cargoes in Hong Kong originate from or are transported to the Mainland. With its industrial base, the Mainland will continue to play its role as the hinterland of Hong Kong. To a certain extent, the logistics process in the Mainland has already become part of our supply chain. Therefore, to successfully develop the logistics industry and enhance the efficiency of the whole logistics process, we must step up co-operation with the Mainland and the relevant coupling actions.

The original motion proposes stepping up cross-boundary transport infrastructural projects, establishing a technology platform for information exchange as well as relaxing border control. These modes of co-operation merit our support for the objective is to reduce logistics barriers in both places by means of hardware and software construction and work out coupling measures for the two places for enhanced efficiency. The Democratic Party has reservations about the idea of co-developing Nansha by the Government and Guangdong. Frankly speaking, I do not quite understand what is meant by the co-development of Nansha by the Government and the Guangdong Province as stated in the executed Letter of Intent. Is the Government going to invest in the infrastructure in Nansha or preferential policies will be formulated in respect of Nansha to encourage local enterprises to make investment in Nansha? There is a significant difference between these modes and strengthening the software connection and link between the two places as I have just mentioned.

As far as I know, the Government has never attempted to put resources into the development of economic construction projects outside the territory of Hong Kong. Since the idea may involve significant policy changes, we cannot treat it lightly. It is regrettable that the Government has still failed to submit detailed documents to the public and this Council to explain the idea of the co-development of Nansha since the government announcement on the relevant co-operation project on 25 July. In the paper it submitted to the Finance Committee of this Council last month seeking approval for the creation of posts in the Hong Kong Guangdong Cooperation Coordination Unit, the Government has only simply stated that Nansha would be one of the tasks of the Unit. So far, the public only has such information as the press release made by the Government and the record of the remarks made by the Financial Secretary at the press conference on that day. Yet, the Financial Secretary had not disclosed the specific mode of co-operation.

Of course, the details and mode of co-operation may still have to be studied and the Democratic Party would not object to the relevant studies. In

the paper it submitted to the Finance Committee last month concerning the setting up of the Hong Kong Guangdong Cooperation Coordination Unit, the Government stated that one of the tasks of the Unit was to conduct a study on the relevant project, thus, the Democratic Party did not raise any objection. Yet, if this Council takes the initiative to propose a motion, it would represent the will and the appeal made by this Council of our own accord. Since the idea of developing Nansha is still not very explicit and it may involve significant policy changes or even entail commitment in public finance, we really need to give the matter further thought. To prevent the Government from getting an erroneous message that this Council would fully support the idea, the Democratic Party thinks that it would be more suitable to delete the reference to "development of Nansha" while preserving the spirit of the original motion.

Apart from the mode of co-operation, the Democratic Party also has reservations about why the Government has chosen Nansha. As the media has queried, Nansha has an area of 54 sq km but 22 sq km are controlled by Mr FOK Ying-tung who is a major landlord there. In the past 10 years, he has invested billions of dollars in the development of piers, bridges, commercial buildings, exhibition centres, tourism and entertainment industries as well as an information technology park. With the active development of Nansha by the Governments of the two places, the land prices will increase and we all know very clearly who will benefit from this. The Financial Secretary has constantly denied that the project has anything to do with Mr FOK Ying-tung and I do not intend to criticize here that the Government has made any deals under the table. Yet, Mr TUNG Chee-hwa had given us an impression that he had made such deals in the past. We should learn from past mistakes and I do not wish to see the Government implementing any policies that would make Hong Kong people and foreign investors query why the Government is biased towards some consortia or "people on its side", for it would not do the international reputation of Hong Kong any good.

Putting the relationship with individuals aside, it is questionable whether the co-development of Nansha with Guangdong Province would benefit Hong Kong people. In the past, quite a few critics had raised certain questions. Nansha is situated at the estuary of the Pearl River and is a fortress for river trade in Guangdong Province. The role it can play in the whole logistics process of the Pearl River Delta is very similar to that of Hong Kong. It seems that the mutual competition between the two places would be even stronger than their complementary relationship. It is still highly questionable whether the

project would bring Hong Kong benefits or harm and how we could ensure that the interest of Hong Kong would not be jeopardized in this co-operation. Thus, the Government must really study the issue in detail. More importantly, however, the Government should not give Nansha priority consideration at the very beginning. Though the Government has already executed a Letter of Intent on the co-operation, I believe it is only a preliminary agreement.

In the view of the Democratic Party, the Government should not merely focus on studying the Nansha project or restrict the scope to Nansha. On the contrary, to find a more favourable proposal for Hong Kong, it should adopt a more comprehensive and open attitude and explore and compare various feasible proposals as well as the feasibility of negotiating over co-operation with other cities first. It would then understand whether the proposal would be maximize the interest of Hong Kong.

Although the original motion has asked the Government to study proposals other than Nansha, it conveys an idea that Nansha must be given priority consideration. The Democratic Party opines that developing Nansha is not a must and Nansha should not be given priority in consideration. Therefore, the Democratic Party has deleted the relevant wordings and substituted them with "comprehensively explore various feasible proposals". We hope that such wordings would make the position of the Democratic Party more explicit.

Lastly, I wish to take this opportunity to raise the third concern of the Democratic Party, that is, the whole process of the development of the Nansha project by the Government is not transparent enough. On 25 July, the Government issued a statement after the Fourth Hong Kong Guangdong Cooperation Joint Meeting that it had executed a Letter of Intent on co-operation with the Guangdong Provincial Government for the co-development of Nansha. Before then, the public did not understand and they had not heard anything from the Government about the co-operation project. When the public was informed of the project, the Government had already executed the Letter of Intent with the other party. More importantly, the Government has not given the public a clear account to date from the time it decided to develop the Nansha project to the time it worked out the whole strategy for co-operation between Guangdong and Hong Kong. After the meeting of the Hong Kong Guangdong Cooperation Coordination Unit, the Government has not briefed or reported to this Council. We think that the transparency of the whole process is very low and worrying.

We expect that the Government would have more opportunities of co-operation with the Mainland in the future, so, the Government should have detailed discussions with the public over such matters. It should also discuss with the public such issues as the positioning of the future economic status of Hong Kong, the mode of co-operation with and competition against mainland cities and the profit allocation involved, matters that are closely related to the future of Hong Kong and important public policies. We hope that the Government would widely disseminate the relevant information and report to this Council more frequently so that we would know the details.

The Democratic Party hopes that the Government would pledge that, when the relevant studies have made progress, it would consult this Council and the public before engaging in further negotiations with Guangdong Province, including negotiations on the feasibility of the Nansha co-operation project.

With these remarks, I move the amendment.

**Mr SIN Chung-kai moved the following amendment: (Translation)**

"To delete "apart from studying the co-development of Nansha," after "(a)" and substitute with "comprehensively"; and to delete "more" after "explore" and substitute with "various feasible"."

**DEPUTY PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mr SIN Chung-kai to Mr HUI Cheung-ching's motion, be passed.

**MR JASPER TSANG** (in Cantonese): Madam Deputy, I believe nobody would query the importance of the logistics industry to the future economic development of Hong Kong today. If we are to develop the logistics industry, it is very important that we strengthen our co-operation with Guangdong. For this reason, I rise to speak on behalf of the Democratic Alliance for Betterment of Hong Kong (DAB) in support of the motion moved by Mr HUI Cheung-ching. At the same time, we wish to particularly emphasize that the Government of the Special Administrative Region (SAR) should really do more in this respect.



We are certainly aware that the SAR Government has recently become a lot more active than before in strengthening the co-operation with Guangdong Province, including the development of the logistics industry. Besides, the Government has also adopted a proactive approach to developing cross-boundary infrastructure. In this year's policy address, the Chief Executive announced that he had asked the Financial Secretary to chair a Steering Committee on Logistics Development and proposed to set up a Logistics Development Council (LOGSCOUNCIL). Now that the LOGSCOUNCIL has been formally set up, we hope the public can be informed of the functions of the LOGSCOUNCIL and its working timetable as soon as possible. We also hope that the LOGSCOUNCIL can do something to help expedite the development of the logistics industry in Hong Kong and Guangdong.

Speaking of strengthening co-operation with Guangdong in developing the logistics industry, we believe the Government still has a lot of work to do. In particular, it must do a good job of the work in relation to research, consultation, and promotion. Let me explain with a few examples. Firstly, the Nansha development project mentioned by Mr SIN Chung-kai just now. We consider the criticism made by Mr SIN well-founded. Recently, the people of Hong Kong suddenly heard the Governments of Hong Kong and Guangdong would jointly develop Nansha into a logistics centre of the Pearl River Delta (PRD). We believe this decision is the result of the studies conducted by the two Governments over a rather long period of time and should therefore have foundation. But then, in the past, we have rarely or perhaps never heard about news in this connection. So, when this proposal came out of nowhere, people very easily felt that the proposal had just come out all of a sudden and without any clue; besides, they would also have many queries about the proposal. Under such circumstances, efforts to implement the proposal would certainly invite criticisms.

In our view, the future economic development of Hong Kong should fuse with the PRD economy; we also feel that we can support the choice of Nansha as the logistics centre to be co-developed with Guangdong. Just now Mr SIN mentioned that Nansha was located at a significant position of the Pearl River. However, when it comes to the natural advantages of a harbour and the connection with other places of the world, Hong Kong certainly has its own edge. Hence, it should be of mutual benefits for the two parties to co-operate. Having said that, however, it is still an undeniable fact that the people of Hong Kong have not been provided with adequate information. Thus, their various queries and concerns are understandable.

With regard to the co-operation between Nansha and Hong Kong to develop the logistics industry, apart from co-operation, we naturally expect to see competition as well. The question here remains how the pros and cons of co-operation can be properly balanced. The public would certainly like to learn about this. For this reason, I hope that the Government will conduct an in-depth study to look into the positive and negative impacts that co-operating with Guangdong Province to develop the logistics industry of Nansha may have on the development of Hong Kong into an international logistics centre. If the Government has already conducted such a study and arrived at conclusions, it should promptly publicize such results to the public to win the people's support.

According to the motion moved by Mr HUI Cheung-ching, studying the co-development of Nansha should be included as one of the necessary tasks of the two Governments. We consider this proposal reasonable. If we should now delete this point from the motion, we would give the public the wrong impression that the Legislative Council does not think this co-operation project should be implemented. Actually, we believe this study should be continued; besides, we also believe that this study is beneficial to Hong Kong.

Madam Deputy, I should also like to say a few words on the construction of a bridge connecting Hong Kong, Macao and Zhuhai, as proposed by Mr HUI in his motion. Earlier, Mr HUI also expounded on this point when he spoke to move the motion. As a matter of fact, the DAB has already suggested earlier on that in order to strengthen the co-operation between Hong Kong and Guangdong to develop the logistics industry in both places, studies should expeditiously be conducted to look into ways to implement the proposal to construct a sea channel bridge connecting Hong Kong and the western part of Guangdong. Besides, a fifth boundary crossing point should also be opened.

As indicated in the information we have, by 2020, the container throughput in the PRD will reach over 40 million TEU. This together with the cargoes from other areas in Guangdong and parts of the southwestern region, particularly the Xijiang river valley, will further push up the container throughput to over 50 million TEU. As such, the construction of a sea channel bridge connecting Hong Kong and the western part of Guangdong and the opening up of a fifth boundary crossing point will be of significant meaning to the efforts to further fortify the position of Hong Kong as a freight and passenger

transport hub of the PRD and to facilitate the development of the logistics industry in both places. Indeed, in as early as 1989 Zhuhai already proposed to construct a Lingdingyang Bridge, only that the proposal was not given effect due to various reasons. The latest idea put forward now is to construct a bridge connecting Hong Kong, Macao and Zhuhai. In our view, this proposal is more cost-effective and studies should be conducted in this respect. Hence, we earnestly urge the SAR Government to actively look into the relevant proposal, make decisions expeditiously and inform the public of its decisions promptly.

Madam Deputy, I so submit.

**MR KENNETH TING** (in Cantonese): Madam Deputy, given the predominance of knowledge economy, it is a general tendency to develop the logistics industry, and quite a few countries or cities that are aware of the advantages of developing the logistics industry have begun to emphasize such development. In the Mainland, the Guangdong Provincial Government has made developing the logistics industry as one of the major directions of economic development, and it has designated the Pearl River Delta (PRD) Region as the vanguard region for the development of the logistics industry. Taking an overview of the present situation, we find that the difference between the pace of the development of the logistics industry in Hong Kong and the PRD has reduced. Thus, both parties should step up co-operation, co-ordinate the development and let their advantages complement one another to avoid harmful competition.

According to the Liberal Party, to promote the development of the logistics industry in both places, it is imperative to develop cross-boundary transport infrastructure to dovetail the transport networks of the two places for smooth and unimpeded movement. There are such successful examples as the infrastructure connecting New York and New Jersey, and those connecting Singapore and Malaysia. The Government can follow the example of these successful projects and actively negotiate with the Guangdong Provincial Government in order to look for a proposal to promote co-development by the two places.

The Liberal Party supports the proposal in the original motion for the construction of a bridge connecting the Lantau Island, Macao and Zhuhai. Since the bridge can directly connect Hong Kong to the western part of the PRD,

it is conducive to making Hong Kong a logistics centre in South China. Moreover, after the Beijing-Zhuhai Superhighway connecting Beijing and Zhuhai comes into operation next year, it will take only 12 hours to transport cargoes from Wuhan to Zhuhai. If there were a bridge connecting Hong Kong to Zhuhai, it would only take another 15 minutes to cross the bridge; then, the cargoes could be transported to various parts of the world.

Madam Deputy, congestion at the import and export ports of Hong Kong is a major cause of the impeded passenger and cargo flows. Taking freight transport as an example, the Liberal Party thinks that it is not enough to implement round-the-clock cargo clearance at the Lok Ma Chau Crossing, and the Government should actively consider implementing round-the-clock cargo clearance at other control points to relieve the flow pressure at Lok Ma Chau. It can also make more flexible transport arrangements for consignors to increase our competitiveness as a freight transport hub.

The Liberal Party also thinks that the Government may consider opening up the air rights for freight transport in an orderly and gradual manner to encourage more flights to load and unload cargoes on transit through Hong Kong so as to increase the freight transport volume and airport revenue of Hong Kong, thereby consolidating our status as a logistics centre. Yet, we think that the exchange of air rights must be conducted in equitable and reciprocal manner. When the Government handles the relevant matters, it should make protecting the overall economic interests of Hong Kong the prerequisite and endeavour to fight for equitable and reciprocal interests.

Madam Deputy, as the representative of the business sector, I wish to raise the issue of port charges again. At present, the expensive container terminal handling charges seriously hinder the development of our logistics industry. Therefore, I hope that the Government will look squarely at the problem and regulate the situation. Since various lines have charged Hong Kong consignors abusive container terminal handling charges, the Government should limit the charges to reasonable and acceptable levels.

Madam Deputy, the logistics industry in the PRD is developing fairly rapidly. If Hong Kong can grasp the opportunity to step up co-operation between the two places, it would be able to consolidate its advantageous development into a major logistics centre in Asia. Moreover, encouraging enterprises in Hong Kong and Guangdong to invest more in the transport

infrastructure of each other will help foster the tie between the two places.

Madam Deputy, I so submit.

**DR TANG SIU-TONG** (in Cantonese): Madam Deputy, for the prosperous development of our logistics industry, there must be a smooth cargo flow and we must co-operate with Guangdong so that our advantages would complement one another, to further consolidate our advantages and boost the industry ability to enhance value. To achieve this objective, in addition to co-ordinating and co-operating with the Guangdong Provincial Government, the SAR Government has to widely adopt the suggestions of the sector and inject resources to clear up obstacles to the operation of the logistics industry. As Mr HUI Cheung-ching and other Members have already discussed the above, I do not wish to repeat their remarks. In the following, I would focus on our concern about the Government's establishment of a policy and executive structure for logistics development.

Recently, the Government has first established the Steering Committee on Logistics Development and then the Hong Kong Logistics Development Council (LOGSCOUNCIL). In other words, it has established a policy and executive structure comprising a committee and a council to provide policy guidance for logistics development and consolidate various measures for the development of our logistics industry. Though we cannot simply say that the transport sector is identical with the logistics industry, the transport link is still the heart of logistics operation while roads and railways are important components of the whole transport network. Yet, the representatives of the relevant Policy Bureaux and the sector are not members of the committee or council. Would this bring about disharmony or would each go its own way when formulating policies on logistics development and implementing and consolidating the relevant policies? My worries are by no means excessive. Some members of the LOGSCOUNCIL criticized at its first meeting that the Route 10 development to be launched by the Transport Bureau would fail to align with the Shenzhen-Hong Kong Western Corridor and the airport for speedy transport or effectively utilize the existing three north-south links, thus it would not be able to match the development of our logistics industry. The same criticisms were also made at a meeting of the Panel on Transport of this Council.

It is also stated in the study commissioned by the Hong Kong Port and Maritime Board — the Study to Strengthen Hong Kong's Role as the Preferred International and Regional Transportation and Logistics Hub 2001 — that, to increase our competitiveness, we must construct the Pearl River Delta Road Fast Track Pipeline and an Inland Logistics Rail Pipeline within a few years. Concerning such important logistics infrastructure, if the committee and council fail to closely co-operate with the Transport Bureau and the railway corporations, I am afraid there would be disharmony in respect of the timing of alignment and completion and even the matching transport connection. When they discuss co-operation and connection with the Mainland, I am afraid they would only express their respective views. The Long Valley and the Lantau North-south Link are lessons for us, and I hope that the logistics development would not follow the same old disastrous road.

Madam Deputy, though the LOGSCOUNCIL does not comprise representatives from the road and railway sectors, it comprises the representatives of various sectors in the logistics industry. It also serves as a forum for discussion and exchange of views, and provides the industry and the Government with a basis for negotiation and co-ordinations in connection with promoting the logistics development. Actually, the logistics industry involves dozens of trades and industries, to achieve a smooth cargo flow, (besides such matching hardware as infrastructure, customs and border control the co-ordination and co-operation among different sectors is similarly important). Indeed, under the premise of mutually beneficial business operation, (there will more or less be no problem with) the co-ordination among sectors. Yet, some disputes would inevitably arise. The dispute between mid-stream operators, consignors and container transport industry over a \$40 surcharge last year has not been settled so far. I am not advocating that the LOGSCOUNCIL should intervene in business activities. However, if the problem may affect the operation of the logistics industry, should the LOGSCOUNCIL take advantage of its position as a quasi-government organization with extensive contacts to play the role of a mediator, to promote the satisfactory progress of passenger and cargo flows? I hope the Government would take this into consideration.

Madam Deputy, I so submit.

**MS MIRIAM LAU** (in Cantonese): Madam Deputy, while Hong Kong is keen on developing a logistics hub connecting the Mainland and the world, the ports in

the PRD, as windows on China, have also engaged in active development of the logistics industry, thus they are inevitably competing against each other. Recently, the Guangzhou Municipal Government announced a project to develop Great Nansha and construct a deep-water port with the intention of developing Nansha into a Pudong in Guangzhou. Some comment that the Nansha Port would deal a blow at the Yantian Port and lead to a container terminal battle that would directly affect our status as an international transshipment port.

