

OFFICIAL RECORD OF PROCEEDINGS

Friday, 16 July 2010

The Council continued to meet at Nine o'clock

MEMBERS PRESENT:

THE PRESIDENT

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

THE HONOURABLE ALBERT HO CHUN-YAN

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

THE HONOURABLE LEE CHEUK-YAN

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

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

DR THE HONOURABLE MARGARET NG

THE HONOURABLE JAMES TO KUN-SUN

THE HONOURABLE CHEUNG MAN-KWONG

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

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

THE HONOURABLE LEUNG YIU-CHUNG

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

THE HONOURABLE WONG YUNG-KAN, S.B.S., J.P.

THE HONOURABLE LAU KONG-WAH, J.P.

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

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

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

THE HONOURABLE ANDREW CHENG KAR-FOO

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

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

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

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

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

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

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

THE HONOURABLE VINCENT FANG KANG, S.B.S., J.P.

THE HONOURABLE WONG KWOK-HING, M.H.

THE HONOURABLE LEE WING-TAT

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

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

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

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

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

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

THE HONOURABLE CHIM PUI-CHUNG

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

THE HONOURABLE KAM NAI-WAI, M.H.

THE HONOURABLE CYD HO SAU-LAN

THE HONOURABLE STARRY LEE WAI-KING, J.P.

DR THE HONOURABLE LAM TAI-FAI, B.B.S., J.P.

THE HONOURABLE CHAN HAK-KAN

THE HONOURABLE PAUL CHAN MO-PO, M.H., J.P.

THE HONOURABLE CHAN KIN-POR, J.P.

DR THE HONOURABLE PRISCILLA LEUNG MEI-FUN

DR THE HONOURABLE LEUNG KA-LAU

THE HONOURABLE CHEUNG KWOK-CHE

THE HONOURABLE WONG SING-CHI

THE HONOURABLE WONG KWOK-KIN, B.B.S.

THE HONOURABLE IP WAI-MING, M.H.

THE HONOURABLE IP KWOK-HIM, G.B.S., J.P.

THE HONOURABLE MRS REGINA IP LAU SUK-YEE, G.B.S., J.P.

DR THE HONOURABLE PAN PEY-CHYOU

THE HONOURABLE PAUL TSE WAI-CHUN

DR THE HONOURABLE SAMSON TAM WAI-HO, J.P.

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

THE HONOURABLE LEUNG KWOK-HUNG

THE HONOURABLE ALBERT CHAN WAI-YIP

THE HONOURABLE WONG YUK-MAN

MEMBER ABSENT:

THE HONOURABLE TANYA CHAN

PUBLIC OFFICERS ATTENDING:

THE HONOURABLE MICHAEL SUEN MING-YEUNG, G.B.S., J.P.
SECRETARY FOR EDUCATION

DR THE HONOURABLE YORK CHOW YAT-NGOK, G.B.S., J.P.
SECRETARY FOR FOOD AND HEALTH

MS FLORENCE HUI HIU-FAI, J.P.
SECRETARY FOR HOME AFFAIRS

THE HONOURABLE MATTHEW CHEUNG KIN-CHUNG, G.B.S., J.P.
SECRETARY FOR LABOUR AND WELFARE

THE HONOURABLE MRS CARRIE LAM CHENG YUET-NGOR, G.B.S., J.P.
SECRETARY FOR DEVELOPMENT

THE HONOURABLE EVA CHENG, J.P.
SECRETARY FOR TRANSPORT AND HOUSING

THE HONOURABLE MRS RITA LAU NG WAI-LAN, J.P.
SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT

CLERKS IN ATTENDANCE:

MS PAULINE NG MAN-WAH, SECRETARY GENERAL

MRS CONSTANCE LI TSOI YEUK-LIN, ASSISTANT SECRETARY
GENERAL

MRS VIVIAN KAM NG LAI-MAN, ASSISTANT SECRETARY GENERAL

MRS JUSTINA LAM CHENG BO-LING, ASSISTANT SECRETARY
GENERAL

MRS PERCY MA, ASSISTANT SECRETARY GENERAL

BILLS**Committee Stage**

CHAIRMAN (in Cantonese): Good morning, Members. The Committee will continue to scrutinize the Minimum Wage Bill. Members can debate on the amendments proposed by Mrs Regina IP on clause 2, clause 6 and clause 16.

MINIMUM WAGE BILL

MR LEE CHEUK-YAN (in Cantonese): Thank you, Chairman. Before I speak on Mrs Regina IP's amendments, I would first talk about history, so as to explain why at this final stage, I still cannot support the amendments. I would also like to put forward an approach, we can consider whether a study can be conducted along this direction. In fact, this approach can also achieve the objective mentioned by Mrs IP.

Why do we have to discuss today about conducting an assessment on persons with disabilities (PWDs)? In fact, three or four years ago, before the enactment of legislation, the Panel on Manpower had invited PWD groups to join in the discussion. At that time, the PWD groups differed greatly in views among themselves, and they still do today. Some PWD groups consider it wrong to conduct an assessment because the assessment itself connotes stigmatization, to which they find unacceptable. Therefore, they are gravely dissatisfied with this stigmatization act and are also against assessment. They consider that they can accomplish the same amount of work done by normal or able-bodied people, and right now, many of them are in employment. Hence, they feel that they should not be discriminated against, nor should they be asked to undergo an assessment. Therefore, they insist on opposing assessment.

On the contrary, some other PWD groups worry that if they are not exempted from minimum wage, PWDs will not be able to find a job, and employers will not employ them. So, a solution has to be devised to incorporate the views of all PWD groups, and the assessment system is thus introduced. The assessment is voluntary. In other words, according to my understanding, if PWDs do not opt for assessment, no one can ask them to undergo an assessment. If an employer requires someone to be assessed, we can see that this employer

has, to a certain extent, breached the legislation on discrimination because he should have employed that person but not for his disability, and an additional condition is attached, requiring him to undergo an assessment. In the future, the Government should educate employers not to casually ask people to undergo an assessment because the assessment is voluntary. Therefore, to those organizations which are against assessment, since the assessment is voluntary, PWDs can refuse to be assessed. On the contrary, to those organizations which have some worries, this approach offers some protection to PWDs' employment because employers will assess them during the trial period of employment, and they may be paid 70%, 60% or 50% of the minimum wage. Thus, employers may employ PWDs by paying the appropriate wage (if we believe in the assessment), only that their wages may be discounted. This is the idea of the entire approach, and the assessment will be conducted by professionals.

Mrs Regina IP now proposes that the mentally handicapped should be exempted, but a problem may arise. This is because the mentally handicapped can be classified into three grades, severe, moderate and mild. If they are all exempted, it may be unfair for the mildly mentally handicapped. She thinks that getting the mentally handicapped employed is of utmost importance, and some parents share her view. However, some parents of the mildly mentally handicapped think that their children have the ability to work. There are many examples at hand. For instance, some hotels have recruited mentally handicapped persons to tidy up the rooms. While an able-bodied person can tidy up 13 rooms, a mentally handicapped person can tidy up eight rooms. This is not a problem because upon assessment, he will get a lower wage. If there is no assessment mechanism, even if he can tidy up eight rooms, the employer may just pay him the money for tidying up four to five rooms. I am not saying that employers are necessarily bad. Those who are willing to employ the mentally handicapped are probably nice people. However, we have to look at the situation from all aspects to ensure that there is a fair mechanism. The present proposal of exempting all mentally handicapped persons in a broad-brush manner may not be fair to the mildly or moderately mentally handicapped as an assessment mechanism will be established to address the worries of employers.

However, I have thought of a direction which can be considered by Members. I think we should consider the Member's proposal from the rehabilitation point of view. In the United Kingdom, the situation is in fact the same as in Hong Kong. If I am an ex-patient, the minimum wage does not apply

to me because I am undergoing training. The concept of minimum wage is about employment; if I am undergoing training or if I am in the process of recovery, and if the employer employs me for rehabilitation purpose, I do not need the protection of minimum wage because no employer-employee relationship actually exists. Rather, it is just a training or rehabilitation relationship. In the United Kingdom, ex-patients are completely excluded, and in Hong Kong, the situation is the same to a certain extent. We all know that at present, sheltered workshops are not brought under the protection of minimum wage. The reason is that the wage offered by sheltered workshops is very low, only a little more than \$1,000. In my opinion, sheltered workshops provide rehabilitation service, what should be done in future? I do not think that they should be exempted altogether. Instead, deliberation with the Government and the Labour and Welfare Bureau should be held in future, and PWD groups should be consulted to see if a mechanism can be set up to assess whether the PWDs belong to the rehabilitation category. If social workers or social welfare organizations consider that it would be mentally and physically beneficial for PWDs to go out to work, and the objective of rehabilitation can be attained, employers can in fact employ them on rehabilitation grounds, in considering that it is difficult for PWDs to find jobs. They do not necessarily have to work in sheltered workshops, they can work elsewhere. However, the Government should make it clear to the employers that they are not, in fact, employing PWDs, they are helping them to rehabilitate. So, the relationship between them will be very different. It is not an employer-employee relationship.

Hence, I wish we can work towards the dual objectives of establishing a system and conducting an assessment. However, the assessment should not be conducted in the workplace. The current proposal is that an assessment will be conducted within four weeks at the workplace The assessment I am saying is not conducted at the workplace. Under the current proposal, an assessment will be conducted at the workplace within four weeks to assess the PWD's actual working ability. I remember Mrs Regina IP or other Members have expressed worries that this may exert great pressure on the mentally handicapped. Will one or two assessments be enough? Actually, it is not just one or two assessments; we also have to trust the professionals. I believe we have to regard those to be assessed as friends, working together for four weeks. During the four-week trial period of employment, we do not just conduct one or two assessments; instead we let the person to be assessed integrate naturally into the working environment before assessing his performance. I believe the approach

adopted should not be strict monitoring and recording, instead assessment can be made by observation. We should hand over the work to the professionals.

Chairman, all in all, I would like to say that the Confederation of Trade Unions (CTU) supports the final result arising from the consultation with the PWD groups, that is, the introduction of an assessment system. Therefore, we do not want to see a sudden loophole in the assessment system. Nonetheless, if Mrs Regina IP considers that the most disadvantaged group should be exempted, I think they should be taken care of through rehabilitation. The Government should also consider setting up a rehabilitation category for them, so that they can leave the sheltered workshops and go out to work.

Just imagine, if the result of the final assessment is that the PWD can only get 10% of the minimum wage rate, the wage receivable is even less than that provided by sheltered workshops. If the assessment result is 20%, the wage will be comparable to that of sheltered workshops; even if the result is 30%, the wage will be almost the same as that of sheltered workshops. PWDs are making some \$1,000 at sheltered workshops; if the assessment result is 30%, they also earn some \$1,000. I believe we should proceed along this direction. Of course, I will join Mrs Regina IP — after this meeting — to discuss with the Labour and Welfare Bureau to see if the issue can be addressed in this direction and help those people. We do understand their difficulties and we wish to help them, but we do not think that the issue should be dealt with under this legislation. Instead, we should help them with the rehabilitation approach which is the best way out.

Thank you, Chairman.

MR WONG SING-CHI (in Cantonese): Regarding Mrs Regina IP's amendments, I believe they do not reflect her own wish. Based on Mrs Regina IP's past performance, I think she definitely will only propose the amendments after gaining an in-depth understanding of the situation.

As Mr LEE Cheuk-yan has said earlier, simply exempting the PWDs with mental handicap cannot protect those PWDs who really have the ability to work and who meet the requirement for minimum wage payment, this will only leave

out those PWDs who perform well and their employers are willing to pay the minimum wage. Just as Mr LEE Cheuk-yan has said, social workers or the general public all know that there are different grades of mental handicap, ranging from mild, moderate to severe. As a matter of fact, the mildly mentally handicapped may outperform young people of today, because most mentally handicapped people are obedient and they work attentively to accomplish some basic operational tasks which are easy to understand. I know some organizations which have employed mentally handicapped people, I had also once employed some mentally handicapped people to do data inputting work. Their concentration power is even better than my son. If they can concentrate on doing things which are within their capabilities, their performance can definitely be comparable to that of normal people.

Therefore, I believe Mrs Regina IP intends to remind us to show concern for the employment of the mentally handicapped at the request of Dr Louis SHIH (he is sitting in the public gallery). Viewing from this angle, I appreciate the concern raised by Mrs Regina IP's over the employment situation faced by the mentally handicapped. We have all along emphasized, or I myself have also emphasized that the Minimum Wage Bill cannot effectively ensure the employment for PWDs. When I discussed this issue in the Democratic Party a decade ago, I kept emphasizing that enacting legislation on minimum wage might result in the loss of job opportunities for those with lower working ability, or those whose performance have not reached the standard for getting the minimum wage. Because of this, we support the Government's proposal that PWDs have to be assessed so that those with working ability can show their employers that they really are worth the wage. Some PWDs may be less competitive or their performance may not be satisfactory, but through assessment, they can still be employed by drawing a wage lower than the minimum wage rate.

Actually, I have over and over again pointed out that we cannot guarantee employment for PWDs by implementing the minimum wage, instead the Government has to formulate various policies, such as the introduction of an employment quota system. At present, 2% of government employees are PWDs, but the problem is, first, while many PWDs are quite competent, some PWDs' abilities have reached a certain level but are not as good as the able-bodied, has the Government employed this category of PWD? For instance, some basic non-skilled tasks can be taken up by PWDs, has the

Government employed them? In my opinion, the Government should consider employing some PWDs who may not be competitive in society but who can offer help to the Government with regard to certain types of work. I think the Government should consider employing more of these people.

Second, consideration should firstly be given to introducing an employment quota system for PWDs in statutory or subsidized organizations, without having to rush through legislation. Of course, enactment of legislation is the best but I believe this will bring about great impact. Why then can we not first implement the quota system in government bodies, subsidized organizations or even statutory organizations, that is, organizations with government participation? This will to a large extent address the employment problem of PWDs, and will not "trim the toes to fit the shoes", as the present practice of exempting PWDs for fear that they cannot get a job. It does not matter how much the Government will have to pay, so long as PWDs can be employed.

If we hope that PWDs can get a job or have employment opportunities, it is not necessary to suppress them by means of this discriminatory approach. If employers pay an hourly rate of a mere \$2 or \$3 to PWDs to get them into work just for passing the time, this practice is far from ideal. Some PWDs may not be able to display their potential working ability immediately, but when they focus on certain types of work or on certain skills, their performance may improve and this may help them. Therefore, as Mr LEE Cheuk-yan said earlier, we should enhance the employment-related training for PWDs through various channels, or enhance their employability through rehabilitation. I know the Government has implemented the Enhancing Employment of People with Disabilities through Small Enterprise Project, under which voluntary organizations are encouraged to set up social enterprises or sheltered workshops to help PWDs find jobs and receive on-the-job training. I wish Members can vigorously engage more NGOs to discuss with the Government for allocating more resources to provide such services in different areas. I think this can help PWDs in getting employment.

Third, the Government should greatly enhance the services of sheltered workshops. At the moment, thousands of people are in the waiting list and some of them have waited for over a decade but have still not been given a place in the day activity centre. The centre can help the moderately or severely mentally handicapped raise part of their working ability slowly. However, for unknown

reasons, at present, the Government is always reluctant to allocate resources to this cause. I wish that in future, Mr CHEUNG Kwok-che and I can continue to strive in the Legislative Council Panel on Welfare Services for more services in this regard, so that PWDs can really in particular, for some PWDs whose working ability have not reached the standard for minimum wage, they can have the opportunity to show their ability and talent, and can take up some jobs.

I believe Mrs Regina IP's amendments today cannot achieve this objective. Today, Mrs Regina IP is also aware that most Members will not support the amendments. It is not because we do not accept the kind intention of Mrs Regina IP and Dr Louis SHIH, we only think that there are other channels to address the employment problem of PWDs. Let us work together to urge the Government to allocate more resources to promote the services under the Enhancing Employment of People with Disabilities through Small Enterprise Project, and encourage social enterprises to employ more PWDs, so that they can have more job opportunities.

With regard to sheltered workshops, the Government should not limit itself to the handful of jobs being provided now. We also hope in future, the Government can, or perhaps the Chief Executive will in his policy address, promote the development in this respect, so that parents of many PWDs will ease their mind knowing that their children have the opportunity to work and develop in these service organizations. These PWDs can find a place in society for them to work and develop. I believe this practice will be more desirable.

Chairman, although I support the Government's proposal of assessing the PWDs, Mr CHEUNG Kwok-che will propose an amendment afterwards. I hope Mrs Regina IP will support Mr CHEUNG Kwok-che's amendment because it has included the exceptional case not listed under the Disability Discrimination Ordinance, which I think will not subject PWDs to discrimination in terms of employment.

MR LEUNG YIU-CHUNG (in Cantonese): Chairman, I remember four or five years ago, I conducted a survey on wages of employees at fast-food chain stores. According to the then market price, the hourly wage rate was around \$18, but employees of fast-food chain stores in general got an hourly rate of only \$13.

The survey also found that the hourly rate for some PWDs was only \$9 to \$11. After the release of this survey, I gave an interview on a radio programme. The public were alarmed because the then so-called market rate was around \$18 to \$19, but employees only earned \$11 to \$13 an hour, while some were only offered \$9 an hour. The public were of course shocked at hearing such low rates.

In response to a question raised by the host of the radio programme, I said that according to the findings, some employees were PWDs, and some were persons with mental handicap. The host said, "No wonder, that is hard to say. LEUNG Yiu-chung, it is nice that employers are willing to employ persons with physical or mental handicap, how can you complain about low wages?" As the question was raised suddenly, I did not know how to reply. Generally speaking, most people consider that persons with physical or mental handicap have lower working ability, and hence their wages should be lower, but to me, even if that is the case, must they have lower wages? On the contrary, if an organization really intends to help its employees, it should not set the wages at such a low level. Since it wants to help them, why not set the wages at a higher level? I do not think there is a causal relationship between the two, right? Of course, I understand that wages and revenue are pegged, but if an organization employs persons with physical or mental handicap to fulfill its social responsibility with no intention of exploiting them because of their working ability, I think these employees should be given equal pay for equal work.

Moreover, many Members have mentioned earlier that there are different levels of physical and mental handicap, ranging from mild, moderate to severe. For persons with mild physical or mental handicapped, they may perform equally well as other normal persons in certain tasks, such as sweeping the floor, cleaning the table and clearing leftovers. Their performance is no different from that of the ordinary people, why then are they paid a lower wage? I consider this treatment unreasonable. Employers should not intentionally "underpay" (excuse me for using such a word) these staff because of their outward appearance or some other reasons. I cannot see any reason for doing so.

Through this legislative exercise, many PWD groups or parents have reflected to us that they in fact do not hold wild wishes that persons with physical

or mental handicap can make money, they will be more than happy if they can find a job. As such, the PWDs can integrate into society, have more opportunities to enjoy social life, be happy and find sustenance in life. This is already a good thing. We can fully understand these problems.

However, regarding the amendments proposed by Mrs Regina IP today, the problem lies with the broad-brush approach. We cannot treat all mentally handicapped persons in a broad-brush manner, and exempting them all from the Bill. If we exclude them, just as I mentioned in the example earlier, what are the reasons for PWDs who work as effectively and efficiently as other people have to accept a lower wage and inferior treatment, as revealed in the survey. This is unreasonable. If you think that I can say that the only reason is that employers exploit and oppress PWDs unscrupulously, otherwise I do not see any other reasons.

However, I am not saying that every employer will act that way. As I said earlier, for parents, voluntary organizations, social workers or even the PWD themselves, all they ask for is not a job to earn money, but just a job. We fully understand how they feel, but the problem is that we cannot meet all their needs because of this and allow some unscrupulous employers — I pinpoint the unscrupulous employers — to oppress or exploit persons with mental or physical handicap. I think this is unfair and unreasonable. In a civilized and advanced society, this is something which should not have happened.

Hence, having discussed with numerous groups, the people concerned and the parents, we come up with a compromise, that is, the introduction of an assessment mechanism. We are aware that assessment will also create loopholes which require follow-up action gradually, but the key lies with the general principle. The purpose of this approach is to achieve harmony. Through this mechanism, those who consider themselves competent can ask for assessment, so that they can have the chance of getting the same wage as ordinary people.

Meanwhile, we understand that this assessment mechanism should be subject to continuous review in order to ensure that it can truly reflect the ability of the people concerned. Thus, there should be some co-ordination and compromise as far as possible. Nonetheless, if Members today pass Mrs Regina

IP's amendments, those people will not be able to strive for equal job opportunities as available to other ordinary people, and they cannot get a reasonable pay.

From the example I mentioned earlier, I found from the survey that the mentally handicapped absolutely have the ability to engage in cleaning work which requires no special skill, why then should their wages be suppressed? Very often, some unscrupulous employers suppress the wages of the mentally handicapped. I think this will connive the employers in doing so. Therefore, I consider this unavoidable and only this mechanism can serve to prevent such situations from happening.

At the same time, I share the views of Mr WONG Sing-chi. We should help the mentally handicapped, especially the moderately and severely mentally handicapped. We should ask the Government to provide more assistance, including the introduction of an employment quota system, and to increase the number of sheltered workshops and rehabilitation centres so that persons with mental handicap can integrate into society, live and work with different groups of people, and ease the burden on their families. Unfortunately, the Government has not done much in this respect. For instance, on the quota system, the Government tells us the figure is close to 2% but we do not know if that is true. This is because the definition is very wide, even people suffering from colour blindness are included. The Government tells me that at present, the number of PWDs employed by the administration is about 1.7%, instead of 2% as required. Being the biggest employer with great resources, why is the Government not willing to take this step forward? So many years have passed and despite the fact that we have been repeating over and again, the Government is still reluctant to make this step.

Meanwhile, the Government is also unwilling to allocate more resources to sheltered workshops. In fact, sheltered workshop is a good avenue for PWDs to develop their potential and integrate into social life. Of course, for the severely disabled or those who are midway between being moderately and severely disabled, rehabilitation centres are better options for them to come into contact with different environment and receive training. However, on the provision of social welfare, our Government seems rather ineffective. The Secretary is responsible for two areas, labour and welfare. This time, the Secretary has made

great achievement in enacting the minimum wage legislation. We also hope that you can step up your efforts with welfare and do more because the area of social welfare is all about the vulnerable group. For matters concerning the vulnerable group, we should do more work. Just as this Minimum Wage Ordinance, the purpose is to assist the vulnerable group at the basic level. Since we have made this step, why can we not make a further step to help more PWDs, especially the mentally handicapped?

Therefore, Chairman, I cannot accept Mrs Regina IP's amendments. I so submit.

DR LAM TAI-FAI (in Cantonese): Chairman, Mr WONG Sing-chi said earlier that the amendments of Mrs Regina IP may not have the support of the majority of Members. In my opinion, Mrs Regina IP proposed the amendments out of good intention and insight, and though her amendments may be too high-minded to be popular, there will definitely be supporters. "Sing-chi" said just now that Mrs Regina IP proposed the amendments for Dr Louis SHIH, I think this remark is unfair. She is only fighting for the entitled interests of the mentally handicapped children.

According to unofficial statistics, there are around 80 000 mentally handicapped persons in Hong Kong. In fact, to these people, the problems of employment and education are certainly their great concerns, though such problems may not be regarded by society as the most serious issues. These problems have also caused great anxieties to parents of mentally handicapped children. This is particularly so for poor families or families with lower academic and knowledge level. Very often, they are at a loss as to how to face and handle the situation.

Actually, we have discussed the issue concerning the mentally handicapped many times in the Council. Earlier, many colleagues have raised various demands in this regard, especially in the area of education. They strived for the extension of the years of study for mentally handicapped students. At present, mentally handicapped students attend school from six years old to 18 years old — correct me if I am wrong, Dr SHIH — very often, in some western countries, mentally handicapped children start their schooling from three years old, so that

they can study for a few more years and receive more training since their learning ability is weaker. At the same time, by keeping mentally handicapped children at school, it can alleviate the burden of their families. If they are left at home, their families will be under great pressure, and many people will be required to take care of them.

In fact, I have repeatedly pointed out that education and employment of the mentally handicapped have really brought heavy burden to their families. The mentally handicapped students surely cannot make their way to universities. Upon reaching 18 years of age, they definitely cannot pursue their studies and it is also difficult for them to pursue further studies, that is, the Youth Pre-employment Training Programme and the Youth Work Experience and Training Scheme organized by the Secretary. To put it simply, upon graduation, mentally handicapped students will become unemployed because they cannot continue with their studies. What can they do after leaving school? They either remain at home or go out to work. They only have these two choices.

Members said earlier that Hong Kong does not have enough sheltered workshops. According to the information I gathered, there are about 35 sheltered workshops offering a few thousand places. Are these few thousand places enough to put all mentally handicapped graduates in work? They are definitely insufficient. In this regard, I believe the Government should conduct a review, we cannot let this situation go on. Getting into sheltered workshops is more difficult than getting into an elite school, right? What will happen if they cannot get a job? As I said earlier, they have to stay at home. However, what will happen if they stay at home? If they stay at home, they cannot integrate into society, right? They will not have their own social life. They will have nothing to do but face the four walls because Hong Kong is a small place. For some parents who are not well-off, if they have to stay home to take care of them, the financial burden will be greater.

If the mentally handicapped cannot go out to communicate with other people for a long time, they cannot lead a healthy life and many a times, they will become autistic or their development will be retarded. I wish we can pay attention to this problem. For the mentally handicapped who would like to find a job, what can they do if sheltered workshops have no vacancies? They can work in private organizations. However, given the current high unemployment rate, it is by no means easy to get a job, especially after the onslaught of the

financial tsunami. Even university graduates require assistance from the Government, the introduction of the Internship Programme for University Graduates is a case in point. As there is no internship programme to help the mentally handicapped, and no subsidies in the range of \$2,400 or \$4,000 will be provided, how can the mentally handicapped get a job? This is difficult and painful.

Consequently, the mentally handicapped cannot communicate with other people, and they do not have a healthy and happy life. The Government has been advocating a people-oriented caring society, do we not feel bad? Hence, if the mentally handicapped cannot be employed upon graduation, it will exert great pressure on the parents, the families and the Government. This pressure also comes from our obligation towards these people. Therefore, sometimes we have to understand why parents hope that their mentally handicapped children can get a job upon graduation. Do they really want their children to earn a wage? Not necessarily. Apart from getting wages, parents also hope their children can lead a normal life, have a job, social life, friends and something to occupy their time. Their priorities may be different from ours. The seriousness of their problems are different, we must learn from the families and parents of the mentally handicapped and have a better understanding of the root of their problems. What do they want? What is the main reason for parents wishing their mentally handicapped children to become employed? Do they want them to have the minimum wage, or any other things? In order to address the issue, we must understand what they value most and what purpose they want to achieve, rather than viewing the issue from our angle. If we see things from our angle, thinking that this can help them, this may not be the case and may very likely do harm to them. Can we tolerate this? Furthermore, it is regrettable that even if harm is done to them, we may not be aware of it and think that we have done good deeds. This is not desirable. Therefore, we always have to see things from their angle in this regard.

As I said earlier, it is no doubt difficult for the mentally handicapped to find jobs, and I have cited many reasons just now. Frankly, as "Sing-chi" said, even for the moderately or mildly handicapped persons, their efficiency and ability are on average lower than that of the ordinary people. This is a fact which cannot be ignored. Therefore, it is difficult for them to find jobs. Fortunately, there are many employers who are conscientious and kind-hearted, and only a few are unscrupulous. So long as they can, these kind-hearted

persons are willing to The most important factor is that it is within their ability to help. We must have the ability before we can help others, right? For example, a company must have a genuine need before it recruits employees; if there is no such need and the company forces itself to employ some staff, the cost incurred cannot be absorbed by ordinary small and medium enterprises (SMEs). This may be possible for big enterprises but not so for small enterprises. There are really many conscientious people who wish to do some charity work or fulfil some social responsibility within their means, to help those — I dare not say the underprivileged — people in need of help. Actually, even social welfare organizations cannot afford to employ all these people, thus we have to rely on the private sector. In fact, we should respect, appreciate and encourage these employers, we should give them positive commendation and should not arbitrarily label them as unscrupulous employers who exploit workers. This will deal a blow to those kind-hearted people. It is actually very difficult for us to tell the conscientious from the unscrupulous, right? If we keep on saying this, many people will think it is better not to employ the mentally handicapped. Hence, I think we have to be careful before making critical comments.

I said earlier that it is very difficult for the mentally handicapped to find jobs. Finding a job is no doubt difficult, but integration is also difficult after finding a job. Co-operation among colleagues is very important as sometimes they are not working alone, but as a group. Can they integrate into that group of people? Will they be too slow at work? Are they lagging behind? Will they be ostracized? Every one thinks differently. Very often, it is difficult to get a job, but keeping the job is also not easy. Therefore, the job is of utmost importance to them.

I very much appreciate the Government's intention, motive or objective of bringing the mentally handicapped under the protection of minimum wage. However, I am afraid the result or effect would not be as positive as expected. I do not know if Members have thought of the possibility of getting an adverse effect or a negative result. We may seem to have offered help but it turns out not to be the case. This is because in this free economy, just as what I said yesterday, we are free to recruit and be employed, both parties must reach a consensus. No one can coerce a company into employing anyone, and no one can coerce anyone into working for a company. They must be mutually willing to do so. When an employer wants to employ a mentally handicapped person, if

his wage is the same as that of others with normal efficiency, even though the employer is willing to pay \$10 or \$8 more, other staff members may be unhappy, because while they can finish 10 jobs each day, the mentally handicapped can only finish eight, but their wages are the same. This may dampen the morale of the employees. Other workers may perhaps ask for a pay rise, leading to an increase in operating costs, and the employer will not be able to withstand the pressure, right? He may be willing to pay a little more for one person, but a company does not only have one employee. Will such a move have an impact on the co-operation and feelings among the staff? If wages are regulated by law, employers may not be willing to make extra arrangement, he would rather donate money to social welfare organizations to employ the mentally handicapped, or donate money to other organizations to fulfil his social responsibility. He would rather resort to other avenues than breach the law for not doing a good job.

What about the SMEs? The SMEs do not have legal advisers while big enterprises do. If big enterprises are searched, the legal advisers will handle the situation but the SMEs do not have legal advisers, right? If they have to worry about being involved in lawsuits every day, being restricted in every move, they can only evade not evade, but make less arrangements, and the best way out is not to employ any mentally handicapped persons. If they do not employ the mentally handicapped, they will not be named as unscrupulous employers. They do not want to do this, we cannot say so, this remark is not fair because they have the freedom of choice, right? Even if I employ you, you are free to choose whether or not to join my company.

Thus, I think it is better to provide exemption, so that employers and the mentally handicapped can have the flexibility to make their choice. In this way, the employment opportunities of the mentally handicapped will not be affected, and they have greater chance of securing a job. This may be the aspiration of the parents. They may consider getting a job is the prime concern, as that enables their children to lead a normal social life. This is more important than money. To these parents, their prime concern may not be money, getting \$20, \$23 or \$33 is not crucial, the most important factor is to enable their children to have a normal social life. If their children have peer groups, they will not have to stay at home all the time facing the four walls, and parents need not give up their jobs to stay at home to take care of them. This may not be what they think.

Have we considered what is in their mind? It may be better to grant exemption, so that there will be greater flexibility.

What are our worries? We worry that if there is no minimum wage, people who employ the mentally handicapped intend to exploit them, but are we over-worried? Do we have such cases? There are bound to be, as there will be family black sheep. However, if we worry about 10 such cases and neglect the other 50 cases, are we risking big things for the sake of small ones? I repeated over and over again yesterday that we could start with the small things but we should take the overall situation into consideration. If we are always hesitant and become entangled in some trivial issues, we will not be able to take the whole picture into consideration. Only those who bear the overall interests in mind can get things done. The purpose of enacting legislation is to benefit the masses, rather than a small minority. The interests of the masses should override the benefits of the small minority, we have to firmly remember this. There is no such thing as perfection in the world. Nothing is perfect, there is only relative perfection. Can we have perfect measures? That is impossible, right? In 1986, section 39E was so perfect but today, it has become imperfect, the provision can offer no help to our industry. In 1992, this provision could help us but now, it is of no use to us. The present situation is the same, right?

Many people consider employers to be unscrupulous, who exploit workers, deceive them and take advantage of them, but there is not much evidence. If there is, we can report them and have them arrested. Why should we sacrifice the employment opportunities of the mentally handicapped because of the few unscrupulous employers? By giving the mentally handicapped employment opportunities, they can demonstrate their abilities, live and work in peace and contentment and be appreciated, this is a long-term goal, which cannot be achieved overnight.

Regarding Mrs Regina IP's amendments, I think they may only have the support of very few Members, but I believe she will have the support of many conscientious people. In fact, we differ in our perspective and profundity in seeing things, and we have different solutions for the problem. Today, I wish to remind you all, never do a disservice out of good intention, because the problems will surface soon after the enactment of legislation. It will then be too late to

turn back, and we will have to face the situation that many mentally handicapped people will become unemployed and home-bound. By that time, the Labour and Welfare Bureau will have to consider how to amend this legislation to solve the problem which is a real headache.

Chairman, I so submit.

MR PAUL CHAN (in Cantonese): Good morning, Chairman and colleagues. Chairman, I want to declare that my company has employed some mildly mentally handicapped people but Members can rest assured that their wage level has reached the level as suggested in the document placed on your desks.

Chairman, I speak briefly in support of Mrs Regina IP's amendments. The mentally handicapped should be exempted from the stipulation on minimum wage. Chairman, when I considered this issue, I am, on the one hand, lobbied by parents of the mentally handicapped and social workers engaging in this area, and on the other hand, I am inspired from some personal experience.

As an employer, I do not merely consider the factor of money when I employ the mentally handicapped, I also have to persuade other colleagues in the company to accept and accommodate them. The initial wage of this group of people may be lower than that of other ordinary staff, but some time later, their wage will be adjusted according to their performance. They start with a lower wage, making it easier for other colleagues to accept them, and it is also easier to persuade other management staff or even shareholders to accept this trial scheme.

During the process, I notice that having a job not only enables the mentally handicapped to earn money, but also make them feel that life is more meaningful. They can gain confidence in their work, and they can also find happiness. They are happy not because they have a job, but because they can get in touch with other colleagues in the working environment and can socialize with them.

I have also observed that even for some mildly mentally handicapped people, they are less able to control their emotion than the ordinary people. Relatively speaking, their ability to handle pressure is poorer. Therefore, when

we work with them, we should alleviate their pressure where possible. As regards assessment of working ability, no matter how good our intention may be, the pressure caused by such assessment on the emotion of the mentally handicapped cannot be taken lightly.

Chairman, I have another experience. I have visited some social enterprises which have mentally handicapped employees, and a restaurant on MacDonnell Road is one of them. Regrettably, the restaurant has closed down. In his earlier speech, Dr LAM Tai-fai also pointed out that there are not enough sheltered workshops in Hong Kong to provide adequate places for the mentally handicapped. Actually, some conscientious social enterprises employ a large number of mentally handicapped people, this is worth encouraging. Although I have not come into contact with many mentally handicapped people there, I can see happiness in them. As I come into more contact with them, I can also see progress in some of them.

Chairman, to the mentally handicapped, I think the meaning of employment is far greater than that of money, and their parents also have the same view. Hence, if we arbitrarily bring them under the regulation of minimum wage for fear that they may be taken advantage of financially, we may be doing a disservice even with a good intention. We will deprive them of an opportunity to win the recognition of other people more easily, adapt to the working environment, build up interpersonal relationship and find more meaning of life in their jobs.

Some colleagues have earlier expressed the concern that the mildly mentally handicapped may be oppressed and cannot get the wages due to them. I believe their parents and the social workers are also concerned about this. I wish Members will support the amendments and monitor the situation to see if such worry will arise. Legislation is not rigid. If such situation occurs, I believe the legislature will not turn a blind eye. We can amend the legislation whenever necessary.

Chairman, I would like to take this opportunity to make an appeal. As I said two days ago, the Government and the public sector should take the lead to employ a certain percentage of PWDs. I think this leading role is very

instrumental. Hong Kong is an advanced and mature society, I think we really need to care for the less fortunate.

Chairman, I speak briefly in support of Mrs Regina IP's amendments.

MR RONNY TONG (in Cantonese): Chairman, when Mrs Regina IP moved her amendments yesterday, she said she did so on behalf of the most disadvantaged group in Hong Kong, hoping that colleagues would understand their plight.

Just now, Dr LAM Tai-fai — he is not in the chamber now — also said that Members should view these issues from a macroscopic angle, and should not be rigid with some trivial rationales or benefits.

Chairman, I absolutely believe that Mrs Regina IP and Dr LAM Tai-fai have no intention of criticizing colleagues of the Legislative Council; I definitely do not believe that they have such intention. However, for those who are listening to our debate through television or radio broadcasting, they may have the wrong impression, wondering whether many of our colleagues have failed to see that we should sympathize with the disadvantaged, or some may even think that many Members are too apathetic to pay attention to such problems. Why do we have to insist on voting down the amendments which appear to be very meaningful?

Chairman, I speak in this legislature and stand firm in my stance on many issues. I will never please the public with claptrap, and I will express my views from a balanced angle which I consider appropriate.

Chairman, since our angles and views differ, my balance point may, very often, not be shared by others, or may even be considered as biased by other people. However, I can always be accountable to our stance, or my stance, and I also think that I am accountable to Hong Kong people.

Regarding these controversial subjects, there are bound to be different views. Chairman, I very much respect the diverse views of other colleagues in this regard. Of course, I also wish that — although this wish sometimes falls through — other colleagues will respect my views.

Chairman, I remember five years ago, I made separate trips to the United Kingdom to meet with the officials responsible for minimum wage, and to Australia to meet with the Chairman of the minimum wage committee. When I discussed with the Chairman about Hong Kong's enactment of minimum wage legislation, we spent much time on the issue concerning PWDs. I have also discussed this issue with the American officials. After these few trips, I have written many articles in Hong Kong, advocating a certain degree of exemption for PWDs. I dare not say I have successfully won over this system but the exemption system proposed under this Bill is modeled largely on the minimum wage legislation in Australia. Therefore, the exemption system is certainly not formulated behind closed-door discussion, nor is it an incomplete solution put forward only by me. Rather, this approach has gained the recognition of many other places, countries and societies.

Chairman, I have absolutely no doubt about Mrs Regina IP's intention in proposing the amendments. Nonetheless, the thrust of the amendments is not only to address the employment and social integration problem of the mentally handicapped. We understand that PWDs have greater need than ordinary people to integrate into society through work and contacts with other people, so that they will not be isolated. However, basically, the amendments seriously denounce the assessment mechanism. In other words, this mechanism fails to achieve its purpose, or it turns a blind eye to the problems and concerns of some PWDs.

Chairman, many colleagues seem to have linked this assessment mechanism to the entitlement to a reasonable wage. Just now, Mr Paul CHAN said that these people do not work for money. I totally agree with him, but there is one point which has not been mentioned by many colleagues up till now. That viewpoint has been put forward to me by overseas officials in connection with the minimum wage legislation and I agree to it. Chairman, the introduction of the assessment mechanism is not just for deciding the wages of PWDs, it also recognizes the contribution of PWDs to society and their working ability. More importantly, this assessment will give them due respect. If the degree of productivity assessed is 50%, this will be their rights, they do not need to live on the alms given by employers. I think this is a very important point and I am convinced from day one. It is possible that many employers are acting out of good will but after all, they have an almsgiving mentality. In their earlier speeches, Mr Paul CHAN and Dr LAM Tai-fai have more or less showed this

mindset, but I am fully convinced that this group of people does not need alms, we should give them their entitled right to work and respect. Hence, this system is not something bad for them.