Actually, mainland ports including the air transport platforms in Shenzhen, Macao and Guangzhou, the sea transport platform in Yantian and the sea, air and land transport platforms in Shanghai have continuously developed low-cost transport services, posing a threat to the logistics services of Hong Kong. Though Hong Kong and the Mainland are vigorously developing the logistics industry, I believe it would not be a zero sum game in which one party loses when another party gains.

The survival of Hong Kong depends on its complementary relationship with the PRD. In the past, our manufacturing industry made up for our disadvantages with such advantages of the Mainland, especially the PRD, as plentiful land, low wages and sufficient manpower while the Mainland made up for its disadvantages with our advantages in respect of capital, technology, management and sales. With the advantages and disadvantages of the parties complementing one another, there was a win-win situation. Though they competed against each other, the competition was not harmful but virtuous and the competition also brought opportunities for good co-operation. What happened to the manufacturing industry in the past is now happening in the logistics industry today.

Regardless of whether the manufacturing industry or the logistics industry is concerned, the markets in the world would not regard Hong Kong as a single region. Rather they would regard Hong Kong and the PRD as an integrated region. However, the integration of the two places and the co-development of the logistics industry depend on the positioning of both parties. Besides competing against each other, the parties can co-operate and they can only obtain mutual benefits on the basis of co-operation. Therefore, to formulate a strategy of competition for Hong Kong, we must first understand what conditions of co-operation we are able to offer.

On the one hand, Hong Kong has sound financial and legal systems and advanced information systems. Hong Kong people have accumulated enormous international market experience in management and sales, and they are more familiar with the mainland market than foreign investors. Coupled with the low-cost transport services of the Mainland, I believe we would be able to attract a lot of foreign investors to set up production bases and procurement centres in the China and develop the consumer market.

On the other hand, to avoid harmful competition with the low-cost transport services of the Mainland (in fact, Hong Kong would not be able to compete with it even if it wishes to), Hong Kong can provide value-added third party logistics services and control the whole process from production to transportation of goods. It can also make use of supply chain management and information technology to assist factories in the manufacturing, storage, packaging and distribution of goods on the basis of demand, as well as analyzing and promoting sales. Furthermore, it can take advantage of the comprehensive and frequent sea and air schedules to transport time critical goods.

Since the tangible and intangible scopes of supply chain management services are not restricted to one region or country, the co-operation between regions and countries is of paramount importance. As the Airport Authority stated earlier, Nansha is an important port of access to the PRD and we can consider streaming goods from there to our airport or transporting goods there from our airport before diverting the goods to various mainland provinces and cities. In fact, the mode of co-operation is not restricted to Nansha or the sea and air platforms but also the land, sea and air platforms. For example, we can connect the Kowloon-Canton Railway to the freight transport railway systems of the Mainland and co-develop Pinghu in the Mainland into a distribution point for cargoes from various provinces and cities before transportation to Hong Kong and then to various parts of the world by sea or air.

Besides the co-operation between non-government bodies, the co-operation between governments is indispensable. At the Fourth Hong Kong/Guangdong Co-operation Joint Conference, Hong Kong and Guangdong executed a Letter of Intent for economic co-operation and formed an expert working group to study the development of the Nansha Port in Guangzhou into high technology, logistics and talents training centres. In my view, this direction of economic co-operation can be extended to other places in the PRD in order to strengthen the tie between Hong Kong and the entire PRD.



In addition, the level of co-operation between the two places should also include joint elimination of artificial or natural obstacles. To eliminate natural obstacles, the two places have to expedite the construction of cross-boundary infrastructure, and construct the Pearl River Delta Road Fast Track Pipeline, High Speed Craft Pipeline and an Inland Logistics Rail Pipeline on the basis of the Study to Strengthen Hong Kong's Role as the Preferred International and Regional Transportation and Logistics Hub 2001, to promote the flow of cargoes in the PRD and Eastern China. To eliminate artificial obstacles, we can establish an integrated information technology system accessible by Hong Kong and Guangdong, to provide logistics service providers with information and data related to customs declaration, customs clearance and schedules. I believe it would be able to substantially enhance the efficiency and flexibility of cargo import and export.

So long as Hong Kong positions itself well, consolidates its advantages, and steps up co-operation between the Hong Kong Government and the Guangdong Provincial Government as well as non-government organizations, it would be able to promote the logistics development in both places and substantially attract various markets in the world to use the logistics services provided by the two places. Ultimately, a win-win situation would be achieved.

With these remarks, Madam Deputy, I support the motion.

**MR CHAN KAM-LAM** (in Cantonese): Madam Deputy, with the implementation of the opening up policy of the Mainland, Guangdong has become the major hinterland for our development and the manufacturing base for Hong Kong businessmen in the Mainland. For Hong Kong to develop into an international logistics centre geared to the needs of the world and with the Mainland at its back, we cannot make do without the co-operation with and support by Guangdong.

Though there has been considerable progress in the co-development of the logistics industry by the SAR Government and Guangdong, and the Government has adopted a fairly positive attitude, there are still a lot of problems. As we all know, to co-develop the logistics industry with Guangdong, the premise is the smooth flow of goods between the two places, and it is crucial to have good cross-boundary transport by sea and on land, coupling infrastructure, highly efficient port control and the relevant services.

The Democratic Alliance for Betterment of Hong Kong (DAB) proposed to the Government long ago that it should extend the vision of the development of transport and transportation in Hong Kong to the entire PRD, actively negotiate with the Guangdong Provincial Government and study the co-development of an express transport network in the PRD. The development of the network includes the construction of the Rail Pipeline, a mass transit system, a sound road network and strengthening the air transport services for passengers and goods.

The Chief Executive has stated in his policy address that the Government would expeditiously implement the construction of the Shenzhen-Hong Kong Western Corridor and the Shenzhen-Hong Kong Rail Pipeline. The DAB welcomes this and we hope the SAR Government will expeditiously launch the above projects to ensure completion on schedule.

One of the bottleneck problems in the logistics development of Hong Kong and Guangdong is customs clearance of goods. At the Lok Ma Chau and Huanggang ports, over 20 000 goods vehicles cross the boundary every day and it often takes a few hours to complete the formalities. Yet, the problem has not been properly solved over the years. Actually, solving the problem can be very simple. In terms of hardware, we have to negotiate with the Mainland over, firstly, installing more customs clearance facilities at the original crossing points; and secondly, expeditiously opening up more crossing points to change the existing situation in which there are only three crossing points, namely, Lok Ma Chau, Man Kam To and Sha Tau Kok.

The customs clearance formalities should be simplified and employ more electronics. The new electronic verification system adopted by the Mainland in recent years is more efficient and has shortened the time required for customs clearance, earning praise by the transport sector. As regards immigration control, the DAB thinks that outdated policies and unsound management have mainly created the difficulties encountered at the boundary between Hong Kong and Guangdong. For instance, the Government still implements immigration control for vehicles at fixed crossings and it is necessary for improvements to be made. As far as I understand it, around 70% of the goods vehicles from Hong Kong cross the boundary at the Lok Ma Chau Control Point while less than 10% and 24% of the goods vehicles cross the boundary at Sha Tau Kok and Man Kam To respectively. The DAB thinks that the Government should expand the two

crossing points at Sha Tau Kok and Man Kam To. Through changing certain policies and relaxing the existing immigration control for vehicles at fixed crossings, and permitting vehicles to choose crossing points in the light of the traffic conditions, the problem of congestion at Lok Ma Chau can be improved.

Although the Government has already implemented round-the-clock cargo clearance at the Huanggang and Lok Ma Chau control points, there are still long queues of goods vehicles every day and the congestion problem is still very serious. Why do vehicle owners not choose to cross the boundary at night? The answer is easily comprehensible. As far as I know, there are two reasons. First, all the inspection booths in both places are open during the day, but only one or two after midnight. I learnt that the number has recently increased to four. Secondly, laden container trucks crossing the boundary at that time have to wait for a few hours as a result of the complicated inspection process or insufficient lighting, thus, the drivers of goods vehicles are unwilling to cross the boundary at night. Evidently, the problem of long queues can naturally be solved if the Administration would accordingly deploy additional manpower after midnight to speed up inspection and cargo clearance for laden container trucks, and if it would carry out vehicle streaming at the boundary, so that some vehicles would cross the boundary during the day while some others would do so at night.

The DAB thinks that it is crucial for government officials to get rid of their conservative ideas of closing the door, regarding the Shenzhen River as the boundary and separating our economy from that of the Mainland. Instead, they must face up to the new idea of facing the world and integrating with the greater South China economic region.

The basic strategies for the co-development of the logistics industry with Guangdong must take on a broader perspective. The Government should open up the Border Closed Area so that all vehicles can have direct access to various boundary crossing points. It would facilitate the passenger travel between Hong Kong and Shenzhen, and expedite the flows of passengers, goods, information and capital, to the benefit of the economic co-operation between the two places.

The DAB thinks that the amendment of Mr SIN Chung-kai is unnecessary because the original motion urges the Government to study more proposals to enhance co-operation between the two places apart from studying the co-development of Nansha. It is fully consistent with the amendment that calls for

a comprehensive study of various feasible proposals. Yet, the deletion of "apart from studying the co-development of Nansha" in the amendment makes the comprehensive study incomplete. Nevertheless, studying the development of Nansha is not the only option in the co-development of the logistics industry by the two places. Hence, it is unnecessary to rule out at this stage the feasibility of developing Nansha.

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

**DR RAYMOND HO:** Madam Deputy, not so long ago, this Council passed the motion on expediting the development of the logistics industry. The Chief Executive made a prompt response and announced in this year's policy address a number of initiatives in promoting Hong Kong as a logistics centre. These include the establishment of a Steering Committee on Logistics Development and a Logistics Development Council. The former held its first meeting in November while the latter last Monday.

Earlier in the fourth meeting of the Hong Kong/Guangdong Co-operation Joint Conference, the Government of the Hong Kong Special Administrative Region (SAR) has also reached consensus with the Guangdong Provincial Government on studying the co-development of transport and logistics services in Nansha and the feasibility of co-operation between Hong Kong Airport and Zhuhai Airport. These initiatives have shown that the Government fully understands that the development of logistics industry requires co-operation with the Guangdong Province.

These studies must be taken as the first step to strengthen our co-operation with the Guangdong Province. In no way should our joint efforts in developing the logistics industry be restricted to the co-operation between Nansha, Zhuhai and Hong Kong. Given the concentration of manufacturing activities with well-developed transport and port facilities in the Pearl River Delta Region, there must be an abundance of options available in developing the logistics services in the Region. Both the SAR Government and the Guangdong Provincial Government should look into these possibilities with a view to coming up with the best development mode that would be most beneficial to both the Mainland and Hong Kong.

As a matter of fact, better cross-boundary transport link will open up further possibilities for co-operation between the Mainland and Hong Kong. This is one of the reasons that prompts me to urge the Government repeatedly to give priority in developing our cross-boundary transport infrastructural projects. Besides strengthening the transport links, the Government should study ways to streamline customs clearance procedures and shorten the time required for them so as to meet the requirements of the time-sensitive logistics services.

It would be in the best interest of both Hong Kong and the Mainland if we develop a common and coherent strategy in developing the logistics services in the region. The SAR Government and the Guangdong Province have already taken the first step and should move forward from there. Madam Deputy, I so submit.

**MR LAU PING-CHEUNG** (in Cantonese): Madam Deputy, I speak in support of the motion. The transport industry is an important pillar of Hong Kong economy and the industry employs more than 189 500 workers. Although Hong Kong has the Pearl River Delta (PRD) at its back and is the transport hub in the region, can we in Hong Kong set our mind at ease? This warrants serious consideration.

The Government has just set up the Logistics Development Council and invited those in the trade to join the Council and express their views on consolidating the status of Hong Kong as a logistics hub in the region and the international arena. This should be welcomed. Although I am a "layman", what the Government has done in developing the logistics industry has always given me an impression that it is "self-centred". In other words, it has not adequately considered the development trend in our neighbouring regions or sought to effect co-ordination. The situation slightly improved after the Government published the Hong Kong 2030: Planning Vision and Strategy consultation paper last year.

In the past, due to its geographical location and historical reasons, Hong Kong was always a window through which our Motherland reached out to the world, thus, it became the leader in the PRD. Though the costs of container handling in Hong Kong were higher than those of our neighbouring regions, most of the goods produced in the PRD Region for sale in foreign countries were still transported via Hong Kong. However, with China's accession to the

World Trade Organization (WTO), the markets of different domains would gradually open up, therefore the question of whether the situation can be maintained warrants our attention and concern.

Actually, the PRD has developed its logistics industry for some time. When we unfold a map, we would find such container ports as Yantian and Shekou. Since a consortium is considering the development of the Nansha Port, we should be more concerned about the situation. In the past, with our edges in communications, finance and infrastructure, Hong Kong attracted consignors to use our freight transport services despite high transportation costs. Yet, the situation would change after China's accession to the WTO. In particular, in the past few years, a Hong Kong consortium has co-operated with the Mainland, taken part in the operation of the Yantian Port, and introduced to the PRD advanced logistics management technologies. It can be projected that, within the next three to five years, container ports in the PRD would continue to see double-digit growth annually, catching up with Hong Kong. From a commercial perspective, there is no reason for us to ask the Hong Kong consortium to give up the development project. Furthermore, the rapid development of the PRD will indirectly benefit our economy.

Since we cannot obstruct the development of the PRD, we must make the best use of the situation and induce the development of the PRD to tie in with that of Hong Kong. Then, Hong Kong would still play a leading role in the logistics industry in the region and a win-win situation would be created. It is a right direction to transport high-value goods by air, and this is one area where the PRD has still failed to catch up with us. Therefore, the proposal made by the Chief Executive to develop a logistics park merits our support.

Yet, we cannot expect our partners in the Mainland to remain partners forever. Thus, we have to continue to develop freight transport of a lower value. In the past, the industry always complained that the Government failed to provide them with suitable and inexpensive land for a back-up base, impeding the logistics process. As we all know, the ideal mode of operation of the logistics industry is for goods to be produced at the last moment and delivered to consumers at the highest speed. This would be able to cut such extra costs as warehouse rental, and retailers do not have to keep excessive stocks.

Nevertheless, it is after all an ideal and the transportation process would inevitably meet with obstruction. For instance, there would be a brief hold-up

of goods as a result of fire, industrial actions, and so on, and some goods have to be re-packaged for storage in warehouses. For Hong Kong to remain competitive against the PRD in respect of low-value logistics, we must provide the industry with a back-up base instead of offering this sector of the market on a plate. In the past, I proposed that the Government should zone some land for back-up services for freight transport, and make additional provisions in the conditions of land grant to require operators to take appropriate foundation drainage measures to alleviate flooding. If land is disposed of by way of open bidding, such low value-added services could hardly compete with property developers, which would ultimately impede the development of the logistics industry.

Madam Deputy, round-the-clock customs clearance for goods is certainly important, but we cannot overlook the provision of a back-up base for freight transport in Hong Kong, especially because the low-value logistics industry that is more labour-intensive would offer a lot of job opportunities. With a high unemployment rate in Hong Kong, we must maintain and develop the logistics services in this respect. I so submit.

**DR DAVID CHU** (in Cantonese): Madam Deputy, I am sure that Members understand very well the importance of developing the logistics industry to the long-term interests of Hong Kong. But Hong Kong is not a manufacturing base, and it is densely populated and tiny in size. So the actual demand for and impetus of the high-value-added logistics industry should come from the Mainland, especially the Pearl River Delta, where there is a high concentration of Hong Kong businesses. However, Hong Kong is not the only place which looks upon the logistics industry as a business opportunity; such other major cities in Guangdong as Shenzhen, Zhuhai and Guangzhou can also see this business opportunity, and they all intend to make huge investments in the development of this industry. If Hong Kong and these places do not communicate and co-operate with one another in developing the logistics industry, resources will only be wasted, and vicious competition may result. In the end, no one will benefit. In fact, the business environment in Changjiang River Delta places like Shanghai and Suzhou has improved in recent years, attracting many more foreign investors than before. Guangdong has lost its leading position with respect to export growth and introduction of inward investments; this has affected Hong Kong as an intermediary. That is why

Hong Kong and Guangdong must step up their co-operation if they wish to maintain their competitiveness.

In respect of air services, there are already five airports in the PRD Region, each with its unique features. If co-operation can be stepped up, and if they can complement the strengths of one another, then everyone will benefit. We may look at the co-operation and streaming of activities between Beijing and Tianjin as an example. At present, the Beijing Airport concentrates mainly on passenger service, and the airport in Tianjin focuses on freight forwarding. The two airports are connected by an express rail link which allows them to form a kind of complementing zone to raise operational efficiency. Therefore, the SAR Government should seek to liberalize fifth freedom traffic rights at a quicker pace, so that the airports in Guangdong and Hong Kong can make arrangements for connection and a division of roles between passenger service and freight transport. Of course, apart this, Hong Kong and Guangdong still need to step up co-operation in many other areas.

Land transport is an example. Guangdong and Hong Kong should explore how best they can achieve co-ordination in railway development, and such studies should cover the possibility of transporting goods by train from remote Guangdong to Hong Kong for export through the container terminals. This is economically beneficially to both places. The land transport system of Hong Kong is not as well developed its air and sea transport systems. Unless Hong Kong increases the pace of improving its land connection points with Guangdong, the development of Hong Kong into a logistics centre will certainly be hindered. For this reason, Hong Kong must speed up the work of constructing roads connecting to Zhuhai and Macao, and it must also simplify customs clearance procedures, so as to link up Hong Kong and the PRD. Shenzhen has now started the planning of a Shenzhen-Hong Kong Eastern Corridor to link up the various control points between Sha Tau Kok and Huanggang to form a new corridor. The relevant plan has already entered the design stage. I hope that the SAR Government can step up its communication and co-ordination with Shenzhen, with a view to expediting the progress of works and thus improve cross-boundary transport.

Madam Deputy, it has become inevitable for the SAR to step up co-operation with Guangdong. More importantly, we must put aside our past concept of minding our own business; Guangdong and Hong Kong must no



longer chart their own courses in their development and work for co-ordination at the boundary only at the last stage of planning. From now on, they must work for co-ordination beforehand, as early as planning starts, and seek to avoid blind competition. Only this can benefit both sides. With these remarks, I support the original motion and oppose the amendment.