Chairman, when this Bill is drafted, there is no bottom line for this system. Of course, if the assessment result indicates that that he has no ability to work, he will be totally unprotected, but this does not mean that a conscientious employer cannot employ him. The degree of productivity assessed may be 10% or 20%, to which he may accept. Nonetheless, the employer can still say that he will pay more. That said, the employer cannot pay less than the standard as set out in the certificate of assessment.

Another remark which is more sensational is that we have to pay attention to their feeling. We require them to undergo an assessment conducted by a doctor or a professional, is this unfair to them? Chairman, I personally consider that, just as Dr LAM Tai-fai mentioned earlier, we should adopt a macroscopic view. These assessments are conducted by professionals, and we should trust them to a certain extent. That said, to be honest, can every employer clearly determine the remuneration these PWDs, especially the mentally handicapped, deserve, or how capable they are at work, in the same way as the professionals do? If there is no such approach in place, will employers address this matter with an almsgiving mentality? In fact, should we give back these mentally handicapped people and the PWDs some respect they deserve?

Chairman, there is of course another very practical problem which we also have to consider. Many colleagues have mentioned earlier or last night that the mentally handicapped are classified into different levels, and ordinary people cannot differentiate among them. If they are totally excluded from this legislation, the result may be those with relatively mild mental handicap will completely be stripped of the right they should have. You may think their competitiveness will be enhanced? Chairman, I do not see it this way, but if there are different views, I will respect them. If it is considered that their competitiveness has been enhanced, I think, like I said just now, it is a view resulting from an almsgiving mentality. If I were a mentally handicapped person, I would not cherish this.

Another issue is, if the mentally handicapped is exempted, how should the line be drawn? If other PWDs say tomorrow that they cannot find a job, should they also be exempted? Why should this group be exempted and not the other? Finally, would the entire system collapse?

Dr LAM Tai-fai expressed earlier that we should not do a disservice out of good intentions. I do not regard this a flak, I just want to tell Dr LAM Tai-fai that there are two different angles to doing a disservice out of good intentions. I absolutely respect Mrs Regina IP and the views of Members who support her amendments, but it is very hard for me to accept. Sorry though, our Civic Party will oppose the amendments.

MR FREDERICK FUNG (in Cantonese): Chairman, it is indeed necessary to discuss this subject, but the discussion will lead to two completely different conclusions. I will first share my views in three aspects. To begin with, what is minimum wage? Second, if exemption is to be granted, what types of work and who should be exempted? And third, in respect of the amendment proposed by Mrs Regina IP, whether other places have similar situations; and whether they have other solutions to deal with these situations? I wish to share my views from these three angles.

The first angle is that I think minimum wage is mainly about being employed for a proper job in society, the employee is required to perform certain duties, and he will only be employed when he has reached a certain level required. After he has been employed, his wage will be decided by his employer according to market rates when minimum wage has not been prescribed. However, in the present extremely free market, so to say, Hong Kong has moved towards the opposite direction which offers no freedom at all.

Under a monopolized market, workers do not have any bargaining power. We thus hold that under such an employer-employee relationship, workers should be rewarded with a minimum wage. When they can meet the requirements of their work, they should be remunerated. Minimum wage is thus a baseline drawn in the light of this relationship. This baseline cannot be further lowered, otherwise, it is not minimum wage. The minimum is truly the lowest, it should not be the lowest in disguise. If someone said, "You cannot falsify lies, nor verify truth" — this should be the other way round, it should be "You cannot falsify truth, nor verify lies". If it is truly the minimum wage, it should

genuinely be the lowest rate. It should be a baseline drawn purely from the angles of work, remuneration and recognition of the value of labour. A baseline cannot be further lowered.

Under this context, I opine that no one should be exempted, unless he is not under an employer-employee relationship. As long as there is such a relationship, he should be entitled to a minimum wage. I cannot say that the employer is benevolent and wishes to help those people; or that people will have a better social life or mental state after they have found a "job", mind you, the word job should be in quotation marks; or for person with a disability, I cannot say that after he has taken up a certain job, he will feel better with regard to his sense of disability. For the above cases, what is involved is not work nor remuneration for work, but something else. Let me talk about how other countries tackle this issue later. In fact, the Subcommittee on Poverty Alleviation has looked into the approaches adopted by European and Asian countries, and I will talk about them later.

Hence, looking from this angle, I think the present question is not about whether employers are unscrupulous or not. The question is: for those employers who really intend to employ mentally handicapped persons but demand for a slightly lower wage rate, I think these employers should not mind paying an extra few dollars if they are genuinely willing to offer help. I do not know how low their hourly rate is. If their hourly rate is as low as \$5 to \$6, this is certainly out of the question when compared to the hourly rate of over \$20. But if we are talking about paying an hourly rate of \$3 or \$5, should this issue be discussed? The employer may even consider paying the employee the minimum wage and ask him to work for less than eight hours. These are some direct and simple ways to tackle this problem. I thus disagree that benevolence is a reason for us to accept further lowering of the minimum wage rate. Benevolence should be expressed in the form of benevolent approaches.

I do not quite agree with what Dr LAM Tai-fai has said. He said that we should not focus too much on minor details; instead we should take the whole situation into consideration. In fact, this is what I wish to tell him. He said that we should take the whole situation into consideration, but what is this "whole situation"? Hong Kong should really set a minimum wage, which means not only setting up a system, but also a value for minimum wage. Behind this value is the fact that labour has a value. When I have made my efforts to meet the minimum requirement of my job, that is, the minimum requirement of my employer, he has to pay me the minimum wage. This is a very important

principle linking between the employer and the employee. Money is not everything. Dr LAM Tai-fai said that money is not everything, he said that these people can have a better social life and that getting employed itself is a kind of dignity. Precisely because getting employed is a kind of dignity and money is not everything, their wage rate should not be further lowered and their employment should not be disregarded as a formal job. As long as they are employed to take up a formal job, they should be formally paid the minimum wage.

I wish to tell Members, certainly I should not be the one to speak on behalf of the Equal Opportunities Commission (EOC) although I am one of its members; we have also discussed this problem at the EOC. According to my impression and understanding, the EOC does not support making any more concessions with regard to the minimum wage and concessions should be made through other social means. Despite the fact that the Government now said that it will set up an assessment mechanism, we have also spent a long time on discussing whether this mechanism will involve any elements of discrimination. However, as this mechanism is invoked by the PWD himself, we can allow further deliberation on this mechanism to see if there are any elements of discrimination. However, Chairman, I hold that minimum wage is the remuneration that workers deserve. No more concessions should be made.

Second, what I wish to say is, if exemption is really Mrs Regina IP proposed this amendment today because someone had asked her for help. Some elderly people have also come to me and asked for my help, saying that they still wished to work as security guards at their 60s, 70s or 80s and they did not mind having a lower salary. People at senior age will ask for help; the physically impaired will ask for help; the visually impaired will also ask for help; and the hearing impaired will also ask for help. If so, as long as someone has a physical disability, he will ask for help and wish to be exempted. If A is exempted, why is B not exempted? Then, many people can be exempted. If I am illiterate, can I be regarded as having a kind of knowledge impairment and be exempted? There can be many more other reasons because once you open a hole, you can open many other holes. I thus hold that the minimum wage is already the wage floor which cannot be further lowered. If this is really the wage floor, we should not allow any further concession to be made.

We talked about how to treat and help people with disabilities just now — of course, we now refer to the mentally handicapped. This means genuine help,

rather than the kind of help in the context of the labour market where labour should have a value. As the Secretary for Labour and Welfare also takes charge of welfare services, I hold that he should consider other countries' ideas. Let me cite two countries as examples. The first is Spain. In fact, its approach is the most comprehensive among the many countries we have studied. It also has an assessment mechanism like ours, but it separates different types of disabilities by two dividing lines, one of which is 70% and the other is 40%. By 70%, it means that employers are allowed to pay 70% of the wage (this is similar to our current assessment mechanism) and the remaining 30% will be subsidized by the Government. In other words, when a worker performs his work when a person with disability (PWD) has made his best efforts to do his job, he will be paid 70% of his wage in return for making his best efforts. Everyone can make his best efforts, that is what we call making a 100% effort, irrespective of whether he is an ordinary worker or not. In terms of trying one's best, it is the same for everyone. If he has this ability and the employer is willing to employ him, his remuneration, in theory, should be the same as others. However, in terms of market value, the employer will think that since the PWD has only performed 70% of the work required, so he will be paid 70% of the wage. But to the Government, the PWD has already made his 100% effort, so the 30% will be paid by the Government.

The second line is set at 40%. To a very large extent, 40% means the ability to work is very low. For example, how can the Government help someone who has lost his both hands or has lost his eyesight? The Government can design a set of equipment which he can operate at work, such as using wheelchairs, making the desk larger, and providing him with a voice-activated computer and detailed training on how to use it. In addition, a social worker is assigned to follow up 10 PWDs with 40% working ability, such that their work performance can be elevated to 70%. The social worker will follow up these cases for three years. This is the approach adopted in Spain.

With respect to the approach adopted in Taiwan, I am not sure if Members have heard of a renowned organization know as "喜憨兒" (The Children Are Us Foundation). The Chinese word "憨" is made up of two Chinese words "敢" (meaning "courageous") at the top and "心" (meaning "heart") at the bottom. "喜憨兒" in fact refers to the mentally handicapped. The Foundation is a social enterprise in which 30% of its employees are mentally-handicapped persons. Its services its scope of business includes operating bakery factories, bakery

shops and a restaurant. 80% of the restaurant staff is mentally-handicapped persons. However, this social enterprise can only recover some 70% of its costs, while the remaining some 20% deficit has been subsidized by the Government. In this way, the Foundation can employ 20 to 30 mentally-handicapped employees (that is 30% of its staff) despite operating in deficit. Sorry, this is not feasible for social enterprises in Hong Kong to operate in this way. Our social enterprises can only operate for two years, after which if they cannot survive, they will have to close down. This is the difference. Social enterprises provide an opportunity to employ workers with an equal wage. But if you do not employ these workers, they will have to leave Just as Mrs Regina IP has said, they are not only given a job, but also a relationship, happiness and dignity. Taiwan uses this approach to subsidize non-charitable organizations or social enterprises, but we have to bear in mind that their social enterprises cannot recover their costs because almost 30% of their employees have lower working ability. Their government thus subsidizes the deficit. But this is not feasible in Hong Kong. I also operate four social enterprises, two of which are in deficit because some of my employees are disadvantaged workers, with certain impairments. Other employers only need 10 workers to complete a project in 10 days, but I need 13 workers to complete the project in 10 days. Someone has to pay the wages of the three extra workers.

Spain and Taiwan are the two examples I wish to cite. In order to deal with Mrs IP's amendment just now, I think we should opt for the approach in Taiwan. We can consider choosing social enterprises which will employ the mentally handicapped with the minimum wage. If the business has a deficit of course, we have to draw a line at 70% or 80% to define the portion of the deficit, and the other 20% or 30% will be subsidized by the Government. The subsidy can even be paid directly to the social enterprises, instead of to the mentally handicapped.

Will these approaches be better solutions to the problem of minimum wage mentioned just now? I totally agree that this is the question we have to face squarely. Mrs IP, I do not oppose the issue you raised. As minimum wage is non-negotiable and it manifests the value of labour, I oppose adopting this motion to tackle a problem which involves not only the mentally handicapped, but also the physically disabled, aged workers and workers with low working ability and in disadvantaged positions.

The Labour and Welfare Bureau has grouped the policy areas of labour and welfare together, I always think that if you have visited Spain and Taiwan which I mentioned just now, Ireland and Korea, you can feel the flames of enthusiasm of the people to help workers and the disadvantaged groups, and a comprehensive solution has been devised to tackle the problem.

Chairman, I dare say — although the Secretary is present — and precisely because the Secretary is present I dare say that I cannot feel that our public officers Although the Secretary has already put in more efforts and is more devoted than other public officers, he has not formulated complementary measures. Are the flames of enthusiasm not big enough? Or do other public officers or the Chief Executive have the flames of enthusiasm? We have the flames of fury instead. I hope that the Secretary will, after listening to my speech, go back and study the duty visit reports submitted by the Subcommittee on Poverty Alleviation on how different countries alleviate poverty. These countries not only seek to solve the labour problem, but also the problem of the disadvantaged groups in the entire community. They give the disadvantaged groups hope and anticipation, so that the latter can feel the love and care from society. Being members of the disadvantaged groups, they also love this society, this place and this country, because this is their home. We have to instill in the disadvantaged groups this feeling.

Thank you, Chairman.

CHAIRMAN (in Cantonese): Mr Paul CHAN speaks again.

MR PAUL CHAN (in Cantonese): Chairman, I spoke briefly just now because I did not want to drag too long on this subject. However, Mr Ronny TONG said just now that I had shown my so-called almsgiving mentality in my speech. Chairman, I wish to clarify that I absolutely do not have this mentality when I employ the mildly mentally handicapped people, nor have I treated them with this mentality. I only wish to point out an objective reality in society. I understand that in our fight for legislation on minimum wage, we have expressed our ideals and principles. However, in real life, there is always a gap between the ideals and the objective reality. How should we deal with this gap then? This involves judgment. I hold that my judgment on this matter may be different from those of other Members. In arriving at this judgment, I have considered

the fact that the mental state of the mildly mentally handicapped people is relatively less stable; they are harder to be controlled and they are weaker in handling pressure. Moreover, I opine that apart from money, work is meaningful in many other aspects.

Chairman, this is all I wish to say.

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

(No Member indicated a wish to speak)

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Chairman, the Government does not agree to the amendment proposed by Mrs Regina IP.

The objective of the minimum wage regime is to establish a wage floor to provide wage protection to employees. Thus, a person with a disability (PWD) should be protected by the statutory minimum wage (SMW) in the same way as an able-bodied person. This is a major fundamental principle enshrined in the Minimum Wage Bill (the Bill) in respect of PWDs. However, given that the implementation of the SMW may have an impact on the employment opportunities of some PWDs, the Bill has adopted a balanced approach by putting in place a special arrangement. Under the special arrangement, PWDs may have the right to choose to have their productivity assessed to determine whether they should be remunerated at not lower than the SMW level or at a rate commensurate with their productivity. This special arrangement provides a simple mechanism to assess a PWD's productivity in performing his work in the actual workplace. I wish to stress that in order to prevent possible abuse, the right to invoke this assessment is vested in the PWD but not the employer. This special arrangement for PWDs has been formulated after elaborate discussions among the Government and PWDs, parent groups, rehabilitation organizations, related bodies and stakeholders over the past year or so. These organizations have expressed support and contributed their suggestions for the special arrangement. The Equal Opportunities Commission was also involved in the discussions.

I fully understand and appreciate Mrs Regina IP's concern about the employment of PWDs, and I am also aware that this problem should be addressed. However, we do not agree to her amendment because under this

amendment, all PWDs, irrespective of their degrees of disability and productivity, will be exempted. In other words, a person with a mild mental handicap, who may be able to perform his work without any difficulties and should thus be remunerated at the SMW level, may turn out to be unable to receive remuneration at such a level because of the exemption. On the other hand, a person with a severe mental handicap, who should have the right to choose to have his productivity assessed and be remunerated at a rate commensurate with his productivity, will be deprived of the opportunity for assessment. I am thus of the view that the absence of a wage floor will undermine the interests of PWDs, who will have to negotiate their wage levels with the employer.

According to the proposal in the Bill, PWDs engaging in different types of work may choose to have their productivity assessed in the light of whether it will be impaired by their disabilities. As I said just now, they are free to decide whether or not to undergo this assessment. I believe the Government's proposal is more desirable and can balance the interests of all parties concerned.

Besides, Chairman, the mechanism for PWDs proposed in the Bill is applicable to all PWDs, while Mrs Regina IP's proposal is only applicable to a single group of PWDs, that is, persons with mental handicap. This will give rise to the legal problem of whether all people stand equal before the law, without being discriminated. Whether this will create any problems is indeed open to question.

Moreover, the Bill has already provided for a measure to prevent the employment opportunities of PWDs from being affected by its enactment. I do not think that excluding all PWDs from the scope of the Bill is an appropriate approach to protect their employment opportunities.

This morning, I heard many Members express concerns about the employment of PWDs, which is a major area of my work. In fact, I have approached many chambers of commerce, employer groups and non-government organizations over a period of time in the past to encourage them to provide more jobs for PWDs. As a matter of fact, promoting PWD employment is one of the major areas of my work. Both the Labour Department and the Social Welfare Department have introduced special schemes specifically for helping PWDs. In the days to come, we hope to enhance our communication with Members of the Legislative Council, as proposed by a number of Members just now, so that we will be able to explore long-term solutions to this problem. However, I wish to emphasize that we will conduct a comprehensive review on the assessment

mechanism two years after the implementation of the minimum wage regime. In the meantime, extensive discussions and studies may be conducted on any problems or room for improvement identified.

Chairman, with these remarks, I oppose Mrs Regina IP's amendment. Thank you.

CHAIRMAN (in Cantonese): Mr CHAN Kin-por, do you request permission to speak?

MR CHAN KIN-POR (in Cantonese): Yes, Chairman. Pardon me. In fact, I have been sitting here and listening to Members' speeches, so far I do not think that Dr LAM Tai-fai and Mr Paul CHAN have shown any almsgiving mentality when they spoke. On the contrary, I think they are kind-hearted. Moreover, as far as I understand, Mrs Regina IP's amendment may involve discrimination. Thus, I originally do not intend to support her amendment. Actually, I have also received views from parents with mentally handicapped children and relevant organizations. They are very concerned because the mentally handicapped are the group of people in society who have the greatest difficulty in finding jobs. I thus would like to say that Mrs Regina IP only seeks to reflect the mindset of the people who are truly affected. I think we need not speculate too much, or rather, as many colleagues said just now, we should think of a way to help the mentally handicapped if this amendment is negated.

I support Mrs Regina IP's amendment. Thank you, Chairman.

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

(Mrs Regina IP indicated a wish to speak)

CHAIRMAN (in Cantonese): Mrs Regina IP, you will have another opportunity to speak later. Does any other Member wish to speak?

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): If no other Members wish to speak, Mrs Regina IP, you may now speak.

MRS REGINA IP (in Cantonese): I am grateful that so many colleagues have spoken on these minor amendments of mine and have given me so many valuable opinions. I would like to briefly respond to a few points.

First, I of course understand why some colleagues will query, if only the mentally handicapped are exempted, how should the other PWDs be handled? Or how should the other disadvantaged groups, for instance, the elderly, be handled? This is because after the passage of the Minimum Wage Bill, they may face the same problem of being ousted. I would particularly like to respond to Dr PAN Pey-chyou, he mentioned mental patients last night. I have sought the advice of people in the medical field. I personally also know some mental patients and my office has employed mentally handicapped people. In fact, there is a difference between the two. Based on my past experience working as a civil servant, some mental patients, such as those suffering from schizophrenia, have to be institutionalized if they suffer from serious illness. Moreover, one of the court judgments is to sentence the person concerned to be admitted to a psychiatric hospital to receive lifelong treatment. Hence, the most serious patients have been institutionalized for treatment.

As for those who can be discharged for re-integration into society, if they are willing to take medication and are cared for by their family members, they in fact can recover fully. I believe Dr PAN will agree with me. As far as I know, medical technology is ever advancing, even for a schizophrenic patient.....an acquaintance of mine suffers from manic depression, and with better drugs and treatment for some time, he is now a tutor at the University of Washington. From the outside, we cannot tell he is a patient. So long as society does not discriminate, we do not have to worry that some mental patients will turn violent, like the recent case in which a Filipino maid brutally killed her employer. Actually, from the outside, we cannot tell if they are sick, and they can work normally.

Nonetheless, the mentally handicapped — the Downs Syndrome sufferers — are different. Their disease is congenital, we can tell from their appearance. Society's discrimination against them is more serious. Since it is hard to rely on

drugs to completely cure this congenital disease, their work will be relatively less stable. In fact, their working ability can hardly be wholly comparable to that of ordinary people, or to a very large extent they cannot perform what ordinary people can accomplish. I know a parent who has spent much effort to find a job for her mentally handicapped girl. Délifrance rejected her because of her appearance; her working in a herbal drug store has caused anxieties to the customers. Finally, the mother managed to find a relatively stable job for her daughter. These people do require special attention.

How should other PWDS be handled? I know colleagues from the labour or social welfare sector do not agree, but as far as my stance is concerned, I am not against including other PWDs in future because the Schedule 1A I propose is related to PWDs. There are 10 categories under the definition of PWD as given by the Government. However, this is a long-term plan. I am happy the Secretary said that in any case, there will be a review of the Minimum Wage Ordinance two years later to understand what impact it has on employment, and whether it will be, as predicted by some economists, a sharp increase in unemployment. We also would like to know the situation.

I am also very grateful and happy that Mr LEE Cheuk-yan proposed addressing the problem by applying the concept of rehabilitation. I think this idea can be explored. Yesterday, we dealt with the issue of extending the definition of student interns. By passing the amendment, Members in fact have accepted the concept that student interns are not employees, instead, the concept of learning is involved. Of course, in the long run, we can also address this problem by adopting the rehabilitation concept.

I respect the diverse views of Members. Just as some Members have pointed out earlier, the Legislative Council is after all a legislature, all other places in the world will inevitably base their decisions on the opinions of the majority. Overseas politicians have said that sometimes democracy is "tyranny of majority". When the majority supports doing a certain thing, the interests or concerns of the minority will not be catered for. This is not my opinion, the academics bring it up. Therefore, very often, some minorities must be taken care of while designing a democratic system. We see that in America, there is apparently a very unfair phenomenon: for states with a population of only hundreds of thousands, they have two votes in the Senate, but for states with a population of tens of millions, for instance, the state of California, they also have

only two votes in the Senate. This is exactly the case of catering for the interests of the minority.

Hence, dear colleagues, it is my wish that despite the fact that I am representing Let me not say represent, lest offending some colleagues. Today, I dare speak for some minorities, I hope they will not feel unhappy because this is the essence of the spirit of democracy. Through our debate today, many conflicts in society and the employment of the mentally handicapped have drawn the attention of all colleagues. Moreover, I am happy to hear that these problems have also drawn the Secretary's attention. I fully understand that it is very difficult for the amendments to be passed, but I am very grateful to those colleagues who give their support. I believe many parents of the mentally handicapped will also be very thankful for their compassion. Thank you, Chairman.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendments moved by Mrs Regina IP 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)

Mrs Regina IP rose to claim a division.

CHAIRMAN (in Cantonese): Mrs Regina IP 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 Abraham SHEK, Dr LAM Tai-fai, Mr Paul CHAN, Mr CHAN Kin-por and Dr Samson TAM voted for the amendments.

Mr CHEUNG Man-kwong, Mrs Sophie LEUNG, Mr WONG Yung-kan, Mr LAU Wong-fat, Ms Miriam LAU, Mr Tommy CHEUNG, Dr Joseph LEE, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Mr CHEUNG Kwok-che and Mr IP Kwok-him voted against the amendments.

Dr Raymond HO, Dr Philip WONG, Ms LI Fung-ying, Prof Patrick LAU, Mr IP Wai-ming, Dr PAN Pey-chyou and Mr Paul TSE abstained.

Geographical Constituencies:

Mrs Regina IP voted for the amendments.

Mr LEE Cheuk-yan, Mr Fred LI, Mr James TO, Mr CHAN Kam-lam, Mr LEUNG Yiu-chung, Mr LAU Kong-wah, Ms Emily LAU, Mr Andrew CHENG, Mr TAM Yiu-chung, Mr Frederick FUNG, Mr CHEUNG Hok-ming, Mr Ronny TONG, Mr KAM Nai-wai, Ms Starry LEE, Mr CHAN Hak-kan, Mr WONG Sing-chi, Mr LEUNG Kwok-hung and Mr Albert CHAN voted against the amendments.

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

THE CHAIRMAN, Mr Jasper TSANG, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 24 were present, five were in favour of the amendments, 12 against them and seven abstained; while among the Members returned by geographical constituencies through direct elections, 22 were present, one was in favour of the amendments, 18 against them and two abstained. Since the question was not agreed by a majority of each of the two groups of Members present, he therefore declared that the amendments were negatived.

CLERK (in Cantonese): Clause 6 as amended.

CHAIRMAN (in Cantonese): As amendments to clause 6 have been passed earlier by the Committee of the whole Council, I now put the question to you and that is: That clause 6 as amended stands part of the Bill.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clause 8.

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Chairman, I move the amendments to clause 8. The details of the amendments are set out in the paper circulated to Members.

We propose to put in place a transitional arrangement under the Minimum Wage Bill (the Bill) for persons with disabilities (PWDs) who are already in employment, with a view to minimize the impact of minimum wage legislation on serving PWDs whose earning is below the statutory minimum wage (SMW) rate, in particular on those with more severe disabilities.

Since 2008, the Labour Department has held over 10 meetings with PWDs, parent groups, non-government organizations providing vocational rehabilitation services and related stakeholders to discuss appropriate arrangements for PWDs under the SMW regime. The Equal Opportunities Commission (EOC) has all along participated in these discussions. During the discussions, we have first focused on clarifying the major principles under the Bill and have incorporated the proposals arrived at these discussions into the Bill. After the introduction of the Bill into the Legislative Council, we continued in-depth discussion with these stakeholders on the specific implementation details of the assessment mechanism, including the transitional arrangement to provide PWDs already in employment with a right to make a choice.

We have already taken into consideration the views expressed by Members at the meetings of the Bills Committee on Minimum Wage Bill (Bills Committee) and have refined the proposals for the transitional arrangement in collaboration with rehabilitation organizations. The EOC has also engaged in these discussions. We have secured the support of the Bills Committee on the amendments which enable serving PWDs with a wage rate below SMW to make a choice prior to the implementation of SMW, that is, to opt for SMW, or opt for a productivity assessment, which can be conducted whenever the serving PWD chooses to do so, and no time limit has been prescribed.

If a serving PWD opts for a productivity assessment, he may invoke the assessment after the SMW has taken effect, so as to help determine whether he should be remunerated at a wage rate not lower than the SMW or at a rate commensurate with his productivity. There is no time limit for him to initiate the assessment. Before the assessment, if a PWD remains in the same employment for the same work, he is entitled to no less than his current contractual wage rate below SMW. If there is a change in the SMW, it will also be applicable to the current contractual wage rate. Both the employer and the serving PWD must jointly sign an option form to signify clearly the decision

made by the PWD in opting for a productivity assessment. Otherwise, the PWD should be paid not less than the SMW.

Chairman, I have to reiterate that the right to opt for a productivity assessment is vested in the serving PWDs and not his employer. The proposal is in compliance with the Disability Discrimination Ordinance and relevant human rights provisions of the Basic Law.

Chairman, I so submit and urge for Members' support of the passage of the above amendments. Thank you.

Proposed amendments

Clause 8 (See Annex I)

MR WONG KWOK-HING (in Cantonese): President, I speak in support of the Government's amendment. During the deliberation of the Bills Committee, I have raised several points to draw the Government's attention.

First, the Government's amendment adopted the approach of allowing employees with disabilities to make their own choice during the transitional period. It is indeed desirable for them to have such a right. However, I am still worried whether they can really be protected after the legislation has come into force. I hope that the Labour Department and the Social Welfare Department will pay close attention to the situation and provide additional resources to monitor the situation. This is the first point.

Second, during the deliberation of the Bills Committee, I have once pointed out that if employees with disabilities chose to undergo the assessment, the cost of the assessment should not be borne by the employees concerned. I hope very much that the Government can bear the cost involved because they are a disadvantaged group among employees. Their independent and self-reliant spirit should be strongly supported by society as a whole. Therefore, if they choose to undergo an assessment, I hope the Government can bear the cost involved.

Third, I am also concerned about other forms of support in carrying out the assessments, such as the professional qualifications of the assessors. In this regard, during the discussion of the Bills Committee, I have also urged the Government to co-opt professional social workers into the process of making assessments and invite experienced social welfare organizations to take part in the process, so as to ensure the openness, fairness and impartiality of the assessments.

I hope the Government can consider these three points raised by me.

In addition, I am also concerned that after the introduction of a minimum wage, the Government really has to pay extra attention to existing employees with disabilities during the transitional period, so as to ensure that they would not be affected in ways unforeseen by us as a result of the implementation of this piece of legislation, for example, they will not be discriminated against and dismissed. I hope the Government will consider my views. Thank you, Chairman.

MR LEE CHEUK-YAN (in Cantonese): Chairman, I think the arrangements for persons with disabilities (PWDs) are unfair to them because after toiling eight or 10 hours a day, they still have their wages discounted. Of course, I do understand the actual circumstances. We have consulted a number of PWD groups, and in the end, I have to accept, though with an aching heart, a proposal accepted by all groups, that is, an assessment scheme.

However, I have to remind the Government that it will be fairest for the Government to pay for the wage difference, even if we accept that an assessment be conducted by employers. PWDs who choose to go out to work should be treated with dignity. Employers might find themselves unable to bear the cost and they might feel hesitant about employing PWDs. If they cannot offer PWDs the relevant wages, the Government should pay the difference instead. If a PWD also works for eight hours a day, the able-bodied person sitting next to him earns \$6,600 a month and he only receives a discounted salary of only \$4,500 a month, it means a difference of \$2,000. Although his productivity might compare less favourably than that of the able-bodied person, his effort is no different from other people. Members should bear this in mind. They should not merely consider, in a philistine manner, how much benefits the productivity of PWDs, their products or services can bring to their employers. We should

consider the efforts made by PWDs themselves. Of course, I do understand the present social system in Hong Kong. This is why I have to finally appeal to the Government in this Chamber to treat PWDs with dignity and give them reasonable and fair rewards — let them know that their labour should be rewarded. If employers are unable to afford a reasonable rate, then the Government should meet the expenses instead.

In fact, this is not an excessive request. At present, many PWDs are receiving disability allowance from the Government. According to my previous proposal, the Government does not have to pay more. If a PWD receives disability allowance, the wage difference can be offset. For instance, if he receives \$2,000 in disability allowance, and the wage difference is \$3,000, then the Government will only need to pay an extra \$1,000. In fact, the wage difference can be pegged with the disability allowance, as the Government is already paying the disability allowance. The Government only needs to pay a little extra money to make up for the difference. I think it is only fair for the Government to do so.

In fact, Chairman, I have once considered setting the minimum wage level for PWDs at 50%, that is, not less than 50%, because it is really distressing to see that wages can be reduced to less than 50% or 30% after assessment. If the wages, after assessment, are set at a level below 50% or 30%, can Members imagine how much PWDs will earn if their wage level is set at 30%? If we calculate on the basis of an hourly wage of \$30, 30% of \$30 would be \$9, the amount we discussed earlier. This is a humiliating level — \$7 or \$9. Why do we find \$7 or \$9 humiliating, but not so for PWDs? I find this unacceptable. After all, there must be a level, a standard or a value. In other words, labour should be rewarded. At least, there should be a minimum wage level to ensure that everyone is treated equally. If it is impossible to do so, the Government should pay the relevant difference. Although I support setting a minimum wage ultimately, I very much hope that the Government will pay the difference. It is only fair for the Government to do so.

Of course, the entire debate has been going around in circles. I fully understand that PWDs are concerned about their employment prospects because the Hong Kong Government has done nothing at all to help them seek employment. The Government is also reluctant to meet the very basic and humble request of providing tax concessions, even though I doubt the concessions

will not be very helpful to them. Of course, an employment quota system is being implemented all around the world. However, the Government argues that such a system is ineffective because many organizations prefer to be fined rather than provide a quota. Should this be the case, the Government punish them and then implement more rehabilitation programmes to help PWDs. After all, a quota system must be put in place. However, the Government has not only failed to launch a quota system, but also failed to provide tax concessions. So far, it has only mentioned that the Selective Placement Division will help PWDs find jobs. However, this is not a proactive approach. Most importantly, the Government should give them a job.

The second issue concerns a provision in clause 8, that is, the need for transitional arrangements to be made. I have been struggling for a long time because of this. Under the transitional arrangement, PWDs now in employment will have three options: receive a minimum wage, undergo an assessment or accept the present wage. They have altogether three options. As I pointed out earlier, I find it most worrying that the three options offered to existing employees are not real options. Does an employee dare to choose the minimum wage? If he is now earning an hourly wage of \$20, whereas the minimum hourly wage turns out to be \$33 in future, does he dare to choose \$33? Furthermore, does he dare to undergo an assessment? If he chooses to have an assessment, will his employer find him troublesome? After he chooses to have an assessment, what will be the outcome of the assessment? Therefore, he will only be forced to accept his present wage in the end. Of course, I have also heard other voices, and I have to struggle very hard as a result of this. Some PWDs have indicated to me that their present hourly wage of \$26 to \$27 is acceptable, and they do not find it too low. Will things turn out worse should their wages be reduced after the assessment? They do have their concerns.

Hence, first of all, I think this transitional arrangement is unsettling because it is nothing but a phony choice. Therefore, we have to make a lot of efforts to protect these PWDs to ensure that they have genuine choices and that they can make their choices without fears. I believe the Hong Kong Confederation of Trade Unions, being a labour organization, would not merely care about workers in general, it will care about PWDs. We hope that we can protect them in striving for genuine choices. We will definitely take follow-up action for them should there be any complaints.

On the other hand, I would like to add that they may make their choices at any time throughout their lives. Originally, the Government required that choices should be made within a year. But later, it was decided that workers should be allowed to decide when choices should be made. For instance, a worker can make a choice three years or a decade later. Therefore, we must let all existing employees know that, insofar as arrangements for PWDs are concerned, they can make their choices at any time, even a decade later. I hope that they understand their rights and will be able to make appropriate choices in future.

Furthermore, we raised a concern of ours to the Government during the process, and the issue has eventually been addressed. What was our concern? Our concern was that if I opt for the existing wage, will the wage level remain unchanged even if the minimum wage rate has increased? For instance, I now receive an hourly wage of \$20. If the minimum hourly wage rate has risen to \$40, should I continue to accept \$20? The answer is no. This is why I could eventually put my heart at ease. At least, the wages of employees can still be raised in future. But how can the calculation be made? To do so, the existing wage of an employee should be set as a certain percentage of the minimum wage. Should there be a rise in the minimum wage, the wage of this employee should be increased accordingly. The wage of an employee and the minimum wage will thus be pegged under the law. Therefore, the wage of an employee will at least be protected. In other words, even if the wage of existing employees are low, their wage can still follow the minimum wage and go up, or at least be adjusted. This means that, even if the hourly wage rate of an employee now stands at \$20, it will not remain unchanged as \$20 forever. Instead, his wage will be increased accordingly. This has made me feel more at ease.

Lastly, I wish to reiterate that, under the entire arrangement for PWDs, exemptions will be granted before the assessment is conducted. What is more, existing employees will even be fully exempted and then their wages will remain at the existing level. To a certain extent, this actually means that the entire minimum wage system is nearly inapplicable to them. Therefore, I must reiterate that we will definitely help them fight for the difference and seek justice. I hope the Secretary will, in his response, state whether the Government is willing to pay for the difference in this respect. I have mentioned this issue many times in the Bills Committee. What did the Government say? Since the Secretary is

here, there is no way for him to escape this time. Officials of the Labour Department said that this issue concerns social welfare and the matter under discussion is minimum wage. As the Secretary is responsible for the two policy areas of labour and welfare, I hope that, under his co-ordination, the Government can do justice to, rather than discriminate against, PWDs. They should be given equal rights and should enjoy the benefits of a minimum wage, so that they can get rewards and improve their livelihood. Thank you, Chairman.

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

MR FREDERICK FUNG (in Cantonese): Chairman, I opine that on this issue, we can barely have discussions because the Government has proposed two courses of action, one is to undergo an assessment and the other is to maintain the *status quo*, meaning that that persons with disabilities (PWDs) will receive the same wages as before. I am a member of the Equal Opportunities Commission (EOC) and it has discussed this issue for a long time. During the discussions, we were very often perplexed whether maintaining the *status quo* would be tantamount to discriminating against PWDs. As we are aware, this piece of legislation involves a minimum wage, and a minimum wage relates to an employer-employee relationship, as well as paying for a worker's labour or intellectual ability for the provision of services. What is the amount of wages that will be considered reasonable or fair, that is, non-discriminatory against anyone? Since an employer-employee relationship is involved, the relationship should be on equal level, with no party being in a more advantageous position. If the *status quo* is to be maintained, this actually means that some workers will receive wages that fall below the minimum wage. Initially, the Government did not mention that a review would be conducted every two years, so the EOC did not accept the relevant proposal.

Chairman, as the Secretary has, in his explanation, mentioned the EOC, I have to make it clear that in our internal discussions back then, we totally did not accept the absence of a timeframe. Setting the interval at two years actually aims to ascertain whether any inequalities have arisen in the interim and the seriousness of the question. It does not mean that PWDs should receive a lesser amount of wages. In addition, a task force will be established in the EOC to

monitor the relevant situation. I have to tell Members and the Secretary that the EOC did not totally accept that practice. I say it once again that the minimum wage regime under discussion now is a mechanism for setting the price of labour at the lowest acceptable level. Certainly, we will have to discuss with the Government about the specific amount of wages in future, and there should be no room for compromise. As to the reasons for making a compromise possible, I already talked about them just now and I am not going to repeat. However, the Secretary has not given any response to my question. Just now, I cited the examples in Spain and Taiwan, we do not have such examples in Hong Kong. In that event, will Hong Kong consider the practices mentioned? Mr LEE Cheuk-yan proposed another course of action, which I regard as a practice stemmed from the angle of care or welfare, and it is the third possibility. The two possibilities I highlighted just now, namely, the examples in Spain and Taiwan, are not to be regarded as welfare measures but modes of employment. For persons with physical or intellectual disabilities, no matter the cause is inborn or after-birth, if they fail to meet the job requirements but have spared no efforts in doing their work, the Governments will provide subsidies. The subsidies take two forms, one is direct subsidies, as in the case of Spain; the other is indirect subsidies, which are provided to social enterprises in Taiwan. In fact, why does the Government refuse to give consideration to these two approaches? Why does it not devise any comprehensive complementary measures? I have to emphasize again that the Secretary is at the same time responsible for welfare matters, so you cannot evade the responsibilities. If you fail to handle labour issues properly, you have to make up in the area of welfare. If the welfare issues are not properly handled, you also have to — I do not know whether this is the case at present because matters relating to social enterprises are now handled by the Home Affairs Bureau — Can this issue be jointly handled by several Policy Bureaux? What we have to do is to allow PWDs with working ability to be under reasonable, equal and non-discriminatory treatment.

I have been to Korea, Secretary. In fact, in a meeting of the Panel on Welfare Services held some time ago, I mentioned a remark made by the Minister of Labour of Korea when I met with him. Up until now, it still has a profound impression on me. He said what workers and people with working ability needed most were not welfare but a job; a job was welfare to him. What he wants is a job, he does not want you to hand out money to him, he does not want

alms. I hope the Secretary will understand, although only a few Honourable colleagues speak on this issue, it is still an important issue. This is precisely what was said by Mrs Regina IP just now that we are not trying to make use of mass violence, nor are we suggesting that democracy means the final say rests with the majority. This is not what we want. We have to respect the minority and think of ways to address their problems and provide assistance, so as to bring their status, position and reward on a par with most of us. The so-called "on a par" does not mean that the 100-pound force given out by your punch is better than my 70-pound force. In fact, both of us have exhausted all our vigour. In other words, from his personal perspective, he has exerted all his power, so he should be rewarded in return. If the market or the minimum wage system fails to reward him this way, the Government should handle this situation and face up to it. However, in the whole course of discussion — I do not mean the discussion held today or in the past few days — in the discussions conducted by the Panel on Welfare Services and even those on this Bill, we have not seen any comprehensive complementary measures. Just now, I raised this point and now, I put forth again. Earlier, you did not give me an answer. I hope some time later, you will give an answer as to how the Government will put in place an overall complementary arrangement to address the situation of disadvantaged people with working ability. Has the Government given serious thoughts to putting in place a complementary arrangement? Thank you, Chairman.