**MR ABRAHAM SHEK:** Madam Deputy, in recent years, logistics and distribution services have seen rapid progress in China. The local governments at various levels in China, particularly the Guangdong Provincial Government, give encouragement and support to logistics services and commodity distribution. Construction of logistics infrastructure such as ports and airport in the Pearl River Delta Region is in rapid progress. While the transportation and logistics industry has been identified by the Commission on Strategic Development as one of the seven key areas essential to Hong Kong's long-term vision, the way to strengthen the co-operation between China and Hong Kong is significant in order to avoid vicious competition in the logistics industry. In this regard, I support the Honourable SIN Chung-kai's amendment and urge the Administration to provide more incentives and to nourish more favourable market conditions in developing our logistics industry with a competitive edge.

Madam Deputy, Hong Kong is one of the world's top 10 trading economies, our role as a global trader must be continued. After all, trading — and all by extension, transportation and logistics — has been our lifeblood for over 150 years. Hong Kong, over the years, has built up an excellent range and mixture of infrastructure to support its emerging role as a leading logistics and multi-modal transport centre for the region and into China. Today, Hong Kong is a major hub in the global supply chain — a hub that is endowed with a strategic location and a first class harbour, which handled over 18 million containers last year, serving over 80 international shipping lines with some 380 container-liners per week, and off to over 500 destinations throughout the world. Matching the container port's round-the-clock hyper-activity is the international air-cargo terminal. The terminal, also the world's busiest, last year handled some two-and-a-quarter million tones of cargo. It offers access to a wide range of aviation services. Currently, some 65 airlines operate over 3 600 scheduled flights each week between Hong Kong and 130 destinations worldwide. Added to all these, of course, are our other advantages, including the rule of law, an international

financial centre, our renowned efficiency and reliability, our connections with the rest of the world, a liberal foreign exchange regime, a stringent market regulatory system, the free flow of information and, most important, a simple taxation system.

However, whether our status as an international transportation hub will be maintained is largely related to the efficient co-ordination with China's logistics development. In recent years, the Guangdong Provincial Government has heavily invested in establishment of port and airport infrastructure in order to expedite the development of logistics industry. Due to the geographical proximity to Hong Kong, the provision of logistics services brings challenges for Hong Kong transportation and logistics enterprises. To avoid the wasteful competition between the two regions, the Government of the Special Administrative Region (SAR) should actively liaise with the Guangdong Provincial Government to work out some feasible co-ordinated measures for attaining a "win-win" situation.

Indeed, China will open its logistics-related markets within three to six years following its entry into the World Trade Organization (WTO). After the transition, the market will be completely opened to the outside world which will in turn deliver renewed impetus to the growth of regional trade and new opportunities for Hong Kong's transportation and logistics industry. While the market size of transportation and logistics industry will increase substantially, so will be the intensity of competition. In this momentum, the Central Government of China has made significant market access commitment in services related to distribution, including maintenance and repair, rental and leasing, packaging, courier, freight transportation, storage, warehousing and freight forwarding. At present, there are over 1 500 licensed international freight forwarding operators in China. Of these, around 450 are Sino-foreign joint ventures, about 100 are the offices of Hong Kong enterprises. Facing these challenges, Hong Kong's transportation and logistics industry is looking at ways to leverage this position with a view to strengthening its role in the global supply chain. To help Hong Kong's small and medium-sized transportation and logistics enterprises to get prepared for the business opportunities arising from China's accession to the WTO, the Government should strive to promote modern logistics management, step up the training of logistics management personnel, give support to logistics enterprises in improving their services through

restructuring, work out a general plan and formulate policies for logistics development.

Madam Deputy, the function of logistics providers is to plan, manage and facilitate the flow of goods through the supply chain for their clients at the lowest costs by utilizing their expertise and information technology. I believe that modern logistics goes hand in hand with the development of information technology and new logistics technology.

Compared with Hong Kong, China is not short of logistics infrastructure in quantitative terms, but their management techniques are backward, their handling capacity is relatively low and productivity comparatively poor. Logistics enterprises in China trail far behind their Hong Kong counterparts in such areas as provision of services at low costs, capability in information gathering and processing, as well as utilization of specialized knowledge in logistics. I am glad to see the recent establishment of the Steering Committee on Logistics Development that the SAR Government and the Guangdong Provincial Government can work together for their mutual benefits.

Thank you.

**MR AMBROSE LAU** (in Cantonese): Madam Deputy, given the rapidly closing gap between Hong Kong and Guangdong in terms of the pace of developing the logistics industry, our only choice is co-operation, for only this can avoid vicious competition and enable the two places to complement the strengths of each other.

The barriers to Hong Kong-Guangdong co-operation in the logistics industry are many, including an absence of co-ordination in the cross-boundary land transport infrastructure of the two places, congested control points, the failure to appropriately liberalize fifth freedom traffic rights and the lack of information exchanges on logistics development. These barriers have in turn led the two places to plan their logistics infrastructure in their own ways. This has not only resulted in wastage of resources, but also brought about duplicated infrastructure construction and thus vicious competition. For instance, there are now as many as five airports in the Pearl River Delta (PRD) Region, and port facilities in the region are not reasonably distributed. As a result, even now, a highly efficient and low-cost logistics chain has not yet been formed in the

busiest logistics area of the world comprising Hong Kong and the PRD Region. This is not good to the development of the logistics industry in the two places.

As far as the development of the logistics industry is concerned, Hong Kong is faced with the constraints imposed by high costs. It is thus necessary for us to co-operate with Guangdong to work out a reasonable division of roles. In other words, Hong Kong has to embark on the path of combining the traditional mode and the intelligence- and knowledge-based mode of the logistics industry. This means that while working on its existing foundation, Hong Kong has to bring out its functions of distribution, regulation and information exchanges with respect to the logistics resources and logistics market in the region. It has to shift more of its traditional hardware services, or those requiring intensive physical labour, to the Mainland. This is the only way to reduce costs effectively and enable the two places to complement their respective strengths, thus avoiding any vicious competition marked by duplicated infrastructure construction.

Unfortunately, the barrier to the co-operation between the two places in logistics actually stem from their different tempos of decision-making and administrative efficiency. In the Mainland, decisions are made very quickly, so is the completion of construction. But in Hong Kong, the opposite is the case. Therefore, there is a need to narrow the gap between the two places in terms of the efficiency of decision-making and administration before there can be any effective co-operation. If not, the two places will simply keep on playing different tunes and treading separate paths.

There is actually a great urgency to overcome the barrier to co-operation between the two places in the logistics industry. With the accession of mainland China and Taiwan to the World Trade Organization and the closer trade links between China and the Association of South-East Asian Nations (ASEAN) member states, Hong Kong's status as a shipping centre and logistics hub will come under severe challenges. Besides, the "Three Links" across the Taiwan Strait has become an irresistible development. As a result, the direct links across the Taiwan Strait will reduce the re-export volume of Hong Kong. And, with the strengthened trade links between China and ASEAN member states, Kunming may become an air transit point of Northern China and ASEAN countries. Following the completion of the cross-border railway linking Yunnan and ASEAN countries, goods from Southwestern China will be diverted to this railway or to the Indian Ocean ports of ASEAN countries for re-export to Europe and the Middle East. Although the import/export management and

professional services of the PRD are still lagging behind those of Hong Kong, its well-developed transportation network and low pier charges may induce an increased outflow of goods direct from Yantian and Shekou. That is why it has become extremely urgent for Hong Kong to strengthen its co-operation with Guangdong in the logistics industry and to expedite the convergence of the infrastructure of both places. The convergence of infrastructure will not only shorten the logistics flow and reduce costs effectively, but also turn Hong Kong into an important link in the logistics chain, enabling the various local professional services ancillary to the logistics industry to give full play to their strengths; the port and airport of Hong Kong can then be used as the centre of expanding integrated logistics services into the Mainland, thereby enhancing Hong Kong's role as a logistics connection point.

Madam Deputy, though Hong Kong is a shipping centre and logistics hub, its port, despite all the other advantages it possesses, is not supported by any freight rail link. That is why whenever container lorry drivers go on strike, our container terminals will be brought to a halt, paralyzing our functions as a logistics centre. This illustrates that the logistics infrastructure facilities of Hong Kong are themselves extremely backward. If Hong Kong wishes to strengthen its co-operation and division of roles with Guangdong in the logistics industry, it must improve its logistics infrastructure.

Madam Deputy, I so submit.

**MR ALBERT CHAN** (in Cantonese): Madam Deputy, in the past, even without the benefit of extensive consultation and discussions, Hong Kong still, somewhat naturally, developed into the world's biggest container port and the third or fourth largest shipping centre. That discussions are warranted now obviously because there is a crisis. In the past, Hong Kong was the window of China; owing to the circumstances and political problems in mainland China at that time, its goods had to be exported through Hong Kong, which was why Hong Kong naturally became the busiest port in the world.

Today, ports in China have become highly developed, and Hong Kong is already lagging behind in many respects. If Hong Kong does not try to catch up, it will cease to be a first-class port sooner or later, and it may well keep on degenerating, becoming a second-class port, then a third-class one, and eventually, after some years, a ninth-class one. The aim of our debate today is

therefore to alert the Government, to make it realize that it must do something concrete now. If one has the chance to go to the Mainland and inspect the development of container ports and logistics centres there, one will realize that the facilities in Hong Kong are backward in comparison, especially in respect of road planning and back-up lands. Over the past 20 years or so, as a result of erroneous container port planning, residents of Tsuen Wan, Kwai Chung and Tsing Yi have had to put up with, every single day and every single minute, all sorts of nuisances caused by traffic congestion, a poor environment, noise pollution and the vibrations generated by container lorries rumbling past buildings late at night. I hope that having learnt a lesson from this bitter experience, the Government can avoid making the same mistakes when planning the development of logistics in Hong Kong, particularly in regard to back-up lands, transport networks, environmental problems, container terminals and logistics centres. Railway networks must be tackled as a highly important issue, because I am sure that no other place in the world is quite like Hong Kong, where there is an absence of any railway network to support such a huge container port. I think this is another miracle of Hong Kong, but this miracle has been made possible only by the pains of many.

Madam Deputy, we must co-operate with Guangdong on a full-scale basis. As far as planning is concerned, we cannot afford having the co-operation from just 90% of the places while leaving one place out. This is precisely the thrust of Mr SIN Chung-kai's amendment. I hope Members can understand that our aim is not to pick on Nansha; we do not care who is in charge of and controls Nansha, nor are we concerned about who has made the proposal, for we do not have any interests at stake, any personal connections there. But when we talk about full-scale co-operation with Guangdong, if just one particular place is excluded, people may well wonder and think that this place is not connected in any way with logistics development. In reality, this is not quite the case. Nansha will actually be developed into a very important logistics centre, so to exclude it from the comprehensive studies will certainly make people wonder. Perhaps there are reasons we do not know, but if co-ordination is to be achieved at all, roads, transport systems, resources and strategic planning must be involved.

Whether the future logistics centre of Hong Kong is to be located in the east, in the south, in the west or in the north, it will invariably involve the construction of many roads and piers. If it is to tie in with the development of Yantian Port, many of the related facilities may have to be located in the east of

Hong Kong. If it is to tie in with the development of the PRD or Zhuhai, there may be a need to back up the Lingdingyang Bridge or other facilities, and in that case, the port and logistics centre of Hong Kong may have to shift westward. If our logistics centre is to tie in with the development of Nansha, there may really be a need to set up more supporting facilities near the Pearl River estuary. This is a very important point. Therefore, the proposal of Mr SIN Chung-kai's amendment to delete "apart from studying the co-development of Nansha" from the original motion does not actually mean any disrespect for anyone, nor is it meant to pick on anybody; the deletion is meant only to highlight the importance of comprehensive studies and exploration. I hope Members can understand that there is no ulterior motive behind the amendment of Mr SIN Chung-kai. By comprehensive studies and exploration, it is meant that we must seek to tie in with the various developments in respect of logistics in the whole Guangdong Province, or else the exploration concerned will at best be partial in scope, and possible omissions may be discovered in the future. This is certainly not in the interest of the overall development of the logistic industry in Hong Kong. I hope Members can see this point.

Madam Deputy, I wish to say a few more words on the significance of road planning to the future development of the logistics industry. I have recently been to Zhuhai to inspect the planning work there; they have already completed the Qiao Bridge, pending connection to the Lingdingyang Bridge enroute to Tuen Mun or other places. Although the port there is not yet developed, they have planned the necessary road network with a six-lane expressway, which can be widened to 10 lanes to support the development of a container port. Admittedly, back in Hong Kong, there are geographical constraints, but as far as the development of the logistics industry is concerned, a shortage of back-up lands will probably lead to a situation similar to that found in the northwestern and northern New Territories now — utter chaos in the container terminal and resultant impacts on the local environment and ecology. Therefore, I hope that if the Government wishes to draw up a logistics policy and a relevant development plan, the Secretary can make sure that there is always co-ordination with other Policy Bureaux. If not, while one Policy Bureau may say something, another bureau may come up with a different decision of its own. In that case, when a road is completed, vehicles may not use it at all, or even if there is a container port, there will be no back-up lands. That is why the central administration must be fully determined, and it must set down a very clear direction and ensure full-scale co-ordination. It is hoped that the Government

will not tread the same old path of 20 to 30 years ago and make the same mistakes again.

Madam Deputy, I have raised all these points, in the hope that those Members who do not support Mr SIN Chung-kai's amendment may reconsider their position, so that all of us can render our support happily, so that the motion today will not be negated because of any abstention. Thank you, Madam Deputy.

**DEPUTY PRESIDENT** (in Cantonese): Does any other Member wish to speak? *(Pause)* Mr HUI Cheung-ching, you may now ..... Mr HUI Cheung-ching, I am sorry, please speak a bit later, for Mr CHAN Kwok-keung has raised his hand to indicate that he wishes to speak.

Mr CHAN, if you wish to speak, please press the button instead. You may now speak.

**MR CHAN KWOK-KEUNG** (in Cantonese): Thank you, Madam Deputy. Madam Deputy, Financial Secretary Antony LEUNG has pointed out in public that the Government intends to develop Hong Kong into a logistics centre, and active steps will be taken to reduce costs for the local logistics industry, so as to induce more consignors to transport their goods through Hong Kong and enhance Hong Kong's image as an international logistics centre.

As a Member representing the labour sector, I support the Government's efforts to co-operate with the Mainland in logistics development, because the "September 11 incident" is expected to worsen the unemployment problem in Hong Kong, and the Hang Seng Bank has made a particularly worrying forecast that the unemployment rate of Hong Kong may rise to as high as 6.5% next year. According to *Economic Review*, if Hong Kong develops its logistics industry, it will be able to create 70 000 jobs within five years, about three quarters of which will be for non-skilled workers, and this will be helpful to reducing the unemployment rate.

The Mainland is similarly faced with an unemployment problem caused by the layoff of large numbers of workers. It has been reported that the Mainland



will have to create as many as 100 million jobs in the future to relieve the pressure of unemployment. That is why the various places in Guangdong Province are all prepared to take part in the logistics industry, and the development of their infrastructure is especially rapid, the aim basically being to meet the demands from freight forwarding.

The Shenzhen Municipal Government plans to invest RMB 120 billion yuan in urban road construction over the next 25 years. Besides, the Shenzhen Airport will also launch a logistics park project worth RMB 1.5 billion yuan at the end of this month. The air logistics park project is divided into two stages, the first of which will include an international cum domestic cargoes terminal, an inventory centre, and a bonded warehouse, while the second will include the construction of a multi-function warehouse, distribution centre and a bonded zone for commodity processing.

Shenzhen will become a competitor of Hong Kong in the future; whether in terms of geographical location and infrastructure planning, it possesses the ability to compete with Hong Kong. Therefore, high-technology ventures, financial services and logistics will become the three major industries of Shenzhen. The Yantian Container Terminal in Shenzhen also poses a threat to the container industry of Hong Kong: it costs \$2,800 or so to export a container in Hong Kong, but in Yantian, the cost is just some \$800, a difference of as much as \$2,000. One of the main reasons for this is that Shenzhen has not only improved the facilities at Yantian, but also constructed a stage III berthing place recently to cope with the increasing throughput. Besides, the shipping companies have also abolished the surcharges in the Mainland. All this, together with the relatively low costs in the Mainland, has indirectly reduced the competitiveness of Hong Kong's freight transportation industry.

Guangzhou is not lagging behind either, and it now has a plan to launch a large-scale project in the Nansha development area. Under this project, the existing Nansha measuring just 22 sq km in area will be expanded into a greater Nansha measuring 173 sq km. This is meant to back up and tie in with the existing two container terminals, and will become in no time another shipping centre in the PRD Region.

Shenzhen is well-equipped for air services and freight transportation, and Guangzhou has established a new development area. Back in Hong Kong, although the Government is willing to spend huge sums on container terminal

facilities, and although, for example, it is going to construct Container Terminal No. 10 and Route 10 to support it, operating costs here are 100% to 200% higher than those in the two places mentioned above. High fees have scared many consignors. That is why the most important factor determining whether more jobs can be created is actually the lowering of costs for the logistics industry in Hong Kong.

There is no lack of the required talents in Hong Kong. The Polytechnic University is now taking active steps to organize courses on logistics, and the Government also encourages all applicants of the \$5 billion Continuing Education Fund to take courses on the subject. Besides, the Employees Retraining Board has also designed a course on container inspection for unemployed trainees with lower education qualifications, in an attempt to enable the unemployed to also benefit from the development of the logistics industry. But just these efforts are not enough. The Government should help the industry reduce costs and promote its co-operation with the Mainland, so as to create business opportunities, make good use of the strength of the PRD Region and ward off the threats from other places in Southeast Asia.

For all these reasons, Hong Kong should construct roads connecting to the logistics areas in the Mainland, and it should also discuss the detailed arrangements required with the municipal governments of Shenzhen and Guangzhou. It is best to set up an information platform on the logistics areas in Guangdong and Hong Kong. All these factors are essential to lowering costs and achieving economic efficiency in Hong Kong. What is more, all restrictions hindering the development of the logistics industry should be removed. For example, fifth freedom traffic rights should be liberalized to allow adequate freedom for air freight transport, and round-the-clock clearance for lorries should be introduced to make Hong Kong more competitive vis-à-vis the Mainland.

With these remarks, Madam Deputy, I support the motion.

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

(No Member responded)

**DEPUTY PRESIDENT** (in Cantonese): Mr HUI Cheung-ching, you may now speak on Mr SIN Chung-kai's amendment. You have up to five minutes.

**MR HUI CHEUNG-CHING** (in Cantonese): Madam Deputy, I am very pleased that 13 Members have spoken on my motion, making so many constructive suggestions on how to turn the competition between Hong Kong and the Mainland in the area of logistics development into co-operation. I hope the Government can consider them carefully.

Mr SIN says on the one hand that he is not opposed to any joint studies by Guangdong and Hong Kong on the co-development of Nansha, but then, on the other hand, he proposes to delete "apart from studying the co-development of Nansha" from my motion. Will this lead to the misunderstanding that Nansha is not included in the relevant studies?

The biggest problem is that since Mr SIN is so opposed to joint studies by Hong Kong and Guangdong on the co-development of Nansha, I really fail to see any actual difference in implication between Mr SIN's amendment and my motion.