MR LEUNG YIU-CHUNG (in Cantonese): Chairman, when we discussed the amendment of Mrs Regina IP just now, I have put forward a point of view, that is, we understand that many families or parents hope that their children with disabilities can get a job so that they can be integrated into society and maintain contacts with other social groups. We understand that this is their earnest hope. However, I want to make a point and hope that we can all understand. When we talk about the disabled children getting a job regardless of pay, this only applies to families with the financial means. For those families with less favourable financial conditions, they really need to have both. What are these two things that they need? The first one relates to the need of their disabled children to get a job so that they can integrate into society and reduce the burden of care on their families. At the same time, they also hope that their children can live independently instead of relying on the family. It is because when the parents

are still alive, their children can of course depend on their families for care and support. But when the parents pass away, what is to become of them? This is of course a question to be considered.

Therefore, what is the essence of minimum wage that we are establishing today? Its essence is to enable every person who works to have a reasonable standard of living. This is the basic requirement. At the same time, we want them to have dignity, but now the problem lies with the assessment mechanism to be adopted. Although I mentioned in the previous discussion that I accepted this assessment mechanism, my acceptance was not really by choice because this was a consensus reached after discussions with many organizations. However, this assessment mechanism cannot address the problem where the income of a person with disabilities (PWD) after assessment is lower than the level we consider to be adequate for maintaining a reasonable standard of living. Wages below this level mean that it is not adequate to maintain a living. Then what should he do? If he cannot maintain his own living, he must rely on his family. Of course, there will be no problem if the family can afford. But what if the family cannot afford? That is the question we have to consider. Therefore, I consider the viewpoints raised by Mr Frederick FUNG and Mr LEE Cheuk-yan very important. Both viewpoints involve a very important element, that is, government participation. The concept is that no matter what forms of participation it takes — whether it is through paying the difference in wages or offering jobs to PWDs in enterprises operated by subvented organizations — the Government must have a role to play.

But unfortunately, today the Government — I dare not say the Government has not participated because it has indeed been engaged in some work relating to social enterprises such as the Community Investment and Inclusion Fund — the Government has done something, it is not working hard enough. As Mr Frederick FUNG said just now, having visited many countries to study their social enterprises, we notice that the development of our social enterprises really lags far behind.

In fact, PWDs must be able to live with dignity. I remember our former colleague Dr Fernando CHEUNG has written a book entitled 《請勿憐憫》 (meaning "No pity, please") in which he interviewed six PWDs about their lives. It turns out that they all eagerly want to live independently without having to rely on others. Through their efforts, some of the interviewees can actually live

independently according to their own will and in a dignified manner. They said that they do not need pity from others. They just want to be given reasonable work opportunities.

Therefore, although we support the assessment mechanism reached through compromise, I do not consider it desirable because there is still a gap in terms of pay. If we ignore this gap, I think we have wrongly treated the PWDs because they have made their best effort just like normal people. They have worked with their best effort. But unfortunately, they do not get the reward they should have, just like everybody else. I consider this really unjust and unfair. That is why I support the idea that if the Government also agrees that this is a proposal reached out of compromise, it should try harder and do more. How to even out the differences created under this assessment mechanism? How to give them a reasonable standard of living so that they can live in a dignified manner and, like everybody else, live independently according to their own will and stop relying on their families for care? I think this is all the more important.

I stress that I totally agree with the title of Dr Fernando CHEUNG's book and we should not pity them. Instead, we should respect and value them so as to enable them to live independently according to their own will and with respect. With these remarks, I so submit.

MR WONG SING-CHI (in Cantonese): Regarding the provision of assistance to persons with disabilities (PWDs), or the enhancement of their employment opportunities, or even returning them their rights, Mr LEUNG Yiu-chung has said very clearly. The book written by our former colleague Dr Fernando CHEUNG is neither about pity nor sympathy. I think it is about responsibility.

When I was at school, I had read a book written by FEI Hsiao-tung entitled 《重返江村》 (meaning "Jiangcun revisited"). The book is about village life in the past. In fact, the role of government in villages was minimal at first. But with the advent of industrialization and urbanization, progress sets in and this makes the role of government increasingly important because people have left their extended families. In the past, the relationship in villages can be categorized as primary relationship where the father takes up the roles of caretaker, teacher and breadwinner. But with urbanization and industrialization,

the trend is towards specialization and many functions of family have been replaced. From this perspective, the role of government should be all the more important. In the past, PWDs, the elderly and the disadvantaged living in extended families in villages can be more properly looked after by their families. However, with the development of society, family size has become smaller. The society becomes increasingly dependent on the functioning of various specialized services and institutions such as factories and medical services. As such, the role of government has become increasingly important as it is no longer limited to maintaining order and promoting social development. As the society progresses, government should play the role of supporter and facilitator to the misfits. As the power of government comes from the people, everybody should share this responsibility.

As far as the employment of PWDs is concerned, what we are saying now is to give them a good employment opportunity so that they can live out their lives through work and enjoy the rights they should have. This is what we should do. This is neither alms giving nor sympathy, but responsibility. I think it is very unfair that the wages PWDs receive after labour are different from others. The reality in our society is that everything is money oriented and many enterprises are only concerned about making money although we know that some of them do have a certain degree of social conscience. But we cannot simply rely on the conscience of social enterprises and expect them to sympathize with or provide relief to PWDs out of their own initiative. This mentality is not acceptable. We should promote overall social responsibility and encourage each and every one of us to pitch in more so that this disadvantaged group of PWDs and the elderly who have yet to enjoy major benefits of social progress can be taken care of properly. Chairman, this is the responsibility of every one of us.

Therefore, the special arrangement for PWDs proposed by the Government aims at enabling PWDs in work to stay in employment, it is merely an option better than nothing because the Government has failed to help PWDs get proper reward for their labour through other means. This is just an option better than nothing. Nonetheless, in the long run, as some Members have said just now, we think the Government should make a commitment in this respect or even take the lead for society by acting responsibly to provide assistance or to allow the PWDs enjoy their proper rights. This is the reasonable thing to do.

That is why, Chairman, although the Democratic Party supports the Government's proposal in the Bill, it will continue to fight for the rightful interests of PWDs who has been discriminated against or even ignored. Each one of us has to undertake this social responsibility. Thank you, Chairman.

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

(No Member indicated a wish to speak)

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Chairman, I thank Members for the views expressed by them just now and I will give a concise and brief reply.

In fact, we have discussed many issues in the Bills Committee on Minimum Wage Bill (the Bills Committee). First, concerning the several issues raised by Mr WONG Kwok-hing, after the implementation of the scheme, we will certainly monitor closely the operation of the transitional arrangements — Mr WONG Kwok-hing has just returned to the Chamber — to ensure that employers of persons with disabilities (PWDs), various groups and employees are all aware of their rights and responsibilities. Yesterday, I said many times that the complementary measures to be taken by the Labour Department include publicity, education and promotion, and that these three legs must move at a faster pace because many members of the public do not have a good understanding of issues such as, what are the circumstances that would constitute an offence in law and what are their rights. We will give specific examples in leaflets, guidelines and on websites. We have a great deal of work to do, so after the passage of the legislation, we have to introduce a series of follow-up measures.

Second, he asked about the cost of carrying out an assessment. Just now, I have already given a very clear account. After the passage of the Minimum Wage Bill, we will expeditiously discuss with relevant groups the detailed arrangements. As regards how the entire assessment mechanism should operate, we have to spell out all the details exhaustively and then decide the fees, announcements will also be made in due course. I am seriously considering — and I have also said so earlier on — that Government's resources will be used to

cover the cost and of course, we also have to assess the budget involved. I intend to meet the expenses from the budget of my Policy Bureau and I do not wish to make PWDs pay out of their own pockets. This is my view and I will try to do so as far as possible. However, I can only brief Members later because calculations have to be made and it is also necessary to discuss with various organizations.

Mr LEE Cheuk-yan, who is not in the Chamber now, has raised many issues and he mentioned again the history of the Provisional Minimum Wage Commission. This precisely highlights the complexity of introducing a minimum wage, in particular, the issue involving PWDs. Instead of using the word "compromise", I would use the words "pragmatic" and "balanced" to describe this proposal. This proposal has balanced the interests of various parties, and it is also practicable. This is very important and the proposal is a balanced one. This task cannot be accomplished easily because all parties have different views, different interests and different viewpoints. However, after a long period of fermentation, holding more than a dozen meetings and having meetings day and night with over 100 groups and focus groups, we have listened to the views of various groups. Various categories of PWDs (Members should bear in mind that different categories are involved), including the mentally handicapped, the physically impaired and the visually impaired, were also involved in this process. We summarized and collected all the views, and came up with this proposal, so there was really public participation from the bottom up and this process was not dictated by bureaucrats or the will of the leadership. In fact, the views came from the community. The views of all parties were drawn on and the wisdom of all parties was tapped, so this is a product created jointly by all parties.

Just now, I said that we would monitor the operation and after two years of operation, a comprehensive review would be conducted. If any problems are found in this process or if Members find any major problems, we will be happy to make adjustments because the public's interests are our prime concern and the whole matter is people-oriented. Therefore, Members must have confidence in us and we will make adjustments as we go along. We will adopt an open attitude and accept criticisms. Although this approach is by no means perfect, it is practicable and pragmatic.

Third, some Members talked about wage subsidies, an incomplete mechanism, complementary facilities, and so on. Regarding Members' views, we understand them and I also hope that there can be an ideal arrangement. However, Members must understand that at present, the aim of the minimum wage legislation is to prevent wages from getting too low. A wage subsidy is not the original intention and scope of the policy on minimum wage. We understand that Members will query if PWDs would be affected. From a broader perspective, for some time in the past, the Labour Department and the Social Welfare Department (SWD) have actually made a great deal of efforts to help PWDs find employment. The Labour Department has the Selective Placement Division and many people may not know that our officers would accompany job seekers with disabilities to attend interviews. Their success rate in finding employment is more than 70% and it is not a low one.

Second, the Labour Department has implemented the Work Orientation and Placement Scheme and Mr WONG Sing-chi also mentioned just now that this is one of our very popular schemes well-received by employers and PWDs, that is, we provide a maximum of six months of subsidies amounting to a maximum of \$4,000 per month to employers. The subsidies will be provided for six months and it is hoped that employers will give opportunities to PWDs. The SWD has also implemented a project called Enhancing Employment of People with Disabilities through Small Enterprise. These two Schemes are both within my purview, one deals with employment and the other deals with starting up a business. These two Schemes operate in pairs and are tailor-made for PWDs. I do not mean that I am satisfied with the work at present, so we will continue with our efforts.

I agree with Mr Frederick FUNG's comment that we should do more in respect of social enterprises and that social enterprises have great potential. How should we mobilize employers to help PWDs, particularly after the introduction of a minimum wage, and how can we truly help PWDs find employment? I will consider these issues together with the Secretary for Home Affairs and discuss how more in-depth measures can be taken in the future. I can also ask Members to share with us some of their experience of overseas visits

and talk about the experience of such places as Taiwan and South Korea. We will be happy to sit down and discuss with Members.

The last issue is about employment quota. I have explained many times why quotas are not adopted in Hong Kong. The Bills Committee has also analyzed this system and found that such practice is not successful in overseas countries. Why are quota systems not successful? The International Labour Organization and the European Union have also examined this and found that all such systems are ineffective, just as the case of the Wage Protection Movement. These systems are really unsuccessful, worse still, they cause insults to PWDs. As employers are somehow forced to hire PWDs rather than hiring them willingly, and PWDs are not employed for their abilities, PWDs may feel resentful. Most employers would rather pay the fine, and the fines received are not used on promoting employment but just deposited in government coffers. In the end, despite all the hassle, nothing can be achieved, but I understand that Members' intention is to do more to help. I promise that in the future, we can discuss in the meetings of the Panel on Welfare Services how to move forward, but on this occasion, we must firstly focus on dealing with a minimum wage.

Thank you, Chairman.

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

(Members raised their hands)

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

(No hand raised)

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

CLERK (in Cantonese): Clause 8 as amended.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clause 8 as amended stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hand 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 10.

MR LEE CHEUK-YAN (in Cantonese): Chairman, may I seek your consent to move under Rule 91 of the Rules of Procedure that Rule 58(7) of the Rules of Procedure be suspended in order that this Committee may consider new Schedule 3B together with clause 10.

CHAIRMAN (in Cantonese): As only the President may give consent for a motion to be moved to suspend the Rules of Procedure, I order that Council do now resume.

Council then resumed.

PRESIDENT (in Cantonese): Mr LEE Cheuk-yan, you have my consent.

MR LEE CHEUK-YAN (in Cantonese): President, I move that Rule 58(7) of the Rules of Procedure be suspended to enable the Committee of the whole Council to consider new Schedule 3B together with clause 10.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That Rule 58(7) of the Rules of Procedure be suspended to enable the Committee of the whole Council to consider new Schedule 3B together with clause 10.

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, who are present. I declare the motion passed.

Council went into Committee.

Committee Stage

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

CLERK (in Cantonese): New Schedule 3B

Specified
organizations.

labour

CHAIRMAN (in Cantonese): The Secretary for Labour and Welfare and Mr IP Wai-ming have separately given notice to move amendments to clause 10(2)(b). Both amendments are in relation to the composition of the Minimum Wage Commission. If the Secretary's amendment is passed, Mr IP Wai-ming may not move his amendment.

Besides, the Secretary for Labour and Welfare has given notice to move amendments to clause 10(3), while Mr LEE Cheuk-yan has also given notice to move the addition of new subclause (3A) to clause 10 and consequential amendment to clause 16 as well as the addition of new Schedule 3B. Those amendments are in relation to the matters that have to be taken into account or considered in appointing members to the Minimum Wage Commission.

If the amendment to clause 10(2)(b) moved by the Secretary for Labour and Welfare is negated and the amendment proposed by Mr IP Wai-ming is passed, Mr LEE Cheuk-yan will withdraw his amendments, that is, the addition of subclause (3A) to clause 10 and amendments to clause 16 as well as the addition of new Schedule 3B. Irrespective of whether Mr IP Wai-ming's amendment is passed, the Secretary for Labour and Welfare may later move amendments to clause 10(3).

CHAIRMAN (in Cantonese): Members may now debate the original provisions as well as the Secretary for Labour and Welfare's, Mr IP Wai-ming's and Mr LEE Cheuk-yan's amendments jointly. I will call upon the Secretary for Labour and Welfare to speak and move his amendment first, to be followed by Mr IP Wai-ming and Mr LEE Cheuk-yan; but no amendments are to be moved at this stage.

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Chairman, I move the amendments to clause 10(2)(b), as set out in the paper circularized to Members.

In active response to the proposal raised by Members during the discussions held by the Bills Committee, the Government's amendment seeks to

introduce technical amendments to the drafting of the provision concerning the composition of the Minimum Wage Commission by adding clarity to the provision of clause 10(2)(b) to set out clearly that not more than nine non-official members will be appointed as members of the Commission, with three non-official members to be appointed each from the labour sector, the business sector and the relevant academic fields.

I will move amendments later to clause 10(3) to clarify that, in appointing members of the Commission, regard will be given to the need for maintaining a balanced number of members with labour, business, academia and government backgrounds. I will also move amendments to section 1(2) of Schedule 4 to amend "任期" as "任免" to make the Chinese expression more consistent with its consequential English provision in terms of meaning.

With these remarks, Chairman, I implore Members to support the Government's proposed amendments.

Proposed amendment

Clause 10(2)(b) (see Annex I)

MR IP WAI-MING (in Cantonese): Chairman, I now propose to amend clause 10(2)(b) concerning the arrangement of labour sector representatives. Although the Government's amendment stipulates that three members shall be representatives of the labour sector, the Hong Kong Federation of Trade Unions (FTU) is of the view that the Minimum Wage Commission (MWC) is very important. Given that the minimum wage rate in future will basically be prescribed by the MWC in accordance with what the Government refers to as a basket of statistical data, we consider the composition of the MWC, which will perform such an important function, very important.

Although there are representatives of the labour sector, employers and the academia in the MWC, similar to the composition of the relevant committees in the United Kingdom and Australia, we can sense that the Government is still not at ease. Despite having other representatives in the MWC, the Government still insists on including three official members. We think the inclusion of three

official members only serves to increase the Government's safety factor in prescribing the minimum wage rate. This is different from what we can see from the experience of the United Kingdom and Australia.

Despite the Government's explanation that this move seeks to uphold the principle of tripartite participation, is it appropriate to include three official members, especially when these three members will be appointed in the capacity of public officers? In other words, they will perform their official duties in the MWC. Regarding the function of these members, I will give further details in the discussion of another amendment concerning voting rights later.

Since the MWC is so important, we hold that the labour sector members should have greater representation. We hope the three members with labour background will be able to accurately reflect the relevant views of the working masses in Hong Kong. However, the Government has adopted the appointment approach. Besides, I note that Mr LEE Cheuk-yan's amendment requires the Chief Executive to appoint representatives of the three labour organizations specified in the relevant Schedule into the MWC. In this regard, the FTU has already indicated during the Committee stage, and I now reiterate, that we consider it inappropriate to specify in the Schedule the labour organizations whose representatives should be appointed. Given the numerous labour organizations and labour unions in Hong Kong, we think they should not be given specific rights based on their scale and membership size. This is unfair to other labour unions or labour groups.

To enhance the representativeness of the three labour sector members, we think the most appropriate approach is originally, we hoped that they would be returned through election among registered trade unions in Hong Kong on the basis of "one trade union, one vote", but the Government did not really agree to it, pointing out in its reply that this arrangement has cost implication as elections have to be held. Therefore, we have put forward another proposal. Among all the existing advisory bodies in Hong Kong, only the five elected employee representatives in the Labour Advisory Board (LAB) are returned through election by all trade unions in Hong Kong on the basis of "one trade union, one vote". As they are returned through election by trade unions registered under the Trade Unions Ordinance on the basis of "one trade union, one vote", we opine that the most appropriate approach which does not involve public money is to

have three out of the five elected employee representatives in the LAB as representatives of the labour sector in the future MWC. We believe this arrangement will enhance the representativeness and credibility of the three labour sector members in the MWC, so that they will be able to accurately reflect the views of the labour sector in Hong Kong.

Besides, the three labour sector Members in this Council, namely, Dr PAN Pey-chyou, Ms LI Fung-ying and I, and the six employee representatives in the LAB convened a general meeting of trade unions in Hong Kong in late April this year to seek their views on this issue. Chairman, over 200 people representing various trade unions across the territory attended the meeting. Among the people present, over 90% of them supported appointing three out of the five elected employee representatives in the LAB to be members of the MWC.

Therefore, we hope Honourable colleagues will support this amendment. Only in this way will the representativeness of the relevant members be enhanced. Thank you, Chairman.

MR LEE CHEUK-YAN (in Cantonese): We are now discussing the composition of the Minimum Wage Commission (MWC), and we, as employee representatives, are particularly concerned about the composition of the labour sector representatives. Members can imagine that the crux of the minimum wage legislation is the composition of the MWC, for it is the organization which will decide whether minimum wage rate will be set at \$33. In other words, the minimum wage rate will be decided by the MWC.

At present, the Government proposes that the MWC should be composed of four categories of members, namely employers, employees, public officers and academics — academics is not the proper word, it should be persons in a relevant academic field. Firstly, I have to talk about persons in a relevant academic field. I hope this category will not be confined to academics, community think tanks and community labour groups engaging in studies in the field should also be considered. During the deliberation of the Bills Committee, I have considered proposing an amendment on this issue. But the Government said that such an amendment will be unnecessary, for academic field does not only refer to universities, but also include community think tanks and certain community

groups engaging in relevant studies. I hope this point can be put on record and that the Government will honour its promise by extending the meaning of the term "academic". This is an issue about the details.

The MWC is composed of four parties, with all members being appointed by the Chief Executive. This reveals that, to a certain extent, the Government is playing an extremely significant role in setting the minimum wage rate. The whole process is completely under the control of the Government. The 12 members will be appointed by the Chief Executive and their reports will be considered by the Chief Executive. But will the Chief Executive accept the recommendations of the MWC after reading the reports? Not necessarily, and no one knows. Please note, there are also three other members on the MWC who are public officers. As members of the MWC are appointed by the Government, there are official members in the MWC, and the reports of the MWC are considered by the Chief Executive, it means that all three parts are controlled by the Chief Executive. Hence, we can see that the Chief Executive holds tremendous power on this issue to the extent that allows him to manipulate the entire situation.

At present, we can only do one thing. Though the Government is in control of the entire situation, it cannot decide who should be the representative of the labour sector. Pardon me for my vulgar language, "Who do you think you are that you can decide who should be the representative of the labour sector?" Indeed, why should the Chief Executive intervene in deciding the representative of employees or trade unions. The members to sit on the MWC should not be appointed by the Chief Executive in the first place, they should be nominated by labour organizations, and reported to the Chief Executive. Certainly, I cannot specify who must be appointed when I draft the amendment, and the power of appointment vested with him eventually. But it is stated in our draft amendment that in appointing members, the Chief Executive must have regard to any nomination made by trade unions or labour organizations. Actually, the phrase "must have regard to" is almost equivalent to "must appoint" the representatives we nominated.

What are the differences between the Hong Kong Confederation of Trade Unions (CTU) and the Hong Kong Federation of Trade Unions (FTU) to which Mr IP Wai-ming belongs? I have to explain. We oppose allowing the Labour Advisory Board (LAB) to nominate their members to join the MWC. As

explained by Mr IP Wai-ming earlier, another idea proposed by them can be discussed jointly, for they are the same, that is, the representative of the labour sector will be elected by the method of "one trade union, one vote". Some people may ask: LEE Cheuk-yan, does it mean that you oppose election? I have to make it clear why I oppose this kind of election. The basis of the election is the primary cause. The LAB is elected by the method of "one trade union, one vote" and Members of the Legislative Council representing the labour sector are also elected by the same method. Why do I consider the election method of "one trade union, one vote" inappropriate? The greatest problem is that this election method is not people-oriented, and consideration will not be given to the membership size of trade unions. This means that a trade union with seven members will have one vote, and the 80 000-strong Hong Kong Professional Teachers' Union (PTU) will also have one vote. If the approach of "one trade union, one vote" is adopted, a trade union with a membership of 80 000 will have one vote, while a seven-member trade union will also have one vote. Such being the case, what will be the future development of trade unions in Hong Kong? For the purpose of election, particularly under the present system where people may join the Legislative Council through functional constituencies, should more trade unions be set up? In fact, the number of trade unions has increased considerably in the past few years. Over the past decade, I believe the number of trade unions has increase by 300. In the past, there were around 500 trade unions, but there are 700 or 800 trade unions now.

May I ask Members of the reasons for forming trade unions? What is the overriding principle for forming trade unions? The overriding principle for forming trade unions is to promote solidarity and represent employees. How can seven people represent the labour sector? That is impossible. The labour sector should be represented by 10 000, 100 000 or even one million people, to serve the purpose. Workers around the world try by all means to form the strongest trade union, which means there will only be one trade union. This is the case in Sweden. But this is not so in Poland, where several trade unions have been formed. In Sweden, there is only one trade union representing white-collar workers, and another union representing blue-collar workers. In other words, there is only one trade union. No workers around the world will form an infinite number of trade unions, they will only minimize the number of trade unions by all means, and that only one trade union will be formed for one trade. However, the trade union movement as a whole in Hong Kong has been distorted. The present election method is also a distortion, for it creates the

incentive to form trade unions, which will result in the formation of more trade unions. To play by the rules of the game, does it mean that the PTU should form a trade union in every school? If a trade union is formed in each school, there will be 1 000 trade unions for the 1 000 schools, and it can immediately monopolized the functional constituency election of the entire sector. Should this approach be adopted? This approach is against the principle of trade unions. The principle of trade union is to limit the number of trade unions but expand the membership size. However, the present method proposed by him will encourage forming more trade unions instead of recruiting more members. It will be best to form a trade union with seven workers. If there are 14 workers, two trade unions instead of one can be formed, for in this way, one more vote can be secured.

I am not saying that currently, all trade unions have adopted this attitude, but I have to point out that the entire election system is unreasonable for it goes against the basic principle of forming trade unions, which should be based on membership. Members of trade unions should form the foundation of trade union movement, and the aim is not to form more trade unions. I think in the latter case, it will only bring Hong Kong down.

Chairman, I have been engaged in trade union work for 30 years. All along, we have been emphasizing one point, and that is, we hope that wage earners in Hong Kong can be more united. They have to be more united, not to form more trade unions, but to join existing trade unions. It is most desirable to have only one trade union. For instance, there are 200 000 workers in the security guards sector, and the 200 000 workers should join the trade union of security guards. They should not form 200 000 security guard trade unions but rather one security guard trade union with 200 000 members. Do not form an excessive number of trade union, this is a very important principle.

Right, after stating the principle, what is my request now? What is my approach? Regarding my approach, Members may look back at the history of trade union movement and see which trade unions have great representativeness. I adopt the approach of the International Labour Organization (ILO). The ILO is a tripartite organization formed by all trade unions, business sectors and governments around the world. The organization upholds a principle of tripartite negotiation, stipulating that governments should negotiate with representative organizations of employers' and workers, so as to promote and

comply with international labour standard. It is stipulated unequivocally in the International Labour Convention 131 — Convention 131 is the Minimum Wage Fixing Convention 1970 — that governments must ensure that representative organizations of employers and workers have direct participation in fixing minimum wage.

It is also stipulated in the ILO Conventions that there should be representative organizations of workers. What is the definition of representative organizations of workers? The most incredible thing in the world happen here in Hong Kong. The functional constituency system is a case in point, it can be found nowhere in the world but Hong Kong. The LAB is another example, the election method of "one trade union, one vote" can also be found in Hong Kong alone.

Earlier on, I heard certain Members, such as Mrs Regina IP, point out that the same approach is adopted in the United States. She said that among the 52 states in the United States, some smaller states also have two representatives as the larger states do, and the situation was comparable to the trade union election under discussion, where both small trade unions and large trade unions have representatives. However, we are not discussing the election of various states in the United States. We are discussing the case of trade unions in Hong Kong, where representative organizations of workers should negotiate with the government on minimum wage.

What is the definition of representative organizations? My definition is simple, which follows the principle I mentioned earlier, that is the trade unions should have a certain number of members. I think that at present, three trade unions in Hong Kong have had a considerable number of members, and they are trade unions representing workers in the private sector. Excluding the trade unions of civil servants, the three major trade unions representing workers of private enterprises are the FTU, the Federation of Hong Kong and Kowloon Labour Unions (FLU) and the CTU. Hence, I propose that the three representatives of the labour sector should be nominated by these three organizations. The approach of "one trade union, one vote" should not be adopted, for we consider this kind of election system totally unacceptable.

Chairman, my amendment is a technical amendment. It is proposed that clause 10(3A) and Schedule 3B be added to the Bill, stating that the Chief

Executive, in appointing members representing the interests of workers, must have regard to any nomination made by the labour organizations specified in Schedule 3B. Clause 16 should then be amended to allow the Commissioner for Labour to amend the labour organizations specified in 3B by notice published the gazette. In other words, I propose the addition of a schedule specifying the name of the three labour organizations. If there are any changes in trade union movement in future and there are changes in the representative organizations, immediate amendment can simply be made to Schedule 3B.

Hence, Chairman, I hope Members will support my amendment. When voting is carried out shortly, the amendments of the Government will first be put to vote. We will support the amendment of the Government, for the Government is only making some technical amendments, which are not contradictory to my amendment. Besides, those amendments will meet the request put forth by Mr Tommy CHEUNG that a clear composition of "3-3-3" or "2-2-2" of the MWC should be stated, rather than only stating ambiguously that not more three members in each group. We support this point and I hope Members will vote for my amendment. Thank you, Chairman.

MS LI FUNG-YING (in Cantonese): Chairman, I speak in support of the amendment proposed by Mr IP Wai-ming to clause 10(2)(b). As also mentioned by Mr IP Wai-ming earlier, we, Members of the Legislative Council from the labour sector, convened a general meeting of trade unions in Hong Kong on the enactment of legislation on minimum wage in late April this year. An overwhelming majority of representatives of trade unions attending the meeting agreed that the representatives of the Labour Advisory Board (LAB) should sit on the Minimum Wage Commission (MWC).

Chairman, this demand is very simple, and let me briefly explain the two reasons for it. First, the representatives of the LAB, who are elected by representatives of registered trade unions in the territory, should be unequalled in terms of legitimacy and representativeness. Second, the terms of reference of the LAB have stated clearly that the LAB is to advise the Commissioner for Labour and the Government on matters relating to labour. As the MWC will discuss the level of minimum wage in future, which is closely related to workers in general, why is it that the representatives of the LAB have no role to play in it

at all? For these reasons, the labour sector is of the view that the existing arrangement under the Bill is hardly acceptable.

With regard to Mr LEE Cheuk-yan's speech earlier, Chairman, I wish to take this opportunity to say a few words in response. Mr LEE Cheuk-yan pointed out that it is not people-oriented for representatives to be elected by trade unions using "one trade union, one vote", but he considers it more desirable for representatives to be nominated by three syndicates of trade unions, as proposed in his amendment. Chairman, the federation of trade union is composed of trade unions, which means that their members are trade unions. Such being the case, is that not even more restrictive? So, in view of the existing system, I think Mr LEE Cheuk-yan's proposal is contradictory.

Certainly, I do understand that Mr LEE Cheuk-yan is ultimately directed against functional constituencies, and that is not an issue for debate in the context of this amendment today. But with regard to the proposal on nominations by syndicates of trade unions, even though I am the Vice Chairman of the FLU, which is one of the labour organizations mentioned by him, I will not accept his amendment. I will support Mr IP Wai-ming's amendment. Thank you, Chairman.

MR FREDERICK FUNG (in Cantonese): Chairman, from the perspective of powers, this amendment is the most central amendment insofar as the entire issue is concerned, because this clause specifies who will have the power to set a minimum wage on our behalf in future. Whether it will be \$19, \$20, \$24 or \$33 is up to the decision of these people, but do these people share our view on "making work pay"? While we champion for "making work pay", other people may hold that the market determines the pay. If that is the case, the outcome would be most paradoxical, and we will put the cart before the horse.

Mr LEE Cheuk-yan has just made an analysis on powers, and I will not go into details again because I agree to his analysis. I only wish to point out that the greatest power is actually in the hands of the Chief Executive. Presently, our Chief Executive advocates and worships free market, and over the years I have pointed out repeatedly that it is contrary to the actual circumstances if Hong Kong remains to be governed by the principle of free market under the current situation. It is also universally recognized that free market is not omnipotent, especially in

areas where the authority refuses to control, is reluctant to control or even does not want to control, as well as in areas where it is beyond its capability to control. Our Chief Executive has nevertheless followed this direction, worshiping free market as if it were God. This is precisely why I am worried that the entire Minimum Wage Commission (MWC) would be manipulated by the political thinking of one person. Today, this person is Donald TSANG and he adopts this political thinking, but if it were Frederick FUNG tomorrow, there would be another political thinking. This is why the MWC must truly incorporate different opinions. If, in the MWC, there can be more balanced views for discussion and for brewing, arbitrary manipulation by the Chief Executive would be impossible. In that case, disregarding whether the Chief Executive is Donald TSANG or Frederick FUNG, the views of the MWC are not going to become lopsided.

The second point that I would like to raise is about those several appointed members. Now, we are just discussing the three seats for trade unions, whereas the three seats for employers and the other three seats for the academics will not be discussed in this Bill today. We only discuss the three seats for the labour sector. These three members from the labour sector basically serve to reflect the views, values and perspectives of workers. When a mechanism is put in place in future, they will express views on the methods for determining various factors under the mechanism and on the application of such factors for devising a formula, and then they will look at the social statistics. However, as mentioned earlier, the Chief Executive can entirely reject these recommendations in the end, but the Legislative Council cannot entirely reject his. What I mean is that he can say that our proposals and suggestions are not viable, but we cannot amend his proposals. We can either accept all of them or reject all of them. We cannot accept some other proposals, but the Chief Executive can do so.

Under such circumstances, all that we can discuss and amend today is how those three seats for members from trade unions should be made up. This is a pointed question. On this one and only one point, we hope that some changes can be made. I think there are only several possibilities for changes to be made. The Chief Executive can appoint all those who are supporters of a free market, supporters of powers, and even supporters of the establishment to sit on the MWC. Some people may say that this will not happen, for the Chief Executive will definitely be fair. If the Chief Executive is fair, his popularity would not

have been so low as it is now. Let us not dwell on whether he is fair or not, and he may perhaps be fair, but what if there are people who consider him unfair? So, what we trust is the institution. We hope that institutionally, such a very important MWC can reflect the views of workers and employers on wages, enabling both sides to come up with a conclusion through negotiation and resolve the conflicts or arguments between them. I, therefore, consider it imperative for those three seats to truly reflect workers' views.

Chairman, with regard to how these seats should be made up, I think there are three possibilities. One is for them to be elected by trade unions, as proposed by Mr IP Wai-ming. If they are to be elected by trade unions, and if this is a decision which can have a bearing on powers, this is actually calling on everyone to "split up" existing major trade unions into smaller groups. This is a way for them to compete for powers, which is undesirable. I agree to the principle put forward by Mr LEE Cheuk-yan earlier and that is, it is the inherent duty of trade unions to uphold firmly the position of workers and to fight for the rights and interests of workers. Of course, there may still be bias, and it is necessary for the business sector or trade associations and workers' organizations to work together to strike a balance. If possible, they can even sit down and negotiate with each other and in the course of negotiation, the Government should play the role of a middleman. It should not be biased in favour of trade unions; nor should it be biased in favour of the business sector. However, this arrangement is undesirable. By then, there may be 1 000, 10 000 or tens of millions of trade unions but the rights and interests obtained would be minimal. While their number may be great, their influence or powers would, quite the contrary, be reduced to the least. We can see that none of the places in the world where there is labour movement is working in this direction. Yes, this can be an option, but I do not agree to it.

The second possibility is for the representatives to be returned by workers on the basis of "one person, one vote". How many workers are there in Hong Kong? There are two million workers. So, these two million workers will vote to return the representatives, and the three candidates who have obtained the largest number of votes will win.

Chairman, there is a third possibility. The third possibility is that since there are so many trade unions, the seats will not be distributed on the basis of trade unions as a unit, but on the basis of those trade unions with the largest

membership and influence. In the past, our trade unions can be classified into leftist, rightist, pro-Mainland and pro-Taiwan, but no such distinction is drawn now. This arrangement requires a headcount in order to find out the membership size, which in turn, indicates the influence of the trade union. The three trade unions with the largest numbers of members will be given the seats. They can also be returned by proportional representation, but not on the basis of a seven-member trade union as a unit for returning representatives to sit on those three seats which will be vested with the biggest powers. Proportional representation is one of the methods. We are aspiring to democratization in Hong Kong, and this process of democratization does not confine to seats in the Legislative Council. It is actually about how the entire value of democracy can be incubated in various power structures. Let us look at the situation in the West, and just take a look at the elections in Scandinavian countries. Even their Inspectors are returned by elections. As to whether this approach is correct or whether it merits our support, we can think about that, and I may not agree to their approach either, but the main point is how far their culture of election has penetrated?

Since the MWC is such a very important decision-making body, if we are not permitted to return only three seats out of the 12 seats by election and the appointment still has to be subject to the decision of the Chief Executive alone, that would be unacceptable.

If these seats will really be returned in the way as suggested in the current proposal, it means that this legislation, which we have been debating since yesterday and will be passed after going through the Third Reading later, will achieve nothing. It is because we are not allowed to discuss the final proposal on minimum wage in this Council, and we are not allowed to make a decision. I, therefore, consider that at least in respect of members from the labour sector, trade unions with various degrees of strength should have the right to join the MWC. Certainly, their strength, as I said earlier, is quantified in terms of the number of members. They can be returned either by all workers using the proportional representation system or alternatively, according to the number of members of the trade unions, whereby the three trade unions with the largest membership size shall sit on the MWC. When you join a certain trade union, it means that you have, to a certain extent, voted in support of that trade union.

Certainly, trade unions will entice support from their workers in various ways but in general, trade unions will strive for the rights and interests of workers. Let me say this once again, Chairman. What we are talking about here is actually three seats out of 12, and among these three seats, if trade unions are classified into the leftist, centrist and rightist party in Hong Kong, each party merely constitutes one seat out of 12. If trade unions of the leftist, centrist and rightist party can join the MWC, at least the representatives of trade unions holding different views on worker's rights and interests can speak up in the MWC.

Chairman, another amendment to be discussed later is related to the decision-making power, that is, an amendment on voting. I will speak on that later on. Now, regarding this amendment, I only hope that colleagues can support the approach that no matter how those three seats are returned, the method to be adopted must be able to strike a balance among trade unions with different influences which can truly create an impact. As for these influences that can create an impact, I think they should not be built on the basis of organizations. Even in respect of the election of functional constituencies (FCs), although they are elected on the basis of organizations, the public will eventually demand the gradual "humanization" of FCs. I am not a unionist; I am a person engaging in community work. In a community, the people are truly represented not by individual organizations. Of course, each organization has its representativeness and this, I agree. But as for how the view of each person can be ultimately reflected, this does not rely on the balancing of powers among organizations. It is because we are not practising a federal system or anything like the federal system in the United States, under which each state has two seats in the Senate. We are not talking about this. What we are talking about now is rights and interests. If an organization has strengths but the authorities do not allow it to express its views within the establishment, it will attack you outside the establishment and you will still be pressurized. Therefore, I think even if you do not allow its participation, you will face the same dilemma. My view is that an organization with strengths and supporters can join the MWC. As for the method for returning these seats, it can be "one person, one vote", it can be the proportional representation system, or the seats can be taken up by the three trade unions with the largest membership. Thank you, Chairman.

MR WONG SING-CHI (in Cantonese): Chairman, with regard to the method for returning members representing the labour sector in the Minimum Wage Commission (MWC), the Democratic Party supports the amendment proposed by Mr LEE Cheuk-yan. We do not support Mr IP Wai-ming's amendment which proposes that members from the labour sector must be members of the Labour Advisory Board (LAB) elected by trade unions.

As Mr LEE Cheuk-yan and a number of Members have said earlier, with regard to the existing MWC — it is provisional for the time being but will officially become a statutory commission after the passage of the Bill — its composition actually carries a subtle implication, with three representatives from the Government, three from the academia, three from the labour sector and three from employers. In fact, representatives from the labour sector can only exert very limited influence, and if they will be returned by "one trade union, one vote", we really worry that it would be even more difficult to convince the public that the members will truly be more concerned about the rights and interests of grass-roots workers. Of course, I am not questioning members from the labour sector currently sitting on the LAB or the LAB itself. But the problem is that each of their votes now is really Mr LEE Cheuk-yan has explained this very clearly earlier on. So, the Democratic Party considers that under such circumstances, we would prefer the arrangement that some major trade unions — trade unions with the overall objective of working for solidarity — shall nominate representatives to join this MWC. This is, in our view, more appropriate.