My motion, as it is originally worded, says that apart from studying the co-development of Nansha, we should also explore more options. Mr SIN's amendment says that Hong Kong and Guangdong should comprehensively explore various feasible options. The original motion and the amendment, as they are respectively worded, do not involve any difference in principles and policies, and the amendment does not contain any new ideas either. Although Mr SIN does have the right to move an amendment, he still should not move an amendment just for the sake of amending the motion. I therefore think that Mr SIN's amendment is unnecessary. Lest people may say that the amendments moved by Members of this Council are empty in contents, I call upon Members to vote against Mr SIN's amendment.

Madam Deputy, I so submit.

**SECRETARY FOR ECONOMIC SERVICES** (in Cantonese): Madam Deputy, I am grateful to Mr HUI Cheung-ching, Mr SIN Chung-kai and other Honourable Members for their valuable opinions on how to co-operate with the Mainland in developing the logistics industry. I would like to make it clear from the outset that our attitude towards the development of the logistics industry is open. I am also thankful to Dr Raymond HO for recognizing our recent proactive efforts in this area.

THE PRESIDENT resumed the Chair.

Ms Miriam LAU has pointed out the advantages we have in developing the logistics industry. Certainly, we will not be complacent with the possession of these advantages. I am in complete agreement with her view that we must provide value-added services to ensure greater room for development. This will also enable the logistics industry to co-operate more effectively with its counterparts in the Pearl River Delta and to engage in healthy competition. I would also like to thank Mr Abraham SHEK for pointing out what our advantages are. Mr SHEK has mentioned that our advantages in infrastructure facilitate our efforts in developing the logistics industry.

Mr Albert CHAN also mentioned that in the past there was the problem of a lack of land when development reached a certain stage. I have made a study trip to the Pearl River Delta (PRD) and as Mr Albert CHAN said, there is much more land there for development. In Hong Kong, we have been using a very small amount of land for development and so our services must be value-added. This is also the objective that we must seek to reach when we develop our logistics industry.

Many Honourable Members have expressed different views on the co-development of Nansha as announced by the Government. I would like to talk about what stand the Government is taking as regards the co-operation with Nansha. On the fourth meeting of the Hong Kong/Guangdong Co-operation Joint Conference on 25 July this year, both parties executed a Letter of Intent on economic co-operation. A group was formed by both sides. Meetings were held in September and on 14 November. Regarding co-operation proposals, they are still in the conceptual and study stage and concrete plans have yet to be finalized. The focus of our work now is on studying the way forward. Our decision is to find out if Nansha can serve as an entry point for our development of the PRD and how it can be used to promote the logistics industry of Guangdong and Hong Kong and how interchange and matching efforts can be made.

Although Honourable Members have focused their discussions on whether Nansha is our only key development area, I should like to make it clear that what we have in mind is not one single place, but also other places out of Guangdong.

Apart from engaging in competition with them, we also want to tap the sources of the supply of goods from these places. Thus, we are fully aware of the fact that if the logistics industry is to develop, we must attach great importance to the keeping of close contacts with Guangdong authorities at corresponding levels and the forging of closer ties with them. In addition, efforts must be made to match the work to be done by both parties in planning and other aspects.

That brings us to a question: Where should we concentrate our efforts in developing the logistics industry? In fact, what Honourable Members have mentioned is actually the kind of work on which we have decided to concentrate resources after the meeting of the Logistics Development Council (LOGSCOUNCIL) this week. Many Honourable Members have pointed out that we should develop a transport network linking up the PRD. They have talked about how the road transport network should be developed. The matter has been put on our agenda.

Another Honourable Member raised the issue of co-ordination between government departments. It is because the Economic Services Bureau is not responsible for the building of roads. I would like to explain here that when this issue is raised in the Steering Committee chaired by the Financial Secretary, colleagues from the Transport Bureau will be invited to join in the discussions so that matching work in this respect can be made. In addition, in the five special working groups under the LOGSCOUNCIL, there is a special working group tasked with infrastructure logistics. This group comprises representatives from the transport industry, as well as officials from the Transport Department and the Transport Bureau for better co-ordination of the work to be done.

Apart from road transport, some Honourable Members also raised the point of rail development which was their concern. Honourable Members may have heard on other occasions that the Kowloon-Canton Railway Corporation is undertaking a feasibility study of the development of a commodity distribution centre at Pinghu. It is also engaging in discussions with the relevant mainland institutions like the Ministry of Railways, the Guangzhou Railways Group, the Guangzhou Shenzhen Railway Corporation, and the Liaison Office of the Shenzhen Municipal Government, and so on. I have listed these institutions here to show that we have not been idle. Those of my colleagues who are responsible for railways will know that if the delivery of goods is to be made

faster, active development of railways must also be launched in addition to the development of road links.

In respect of transport, many Honourable Members have talked about the issue of clearance at the boundary crossings. I do not wish to talk about the opening hours of the boundary crossings at Huanggang and Lok Ma Chau, or the issue of three south-bound accesses or one north-bound access, and so on. The issue involves the legislation and customs operation on both sides of the boundary. I would like to point out here that the LOGSCOUNCIL is very concerned about what can be done to streamline customs clearance. In this regard, representatives from the Customs and Excise Department are sitting on the LOGSCOUNCIL. But it must be noted that the Customs and Excise Department does not act by itself alone. We must be aware that the issue of customs clearance will be dealt with at the level of the Chief Secretary for Administration and studies will be conducted on improvement measures. I would like to point out now that we will keep a close watch of the operations of the check points and will make constant reviews of the situation to see what can be done to improve it.

Quite a few Honourable Members mentioned the airport dimension in infrastructure construction. They pointed out that there are five airports in the PRD Region. When I gave a reply to an oral question this afternoon, I explained in detail the competitive edge which our airport enjoys. It remains of course, that competition is always there. In 2003, a new airport, that is, phase one of the Baiyun airport will be commissioned. We should bear in mind that China is a vast country, but the greatest competitive edge of our airport is our outbound air links are greater in number than those offered by any airport in South China. So in this respect, I have the responsibility to develop external freedom rights. When everybody is saying that we should develop the fifth freedom rights, I hope we can understand that the third and the fourth freedom rights are also very important. It is not like what some companies have said that the possession of fifth freedom rights will enable the aviation industry to grow. In negotiations in respect of freedom rights, the international practice is that bilateral discussions will be held and these will lead to the conclusion of bilateral agreements. I believe all Honourable Members will agree that Hong Kong should safeguard its own economic interests and negotiations on freedom rights and their exchange must be made on an equal basis. Now I would like to add a few words on why I think that the third and the fourth freedom rights are equally

important. It is because an airline has to put in more resources for the third and the fourth freedom rights. Very often when an airline has already owned the third and the fourth freedom rights, their demand for the fifth freedom rights would only be a need to provide connection services. When the economy is booming, many people would think that fifth freedom rights would enable airlines to develop their businesses and hence make more profits. But when the economy is gloomy, the first flights which will be cancelled are usually the flights on the fifth freedom rights. If we are to develop Hong Kong into an aviation hub, do we want to see too many routes which are not so stable? I hope Honourable Members can understand this problem and agree that negotiations should not be held simply because of the desire to secure fifth freedom rights. We should know that fifth freedom rights should go in line with developments in the third and fourth freedom rights.

Moreover, I mentioned in the oral reply given by me earlier today that the five airports in the PRD Region were making a study led by the Hong Kong Airport Authority. They would hold another meeting in March next year to study what room of development can be found among these five airports. I also hope that sustained progress can be made in this respect.

Apart from the logistics infrastructure, many Honourable Members also stressed that developments should be conducted in information and human resources. I have not played down the difficulties of developing information logistics at all, for these difficulties are not simply those related to cross-boundary co-operation, but also the reaching of a consensus within the territory, between the government, the public bodies and the private sector. We can just imagine the kind of planning that needs to be carried out if we wish to put in place an electronic channel which is commonly accessible by all people in the banking and insurance industries, the freight forwarders, pier operators, the airlines, the shipping companies and the drivers, and so on. But that is still the decision we made after the meeting this week, that work on this would be carried out. We hope that this can be done in phases and that the business sector can give its support and commitment. We do not want to see that because a new platform is to be set up, that some companies will have to discard the technology resources which they have put in. We hope that all these can be linked together so that the logistics industry can operate and grow under seamless conditions, as Honourable Members have put it. Admittedly, that will be a very arduous task,

and that is not simply a technical or manpower problem, but that there would be very great financial implications. I hope therefore that in future when we have come up with any new proposals, we would have the opportunity of briefing Honourable Members and that we can enlist their support.

Some Honourable Members mentioned earlier that matching efforts should be made in manpower resources. In this regard, we have made some arrangements with the authorities to enhance manpower training. We are also concerned about giving assistance to small and medium enterprises in training up manpower in this respect. This is done in the hope of raising the status of the logistics industry in Hong Kong both on the domestic and international fronts.

Having said so much on this, Honourable Members may think that what I have said will all be carried out in Hong Kong. However, we would not confine our efforts to Hong Kong. Apart from looking into how various institutional frameworks, infrastructure and information facilities can be developed in Hong Kong, we would endeavour to make reciprocal efforts with corresponding authorities in Guangdong on various levels.

As Members have said, the logistics industry encompasses policy areas in air, land and sea matters. We need to divide them up and put in our matching efforts and co-operate with the different government bodies in Guangdong. Otherwise, a mammoth and inefficient abnormality is bound to appear. On every occasion we will draw up a different agenda for discussion. So with respect to infrastructure and port development, we will match our efforts with that of the mainland port authorities. At the same time, we would need to exchange information with the planning authorities on the Mainland and seek their co-operation. This kind of work in connection with logistics development cannot be incorporated or matched simply by organizing the logistic organizations on both sides or holding conferences or information exchange sessions. We have to divide the areas involved and to communicate with the corresponding units and forge ties with them in a systematic way.

Madam President, I am grateful to Honourable Members for the many suggestions made today. The LOGSCOUNCIL will hold a meeting this week and afterwards, the five special groups under it will hold their own meetings in January next year. After the meetings, these groups will submit their respective



outlines of work and blueprints to the LOGSCOUNCIL which will hold its meeting in early March next year. As the Chairman of the LOGSCOUNCIL, I am very concerned about the future objectives and plans which the special groups will formulate at their first meetings. It will be a very busy time for us in January next year. I also hope that next January will be a very meaningful time for us and that an overall plan can be devised by that time for the future development of the logistics industry in Hong Kong.

May I thank Honourable Members again for the advice and support they have given to our efforts in promoting the logistics industry in Hong Kong. Thank you, Madam President.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the amendment moved by Mr SIN Chung-kai to Mr HUI Cheung-ching's motion be passed. Will those in favour please raise their hands.

(Members raised their hands)

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

(Members raised their hands)

Mr SIN Chung-kai rose to claim a division.

**PRESIDENT** (in Cantonese): Mr SIN Chung-kai has claimed a division. The division bell will ring for three minutes.

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

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

Functional Constituencies:

Mr Kenneth TING, Dr Raymond HO, Mr Eric LI, Dr LUI Ming-wah, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Mr LAU Wong-fat, Ms Miriam LAU, Mr LAW Chi-kwong, Mr Abraham SHEK, Miss LI Fung-ying, Mr Tommy CHEUNG, Mr Michael MAK, Dr LO Wing-lok and Mr LAU Ping-cheung voted for the amendment.

Mr HUI Cheung-ching, Mr CHAN Kwok-keung, Dr Philip WONG, Mr WONG Yung-kan, Mr Timothy FOK, Mr Henry WU, Mr LEUNG Fu-wah and Mr IP Kwok-him voted against the amendment.

Geographical Constituencies and Election Committee:

Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Mr Andrew WONG, Dr YEUNG Sum, Mr Andrew CHENG, Mr SZETO Wah, Mr Albert CHAN, Mr Frederick FUNG, Ms Audrey EU and Mr NG Leung-sing voted for the amendment.

Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr TAM Yiu-chung, Dr TANG Siu-tong, Dr David CHU and Mr Ambrose LAU voted against the amendment.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 23 were present, 15 were in favour of the amendment and eight against it; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 23 were present, 14 were in favour of the amendment and eight against it. Since the question was agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was carried.

**PRESIDENT** (in Cantonese): Mr HUI Cheung-ching, you may now speak in reply. You still have one minute 56 seconds.

**MR HUI CHEUNG-CHING** (in Cantonese): Thank you, Madam President. Although this amendment has been passed, as I pointed out in my speech a moment ago, it is largely unnecessary, because its wording and that of the original motion do not actually contain any difference in principles or policies. *(Laughter)* But since the amendment has already been passed, and since it is actually no different from the original motion, I will support it. And, I also call upon Members to support the amended motion, which is no different from the original motion. Thank you. *(Laughter)*

**PRESIDENT**(in Cantonese): I now put the question to you and that is: That the motion moved by Mr HUI Cheung-ching, as amended by Mr SIN Chung-kai, be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

**PRESIDENT**(in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections and by the Election Committee, who are present. I declare the motion as amended passed.

**PRESIDENT** (in Cantonese): Second motion: Opposing unfair competition.

### **OPPOSING UNFAIR COMPETITION**

**MR LEUNG YIU-CHUNG** (in Cantonese): Madam President, I move that the motion as printed on the Agenda be passed.

Madam President, it is already the fourth time the question on opposing unfair competition is raised in this Council. I am not picking up phrases from others and pass them off as my own. But I see that the problem is becoming more serious every day, while the authorities remain indifferent. Even though eight parties of this Council have joined hands to pass three motions respectively asking public utility companies to lower their charges, most of these companies still persist not to heed the public wish, and the Government would put on a helpless air; so the people can only go on living in deep water and scorching fire.

Therefore, I find it necessary to again move a motion, in addition to applying pressure on the Government, to see if the Government really has such a heart of stone.

In the past, the Government has always been willing to be an ostrich: in every debate, it either covered up problems, or hid behind the excuse of ensuring maximum market openness and free operation; or even confused people and threatened that legislation would run the risk of overcorrecting. This indifference to the people's welfare is disgusting.

In the past, when Members raised similar debates, responsible officials would say, "It is not that the Government is afraid of or opposed to amending legislation to deal with the problem of anti-competitive conduct, but present restrictive business practices in the local market are not serious enough to warrant a 'broad-brush' legislative measure by the Government."

In that case, we must ask if we have to amend the "broad-brush" provisions in the Prevention of Bribery Ordinance, after seeing improvements to the corruption problem, to deal specifically only with problematic corruption areas; and to amend the Public Order Ordinance, after public order in certain districts has improved, to deal specifically only with certain districts with serious crimes. Such an argument really does not hold water.

Madam President, I lately heard a certain senior official speak with fervour and assurance in a seminar on the problem of monopolization, that fair competition legislation is a socialist means.

I have been given to understand that Mr Fred LI also attended that meeting. I hope Mr LI can later verify whether some official really made that remark at that time.

Madam President, if some official should really have said it, I would be very surprised by the official's ignorance. No doubt, our great Motherland, ever upholding socialism, issued in as early as 1993 the "Law of the People's Republic of China Against Unfair Competition", to become the Nation's first legislation on regulating the order of market competition.

However, at present besides China, this so-called socialist country, there are already in the whole world over 70 economies with different forms of competition law, including several American continent countries, member states of the European Union, Australia and New Zealand, South Africa, Japan, South Korea, and Taiwan. Can we say they are all socialist countries? Can we say they are practising or moving towards socialist economies?

At present, the phenomenon of unfair competition has already in fact spread to all trades and industries. The most obvious and vitally concern the people's life are power supply, gas, petroleum products, supermarkets, container terminals and their complementary services, Easy Pay System (EPS), and so on.

The Government is aware of these monopolization conditions, but has always turned a blind eye to them. This behaviour is not only being partial to the interests of big enterprises and large consortia, but also shows the Government has always been indifferent to the public's consumer rights.

Take electricity as an example. There are at present two electric power companies: the CLP Power Hong Kong Limited operated by the Kadoorie family, and the Hongkong Electric Company Limited (Hongkong Electric) owned by the LI Ka-shing family, Mr LI himself being Chairman of Cheung Kong (Holdings) Limited. Under the umbrella protection of "Scheme of Control Agreement" they can make a "guaranteed" profit 15% of their net assets value every year. Whenever they cannot make this rate of profit, they have grounds to apply for a price increase. The masses as clients can only submit themselves like fish and meat on their chopping block with no bargaining power.

I hear the Hongkong Electric will announce this Friday it will effect a price increase of more than 5% next year. In fact, the Hongkong Electric profits last year was as high as \$5 billion, but still it insists on a price increase. Do you not think this is "wild"?

The Hongkong Electric's grounds for price increase are that profits last year did not reach the level prescribed by the Scheme of Control Agreement. In other words, not that there was no profit, but the profit was not enough. This sort of behaviour, callous to the suffering of the people, really makes heaven and man angry. The Government only looks on with folded arms, allowing these organizations to freely increase prices. This completely exposes the actual absurdity of the mechanism. Under such circumstances, why do we still not have a critical review?

As to home gas fuel, the Hong Kong and China Gas Company Limited operated by the Henderson Group enjoys monopolized dominance, and can also freely revise its tariffs, which consumers have no choice but accept.

As to vehicle fuel, there is the obvious problem of "collaborated price fixing" among the several oil companies, the Government having no way to supervise or control it. Faced every time with brewing price increases by oil companies, the Government can only resort to "tongue work" to force them to yield. Every time, the Government will look like making an exhausting effort. In such a case, why does the Government still laboriously spend effort to carry out this persuasion work? Why does it not regulate with legislation?

Supermarkets and the newly emerged superstores are another obvious example. The present market is more or less divided and owned by two supermarket groups: Park'n Shop operated by the LI Ka-shing group, and Wellcome under Hong Kong Land and Swire. Their branch stores are everywhere. The reason behind it is the support of the Government or its affiliated organs for them to hurt others by means of capital, killing the vitality of many vendor stands, stores and market "wet stalls". We customers and even product suppliers, with the unobstructed expansion of the two supermarkets, may end up as victims instead of being beneficiaries.

The Consumer Council released in November 1994 an investigation report on the development of local supermarkets, expressing worry for possible monopolization in the supermarket trade, and the fear that they might eventually control and manipulate product categories and prices. Product suppliers would in fact bear the brunt: the products they can sell and pricing are entirely in the

hands of the two supermarkets, the suppliers themselves having no bargaining power. I think the Honourable Mrs Selina CHOW must have received many complaints from her voters about this.

As for consumers, with the sources of products and prices under the control of supermarkets, the consumers' choices are relatively reduced, forming a kind of reliance on and being nose-led by the supermarkets, with no chance to try other products. Our daily life and food rely entirely on two supermarkets, and when they raise the prices of certain products, we can only accept quietly.

By protecting the monopolistic operation of mid-stream operators, the Government has not only ill affected the income of people in the trade, but also, more seriously, the competitiveness of Hong Kong.