Chairman, let us take a look — we will discuss this in detail later — at the role played by the Government, which will be weighty indeed, and it can be said that the Government has power to control the whole process of formulating the minimum wage. As employees and employers may, very often, fail to reach a consensus easily, the Government can therefore play a very important role. That said, there may still be three members from the academia and as we all know, the academics often have different positions. Some are more inclined to the left while some are more inclined to the right. The Government also has the right to appoint the three members from the academic field. I think the Government will not skew to any side in considering the appointments, and among the appointees there must be people who are more inclined to the market or the people's livelihood or social development, and this may also be the Government's consideration. As a result, the three members from the academic field may not be able to reach a consensus at all. In that case, things would be easy for the

Government, because with three official members and three members from the labour sector, together with one academic who is more inclined to the labour side, there would be seven of them who can already constitute a majority vote. Or, alternatively, if the Government thinks otherwise, with three official members and three members from the employers, together with one academic who is more inclined to support the employers, the Government will still manage to get things through.

So, basically, we can see that if the Government's position is more inclined to a certain side, it can actually adjust the combination of votes in the MWC very easily and the amount of the minimum wage can then be set according to the wish of the Government. After setting the level of minimum wage, the Chief Executive will make a decision accordingly, and the whole thing is almost all under the control of the executive. In view of this, we, therefore, consider that it is very important that representatives of the labour sector can truly represent the rights and interests of workers or they should have extensive representativeness. Therefore, the Democratic Party supports Mr LEE Cheuk-yan's amendment and opposes Mr IP Wai-ming's amendment.

I so submit.

MR LEUNG KWOK-HUNG (in Cantonese): I have said this for many times. Whenever any reform is discussed in this Chamber, we are invariably reminded of the depravity of the system.

Of course, having a chance to enact legislation on minimum wage today is still better than not having such a chance. But the point is that when we discuss who will decide the level of minimum wage, we must go back to square one and that is, why should we allow four different syndicates to decide on a question relating to three million-odd workers, especially a question relating to an impoverished population of over one million? Let me reply to a question first. Many people said that the pan-democratic camp advocates democracy on all issues, and does it mean that elections must be held in society all the time? Holding frequent elections may cause great trouble, should election be held for the Minimum Wage Commission (MWC)?

Chairman, when the Government makes appointments or when it selects certain people with a more open approach, it actually should have some criteria to base on. What are these criteria? The Government has not mentioned today. It just follows the old practice by copying the model adopted by the Labour Advisory Board, drawing representatives from three sides, and adding in the entity called the academics, or the entity which relates to the academic field, and passing this off as an attempt to broaden its membership. In the MWC, there are two entities which seem to be neutral, one being the Government and the other being the academics, the other two parties have close interests related to each other.

What criteria has the Government adopted in appointing the academics? The Government has not told us. Why has the Government not told us? Chris PATTEN had made appointments using the same approach, that is, he appointed some people whose mindset or advocacy were known to him already. These people are like vehicles with automatic transmission system, as they do not need to be taught what they should do. This is like what happened when Chris PATTEN came to Hong Kong. He abruptly dismantled the composition of the executive and the legislature, and from his arrival in Hong Kong to his departure from Hong Kong, he had appointed people whose political inclination or mindset he clearly understood. This explained why his governance had been very smooth.

Our Government has used the same method today, and with regard to the three so-called academics or persons relating to the academic field, what do they advocate? Can these be made known to other people? In making the appointments the Government has not even made public their curricula vitae or information such as whether the appointee supports the setting of a minimum wage. If he does not advocate the setting of a minimum wage in the first place, for what purpose is he appointed to the MWC? This is a question to which an answer must be given. In fact, Dr Margaret NG who is sitting in front of me has mentioned seven principles for selection, including whether the appointee has good moral character or expertise, and so on, but no such criteria is adopted now. Is this not depravity on the part of the Government? If CHAN Yan-chong is appointed to the MWC, what is the purpose of his appointment? He is opposed to setting the minimum wage. So, the truth is that the academic field is actually a "servant girl"; it is a "servant girl" given to employers as a gift by the Chief Executive at the service of employers and also at the employers' beck and call.

Speaking of the representatives of the Government, the Government does have its position — the Secretary now knows that he can go to the toilet; he is not "Frankenstein" any more — For what purpose do government representatives join the MWC? The Government's position has been expressed most clearly in this legislative exercise. In all cases when a bill is proposed, under this parliamentary system of ours now, which is neither fish nor fowl, the Government, as I have reiterated, will certainly exercise its powers to control the entire legislative process, and whatever amendments proposed by us will all be rejected.

Chairman, talking about representatives of the academic field, I am also from the academia, so why am I not appointed? I am a Marxist, and let me read out a paragraph of an academic essay. This is from Volume Two of the *Selected Works of Karl MARX and Friedrich ENGELS* (page 200 of the Chinese translation) and I quote: "But as to profits, there exists no law which determines their minimum. We cannot say what is the ultimate limit of their decrease. And why cannot we fix that limit? Because, although we can fix the minimum of wages, we cannot fix their maximum. We can only say that, the limits of the working day being given, the maximum of profit corresponds to the physical minimum of wages; and that wages being given, the maximum of profit corresponds to such a prolongation of the working day as is compatible with the physical forces of the labourer. The maximum of profit is therefore limited by the physical minimum of wages and the physical maximum of the working day. It is evident that between the two limits of the maximum rate of profit and immense scale of variations is possible. The fixation of its actual degree is only settled by the continuous struggle between capital and labour, the capitalist constantly tending to reduce wages to their physical minimum, and to extend the working day to its physical maximum, while the working man constantly presses in the opposite direction. The matter resolves itself into a question of the respective powers of the combatants."⁽¹⁾

Why can I not sit on the MWC? I cited this paragraph to state my view that this is the result of a struggle. Nobody has mentioned this in this Chamber. Why is it not me? Although I have never studied in university, I represent an inclination, and what I represent is that workers have to put up a fight for better

(1) <<http://www.marxists.org/archive/marx/works/1865/value-price-profit/ch03.htm#c14>>

wages. The setting of a minimum wage is actually not a favour bestowed by anybody; nor should it be set under the false pretext of doing justice.

Academically, the situation is actually quite fragmentary already. The so-called academic field — As for employers, they are also messing around, and there is "19-dollar Chan". The other day I threw some counterfeit banknotes in this Chamber. Chairman, the leader of a capitalist consortium is telling the community that he would have to make a profit warning announcement if the minimum wage would be set at \$33. He told the shareholders that once the minimum wage is pitched at \$33, this major enterprise would be greatly affected.

MR TAM YIU-CHUNG (in Cantonese): A point of order. With regard to what Mr LEUNG Kwok-hung has said, have you noticed that he seems to have already talked about this before? It seems that his speech is not quite related to the amendment. Have you noticed that?

MR LEUNG KWOK-HUNG (in Cantonese): How dare you! You dare to even insult Karl MARX! *(Laughter)* There will surely be retribution for you! You must not stop this Council from listening to the words of Karl MARX! You will get retribution for doing that!

CHAIRMAN (in Cantonese): Mr LEUNG Kwok-hung.

MR LEUNG KWOK-HUNG (in Cantonese): The portrait of Karl MARX is still being hung nowadays in the Mainland. The four cardinal principles still apply. Persevere with Marxism! Mr TAM Yiu-chung, you really must make your attitude right. You must not go so far as to bite the hand that feeds you! Today, you dress like the bourgeoisie

CHAIRMAN (in Cantonese): Mr LEUNG Kwok-hung.

MR LEUNG KWOK-HUNG (in Cantonese): Chairman, he did offend me in such a way. He even went so far as to offend Karl MARX! I was citing from Karl MARX then!

CHAIRMAN (in Cantonese): Mr LEUNG Kwok-hung.

MR LEUNG KWOK-HUNG (in Cantonese): How is this relevant? Why can I not cite those lines? So many people have cited rubbish, citing a certain so-and-so economic study in the United States

CHAIRMAN (in Cantonese): Mr LEUNG, stop it, please.

MR LEUNG KWOK-HUNG (in Cantonese): of the 100 greatest men in the 19th century, Karl MARX has remained to be the first on the list.

CHAIRMAN (in Cantonese): Mr LEUNG, when another Member raised a point of order, it is for me to make a ruling.

MR LEUNG KWOK-HUNG (in Cantonese): Fine, but I think this is going too far, and as Ms Emily LAU always puts it, I am shocked

CHAIRMAN (in Cantonese): Please go on and speak with relevance to this amendment under discussion now.

MR LEUNG KWOK-HUNG (in Cantonese): How ridiculous! What problem is there for me to cite those lines? He knows only to cite from people whose comments vanish as soon as they are said. One should not go so far as to forget his origin.

(Mr LEUNG Kwok-hung sat down)

CHAIRMAN (in Cantonese): Mr LEUNG, have you finished your speech?

MR LEUNG KWOK-HUNG (in Cantonese): Who said that I have finished my speech? It was you who told me to sit down. *(Laughter)*

CHAIRMAN (in Cantonese): Mr LEUNG, I only remind you that we are now discussing the composition of the Minimum Wage Commission. Please go on and speak with relevance to the amendment.

MR LEUNG KWOK-HUNG (in Cantonese): Chairman, let me say this with a clear conscience: What I had said was indeed cited from a book. Anyone can go and buy this book. I have already given it to the translation division to facilitate the translation.

With regard to the group of capitalists, I have no personal grudges against Mr CHAN Yue-kwong, but "the falling of one leaf heralds the coming of autumn". A person appointed by the Chief Executive has openly opposed setting the minimum wage at \$33 and openly trampled on labour rights to whet the appetite of listed companies for profit. The so-called "rate of profit" is what I have just read out. Mr TAM Yiu-chung, there is actually a basis for what I have said, and it has to do with the conflict between profit and the pay for work. Work harder and learn this by heart! You obviously failed to learn it 30 years ago!

There are reasons for what I have said. When a capitalist said that his rate of profit should not be reduced as a result of an increase in wages and explicitly opposed an hourly rate of \$33 for workers, why should he be appointed? Because when you appoint him, he will vote for you! I would not talk about the other two persons!

Third, let me talk about workers. Please come to your senses. The Labour Party used to be controlled by trade unions, which means that the votes of trade unions were used to control a party. I certainly dislike Tony BLAIR, but he probably had a motive in freeing the Labour Party from the control of trade unions. What we are discussing today concerns the entire working class. Why

is the working class not allowed to elect their own representatives through their votes? If they cannot do it now, why do we not make this possible under the legislation to be enacted? So, Mr LEE Cheuk-yan's view is more in line with this principle.

Lastly, in this place of Hong Kong, no matter how strongly you dislike this Legislative Council, it still serves to express public opinions by way of votes constitutionally. Why are we not vested with the power to review all issues? Even though we do not have this right, why can we not do so? This is where the major problem lies! So, to sum up the points that I have made, these four sectors are actually like what zoo visitors are most fond of, namely, a Pere David's deer which resembles four kinds of animals but is none of the four. It is a product of inbreeding. Is this not an exact case of inbreeding? All the shortcomings are there to be seen, and I have said this for many times. Why are there so many obese people in European countries? It is all because they are inbred. Insofar as our current system is concerned, under the system of separation of powers among the executive, legislature and Judiciary, the stipulation in the Basic Law is an instance of inbreeding! People are treated differently according to affinity and this is inbreeding. Even though this is not inbreeding, this is merely a furtive attempt to cover things up, just as what the revised District Council proposal is meant to be.

What else is left in the MWC? We certainly stand a chance to get two dollars more but we are set to lose dignity. It turns out that our dignity is like that person called JIA Gui in the *Dream of the Red Chamber*. He had long been a lackey and when his master told him to sit down instead of standing up all the time, he was still too afraid to sit down. Chairman, I am not from the academic field, but I hope Members will understand one point and that is, anything that increases the portion of bread to be given to us will certainly boost our spirit. But if one takes away the bread and then receives Holy communion, and after drinking wine and eating bread, he keeps the devil's company the following day and then makes a confession; such being the case, he should not have received Holy communion! Why do you eat bread and drink wine? This is my conclusion.

Members, if we agree to this composition, it would actually set a very bad precedent. It means that in the course of handling two completely unequal strata, we have, in the struggle between them, shown favour to a stratum which is

already so rich that it can hardly put on socks and which has so many powers that it has a rubber stamp at its disposal. This is most unfair.

Therefore, I do not see any reason not to support Mr LEE Cheuk-yan. Thank you, Chairman.

MR WONG KWOK-HING (in Cantonese): Chairman, this part concerns the composition of the future Minimum Wage Commission (MWC). The Federation of Trade Unions (FTU) considers that the Government's proposal has problems. We consider it more reasonable to follow the current composition of the Labour Advisory Board (LAB). It is because under the Government's proposal, there will be three official members in the MWC and this, we think, is unnecessary; this is also against the principle of striking a balance proposed by the Secretary himself. So, at this meeting today, we once again urge the Government to consider the proposals of the FTU, and even if the Government refuses to withdraw its proposal, we hope that the three official members will not vote in the MWC. I understand that the next part of our discussion will cover this issue, but since the composition of the MWC is brought up, I will briefly talk about this point.

Chairman, I would like to talk about Mr LEE Cheuk-yan's amendment. The FTU does not support Mr LEE Cheuk-yan's amendment. I have listened very attentively to what Mr LEE Cheuk-yan said earlier. The reasons why I do not support his amendment have actually been expressed at meetings of the Bills Committee. Mr LEE Cheuk-yan proposed that a representative of the Confederation of Trade Unions (CTU) will sit on the MWC and to this effect, he proposed that there should be one representative from each of the three syndicates of trade unions. I respect Mr LEE's intention in striving for the inclusion of a representative of the CTU. However, the reasons given to justify his proposal cannot hold water. With regard to Mr LEE's explanation earlier, I think what he has said is not in line with the long-held principle for organizing trade unions as well as the principle of solidarity in labour movements. Nor is it in line with the spirit consistently upheld by trade unions of equality for all trade unions regardless of their scale. In forging solidarity among trade unions and workers, there should be no distinction in terms of political affiliation, ideology and race, while efforts should be made to seek common ground while reserving differences, and in the event of disputes, the minority has to submit to the majority. This is the principle of solidarity upheld by trade unions and in labour movements.

Why must we uphold this principle of solidarity? Because we have to strive for the greatest power of unity among workers, so that we can negotiate with the employers and fight for our rights and interests.

Regrettably, Mr LEE said earlier that he has taken part in labour movements for more than three decades and yet, he has outrageously forgotten this most fundamental principle of solidarity in labour movements and among workers. I have engaged in local workers' movements for 44 years, bearing witness to the trade union movement in Hong Kong and going through many twists and turns and different stages of time. From my experience, I have come to realize that regardless of political affiliation, religion and social class, workers should really strive for solidarity. It is only when solidarity is achieved that our rights and interests can be truly defended and safeguarded. Only in this way can we strive to further improve our situation, terms of employment or fringe benefits.

Why do I say that Mr LEE is against this principle? Firstly, Mr LEE has earlier on cited some of the views of the International Labour Organization, saying that we must form the biggest organization and that we must join the biggest union. After a long history of development, the FTU has a membership of 350 000 to date. It is a massive syndicate of workers' unions in the trade union movement in Hong Kong. In various industries and enterprises, the workers' unions under the FTU were established earlier than their counterparts and have a larger membership. This is a historical fact. Workers' unions under the CTU in similar industries and enterprises were set up only at a later time. According to the theory explained by Mr LEE Cheuk-yan earlier on, it is not necessary to set up workers' unions under Mr LEE's CTU at all, as such unions can simply join the FTU, and saves all the fuss! Go and join the biggest union! This is exactly an appeal made by Mr LEE Cheuk-yan earlier. He was using his own words to refute himself. In fact, the labour movement cannot possibly be dominated by one labour union. This is out of the question. In enterprises and industries, different strata have different interests that need to be reflected. This is why unionists and friends engaging in the work of trade unions do understand the need to respect each other, regardless of the scale of the unions, with a view to seeking common ground while reserving differences. This is the way to achieve solidarity.

In this connection, the FTU has all along been committed to taking forward such work. Although there are various workers' unions in industries and enterprises — these unions were not formed because of some hard and fast rules; instead, they were often set up on the initiative of workers and employees in the light of their rights and interests as well as their situation — and once they have formed their own unions, all we can do is to bring them together to seek common ground while reserving differences. Let me cite a simple example. With regard to workers' unions for railway employees, there were five unions in the last term of the Legislative Council, and the number has increased to seven in this term of the Legislative Council. Should workers' unions set up earlier discriminate against those set up later? Should workers' unions with a large membership exclude those with fewer members? No, they should not and cannot do so! This is a most down-to-earth principle. We are now promoting unity among the seven unions of railway employees, so that they can join forces to fight for a salary increase. That is a case in point. Why should workers' unions set up later be excluded? Why should workers' unions with fewer members be excluded? We cannot say, do not set up any workers' union, just come and join my trade union. That is to advocate the formation of one mega union. Is such an idea of monopolization by one mega union advocated in labour movements? The answer is definitely no. If such being the case, or according to Mr LEE Cheuk-yan's logic, the affiliated unions of the CTU simply cannot and should not be formed in the first place. So, this is wrong. Why do I have to make this crystal clear? True enough, we are standing on the same side as we are working for the benefit of workers. But if I do not make this clear, "wage earners" who are listening to radio and watching television would find the message ambiguous, not knowing what we are doing now. I talk a little about the historical development to present the real situation. Let me make an appeal to the CTU and to CTU's affiliated unions: We should forge solidarity and seek common ground while reserving differences.

Chairman, next, I would like to talk about the demands put forward by "wage earners" and the labour sector, they are demands put forward on behalf of all trade unions in Hong Kong. They are not the personal demands of IP Wai-ming; nor are they initiated by the four persons from the FTU. Chairman, on the night of 26 April 2010, the local labour sector in Hong Kong held a general meeting of trade unions in Wan Chai. The meeting was attended by 270 representatives from the FTU, CTU, Federation of Hong Kong and Kowloon

Labour Union (FLU), Hong Kong and Kowloon Trades Union Council, Chinese National Federation of Industries, Hong Kong Federation of Civil Service Unions, Neighbourhood and Worker's Service Centre, and so on. I may have left out some of them. Representatives of seven or eight syndicates of trade unions or labour organizations attended the meeting, and labour unions of foreign domestic helpers also attended. At the meeting, they fully expressed their views. The representatives of over 30 trade unions had spoken and participated in the discussion. From the questionnaires collected later, 214 of the 270 representatives (accounting for 94.3% of attending representatives) had signed in support of the proposal that the three members representing the labour sector in the MWC should be the employee representatives in the LAB. Chairman, this is a collective view. If we support solidarity, and if we clearly recognize that solidarity is the principle for workers to fight on and that it is the essence of The Internationale, why do we not respect the view reached through a democratic process of collective discussions? Why do we have to act in our own way? What is more, the representatives of CTU's workers' unions did attend the meeting that night. I, therefore, earnestly hope that we can stand united, because we are already at a disadvantage. If we do not stand united, we cannot fight for our rights and interests. I hope that we will truly respect the view reached through a vote conducted on democratic principles. We should respect this view and work in concert to achieve it.

Moreover, Chairman, if, as suggested by Mr LEE, and if his amendment will be passed, there will be one representative from the FTU, one from the FLU, and one from the CTU, may I ask where should we put the Hong Kong Chinese Civil Servant's Association with a membership to the tune of 100 000? Where should we put the Hong Kong and Kowloon Trades Union Council, or the right-wing trade union as it has been referred to, which represents 60-odd trade unions? What about the Hong Kong Civil Servants General Union, Hong Kong Federation of Civil Service Unions, and Neighbourhood and Worker's Service Centre to which Mr LEUNG Yiu-chung belongs? Where should they be put? Why is it that they are considered to have no representativeness? What justifications are there for Mr LEE to conclude that they have no representativeness? I wonder how Mr LEE is going to say in reply.