Ms Miriam LAU knows best the whole story from beginning to end. I do not know whether she will agree with what I say today. The crux of the problem lies in fact in the monopolistic operations of the LI Ka-shing group, which make berths constantly short of demand in order to maintain high charges, but thus weakening Hong Kong's competitiveness.

Data recently collected by the "Hong Kong Container Drayage Services Association Limited" show the charge, in Hong Kong dollars, for shipping one TEU to the United States, Europe or Australia is about \$2,000, whereas it is only \$700 or \$600 in Singapore and South Korea, and only about \$1,300 even in Taiwan. The figures also show if the goods are exported via Yantian port, the charge is only about \$650. It can thus be seen how unsatisfactory the situation is in Hong Kong.

The row about charges was discussed again in yesterday's meeting of the Legislative Council Panel on Economic Services, still without result. The Secretary for Economic Services regrettably expressed that the Government "had no right" to stop any private organization from collecting fees, and had no intention to control commercial activities with land grant conditions. The Government is obviously evading the question, the reason behind it being for the protection of the interests of the LI Ka-shing family. I have to remind the

Government here that Hong Kong economy may suffer a significant setback on account of this.

There is also the EPS promoted by several big banks, which seems to bring us a lot of convenience, for instance in shopping and patronage of public means of transport. However, when this kind of service has extended to every part of the citizens' daily life, they may collect a service fee from it, and the consumer will then have to accept unconditionally.

I think Mrs Selina CHOW understands best the problem with this. She once protested on behalf of her voters that EPS would levy a service charge on every transaction. From this we can see that this kind of monopolization is already serious enough to strangle and destroy the development of small enterprises. Of what help would this in fact be to the recovery of the weak consumption market as a whole?

In fact, we can foresee that the "Octopus" payment system spearheaded by the MTR Corporation Limited and quickly developing has the same hidden problem. Some convenience stores lately attracted customers to buy newspapers and magazines with Octopus for gifts, which resulted in other newspaper vendors protesting. This is evidently the practice of hurting others by means of big capital. However, the Government has at present no way to stop this kind of practice.

Yet, the Government constantly boasts that the goal of its competition policy is to boost economic efficiency and free trade, in turn to the advantage of the consumer. I agree. For example, the Government opened up the telecommunication and broadcasting markets, allowing new operators to join in the competition, which resulted in the service charges being lowered continuously, to the benefit of the consumer. However, the Government's act has not comprehensive enough. It favours and is partial to certain big families and big financial groups. Is this practice fair and just?

Although the Government established in 1997 a Competition Policy Advisory Group, which is chaired by the Financial Secretary, to handle the problem of competition, yet we ask what can such a "toothless tiger" do given that it is inferior even to the Consumer Council in portfolio and power, in the face of certain big families and financial groups of privileged standing?



In fact the Government should readily accept good advice and, with a fair and impartial attitude, enact a fair competition law to look after consumer interest and facilitate fair competition in all trades and professions. It should also stop special big families and big financial groups from monopolizing the market, which suppresses Hong Kong's economic development. Instead, the Government should, with fair competition legislation, save Hong Kong economy, which is in its death throes.

At the same time, the Government must also establish a statutory authority which receives complaints and has investigative authority, in order to support policy implementation and law enforcement.

According to other countries' experience, the fair competition authority can be responsible for investigating cases of possible violation of fair competition legislation, and the courts or the authority will adjudicate. The people or enterprises suffering damages can initiate civil proceedings to stop the other party's anti-competitive behaviour, and obtain due damages. I think this will bring certain benefits to Hong Kong economy, and will be of greater help to the economy's recovery in the future, especially to small enterprises. For these reasons, I hope the Government will accept good advice readily and enact a fair competition law.

With these remarks, Madam President, I beg to move.

**Mr LEUNG Yiu-chung moved the following motion: (Translation)**

"That, as currently unreasonable market domination and unfair competition exist in such domains as power supply, gas, petroleum products, supermarkets, container terminals and their complementary services, and the Easy Pay System, and the trend tends to escalate, thereby adversely affecting people's livelihood as well as industrial and commercial enterprises, this Council urges the Government to expeditiously enact a fair competition law and set up a fair competition authority, so as to promote fair competition and safeguard the rights and interests of the public."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the motion moved by Mr LEUNG Yiu-chung be passed.

**DR LUI MING-WAH** (in Cantonese): Madam President, in principle, I oppose unfair competition, because unfair competition can produce the following negative effects: Prices of products or services are raised to unreasonable levels, incomplete variety of goods supplied, thereby reducing consumers' choices and making it difficult for new suppliers to enter the market, and so on.

Unfair competition can take on the following forms:

- (1) Government policy specially allows a certain company to operate in a specified domain or market, and it is difficult for other companies to enter that market. For example, the electric power companies and the former Hongkong Telecom Company.
- (2) The market scale is limited and a new company has to invest a great amount of capital to enter the market, for example, the Hong Kong and China Gas Company Limited.
- (3) The market is already carved up by existing companies. As consideration has to be given to the low rate of investment return, it is difficult to attract investment by new companies, for example, the fuel market, and ferry terminals.
- (4) The rapid development of certain companies creates a scale of operation far exceeding those of other companies of the same kind, whereupon the enormous companies will compete with price advantage, thereby constituting pressure on the other companies, for example, the big retail stores.

For historical reasons, there do exist individual companies that operate in a monopolistic manner. I hope the Government will, when agreements are due for renewal in future, negotiate with this kind of companies to open up the market to increase competition and reduce the market burden.

The Hong Kong Government did have credit in the past in opening up markets. For example, the opening up of the telecommunication market has greatly lowered wired telephone long distance rates. The great number of competing companies in the wireless communication market is also the main reason for the popularity of the mobile telephone.

However, we must note that there are also negative effects with market liberalization, for example, bus services. During non-peak hours, many buses run on the roads, but passengers are scarce, constituting waste of resources and causing air pollution. Therefore, in opening up markets, careful consideration must be given to consequences and effects.

As to public utilities and other privately run public service enterprises, it is, as far as the citizens are concerned, a question of price control and quality of service, and competition is not a question.

We can see in the discussion above that market competition in Hong Kong is at present rather open, and I see no need for formulating a set of laws to counter unfair competition and to effect regulation.

Here, I ask Members to note that a certain degree of monopolization and unfair competition is bound to exist in every market, and as long as these companies do not seriously affect the interests of consumers, society can tolerate it. Take the example of world-known big fast-food chain stores, and big software companies, not only do they dominate in their own country, but also occupy a monopolizing position in the world, and with globalization of world economy, their market becomes even bigger and more solid. Which country would dare to touch them? This is a fact of life.

Madam President, I ask Members to open up their breadth of vision and be far-sighted. Let market competition decide the winners and losers. Do not unnecessarily, lightly speak of regulating market operation. It should be like this now, and the same consideration should also be made in future.

Thank you.

**MR FRED LI** (in Cantonese): Madam President, for years before and after the reunification, I have spoken on behalf of the Democratic Party on fair competition. I am glad that the Honourable LEUNG Yiu-chung has given me this opportunity today to refresh my years-long thoughts on the subject and to review the latest condition in Hong Kong.

Madam President, in February this year, *The Economist's* Intelligence Unit lowered the business environment grading for Hong Kong from the third

position to the 12th, a drop of nine grades. Of course, political factors are among the degrading reasons, *viz.* the interpretation of the Basic Law by the National People's Congress, and so on; but for economic factors, they made it known that Hong Kong lacked legislation on competition, and several important areas in the economy of Hong Kong, for example, retail and the property market, showed "cartel" phenomena, that is, monopolization. These factors together have caused Hong Kong's grading to drop to the 12th position.

It can thus be seen that fair competition legislation will induce confidence among foreign investors, making them believe that Hong Kong has a fair and good business environment. Not as alleged by some critics, fair competition legislation will not become a stumbling block to economic development.

The Democratic Party supports fair competition legislation. We tried last year to introduce it by way of a private bill, but alas, it could not be tabled before the Council because the Government said it had a charging effect. We believe fair competition is an indispensable element in maintaining and enhancing Hong Kong's economic competitiveness. Many countries have formulated fair competition policies, because when there is competition in the market, the distribution of resources is more efficient. It is also an impetus for progress and innovation.

For the consumer, a market with competition allows prices to reach correspondingly reasonable levels and more choices accordingly, and better service as well.

Alas, the Government has always maintained there is no need to introduce fair competition legislation. The Government alleges that fair competition legislation may lead to frivolous proceedings, thereby raising operators' costs, and that over-regulation also creates an unstable business environment. The Government also stresses that Hong Kong being a free market with great competitiveness in its economy, there is no need to introduce fair competition legislation. At the end of 1997, the Government rejected the Consumer Council's recommendation to make fair competition legislation and to establish a fair competition authority; instead, the Government established a Competition Policy Advisory Group (COMPAG), emphasizing leadership by the Financial Secretary to handle matters concerning competition. However, I wish to say to the Secretary that over 80 countries or districts in the world have with fair competition legislation. Are we saying all these countries have a "stumbling

block", with the problem repeatedly emphasized by Secretary Sandra LEE? Are the economies of these countries really bad? Is their regulation overly strict? Are they in trouble? The answer is: "Of course not."

Lack of full competition is a setback for consumers and businessmen alike. Mr LEUNG Yiu-chung just now also mentioned as an example that Easy Pay System (EPS) had raised its levies last year. EPS is promoted by Electronics Payment Services Company (Hong Kong) Limited, principal members of which include the major note issuing banks, *viz.* the HSBC and Standard Chartered Bank. Without competition, EPS decided to raise service levies last year, increasing the expenditure of businesses manifold. A small group of merchants could do nothing about it other than boycotting the service.

Let me cite another example. Early this year, the Hong Kong Mid-Stream Operators Association Limited, representing eight terminals, agreed on a surcharge of \$40 across the board, a fee now called "added-value fee". In the meeting yesterday, I asked the question, and the conclusion was that it was an increase of \$40 by collaborated price fixing. The Association representatives also expressed that \$40 was not enough and they had to subsidize it, the present \$40 being only tentative. Is this not market monopolization? There being no competition, do drivers have any alternative? Where can they go, if not those terminals? The Hong Kong Mid-Stream Operators Association Limited has captured most of Hong Kong's mid-stream operation market. If they decide on a \$40 fee hike, and drivers have to go to mid-stream operation terminals to get their goods, the drivers have no choice. Who will suffer ultimately? Of course, the shippers, that is, the merchants. I hope Dr LUI Ming-wah can see that the Federation of Hong Kong Industries and the Hong Kong General Chamber of Commerce also oppose the collection of a \$40 monopolistic fee. For the very reason that a fair competition policy is lacking, and without a fair competition law, these merchant associations indulge members to jointly raise fees, but the victims are also mostly merchants. I hope Members from the business sector can realize that there are in fact distortions in the market: Pricing not by market competition, but because of market monopolization by some people. There is utterly no competition in the market.

The newest example was just mentioned by Mr LEUNG Yiu-chung: 7-Eleven convenience stores. He may have been mindful of reproaching 7-Eleven stores, but I venture to look at it from another angle. Newspaper vendors together called meetings to mutually agree to no price increase, no gifts, and no giving away of paper handkerchiefs; just like the oil companies together

deciding to give away paper handkerchiefs together or not at all, give away bottled water together or not at all, and price hike together or price drop together. These also constitute anti-competitive conduct.

Although the COMPAG established by the Government is under the personal leadership of the Financial Secretary, we think it can achieve little effect. The COMPAG simply does not have resources to conduct independent investigations, and complaints received by it are few. Given the lack of publicity, the public simply do not know either that they can complain to the COMPAG; and all that the COMPAG can do is to refer the complaints to the Consumer Council or the relevant Policy Bureaux. I think the COMPAG serves the purpose of window-dressing more than anything practical. Besides, it is not given enough publicity by the Government, which has hardly been educating the public more on the concept of fair competition, or promoting civic education in this respect.

Once more, the Democratic Party urges the Government to enact a fair competition law to correct market distortions as a result of unfair competition. Fair competition legislation simply cannot ill affect the business sector, but help them. It will help certainly not the large consortia that monopolize the market, but small and medium enterprises and small proprietors. I think this is an assurance of confidence to the business sector, and it allows consumers to pay relatively reasonable prices.

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

**MS AUDREY EU** (in Cantonese): Madam President, the topic today has been discussed in this Council many times. The pity is, as Mr LEUNG Yiu-chung said, the Government has remained indifferent to efforts by the Consumer Council, Members, and non-governmental organizations who have been fighting for many years for fair competition legislation. Even though the International Monetary Fund made a similar recommendation at the end of last year, the Government has maintained its indifference and insists that the Hong Kong market is already rather free and open, that there is no need to lay down a comprehensive set of fair competition laws or legislation specific only to a certain trade.

The Hong Kong market is indeed rather free and open and Hong Kong has lately been elected consecutively for the eighth year by the Heritage Foundation

as the freest economy in the world. However, even the most liberal and open economy cannot avoid monopolization and unfair competition. This is especially so during an economic downturn, when small and medium enterprises find it more difficult to compete with financially powerful big enterprises. The weak will continue to be eliminated, leaving behind the powerful, eventually ending with some big financial groups to occupy the market and easily constituting a crisis of monopolization.

Take the supermarkets as an example. Big supermarkets enjoy a big advantage in price negotiation with suppliers. Traditional stores are gradually dying out in recent years. Some small and medium supermarkets cannot survive in bad economic conditions either. For example, KK Supermarkets, which owned 39 branch stores, also closed down recently. The public cannot help but worry monopolization will emerge in this sector of the economy.

Honourable Members also mentioned the fee increase effected by the EPS electronic trading system last year, causing travel agencies collectively boycotting it. The Consumer Council released a report subsequently pointing out that the EPS service network was composed of 35 banks in Hong Kong, with an overwhelming dominance in the market, making it impossible for other operators to enter. Merchants naturally found it difficult to oppose service fee increases.

In fact, in its surveys and research conducted in past years, the Consumer Council already pointed out that with insufficient competition in such trades as supermarkets, fuel supply, and even the publication of textbooks, consumers may not be able to purchase products they need at the most reasonable prices. In a report released in September this year, an international review organization, Political and Economic Risk Consultancy Limited, stated that there is monopolization in the Hong Kong markets in estate property, telecommunications, public transport, power supply, and so on. It shows market monopolization really exists, and it is simply not groundless fear.

Some businessmen are of the opinion that fair competition legislation will stifle free development of the market. Ideas like this carry a misunderstanding that the purpose of legislation is to obstruct merchants doing business, whereas the reality is exactly the opposite. Fair competition legislation is conducive to fostering a more liberal and open business environment: Current operators can compete in a fairer environment and new operators can more easily enter the market.

Madam President, a fair competition law mainly checks some unscrupulous business practices like market domination, price manipulation, and allied slaughter of new operators, and so on. "Genuine gold fears not red furnace fire" goes the saying. Tell yourself to "walk upright; stand upright", not through foul play for gain, and fear not a law for fair play.

The Government has always stressed that it will promote fair competition through education and publicity, whereas legislation is in fact the most effective means. To those unscrupulous profiteering merchants, grandma's advice from the heart but bitter to the taste is only harping music to bulls; nothing short of legislation frightens them. It is in actual law abiding that merchants can grow in consciousness of fairness.

Besides legislation, Mr LEUNG Yiu-chung's motion mentions the establishment of a fair competition authority. In fact, as early as 1996, the Consumer Council similarly recommended an independent statutory organ to regularly review competition policy or legislation, to handle public complaints, and to do more publicity and education work on anti-trust and promoting fair competition.

The existing COPAG under the leadership of the Financial Secretary is merely an advisory organ. It only issues a report annually with recommendations on competition policy or legislation, but the relevant departments are not obliged to follow. Hence I agree on the establishment of a statutory authority along with the enactment of a fair competition law to more effectively put an end to unfair business practices.

Madam President, the enactment of a fair competition law will benefit consumers and merchants alike, in reality as well as in name a win-win proposition. I earnestly hope the Government would change its obstinate attitude and accept Members' continual recommendations.

With these remarks, I support the motion.

**DR RAYMOND HO** (in Cantonese): Madam President, Hong Kong is a free society. Both its citizens and businessmen enjoy a high degree of freedom. That Hong Kong is able to rise from an unknown fishing village to a world-renowned metropolis is, in no small measure, due to its continuous faith and



practice in freedom, especially in the economic and commercial arena, though one must not, of course, ignore the contribution of its citizens. If Hong Kong is to further develop its economy, it must remain a free economy; otherwise its economic development would certainly be dragged to slow down or even collapse.

A free economy means, basically, its operations are free of government intervention. The government could intervene in various ways, for example, by adopting a new policy or intervening financially. If a government supports a corporation financially, it is an act of intervention. And, if the government deliberately tries to help some party by legislation, it is even more so intervening in a market's free development. To ensure Hong Kong as a free economy, I believe the Government should not intervene, including not introducing new legislation. Let the market operate freely and right itself.

I strongly believe in free market principles, not only because all advanced industrial countries and regions have free markets, but also because foreign companies or corporations which have already set up shop and market in Hong Kong would, I am afraid, withdraw their investments if Hong Kong ceases to be a free economy. The unemployment situation in Hong Kong would then worsen and our economy would suffer accordingly. If fast-food chains like McDonald's, Hardee's and KFC all withdraw from Hong Kong, how much higher will the rate of unemployment go? I am afraid we all have a pretty good idea of the answer. Also, if there is a change in our free market economy, overseas corporations, which originally are interested in investing in Hong Kong, would perhaps also have second thoughts. Then Hong Kong's recovery from the economic downturn would become a distant dream.

The fact is, to ensure free and fair competition, it is not necessary to introduce new legislation. The Government could use other methods to achieve the same goal. Anti-corruption is a good example. In the '50s and '60s there was no fairness in Hong Kong because corruption was rife. Since the establishment of the Independent Commission Against Corruption, the situation has much improved, but, if Hong Kong would like to become a level field for competition, it must ensure that corruption be eradicated completely. Besides, the provision of more business information is another way to ensure fair competition, because given business information, various enterprises would then be able to decide on a market strategy and compete in the market.

Hong Kong is a free market economy. It has been ranked as the freest market in the world. To maintain its competitiveness in the world, the Government must ensure that our free economy will continue to operate without fetters and government intervention will be kept to the minimum. At present stage, I am very much against the Government introducing a law to promote fair competition, for so doing will run counter of free market principles. On the contrary, I urge that the Government adopt other policies based on fair competition principles and encourage Hong Kong's corporations and enterprises to engage in fair competition.

With these remarks, Madam President, I oppose the motion. Thank you.

**MR TOMMY CHEUNG** (in Cantonese): Madam President, Hong Kong's success depends on a free market economy, and an important factor of market economy is fair competition, through which we can encourage innovation, promote productivity, and enhance quality of products and services in order to make Hong Kong more competitive.

To the Liberal Party, fair competition means sufficient openness of market to allow investors who intend to operate in the concerned trade and profession to freely participate. But it is entirely the investors' own strength that decides its achieving or not the expected market share and gains, which is the law of the market.

Compared with other countries, Hong Kong already has basically a fair competition environment. The past several years have seen the liberalization of many trades and professions, giving rise to keen competition, even survival of the fittest, and such examples include mobile telecommunication, long distance telephone service, newspapers, franchised bus service, and so on. Besides, many trades and professions are gradually abolishing the system of negotiated price levels by the trade, *viz.* solicitor's fees and bank rate agreements, and so on.

The Liberal Party supports fair competition but has reservations about a comprehensive "fair competition law". In the first place, various markets in Hong Kong are already very open, so there is no urgency for a comprehensive law. That some markets are divided by several operators is mainly due to the successful operation of these companies and their advantage in economies of scale, survival of the fittest being the law of the market. The role of the

Government is to ensure that new participants can enter the market any time, but not to enact a set of laws to constantly supervise the trades and professions, and more so not to legislate solely to attack the powerful.

Hong Kong is a very small market. Some trades and professions can often accommodate very few operators. The number of operators also depends on the nature of the relevant trades or professions. Take bus service in public utility market as an example. Three companies operating currently already give rise to many problems. Think of the scenario if tens of bus companies were operating in the sector now. We would see even in non-peak hours 10-odd buses of different companies running the same route, and coming to a bus stop at the same time, causing traffic jams; and route signs of different companies will also fill up pedestrian pavements. Take also the examples of the gas, power, and telecommunication trades. If the mere introduction of more competitors would amount to fairness, we could imagine every three days or so, roads which are already narrow would be dug open to lay gas pipes and power and telephone cables, seriously affecting citizens' life. The Liberal Party wants to ask what is wrong with free market forces regulating and naturally giving rise to the oligopoly. If markets are rashly opened up, a possible result will be vicious competition and operational hardship affecting service as a whole. Of course the Government should encourage competition, but it must be wary of over-regulation sacrificing flexibility of the trades or causing vicious competition.

In the view of the Liberal Party, given possible market dominance in individual business domains, the Government can decide whether to introduce competition according to conditions in individual trades; there is no need to enact a law that totally affects all business. Experience in other countries has also demonstrated that the enactment of a comprehensive fair competition law will greatly increase the number and scale of business disputes and litigation cases. Often, such proceedings are initiated by the Government, meaning that the Government has to invest large resources in it. Moreover, it also increases business costs, which will ultimately be transferred onto consumers. Hence, it may not be the best move to have comprehensive legislation under the current economic circumstances.

The motion also proposes to set up a fair competition authority with actual powers of investigation and arbitration. The Liberal Party asks this question again. Although promoting competition is no doubt a good thing, would the establishment of an extremely powerful organ lead to too many unnecessary

disputes and frivolous proceedings? Besides, the employment of new and improved means of operation and publicity strategy continuously is meant only to increase sales and improve service, not "anti-competition". Rashly allowing the authority to gather all authority to itself can very likely undermine investor confidence in the absence of suitable checks and balances.

In fact, in recent years, competition has been getting more and more keen in many trades and industries making the business environment very difficult. The Government should not "add fuel to fire". On the contrary, it should use gentler means to encourage competition, for example, encouraging the trades to formulate codes of practice themselves. The Hong Kong Coalition of Service Industries under the Hong Kong General Chamber of Commerce also recommends that the Government co-operate closely with the business sector to form an organization to promote competition; and expand the organization of the Competition Policy Advisory Group (COMPAG), adding to more members of the business sector and the public to enhance its recognition and acceptance by the public.

In summary, the Liberal Party consider it unnecessary for the Government to enact a comprehensive fair competition law. However, it can, without obstructing competition in individual trades, appropriately introduce measures that promote competition. This is the best way to balance the interests of the business sector and those of consumers. The Liberal Party has some reservation about Mr LEUNG Yiu-chung's motion. Thank you, Madam President.

**DR LO WING-LOK** (in Cantonese): Madam President, there are indeed many different links in society that lack fair competition, resulting in monopolization.

The cases mentioned by Mr LEUNG Yiu-chung in his motion are only some examples. If we look around us carefully, we shall see unfair competition not only in the domains of industry and commerce in society, but also in the public sector anti-competitive practices are employed to twist and bend the market economy. Worse still, public funds are used as "competition chips" to create great differences in prices; or public resources, which the whole Hong Kong public are entitled to share, like land, are used to contend for and capture the market so as to protect institutional interests, resulting in enormous increases in public expenditure, directly leading to the imminent deficits.

Part of the reason for the change in these services from being provided directly by the Government to being provided by public organizations outside the Government instead is for these service providers to free themselves from the restrictions of the government structure so as to operate with greater flexibility and more to the satisfaction of the users' demands, and to match better with the market situation.

This mode of operation, in the context of private commercial organizations operating for profits, is of course 100% correct. They can satisfy the consumers, and keep pace with the market situation. Thus more and more customers will naturally be attracted, making greater and greater profits for their organizations and shareholders.

Private commercial organizations will find all the more reason to employ various means to stimulate consumer demands and increase in spending, so as to increase the organizations' turnovers and profits.

As to how these private organizations use their resources, the executives have to be responsible to the board of directors, and the board of directors to the shareholders. This accountability system ensures that shareholders can gain the greatest returns. Financial institutions that extend loans to these private organizations are also very much concerned about these organizations' financial stability and strength, without which an organization will have great difficulty in borrowing money to do business.

Thus, a private organization has great cause to be thrifty and serve the shareholders' greatest interest.

In contrast, the resources of many public organizations are public resources, which can be public funds, or land. Often, they do not have to borrow to obtain resources. They do not have to be responsible to lending institutions either. At the same time, they do not have to be responsible to shareholders either. For this very reason, the thrift consciousness of some public organizations is not strong. On the contrary, their cultural crave for greatness and success is not weak. The board directors of these public organizations are often well-known people in the community holding 10-odd offices concurrently, and they are only volunteers, exercising little monitoring effect of the management of public organizations.

There being no need to carry loans to provide, and a lack of effective supervision, these public organizations become one after another independent kingdoms. This phenomenon is especially obvious in some public organizations responsible for some very specialized services like medical care.

The common characteristic of independent kingdoms is the continuous expansion of the kingdom's territory. The bigger the kingdom, the more will be the public resources allocated, and more posts of all positions, and greater the power. This is the greatest incentive for public organizations to put the organizations' own interests in the top priority.

When Hong Kong economy is soaring, its resources ample, the effects of these organizations using abundant public resources to twist and bend the market order may not be very obvious. But when the economy enters a rather long adjustment period, these organizations become, one by one, big and slow ships obstructing the fairway, denying progress of smaller, faster boats, stifling the economic vitality of Hong Kong, and slowing down its economic recovery.

Hong Kong's publicly-operated medical services are such a big ship. In the fairway occupied by this big ship, small boats of privately-operated medical services cannot go forward. Many small boats are even tossed up by the monstrous waves turned the big ship and capsize.

A year ago, the utilization of resources on information technology by the Hospital Authority (HA) was severely criticized by society. A few days ago, the Director of Audit also criticized the HA's waste of resources in the purchase of instruments, so much so that the concerned monitoring mechanism was fully questioned by Legislative Council Members and all sectors of society. This rightly reflects the difficulty in monitoring these publicly organizations.

Although the public revenue has decreased, and allocations to the HA are not expected to increase too much, this reality has not change the ambition of some HA members to continually expand their territory. The idea has been mooted lately to expand its provision of private medical services in the public sector, the intention being to absorb private resources into the public organization. This practice will make the HA the only winner.

To use public funds to establish a medical services organization, build up its brand and then offer priority service to those people who are willing to pay for

private medical services is unfair to the majority of the public who cannot afford such services. So they will be the big losers.

When the public sector medical service uses its enormous financial strength to concurrently operate private medical services, the private sector medical services will quickly disappear, reducing to big losers as a result.

One single organization will eventually monopolize all medical services in Hong Kong, be it public or private. The market and taxpayers, without other choices, can only submit themselves as fish and meat under the knife. The whole community will become losers.

Therefore, the terror monopolization brings is not restricted to supermarkets. What is also terrifying to people on account of monopolization are those public organizations that carry the signboard of public service, growing in scale continually and becoming independent kingdoms of all forms and colours. Therefore, any anti-trust law must include regulation of public organizations.

I so submit.

**MR ABRAHAM SHEK:** Madam President, Hong Kong's strength lies in its free economy. Ensuring a level playing field in Hong Kong is a paramount key to our continued economic success and for overcoming the present global economic downturn.

The best way to promote competition is to allow free market operation. We should adhere to the free market principle which has long been practised here. We must keep intervention to the minimum and must not adopt legislative control lightly, unless there are market distortions or abuse of dominant position in individual sectors which impair free flow of trade.

The non-legislative approach does not mean that market freedom is not under proper protection in Hong Kong. In 1998, the Government has adopted a competition policy. In the policy statement, the Government pledged to take administrative or legal steps as appropriate to remove unfair trade practices.

An all-embracing law on competition will only take away this flexibility of adopting appropriate measures in individual markets. The Government should

be allowed to decide on the best approach — whether it is self-regulation, administrative measures or legislative control — to deal with free-trade violations in different sectors. A comprehensive competition law will likely be an overkill — doing more damage than good to the business environment and to the general health of our economy. Premature openings of established markets may drive some businesses to their closure and thousands of workers out of their jobs. It will be the community that suffers eventually.

Since 1997, the Government has set up the Competition Policy Advisory Group to track cases of unfair competition. The Consumer Council also works as the other watchdog for the Government to keep track of restrictive business agreements and market abuse. I believe that the pair, working under the framework of the competition policy, is effective enough in guarding and promoting the free market principle in Hong Kong.

Even without a competition law, the Government has enough power to open up restrictive markets. This year, we have seen the government-initiated deregulation of bank interest rates. Soon, the Government will remove the 0.25% minimum charge for stock transactions, not to the favour of the Honourable Henry WU here. All of the above are done without a competition law.

Hong Kong is a small place, and a degree of concentration in certain markets is inevitable and not unreasonable. The question is whether such concentration leads to abuse. In the sectors of electricity supply, gas supply and supermarkets where there is such concentration, consumers generally benefit in terms of price and varieties of goods or services. In my view, these markets still provide room for healthy competition despite the presence of market domination.

- In such domains as power supply, gas and petroleum products, factors such as economies of scale, substantial investment and so on, make it more efficient to have only one or a few operators. Acting on consumers' welfare, the Government has devised an asset-based profit control scheme in the power supply market. In the highly competitive petroleum market, the Government has been encouraging suppliers to exert self-regulation in price adjustments.



- In the supermarket sector, the presence of two major supermarkets does not deter newcomers from entering the market. Carrefour, the French supermarket giant, and AdMart, the home delivery retailer, have freely entered and left the market based on their own business decisions.
- In the container terminal business, the incumbent operators have invested substantially in land and port facilities. Their commitment has upgraded Hong Kong's container service to a world-class level and their operations employ thousands of workers. Their positions in the market, however, are always under challenge. Competition is intense from other ports in this region and around the world. It is keen competition, not abuse of market domination, which keeps potential newcomers from entering the market.
- The Hutchison Group might not be welcome by many people in Hong Kong, but it has been welcome by the governments in China, the United Kingdom and Panama, to name but a few. We must not drive such operators out because they are providing thousands and thousands of jobs in Hong Kong.

However, there are markets where the Government itself has erected anti-competitive measures. It is these measures which need to be removed by the Government.

- In the market of public transportation, the two railway operators have enjoyed dominant positions over other competitors under the Government's preferential route planning exercises, such as allowing no other forms of transportation to run on the same route where a railway is already serving. Clearly, this government-created unfair competition is not in line with the Government's non-interventionist competition policy.
- In the housing sector, the Government has been using the supply of Home Ownership Scheme units as a tool to intervene in the property market. If the Government strictly adheres to the fair competition policy, it should stay away from further intervening in the private property market. Instead, it should focus on the provision of public rental housing flats.

Proponents of an all-embracing competition law and a competition authority should also take into account the legal and administrative burden imposed by such measures. Considering that unfair trading practices are always difficult to substantiate or prove with evidence, is it worthwhile to ask the taxpayers to pay for the legal and administrative costs? The answer is clearly no. The proposed competition law will only deter people from investing in Hong Kong. Are we prepared to push investors to other overseas markets which will then affect our economic prosperity and job opportunities? I am not overstating the case. A competition law can be a real harm to the long-term economic development of Hong Kong.

Thank you, Madam President.

**MR FREDERICK FUNG** (in Cantonese): Madam President, the Government of Hong Kong has always pursued an economic policy of positive non-intervention, hoping to make Hong Kong an area of highly free competition. A scholar (Dr LAM Pun-lei) points out: Economic freedom does not equal fair competition. Hence, although Hong Kong is pursuing a free market economy, it does not mean that unfair competition does not exist in Hong Kong. This point warrants the Government's attention.

In simple terms, unfair competition means the market has lost sufficient conditions for competition, or participants cannot operate in a fair environment. Thus, sufficient conditions for competition and a fair environment are two important elements of fair competition. The existence of unfair competition easily leads to monopolization. Product prices will then be manipulated by big enterprises and consortia, causing a failure of the free market's automatic regulating mechanism. Ultimately the victims are again the general public. Therefore, when unfair competition exists in society, it is indeed necessary for the Government to intervene, in order to protect the interest of the community as a whole. Take the example of the United States. Microsoft Company (Microsoft) had been selling the company's products Windows and browser together, by which to expand its market share. As a result, the United States Judiciary prosecuted Microsoft under anti-trust law, eventually succeeding in maintaining competition in the software market, and preventing Microsoft from monopolizing it. This is a forceful example illustrating the importance of upholding fair competition.

Let us look back at Hong Kong. It is not difficult to find the existence of unfair competition. For example, mid-stream operators have monopolized the market, and under the monopolization by Hong Kong Midstream Operators Association Limited, container drivers are forced to pay a surcharge of \$40. In the case of the Cyberport, the Government awarded the development contract without open bidding. The process lacked competition entirely, precluding other companies from participating in the bidding at the same time. Hong Kong's power companies also enjoy a franchise. Yet, they still wish to increase prices despite making profits. Consumers, without other power companies as choices, have to accept helplessly. The telecommunication trade earlier on, through mutual agreement, jointly collected a surcharge from all Hong Kong mobile phone users. Such a practice is an example of damaging fair competition in the market. If the consumers want to continue using their mobile phones, they can only accept this kind of disguised price increase. These examples are evidence that in Hong Kong, a place that pursues free market economy, the lack of competition and a fair competitive environment have given rise to certain unfair conditions. It requires the Government's assistance in all aspects to improve these conditions.

Actually, fair competition will bring the community many benefits. Under fair competition circumstances, enterprises will persistently improve their quality of management, mode of operation, quality of products, and so on, so that in the process of competition they can achieve greater sales. This kind of condition is of great benefit and importance to social development and to the interests of the public. In Hong Kong, a power company which, because of its mistaken estimation of future power demand, made an investment mistake, eventually shifted the cost of this mistake onto consumers and applied for a price increase. In a market where competition is fair, this will never happen.

Foreign governments have realized the harms of such unfair competition and the benefit and importance of fair competition to society. They have laid down mechanisms and laws to uphold fair competition in the market. Should the Government of the Special Administrative Region not "take one more step" under the principle of anti-unfair competition?

With these remark, I support the motion.

**MR CHAN KAM-LAM** (in Cantonese): Madam President, fair competition cannot be measured or compared by prices alone, because non-price factors of competition like conditions and quality of service will affect the competitive environment of the market. Besides, every trade and profession has a different mode of operation. When we evaluate competition in the market, we have to make different considerations. We cannot agree with assertions, of the existence of unreasonable market domination and unfair competition in the economic domain, that are made before in-depth analyses are conducted beforehand separately of every trade and profession.

In fact, there is no franchise in many trades and professions under current laws, and anyone can enter the market. As long as they have the capital, the skill, a good product, an attractive price and a good standard of service, they can get equal treatment under the law and have a share in the market. Only when the investment required is very huge for certain facilities will the Government accord profit protection, to a certain degree, in order to attract investors to operate in the business, calling it by the fine-sounding name of "profit control". Whether a market is fair depends on how free the market is and the equal opportunity of participation, definitely not so simple as Mr LEUNG Yiu-chung's repeated statement about a certain group or family operating in a certain trade or profession.

The effects that market competition seeks to achieve are quality products at low prices, quality services, high efficiency, and low cost. The motion mentions that in the areas of power supply, gas, petroleum products, supermarkets, and so on, there are phenomena of market domination and unfair competition. This is in fact a kind of prejudice and a one-sided view. Let us just take the example of supermarkets, which are a mode of operation in the huge retail business. With massive stocking of goods, items can be sold at a lower price; with enormous store space, items are complete with everything you expect to find; together with orderly display and sufficient lighting, the supermarket allows the consumer to enjoy pushing a shopping cart to slowly select their items, which can be a kind of pleasure and fun. Supermarkets sell fresh vegetables and fruit, and seafood; they have trade-wide lowest pricing campaigns; they have "you buy and I deliver" service. Mr LEUNG takes all this as market domination and thinks there is unfair, vicious competition. He is completely mistaken! Why do we have market competition if not for better service, better products, and lower prices? Whoever can do it owns the market; those who do badly will be eliminated gradually. This is the natural law of the free market.

Recently several chain stores and convenience stores have begun to offer prices lower than those of supermarkets, and full arrays of goods, and they are much welcomed. This shows that the supermarket is not a single market, and there is no question of market domination.

As to Easy Pay System (EPS), the mode of payment in the market tends to be electronic and varied, with credit cards, petrol filling cards, Octopus, and every other means. Whoever invents it first promotes it first, and if safe and reliable, will capture the market. The market shares are not unchanging. If a certain payment method is more reliable, more convenient, cheaper, and offers good service, there will of course be space for it to develop its market. If Mr LEUNG thinks EPS dominates the market and needs to be checked, must Octopus then be checked as well? At present, with an Octopus card, we can take the Mass Transit Railway, the Kowloon-Canton Railway, buses and mini-buses, park cars in car parks, and even make purchases. It can be said that everyone finds it a great convenience. Octopus and EPS are new inventions in electronic money. Everyone has the right to choose using it or not. Thus, there is no question of market domination.

Mr LEUNG says we have to enact a fair competition law, which is in fact to abolish free competition in the market. A policy of fair competition may sound pleasant to the ear. In fact, it protects the weak in the market and suppresses the strong, which is contrary to the principle of free economy. If one says there is no fair competition doing business in Hong Kong, one basically does not understand the Hong Kong market.

Madam President, the Democratic Alliance for Betterment of Hong Kong thinks the Government should foster a competitive and highly transparent business environment, use market forces to improve operational efficiency and provide better products and service. The question itself as to whether there should be fair competition legislation is already highly controversial. The establishment of an enforcement agent, namely a fair competition authority, is an even more serious question. According to consumer suggestions, the fair competition authority's mandate is to investigate, prosecute, and punish offending companies. There is to be established also an appeals mechanism to hear complaints against the authority's ruling. Consideration will also be given to giving the authority injunction powers. It becomes a super regulatory authority vested with the three executive, judicial, and legislative powers together.

Truly, many European and United States countries have fair competition laws. However, their business operators constantly weary themselves in unfair competition litigation. Ultimately, the only winner is the litigation lawyers. Fair competition legislation and fair competition authorities are now regarded as obstacles to market development. It is exactly because a fair competition authority has enormous powers that its operation will constitute direct influence on the free market and investors' business attitude. We believe this is not the best time to have fair competition legislation and a fair competition authority.

With these remarks, Madam President, I oppose the motion.

**MR HENRY WU** (in Cantonese): Madam President, it is indeed a highly controversial subject whether Hong Kong needs a fair competition law and a fair competition authority. Of course, actual market operation cannot be ignored. A "broad-brush" law may limit individual trades' space of development. On the other hand, unchecked vicious market competition causing oligopoly has an adverse, unfair effect on other operators and consumers. Thus, a flexible, reasonable and practicable monitoring mechanism for fair competition is a must. The only reservation is whether this is the most opportune time for legislation.

We must absolutely not help the growth of an anti-competitive environment. We have to proceed by stages in implementing a reasonable, workable and flexible mechanism. The establishment of a fair competition authority is the first step that can be practically considered now.

I think a fair competition authority can assume a monitor cum arbitrator role, whereas the criteria for upholding a fair competition environment can be enforced only after comprehensive consultation. Such a monitoring system must regularly liaise with all trades and walks of life closely, and regularly review regulations and details to meet the needs of trade modal transformation and market operation, in order to effectively help trades free themselves from the threat of unfair competition.

Madam President, the effects of an anti-competitive environment to individual trades can be far-reaching and irreparable. The unfair competition environment faced by the financial services industry is the best example. Banks

can take advantage of their special identity under current law as "exempted traders" to conduct securities transactions. Some banks, with eyes on "snatching for clients", openly defy the proven regulation on minimum brokerage commission. They resort to lower than minimum brokerage commission or cash rebates and other unfair means in violation of the regulation, causing great threat to small and medium securities traders who abide by the game rules.

At the same time, when the economy is not doing well and trading business in securities is little and quiet, if the authorities still insist on a full abolition, effective April next year, of the long-standing minimum brokerage commission rule, unfair competition then in the securities trade will become more fierce. In a cut-throat price war of vicious competition — I emphasize cut-throat vicious competition, the vitality of small and medium securities companies will be further squeezed. Companies that can hardly carry on business will be forced to cut staff or even close down. The foreseeable ending is that in an unfair business environment where big capital can hurt others — I repeat, where capital hurts others, small and medium securities traders will be unfairly eliminated and sacrificed. Remaining in the battlefield will be the big organizations destined to become market leaders of the oligopoly. Then stocks clients, like passive vulnerable chess pieces, will lose their present varied choice of agents and commission bargaining power, and finally as losers in unfair competition.

However, a fair competition authority that can effectively monitor market operations can come into full play in such circumstances, maintaining market order and sparing the public from becoming theoretical winners but actual victims of oligopoly eventually.

Therefore, I support the establishment of a fair competition authority to maintain a business environment of fair competition. However, I think this is not the opportune time to go a step further with fair competition legislation. Rigid enforcement of such legislation may deny individual trades flexibility and space in business and development. As to the motion today, I support the establishment of a fair competition authority, but not legislation, so I will abstain in voting.

Madam President, I so submit.

**MS MIRIAM LAU** (in Cantonese): Madam President, I did not intend to speak today originally, as the Honourable James TIEN is the speaker for the Liberal Party on today's motion, who will later elaborate on the Liberal Party's stance on the motion. I speak because Mr LEUNG Yiu-chung gave me face in particularly mentioning me in his speech. I ask Members to recap Mr LEUNG's words about the case of mid-stream operations.

Mr LEUNG said, "Ms Miriam LAU knows best the whole story from beginning to end. I do not know whether she will agree with what I say today. The crux of the problem lies in fact in the monopolistic operation of the LI Ka-shing group, which makes berths constantly short of demand in order to maintain high charges, but thus weakening Hong Kong's competitiveness." These words by Mr LEUNG are evidence that many Members or Hong Kong people do not understand some business operations, regard such business operations as monopolization. Mr LEUNG's misunderstanding of mid-stream operations is a classic example.

I would like to tell Mr LEUNG a few points. First, the mid-stream operators' dispute with lorry drivers in the last year had nothing to do with monopolization or shortage of berths. In fact, berthing conditions at Hong Kong terminals are rather healthy. In the first place, we have eight large terminals providing berths to ocean liners. In the second place, we have many mid-stream operators that are companies on short-term lease to operate container handling work. They include companies of the LI Ka-shing group. There are in fact quite a number of mid-stream operation companies of varied size, providing quite flexible services. If some companies do not have enough capital to bid for government short-term leases, or even long-term leases, to engage in mid-stream operations, they can in fact also use public unloading areas for alternative, flexible handling. The work they all do is in fact the same, that is, to move cargo from shore to ship. It is only the mode of operation that is different. There is rather great flexibility. Thus, competition in the trade is keen: big companies can compete with small companies; small companies can compete with medium companies; and medium companies can also compete with medium companies; so there is no monopolization at all.

Second, there is no question of shortage of berths. Even if there is shortage, it is only we are probably short of big terminals of berths for ocean liners. That is why Container Terminal No. 9 is being built now. However, mid-stream operators have already expressed that there is no need for the



Government to grant extra land, because much of present land is not used at all, and public loading areas also have many vacant berths. These conditions show there is no question of shortage of berths.

Another misunderstanding of Mr LEUNG's is that the payment of \$40 as fee by lorry drivers to mid-stream operators is caused by monopolization. I fully sympathize with the lorry drivers and understand their dissatisfaction with the incidents. However, the root of the problem is not monopolization. Let me take some time to explain to Members the whole operation at present. When a lorry driver has to go to a certain mid-stream operation depot to deliver or take a container, it is not because of monopolization, or too few companies engaging in mid-stream operations, that the driver is forced to collect or deliver the container there and to pay \$40. The fact is that the shipper has to do it through a shipping company every time it gets or ships a container, and the shipping company has designated a terminal; so the lorry driver has to go to that designated terminal to deliver or collect a container, not because there are not enough mid-stream operation depots. Therefore, if a lorry driver is instructed to deliver or collect a container at a certain mid-stream operation depot, even if there are numerous other mid-stream operation depots, that lorry driver still has to go to that designated depot to deliver or collect the container. Thus there is no monopolization at all.

I understand Mr LEUNG is concerned about the charging of fees. As a matter of fact, we in the Liberal Party also constantly argue about this question. We all know the Honourable Kenneth TING has continually expressed his opinion on the question of expensively high terminal handling charges (THC). I fully understand the THC are exorbitant from the shipper's point of view; as an ordinary citizen, I also think the THC excessively expensive. But can we solve the problem by criticizing the exorbitant THC? The THC are in fact determined by international shipping agreement, by worldwide liner conferences. Mr LEUNG may not be happy with their autonomous pricing and then imposing it on others, but what I want to say is that unhappy about it as we are, even the United States, which has fair competition legislation, accepts this established practice in the shipping business, which we may all find strange. Nevertheless, I still think we should keep on interest in the question of exorbitant THC, and seek means to persuade liner conferences to change their practice, increase transparency, or even, on account of worldwide economic recession, consider lowering their charges. This work we have to do. If we only criticize the

THC and allege that they are a product of monopolization, we are only engineering an argument and then find many unreal reasons to prove the existence of monopolization.

Mr LEUNG, I am sorry I think you do not understand the issue of mid-stream operations. The fact is that it has nothing to do with monopolization and shortage of berths. As to Mr LEUNG's other points, Mr James TIEN will later respond to them one by one.

**DR TANG SIU-TONG** (in Cantonese): Madam President, Hong Kong is one of the freest economies in the world. Its operation of market forces is more effective compared with many other places with fair competition legislation or anti-trust legislation. Truly, like other places in the world, businesses with an exclusive market, oligopoly, insufficient competition, and so on, do exist in some trades and professions and domains. The Hong Kong Progressive Alliance (HKPA) absolutely agrees with the principles of fair competition and protection of consumer rights and interests. However, to achieve these goals, fair competition legislation and the establishment of a fair competition authority at the present time are not the most appropriate and effective means. In the current economic downturn, Hong Kong should first concentrate on stimulating the economy and improve the business environment. Fair competition legislation may, on the contrary, have far-reaching effects on many trades, possibly creating an unstable business environment because of over-regulation.

Besides, measures taken by the Government in recent years in promoting competition have had undeniable results. For example, it has successfully introduced competition into the telecommunication market to benefit consumers. A lot of work is also in progress in other areas requiring improvement. The Government has taken several measures to facilitate entry of the fuel market by new operators. In the past, gas station bidders had to have a special importer licence, or be able to show a certificate of origin for supplied fuel from fuel suppliers. Effective from July 2000, these restrictions were lifted. Besides, when land leases of existing gas stations expire, the authorities will not extend the leases, but grant new leases by open bidding. As to the power market, the Electrical and Mechanical Services Department in February 2001 appointed a consultancy to conduct a detailed study on planning, reliability, and logistic support required by the two power companies to effect inter-connection, in order

to facilitate progress in this direction. At the same time, the Economic Services Bureau and the Electrical and Mechanical Services Department are studying the experience of other places in reforming their power market, with a view to formulating practicable plans for the future development of the Hong Kong market. In the area of retail payment systems, although there is a lack of competition, the Hong Kong Monetary Authority is carrying out a review. In short, the Government is not doing nothing with problems of public concern.

Madam President, the formation of monopolistic positions in individual trades has complex causes. It is a problem that cannot be solved by a single set of laws. There are many grey areas in a market's specific operation and competition, making it impossible to define in concrete terms certain market behaviours as reasonable competition or anti-competitive. Moreover, to understand whether a certain business violates competition principles, we cannot decide only by that business's scale of operation or market share. But we have to consider other factors such as whether it abuses its dominating position to restrict other investors from entering the market. Many complicated questions are involved. At the present stage, it is not realistically sound to have a fair competition authority to decide whether a certain trade or organization violates the relevant regulations. The HKPA has always favoured the formulation of a fair competition policy to remove unfair market obstacles. But this must combine with Hong Kong's actual circumstances, in order to avoid causing confusion in the market. There is one scenario which we must consider, which is vicious competition caused by the hastened introduction of fair competition legislation may give big companies an excuse to carry out large-scale layoffs or pay cuts, or even result in companies closing down. In that event, it will do harm to employees.

Madam President, I so submit.

**MR JAMES TIEN** (in Cantonese): Madam President, every other year or two the Legislative Council will debate enacting a fair competition law. Therefore the public and the industrial and commercial sectors are very familiar with this subject.

In Hong Kong, there are many different opinions as to whether it is good to have a fair competition law, or not to have a fair competition law. The industrial and commercial sectors and the Liberal Party think that the whole

business environment and the economic environment of Hong Kong are in reality unique. Take the example of the big question of container terminals, in which it is the Government that sells the land to the company for use as container terminals. If the company has paid several billion dollars to acquire the land, then the fees charged by the terminal will naturally be very high. Mr Kenneth TING and I represent the industrial and commercial sectors and factory owners. We understand very well why factory owners consider the charges highly expensive. We also understand the reason that leads to high charges, because when they initially acquired the land from the Government they had paid to the Government a very large sum of money. After receiving this amount of money, the Government can of course use it on the overall expenditure, so the profits tax and salaries tax collected from us can be lower than in other countries. However, solely on this question of fair competition, can we so easily analyse the whole economic model clearly? I think we may not be able to do so.

Many people in the world find it most free and competitive to do business in the two economies of Hong Kong and Singapore. However, neither of these two regions have enacted a fair competition law. If we really enact a fair competition law, can we achieve the desired purpose? I think we may not.

Mr LEUNG Yiu-chung mentions several items in the motion. For example, power supply is a huge investment, with only two companies operating. It is through the Scheme of Control Agreements that we supervise these two companies, subject to review every two years. For such huge investment to have only one or two companies operating naturally appears as if there is monopolization, but is it definitely good to open up the market? The Government would sooner or later quote the example of the recent big power failure in California. Due to the opening up the power market, several hundred companies joined the power supply market in California. However, is this definitely good for the public?

Although there is not a fair competition law in Hong Kong, everyone can run a supermarket business, but due to the lack of competitiveness, most of the supermarkets are operated by two big companies. Is there a phenomenon of unreasonable market domination? With big capital and big business, more is sold for lower profit, to the benefit of the public. Should we not support them to carry on?

Some will say that after the company has monopolized the market, it will

go on increasing the prices; ultimately the public suffers. However, Hong Kong has not reached this stage yet. If a company increases prices after monopolizing a certain trade, other competitors, I believe, will come in. The weekly magazines are an example. We can see that many such magazines are finding operation very difficult. Look again at mobile phones. Smartone and Sunday are presently still losing money. Thus, we think the policy of the Hong Kong Government is that when a certain trade or profession warrants a review, the Government will tackle the problems with that trade or profession, and solve them one by one. In fact, many colleagues have mentioned lately that whether it is solicitor's fees, bank interest rates or stockbroker commissions, there is persistent pressure from the community to induce competition in these trades or professions so that fees will continue to go down. These things are happening and are caused by market forces. We do not need a fair competition law, and there is not a so-called fair competition authority that comes out to uphold justice. If such authorities can only "talk" without solid powers, it would seem meaningless; whereas if they have solid powers, it would become arbitration, and would that be appropriate? Would it enable lawyers to represent all sides and fight big legal battles? Litigation fees will sooner or later be transferred onto consumers in the public. Hence we do not think it is a good thing.

Madam President, if my memory has not failed me, Mr Fred LI raised the same motion in January 1997. In January 1999, Mr LEE Wing-tat also raised a similar motion. I think when certain kinds of companies and certain commercial sectors realize the Legislative Council discuss this motion every year, they may be prompted to investigate how their efficiency can be increased and the costs lowered, so that the commercial sectors and the general public will benefit. This is also a little constructive.

I think it is a good thing to conduct this debate. Let me mention an old point again. Looking at so many countries in the world, the Liberal Party considers that, on the whole, fair competition in this free economy of Hong Kong is operating very well. Although Hong Kong does not have a fair competition law, nor is there a fair competition authority, we are performing very well in the majority issues, as of now.

In Hong Kong, we have six relatively large companies in the petroleum products business. I also find their oil prices are very high, but they say the biggest part of their income is taken up by government duty. For example, 1 litre of petroleum sells for, say, \$10, of which \$6 will be duty; and with the

remaining \$4, \$1.5 is rent. So they make only \$2.5, which is not too much. If 10 more companies are introduced into the market to make it 16 companies, the pump price of gasoline in Hong Kong will not be much cheaper. The Liberal Party thinks that on the whole it is also a good thing that we continually raise this question and debate about it. However, today we will still not support the enactment of a fair competition law and the establishment of a fair competition authority. Thank you, Madam President.

**MR LEE CHEUK-YAN** (in Cantonese): Madam President, Hong Kong people are in fact rather "fortunate", because there are several families and financial groups that look after perfectly well every link of life for them. These families and financial groups have not only chosen the Chief Executive for the people of Hong Kong, chosen a "Hong Kong Moses" to take Hong Kong people north for fishing, but also taken care of Hong Kong people's clothing, food, shelter and transportation.

Beginning with toasting a slice of bread for breakfast in the morning, we can experience how these several families and financial groups look after us in every possible detail. The bread is bought in a supermarket operated by a certain family; the toaster is transported "abundantly, swiftly and accurately" of course from a container terminal operated by the same family to that family's chain store. And, to miraculously change a slice of soft bread into crispy toast, we also have to be grateful to the same family for inexhaustibly supplying us with electricity. Of course, to be able to enjoy breakfast in such a cosy apartment, we also have to thank the developer owned by this family, which exclusively does the whole job of property management.

Having finished breakfast, we leave home for work. The lift we take is provided by a company with "a complete set of after-sale service", with parts sold solely by the company. The European car we drive is serviced "exclusively" by the dealer, whereas ordinary garages may not even have the maintenance manual. To allow us concentrate on the driving, without distraction to remember so many figures, several attentive, caring oil companies have set for us a "super stable" petroleum price.

Madam President, in Hong Kong, there are as a matter of fact individual companies that have secured too great a market share in certain trades, and these trades are vitally related to the life of the public. Today we request and plead

for enactment of a fair competition law, because when market share is too concentrated, there is tremendous temptation for individual companies to profiteering through collaborated pricing and market manipulation. However, please note, the fair competition law we are discussing now is not targeted at market share. It is not a sin to have a big market share, but if a company has a relatively big market share, it is like the situation when a whistle has been blown, and we should all be alerted, and see if there is collaborated pricing because of big market shares; or whether it would, under monopolization caused by too big a market share, make the company concerned employ certain means to bar entry of other operators. We think we need to supervise these things, but we are not targeting the condition of big market shares. We need a "watchdog" to watch the market condition, yet alas, the Government has always refused to enact a fair competition law, degrading the "watchdog" to a mere "dog at the door". This is why we only hear senior officials resort to "tongue work" pleading with oil companies to lower prices; but these barking dogs have, most importantly, neither nose nor teeth: no nose because the Government has no means of investigating possibly anti-competitive conduct; no teeth, to punish the offences.

Madam President, we are not alone in asking the Government to enact a fair competition law. Some organizations held in high esteem by the Government are asking the same thing. The Government has always attached importance to the International Monetary Fund (IMF)'s appraisal of Hong Kong. Wherever the IMF praises Hong Kong, the senior officials of the Hong Kong Special Administrative Region (SAR) would "spring" out in first instance to express welcome. However, when an IMF executive director clearly urges the Government to consider enacting a fair competition law, our senior officials would "ignore them as absent".

In March last year, the IMF, based on clause 4 of the International Monetary Fund Organization Agreement, issued a staff report which mentioned that Hong Kong should pay attention to the question of internal competition, especially the lack of substantive punishment for trades not regulated by specific regulations or ordinances; and that the SAR Government should watch intensely whether companies have been engaged in anti-competitive activities. The report also urged the Government to consider officially enacting a fair competition law. In March this year, the IMF brings up the old issue again in its report, quoting the Consumer Council statement that since Hong Kong had not enacted a fair competition law, it was difficult for the Government to conduct

investigations into anti-competitive behaviour. The IMF executive director again urged the Government to comprehensively review Hong Kong's competition policy, including consideration for enactment of a fair competition law.

Besides the IMF, the minister-level conference of the World Trade Organization (WTO) held at Doha last month also agreed to, before the next conference, continue studying the question of competition policy, with particular reference to legal provisions against "cartels". Obviously, the making of fair competition legislation is a general international trend. Very often, when the Government explains to us that it has to implement some new policies, it would also emphasize that that is the general international trend. But on this question, the Government's attitude has been different. Obviously, the enactment of a fair competition law is not only a general international trend. Even such international organizations as the WTO and the IMF are discussing it, and hope to push Hong Kong forward to progress in that direction.

Madam President, why does the Government continuously emphasize promoting market competition, and yet refuses to enact a fair competition law? So much so that even when some international organizations much respected by the Government have spoken out, the Government remains aloof and indifferent? We might as well think about this. If a fair competition law is really enacted, which companies' market share will exceed the investigation trigger point or will have blown the alarm whistle? If a fair competition authority is established to enforce a fair competition law, which will be the first organization that the Authority will invite to provide information on its operation? We also know a big meeting of market worth more than \$1 trillion was held last week to support Mr TUNG Chee-hwa's re-election. Just take a look at the people in the front row and you will naturally see the answer. Who would be invited first? It is those financial group representatives sitting in the few front rows. Mr TUNG Chee-hwa relies on their support to be re-elected and dares not take any action against them. The Government's refusal to enact a fair competition law is not only collusion between officials and merchants, it is simply the result of tycoons ruling Hong Kong.

Madam President, economic monopolization has led to political monopolization, and political monopolization further consolidates economic monopolization. The bitter fruit of monopolization of political power by a



minority should be most obvious to the people of Hong Kong in the election farce of the Chief Executive. I hope the people will also realize this.

Thank you, Madam President.

**MR BERNARD CHAN:** Madam President, we all like to think of Hong Kong as a free market. But for some time, I have been hearing complaints about cartels, collusion, monopolies and other anti-competitive business practices. In particular, I hear and read about such complaints from foreigners living in Hong Kong, from overseas commentators, and from Hong Kong people who have lived overseas.

To me, this suggests that we do have a problem. Or, at least, lots of people believe that we have a problem. Either way, surely, is a threat to our reputation.

It is true that parts of our domestic economy are very open. Certainly, the general insurance industry is intensely competitive, with the sector as a whole making an underwriting loss year after year. The old monopoly on long distance telephone calls has come to an end, and consumers have benefited enormously. The banking industry is very open, and is becoming more so.

It is also true that we have a very small domestic economy. And perhaps it is normal for some sectors to be dominated by a small number of players with similar prices and products. So we might be able to excuse the limited choice of supermarket chains or petrol companies.

However, not everyone takes such a liberal view of the situation. And, to them, the lack of a competition authority is proof that we have a problem. To them, it looks as if the Government favours producers over consumers.

As well as the sectors mentioned in this motion, we could also talk about the law against parallel imports passed by this Council. We can now see, looking back, that this measure was basically designed to squeeze the consumers. Is it any wonder that people go shopping in Shenzhen, or buy pirated discs?

We could talk about the legal profession and the medical profession, both

of them are expensive and lacking in price competition. We could even talk about the fact that the Government has cornered the market in hospital services and in affordable homes.

In fact, wherever you look in Hong Kong, you see someone who is afraid of competition. It is as if no one here had ever heard of globalization.

Madam President, if we do not need a competition authority, let us start to get a better deal for consumers — just like our counterparts in the United States and the United Kingdom. And then, we will be one step closer to being a "world city".

Thank you.

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

(No Member responded)

**SECRETARY FOR ECONOMIC SERVICES** (in Cantonese): Madam President, many Members have spoken on the motion and expressed many different views in regard to the idea that the Government should introduce a fair competition law and set up a fair competition commission as soon as possible. The position of the Government on this is both clear and consistent. Despite the fact that we do not intend to enact a fair competition law, we are still guided by a competition policy.

The Government has repeatedly explained in public that government departments should promote and maintain competition. But the promotion of competition is just a process, and the objective of the Government's competition policy is to enhance economic efficiency and promote free trade, thereby benefitting the consumer. We have been endeavouring to promote competition precisely because of this reason. As for the means to be adopted, we do not think fair competition legislation is appropriate in the context of Hong Kong. Economic efficiency means an efficient distribution of limited resources to enable society as a whole to gain the greatest possible economic benefits. To effectively allocate the resources of society as a whole is not the responsibility of

individual organizations or operators. Nor should it necessarily fall on government departments either. Instead, we must rely on the free operation of market forces effect competition through which some inefficient operators will be eliminated.

As Members learnt from the debate on the last motion, since the logistics industry in Hong Kong is facing competition from all sides, we have to discuss how best to enhance our competitiveness. In the free market context of Hong Kong, we should really give enough allowance to business operators to rise to challenges, so that there can be incentives for them to enhance efficiency. We therefore do not think that our competition policy should depart from the principle of relying on the market mechanism.

Several Members urge the Government to rectify a number of market irregularities, and by this, they mean the so-called monopoly or unreasonable market domination referred to in the motion. But what exactly is market domination? In the courts of the United States, the definition of monopoly may be a market share of 85%; in the European Union, this may be a market share of 40% to 50%, and under the laws of Brazil, the market share concerned may be as low as 20%. Some argue that Hong Kong should set down some figures, and they believe that these figures can somehow, magically, define market domination, but what is the practical significance of this? Growth in market share is a reasonable expectation of many business operators. As I explained a moment ago, operators who can out-compete others in a free market are often the most competitive ones, who are best able to utilize resources effectively and satisfy consumers. Is the rigid adherence to market share an adequate justification for restricting or prohibiting business expansion? And, is this a guarantee of greater economic benefits?

Since there is no objective and uniform definition of market domination, we cannot possibly determine whether there is reasonable or unreasonable market domination solely on the basis of scale of operation or the number of operators. I must therefore reiterate that the concepts of predetermined markets and planned economy run counter to the free market principles which we have been upholding, and which have enabled Hong Kong to get where it is. What is more, if we just look at the market share occupied by an individual business during a certain period of time and then conclude hastily that there is monopolization of the market, then it must be said that our definition of "competition" is really very restrictive.

I agree with Mr CHAN Kam-lam. The "Easy Pay System" is just one of

the many mutually replaceable retail payment systems. For gas supply market, it cannot be denied that the Hong Kong and China Gas Company Limited does occupy a larger market share than liquefied petroleum gas suppliers. But these two types of gas suppliers also compete with the power companies for shares in the fuel market. We can look at how hard the power companies and gas companies are trying to market their electric water heaters and gas water heaters to realize that competition does exist. Some Members have doubts about allowing "the survival of the fittest" to prevail in the market, saying that even if this can really enhance economic efficiency at the beginning, by the time an operator can successfully gain market domination, its scale of business will become so large that other people attracted by the prospects of big profits may not have the huge capitals to join the competition. I think such a worry is based on an overestimation of the size of the local market. Some Members point out that given the increasing globalization of the world market now, the Hong Kong market may constitute just a very small portion of multinational investments.

Some other Members say that a market economy may have inadequacies, and that if this is not true, it will not be necessary for the Government to intervene in individual markets, to play a monitoring role, to serve as a goods supplier or service provider, and to rectify irregularities. The Government has put in place a competition policy, but this does not mean that it will refrain totally from intervention or interference. The approach of the Government is to step in when it deems that the principle of competition is being violated in a particular economic activity. Several Members have also talked about the current situation of the telecommunications market. The Government also realizes that a prudent monitoring mechanism is very important to striking a balance between the competition policy and other policies; we must at the same time take account of the reliability of services, the demand for social services and safety requirements. Health care is one example of those areas that require the Government to play an active role.

As rightly pointed out by Dr Raymond HO, market phenomena are extremely complex and volatile. Is a "broad-brush" competition law covering all types of businesses really the best means of upholding fair competition? Members often think that the enactment of legislation can solve all problems, but this is rather misleading. I wish to point out that a fair competition law is no talisman, for it is also marked by many shortcomings. To work out reasonable and precise regulations that are suitable for monitoring all types of businesses is very difficult, and not only this, the scope to be covered is also very vague too.

There are bound to be many grey areas between broad principles and specific regulations. Regulations that are too specific may fail to take account of the unique characteristics and scale of development of the various markets, and may easily result in an overkill that stifles originality and the enterprising spirit.

As also rightly pointed out by Mr Tommy CHEUNG, the enforcement of anti-trust laws will require back-up by professional personnel and a huge organization. As for what should be regarded as illegal, the decision has to be made by another organization, or at the same time by the legal consultants hired by the business operator concerned. Protracted proceedings may well increase continuously, because defendants will always put forward strong defence in order to uphold their own interests. Is this not one of our worries related to wastage of social resources and rising operating costs? In the end, this will only add to the burden of consumers, raising doubts as to whether people can really get any practical benefits.

In fact, the competition law proposed in the motion is just one of the ways to uphold fair competition, but it may not necessarily be suitable for an economy as free as that of Hong Kong. As I said just now, the absence of a competition law does not mean that we do not respect competition. Actually, our competition policy is already equipped with the flexibility to enable the policy-making departments of the Government to introduce appropriate measures specific to individual trades and promote and enhance their competitiveness. I do not wish to analyse in detail any individual trades here. I am very grateful to Ms Miriam LAU for explaining the crux of the mid-stream operation problem.

Such much for that. The most important question I wish to ask is this: Given the existing economic development of Hong Kong, should we seek to make the business environment more difficult and thus increase the costs of business? If Members think there is such a need, then a fair competition law will only do even greater harm to our consumers. Thank you, Madam President.

**PRESIDENT** (in Cantonese): Mr LEUNG Yiu-chung, you may now give your reply. You have up to three minutes 12 seconds.

**MR LEUNG YIU-CHUNG** (in Cantonese): Madam President, I am grateful to the many Honourable Members who have put forward many views and suggestions. Some of the views put forward by Honourable colleagues have been very inspiring. In any case, I would like to thank Mr James TIEN for he has raised one point which is worth noting. He said that as a result of our discussion of this topic on many occasions, some industries and organizations have become more concerned about the issue of making a fair competition law. Certain undesirable business practices have stopped. In other words, Mr TIEN agrees that some kind of monopoly does exist in Hong Kong and so I am more convinced that there is a need to enact a fair competition law.

After listening to the speech delivered by the Secretary just now, I am left with the impression that her speech is full of contradictions. She said that there is a policy on competition in place, but there is no need to enact a fair competition law. It is because laws may impose various constraints. However, the existence of a policy on competition is admission that there is a possibility of unfair competition in Hong Kong, for if not, there will not be a need to formulate a competition policy. As some Honourable colleagues have said, nothing will need to be done if ours is a totally liberal market. There will not be any need for a policy and we can just leave the market to its free play. So I would think that, objectively speaking, there is a common understanding among Members that the problem does exist. Only that Members are not prepared to confront the problem and to make legislation to address it. There may be some misunderstanding about the enactment of legislation. Members should bear in mind one thing, and that is, laws are not meant for the scrupulous but for the unscrupulous. That is something we should agree on. In other words, we are not directing our efforts against the good guys, but only the bad guys. That is why we would like to enact laws on that. I believe Members sitting here have not committed any criminal offences, but does that mean laws forbidding such behaviour need not be enacted? We have seen unfair competition in some industries and organizations, and so we would like to enact a fair competition law to prevent and restrict such behaviour. But that does not mean that healthy competition is barred. We do not oppose healthy competition. The law we propose is aimed at undesirable competition, especially monopolistic competition. That is precisely what this motion is driving at.

Some Honourable colleagues have expressed the worry that if a fair competition law is enacted, some businessmen may withdraw their operations from Hong Kong, hence adding to the unemployment problem. It is true that I am most concerned about the unemployment problem. The unemployment problem we have is certainly a thorny one, but there are also many other problems that we have to deal with. In fact, many countries have enacted a fair competition law, but have their chain stores vanished? They are still there. So the argument put forward by these Honourable colleagues does not stand at all. It is just meant to scare people, and it is far from the reality. If operators engage in normal and sound business practices, I think there should not be any problem at all.

Madam President, I do not think we should look at the issue from a tunnel vision, but we should look at it from a comprehensive perspective. With these remarks, Madam President, I move the motion.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the motion moved by Mr LEUNG Yiu-chung be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mr LEUNG Yiu-chung rose to claim a division.

**PRESIDENT** (in Cantonese): Mr LEUNG Yiu-chung has claimed a division. The division bell will ring for three minutes.

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

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

Functional Constituencies:

Mr CHEUNG Man-kwong, Mr Bernard CHAN, Mr SIN Chung-kai, Mr LAW Chi-kwong and Dr LO Wing-lok voted for the motion.

Mr Kenneth TING, Mr James TIEN, Dr Raymond HO, Mr Eric LI, Dr LUI Ming-wah, Mrs Selina CHOW, Mr HUI Cheung-ching, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr IP Kwok-him and Mr LAU Ping-cheung voted against the motion.

Mr Henry WU abstained.

Geographical Constituencies and Election Committee:

Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Mr Andrew WONG, Dr YEUNG Sum, Miss Emily LAU, Mr SZETO Wah, Mr Albert CHAN, Mr Frederick FUNG and Ms Audrey EU voted for the motion.

Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr TAM Yiu-chung, Dr TANG Siu-tong, Dr David CHU, Mr NG Leung-sing and Mr Ambrose LAU voted against the motion.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 23 were present, five were in favour of the motion, 17 against it and one abstained; while among the Members returned by geographical



constituencies through direct elections and by the Election Committee, 22 were present, 12 were in favour of the motion and nine against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the motion was negatived.

## **NEXT MEETING**

**PRESIDENT** (in Cantonese): I congratulate Members for managing to complete all the items on the Agenda before midnight. I also wish Members a happy holiday. I now adjourn the Council until 2.30 pm on Wednesday, 9 January 2002.

*Adjourned accordingly at twenty-four minutes to Midnight.*

**Annex I****KOWLOON-CANTON RAILWAY CORPORATION  
(AMENDMENT) BILL 2001****COMMITTEE STAGE**Amendments to be moved by the Secretary for TransportClauseAmendment Proposed

3(3) In the proposed section 3(2A), by deleting "所委予或" and substituting "授予他們及".

New By adding -

**"3A. Section added**

The following is added -

**"6A. Attendance at the Legislative Council**

The committees and subcommittees of the Legislative Council may request the Chairman and the Chief Executive Officer to attend its meetings and they shall comply. The Chairman and the Chief Executive Officer shall answer questions raised by the Members of the Legislative Council at the meetings."."

KOWLOON-CANTON RAILWAY CORPORATION  
(AMENDMENT) BILL 2001

**COMMITTEE STAGE**

Amendments to be moved by the Honourable Andrew CHENG Kar-foo

<u>Clause</u>	<u>Amendment Proposed</u>
6	<p>By deleting sub-clause (1) and substituting -</p> <p>"(1) The First Schedule is amended by adding -</p> <p>"4. (1) Subject to sub-paragraph (2), any determination by the Corporation of a matter relating to -</p> <p>(a) the appointment to the service of the Corporation of the Chief Executive Officer, including the terms and conditions of such appointment;</p> <p>(b) the suspension or dismissal from the service of the Corporation of the Chief Executive Officer,</p> <p>requires the prior approval of the Chief Executive.</p> <p>(2) The Chief Executive shall consult the Legislative Council on matters relating to the terms and conditions of the appointment of the Chief Executive Officer."."</p>
6	<p>By adding -</p> <p>"(1A) The First Schedule is amended by adding -</p>

ClauseAmendment Proposed

- "4A. The remuneration, including the salary and other benefits, of the Chief Executive Officer, shall be published in the annual report of the Corporation."."

**Annex II****BANKING (AMENDMENT) BILL 2001****COMMITTEE STAGE**Amendments to be moved by the Secretary for Financial Services

<u>Clause</u>	<u>Amendment Proposed</u>
2	<p>(a) In paragraph (a)(vi), in the proposed definition of "manager", by deleting paragraphs (a) and (b) and substituting -</p> <p>"(a) subject to paragraph (c), in relation to an authorized institution incorporated in Hong Kong, means any individual, other than a director or chief executive of the institution, appointed by the institution, or by a person acting for or on behalf of or by an arrangement with the institution, to be principally responsible, either alone or with others, for the conduct of any one or more of the affairs or business of the institution specified in the Fourteenth Schedule;</p> <p>(b) subject to paragraph (c), in relation to an authorized institution incorporated outside Hong Kong, means any individual, other than a chief executive of the institution, appointed by the institution, or by a person acting for or on behalf of or by an arrangement with the institution, to be principally responsible, either alone or with others, for the conduct of any one or more of the affairs or business in Hong Kong of the institution specified in the Fourteenth Schedule;"</p>

ClauseAmendment Proposed

(b) By adding -

"(d) by adding -

"(17) For the avoidance of doubt, it is hereby declared that any reference in this Ordinance to the commission of an offence by every director, every chief executive and every manager of an authorized institution or other company (including any grammatical variations or cognate expressions of such reference) means that one or more than one of any such director, chief executive and manager may be prosecuted for the offence."."

17

In the proposed section 72B -

(a) in subsection (1) -

(i) by deleting "An" and substituting "Subject to subsections (1A) and (1B), an";

(ii) by adding "and the person" after "to the Monetary Authority";

(iii) in paragraph (iii), by adding "in the case of the notice to the Monetary Authority," before "such";

(b) by adding -

"(1A) Subject to subsection (1B), an authorized institution is not required to comply with subsection (1) in respect of a

ClauseAmendment Proposed

manager appointed bona fide on a temporary basis.

(1B) Where in respect of the appointment of a manager -

- (a) an authorized institution has not complied with subsection (1) by virtue of subsection (1A); and
- (b) the appointment subsequently ceases to be on a temporary basis,

then -

- (i) subsection (1) shall, on the date on which that cesser occurs, apply in respect of the manager; and
- (ii) that date shall be the date mentioned in subsection (1) from which the period mentioned in that subsection shall be calculated within which the institution shall comply with that subsection in

ClauseAmendment Proposed

respect of the  
manager."

21 By deleting "Section 126(2) is repealed and the following substituted -" and substituting -

"Section 126 is amended -

(a) in subsection (1), by repealing "all" where it twice appears;

(b) by repealing subsection (2) and substituting -".

22 (a) In paragraph (a), in the proposed section 132A(1)(f), by adding ", by the Monetary Authority" after "such conditions".

(b) In paragraph (b), in the proposed section 132A(1)(fb), by adding "by the Monetary Authority" after "refusal".

(c) By adding -

"(c) in paragraph (h), by repealing "金" and substituting "產".

23 In the proposed Fourteenth Schedule, in paragraph 1, in the definition of "財政管理", by deleting "金" and substituting "產".



**Annex III****MIZUHO CORPORATE BANK, LTD.  
(HONG KONG CONSOLIDATION) BILL****COMMITTEE STAGE**Amendments to be moved by Dr the Honourable David LI Kwok-po

<u>Clause</u>	<u>Amendment Proposed</u>
2(2)	By deleting everything after "(視屬何情況而定)" and substituting "各有關的合併銀行在香港經營業務的所有地方。".