Furthermore, assuming Mr LEE's amendment is passed and these three organizations will have representatives to sit on the MWC; these organizations

will have changes and should the Legislative Council amend the legislation whenever changes take place? That would be a waste in resources, it also violates the democratic principles and the overriding principle of forging solidarity among workers. Since this is so unreasonable, and as the views of all sides have not been fully considered, is this proposal not unwarranted?

But Chairman, in this Chamber today, a Member who claims to be a Marxist nevertheless agrees with the proposal of Mr LEE Cheuk-yan. If Karl MARX is listening to this debate now, he might find this hilarious as he would never expect his followers to go against his principle of solidarity in such a way. I think if Karl MARX's soul in Heaven is listening to us, he must be seething with anger.

MR LEUNG YIU-CHUNG (in Cantonese): Chairman, today, we are discussing the composition of the Minimum Wage Commission (MWC), but from a certain perspective, we should not discuss this issue. Why? I think the best way to handle this issue is for an elected representative council to discuss the wage level. That would be more reasonable because this representative council is elected by the people and we Members represent voters with different background and so, it is most desirable for this issue to be discussed by us.

However, from the perspectives of efficiency, effects, and so on, this is certainly not practical. This is why we have to discuss the setting up of the MWC. It is because of a practical need that we discuss this issue. But when a dedicated commission is to be set up, there is a need to discuss its composition and this has aroused incessant controversy.

I really consider this quite regrettable, and when we discussed similar labour issues earlier on, I already made the same point and said that I actually found this regrettable. Why? In this Council, I very much hope to discuss some labour issues but very often, it is downright impossible to propose these issues for discussion. The reason is that under the current political structure, any such issue can only be discussed in this Council after obtaining the consent of the Labour Advisory Board (LAB) or subject to a resolution made by the LAB. But even in the course of discussion, we cannot have true discussion and instead, we feel constrained because it is very difficult for us to oppose what the LAB

supports, whereas for proposals opposed by the LAB, it would be useless even if we support them. This is what the existing structure is like, and I consider it unhealthy.

But anyway, reality is reality. In reality, the LAB is like a hurdle. When it comes to the LAB, the Government has kept saying categorically that the LAB is very important. Why? According to the Government's explanation, the LAB is composed of an equal number of representatives from employers and employees. Such being the case, once these representatives have given a green light, a consensus would be reached between employers and employees. There should be no more controversy and the proposal should be able to be brought into operation. This is the *modus operandi* continuously stressed by the Government.

However, the question is, even if we accept such a *modus operandi*, there is still a problem. What is the composition of the LAB? This is a problem. The composition of the LAB has all along aroused much controversy, and the nature of the controversy is in no way different from the one that we see today. Why? At present, the seats of employee representatives in the LAB are allocated by "one organization, one vote". Why has this aroused controversy? The point at issue is that the scale of labour organizations varies. That is, the controversy is about the arrangement for large organizations *vis-a-vis* small organizations. A large organization, such as the Hong Kong Professional Teachers' Union with a membership of 80 000, has only one vote, whereas a small organization, such as some workers' unions with a dozen members, also has one vote. From the perspective of representativeness, the fairness of its composition and whether opinions can be duly reflected are open to question. So, similar phenomenon has arisen.

The case of the MWC under our discussion today is just the same. Given that there are only three seats, what should we do? What should we do to strike a reasonable and fair balance and ensure their representativeness? This is the question which warrants our discussion.

On the surface, the proposal made by colleagues from the Federation of Trade Unions (FTU) seems to be more democratic, because the representatives are returned by "one organization, one vote". It seems to be more democratic but it still has problems. Just like the case of the geographical constituency

(GC) direct election. A GC with more voters will be given more seats, whereas a GC with less voters will be given less seats.

In other words, the size of the electorate must be linked to the number of their representatives, and the method of "one organization, one vote" cannot be adopted mechanically because in doing so, the representativeness will obviously be inadequate. So, their proposal has its shortcomings. Meanwhile, I understand that solidarity is very important, as the last part of the Communist Manifesto also calls on workers of the world to unite. This is a principle that we all understand, and our labour sector certainly understands it even better.

But the point is that a principle is conceptual, while the reality is a different matter. Why do I say so, Chairman? The reason is that the history of development of each trade union varies. As we all know, at the very beginning, it is true that we first have the FTU, which is commonly referred to as the left-wing trade union, and we then have the right-wing trade union. The Federation of Hong Kong and Kowloon Labour Union, the Confederation of Trade Unions, and so on, were set up only at a later time.

Could it be that such development had emerged for no reason? What is the reason? The reason is that these trade unions were set up because of different political positions. We cannot deny this reality, can we? We must all face the reality. We cannot have discussions in an abstract way, thinking that we can achieve solidarity simply by talking about solidarity. The home truth is that our political positions are primarily different. Why should we force ourselves to come together? Such a demand is made to the neglect of reality. We must respect historical facts, and we must also respect the fact that our political positions are different.

Mr WONG Kwok-hing has continuously called for solidarity, solidarity, solidarity. Not that I do not wish to achieve solidarity. But will he call on members of his trade union to join my trade union? This is very difficult, because we have different political positions, right? It is very difficult to do so.

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

Therefore, we must respect trade unions set up according to different political positions, and since this is the case now, we must face the reality. According to the idea on the three major umbrella organizations put forward by Mr LEE Cheuk-yan earlier, it seems that Let us not talk about other organizations. Not even LEUNG Yiu-chung's Neighbourhood and Worker's Service Centre (NWSC) is included. What should we do? This proposal does not seem to hold us in high esteem. I told "Ah Yan" that I do not really mind whether we are held in high esteem, because the kind of umbrella organization advocated by Mr LEE Cheuk-yan aims to bring all trade unions together to form a confederation. The same rule also applies to NWSC, as it is made up of many labour unions, just that we do not call ourselves a confederation, because we are not yet qualified for that. So, I told him that he did not have to feel embarrassed and that I would not be jealous of him. In fact, we basically have not reached that stage of development.

Another example is the Hong Kong Chinese Civil Servant's Association mentioned by him earlier on. It is only a civil servant organization, not a broadly representative umbrella association. So, at present, there are indeed only three major organizations of trade unions in the trade union sector in Hong Kong. Since there are only these three organizations, why do we not allow these major organizations to elect their own representative? In fact, these three major organizations of trade unions are made up of labour unions in various trades and industries and so, they have broad representativeness. This is most important, and it is not the case that Mr LEE Cheuk-yan must fight for getting a seat.

In fact, whether we have to fight for a seat, or whether we have to fight for a seat for an organization is, in my view, not the most important point. This is really not of greatest importance. So long as their representatives can reflect workers' views, and so long as workers' rights and interests can be safeguarded, I think that is already enough.

But the point is that if we hope the MWC can be more broadly representative and that it can have regard to the views of more trade unions with different political stances, we must appreciate that in reality, only three major organizations of trade unions can play such a role. Therefore, why do we not allow these three major organizations of trade unions elect their representatives, so that the views reflected by the MWC can be more broadly representative?

We should think from this angle, rather than insisting on a principle in a purely abstract way and drawing the conclusion that the method of "one organization, one vote" should be adopted. In fact, we must look at the situation practically. Concerning the LAB that we are talking about, true enough, it is indeed returned by "one organization, one vote", and this seems to be fairer. But do take a look at its composition for so many previous terms. Who are the persons being elected to be employee representatives of the LAB? They mostly come from two major syndicates, either the FTU or the FLU. There are also representative from the Hong Kong and Kowloon Trades Union Council. But the chance is extremely slim for other organizations. This is a political reality. I accept this political reality, I understand this political reality, and I appreciate this political reality. This is precisely why I think this method should not be adopted for the MWC. The reason is that even though I said earlier that the LAB is often like a hurdle barring us and precluding this Council from discussing issues that we want to discuss, the LAB has remained to be an advisory body and its decision-making power is, from a certain perspective it does not have great powers and it is still an advisory body, and we are still able to hold more discussions on its decisions in this Council. However, the case of the future MWC is different. It will make a recommendation on the wage level to the Chief Executive and after the Chief Executive said yes or no, the decision would be submitted to us. What is the only thing that we in the Legislative Council can do? We can either accept it or reject it. We are in no position to make any amendment. So, this MWC is very important. Such being the case, and given the limited number of seats, I think only those three existing umbrella organizations can meet the practical circumstances. What does it mean? I am responding to what Mr WONG Kwok-hing has said about seeking common ground while reserving differences and his call for solidarity. We have been taking this perspective, not straining every nerve to fight for something and being hell-bent on getting it. That is not the case.

From the perspective of reality, we all know that the FTU does not only have a large membership of 350 000, the number of its affiliated unions is also second to none. This is a reality. Together with the FLU, they will represent a vast majority of trade unions. Ours is very small and even with the CTU, it is only The CTU has far more unions than ours but even if our unions are added up, the number remains to be limited in comparison. In other words, there is still a gap insofar as the number is concerned. I only wish to say that

from the perspective of reality, since there is a gap in the number of trade unions, and as WONG Kwok-hing has agreed as the FTU has repeatedly said earlier that it supports the viewpoint that we must work for solidarity and seek common ground while reserving differences, why can we not distribute the seats among the three organizations? An equal share of the seats among them will enable their views to be reflected. I think this is indeed a perspective which has regard to the reality. I also hope that we can move forward from this perspective as WONG Kwok-hing has highlighted in his speech earlier the need to have regard to workers' interest and workers' rights. I think this is the most desirable approach from the perspective of reality.

I, therefore, hope that colleagues of the FTU will cease to insist on any abstract democratic principle. "One organization, one vote" is very abstract. It is democracy in form, but it is unfair in reality, because a gap in number would result in imbalanced representativeness, which is unfair. So, from a practical perspective, I hope Members can consider this point.

The Secretary has often stressed the need to be more pertinent. What he means is how assistance can be provided to workers. I very much agree with the Secretary on this point, but the Secretary often says something but fails to put words into action. How can it be more pertinent? Since there are, in reality, these three largest umbrella organizations in Hong Kong, why do we not adopt a more pertinent approach by allowing these three organizations to elect one representative each to fight for and defend the rights and interests to which our workers are entitled?

Deputy Chairman, I so submit.

MR RONNY TONG (in Cantonese): Deputy Chairman, actually, the Bill now under our discussion is merely the framework of the minimum wage. In fact, if minimum wage will become a system of labour wages in future, the commission responsible for setting the wage level will be the soul of this system. Regarding this most important soul, the Government has actually reserved all the political and economic powers.

We have felt extremely disappointed with this arrangement since we started to scrutinize this Bill. Deputy Chairman, why? To put it plainly, we all know

that the Chief Executive is elected by the business sector, and his credibility and popularity are also known to all. If he is to set up the Minimum Wage Commission (MWC) based on his policy of treating people differently according to affinity, the MWC will only have very limited credibility. Moreover, under this Bill, the Government has kept a lot of "trump cards", such as insisting on the inclusion of three official members in the MWC and what is more, insisting that they have voting rights. Even for the views reached by the MWC, the Government had even said at first that such views could not be made public, or that the submission of a report would be unnecessary. And, even if such views would be made public or a report submitted, the Chief Executive would not be obliged to follow. It means that the Chief Executive can, according to the conclusion reached by him and the Executive Council, propose a different wage level and introduce it by way of a subsidiary legislation to the Legislative Council for passage. The Legislative Council can only follow the procedure of the scrutiny of subsidiary legislation, meaning that the subsidiary legislation will automatically come into effect unless we can vote it down.

Put it in other words, the ultimate decision-making power is entirely in the hands of the Government or the Chief Executive. How far can this actually protect the labour sector? To ordinary "wage earners" in Hong Kong, how far is this considered credible? So, this is precisely the Achilles heel and the most disappointing part of the Bill.

Deputy Chairman, in the course of the scrutiny, we had elaborated our views at length and had spent a great deal of time on the composition of the MWC, the powers that it should be given or the relevant powers of the Legislative Council. Certainly, we did make a little headway, but not to the extent that it gives us cause for celebration. An example is making public the report, and we will further discuss this later on. In respect of composition, we have failed to convince the Secretary of not giving voting rights to the three official members. So, we may eventually have to vote on an amendment to this effect, but I am not optimistic about the chance of having this amendment to get through.

The amendment now proposed by the Government is actually just a very small improvement, because the clause in its original drafting format, is open to question in many aspects. The reason is that the clause originally provided that

the Chief Executive may appoint not more than nine members who are not public officers, of whom not more than three are persons from various sectors. It means that the Chief Executive may appoint three persons, or he may appoint less than three persons. What if the Chief Executive has appointed three official members, three members from the business sector and one representative from the labour sector? There is simply no protection provided in the Bill. After much discussion, the Government finally agreed to propose this amendment before us now. But even though an amendment is proposed, it is still far from satisfactory. Just take a look at the clause and you will find that in respect of the appointment of members, it only provides that the Chief Executive may have regard to the need for there to be a balanced number of members appointed under each of the subparagraphs of paragraph (b) of subsection (2) and under paragraph (c) of that subsection. Paragraphs (b) and (c) of subsection (2) certainly have to do with appointing whoever to be representatives of whichever sector.

As we can see from this amendment, it only says that the Chief Executive "may have regard to" such a need for a balance to be reached. This is neither a duty nor a definite requirement on the Chief Executive requiring him to make a decision on the appointment which can fully achieve a balance. I think to many people, it can only be said that they are just putting their trust in him temporarily. But we really do not know whether the future Chief Executive will hold a different view.

Deputy Chairman, if we invariably have to rely on the goodwill of the Chief Executive before a MWC well trusted by Hong Kong people and the labour sector can be set up, such legislation is entirely not in line with the constitutional spirit. This is exactly what has happened over the 5 000 years of Chinese history, when people could only rely on the benevolent rule of the Emperor without the backing of any systems. We hope that in enacting legislation, we can set up a system which commands the trust of Hong Kong people and which is subject to certain standards and controls; only so can such a system be considered acceptable. So, this amendment may not even be a little headway, frankly speaking. It is just a small concession and yet, we have taken great pains to strive for it. Here, I must solemnly point out to the Government, while we may be forced to accept this amendment, the provisions must be amended if the future

Chief Executive is to be truly returned by universal suffrage, so that this system can work better.

Deputy Chairman, apart from this amendment, certainly there are other amendments as well. We have no intention to be involved in the rows among the trade unions. Our view is that these issues do not really fall within our ambit. All I can say is that on the question of the right to veto, we will support the amendment and as for others relating to the representation of the labour sector, we will support Mr LEE Cheuk-yan's amendments.

Deputy Chairman, I must say that it is with a feeling of great helplessness that we support the Government's amendment, but I hope the Government can hear that we are dissatisfied with this arrangement.

DEPUTY CHAIRMAN (in Cantonese): Mr Frederick FUNG, you may speak for the second time.

MR FREDERICK FUNG (in Cantonese): Deputy Chairman, this debate is conducted in a reversed order, as the details are discussed first whereas the general principle is to be discussed afterwards. If we can first deal with such issues as how the 12 members will be elected and whether the Legislative Council has the right to vote on the amount of minimum wage, and if it is only after some amendments can be passed successfully This issue that we are tackling now concerns how the representatives of trade unions should be elected, it is actually a detailed arrangement under a major principle. But now, the order is reversed in that the detailed arrangement is being discussed first.

Deputy Chairman, I am not a member of any trade union but I am familiar with trade unions. I am familiar with the right-wing and left-wing trade unions. After my graduation from university in the 1970s, the first trade union with which I came into contact was the Federation of Trade Unions (FTU), while the Confederation of Trade Unions (CTU) was set up only in the 1990s. Let me tell you, a disadvantage of not being a member of trade union is that when there are disputes among trade unions and even when trade unions are fighting with each other, some people will say, "You are not a member of trade union, so what does this have to do with you?" I probably do not know what is going on inside trade

unions normally, and this is a disadvantage. But it may be an advantage, since I do not know what have happened and I am not their member, I do not have to be concerned about the interests of trade union. I work in the community, serving the local people. Actually, we have similar targets, they are people in the working class and the lower middle class. Therefore, I can voice my views on these issues, such as how the representatives of trade unions should be elected.

In fact, Deputy Chairman, the trade unions on both sides have stressed the need to stand united and this, I fully agree. Solidarity is precisely what we have to strive for. In what way can solidarity be forged most effectively among trade unions, or at the most basic level, how solidarity can be forged to the benefit of workers? This is the perspective that should be adopted in our consideration. I entirely do not take into consideration how trade unions are arguing or struggling with each other. I do not in the least care about these issues. This is the first point that I wish to make clear.

Second, we must really appreciate that trade unions in Hong Kong are different from those overseas. I have studied in the United Kingdom for three years, and I learned that all trade unions in the country will eventually join the national trade union federation. In the United Kingdom, the national trade union federation plays a dominating role. It is dominant indeed. It has many affiliated associations, probably hundreds in number, but in the final analysis, there is only the national trade union federation. Why do we not have a territory-wide federation of trade unions in Hong Kong? Mr LEUNG Yiu-chung has spelt out the basic reasons earlier. It is because in Hong Kong there is also the factor of political flavour, and this flavour has nothing to do with workers' rights and interests. There used to be pro-Mainland trade unions and pro-Taiwan trade unions. Civil servants can neither be pro-Mainland nor pro-Taiwan, so what should they do? Could they be pro-Britain before 1997? No, they could not. Civil servants' unions were, therefore, set up without being inclined to support either side. Never talk about Mainland affairs or Taiwan affairs with these trade unions, for they are only concerned about civil servants' affairs. Civil servants belong to the third power, but insofar as this issue is concerned, I think the position of civil servants should be given slightly less importance, because what I am talking about is not entirely the rights and interests of civil servants. What Hong Kong is discussing now is labour legislation, which has nothing to do with civil servants.

On the question of minimum wage, I dare say that this has nothing to do with civil servants either. What is the lowest salary for civil servants now? It is some \$7,000 or \$8,000, not as low as some \$5,000. So, the chance for pegging the minimum wage to the civil service pay is slim. If you ask for my opinion, I would say that when the amount of minimum wage is discussed in the Minimum Wage Commission (MWC), I would attach slightly less importance to the position of civil servants because this issue may not necessarily be directly related to them. From this angle, how can we secure the greatest support from workers? As I always say, we may ultimately have to do a headcount. Should a problem arise in future, it is the people, not the trade unions, to be mobilized. At present, there are four organizations which are larger in scale, including the FTU, the FLU, the CTU, and the Hong Kong and Kowloon Trades Union Council. If you ask for my opinion, I would allow all these four organizations to join the MWC, as they represent all members, overlapping membership included, of each trade union syndicate, and the greatest solidarity can hence be forged. In the MWC, please do not make such distinction as left-wing, right-wing, pro-Taiwan, or pro-Mainland, and discussions should be confined to workers' interests. But as the Government has provided three seats only, what should we do? If you ask me what we should do, my view is that three of those four umbrella organizations of trade unions should be selected, so that the largest majority of workers and workers who have joined these trade unions can be represented in the MWC. In this way, solidarity can be forged among workers. But if one of the umbrella organizations is to be screened out arbitrarily, that organization would feel aggrieved, dissatisfied and even furious, and is that solidarity by any standard? It is the system which prevents us from forging solidarity, because the screening out of an organization precludes us from forging solidarity. This option does not worth pursuing.

Therefore, from my point of view, if organizations representing the largest number of workers will join the MWC and their three representatives can put aside their political values and inclinations for the sake of workers' interests when they discuss the minimum wage, solidarity can be forged among the greatest number of workers. Voting by trade unions does give cause for concern because there are various syndicates at present. The membership of one trade union syndicate may outnumber that of the other two syndicates, or a merger of two syndicates may constitute a great majority and hence enabling them to obtain all

the seats. The distribution of seats and even powers will cause division among trade unions, and I think this situation should not arise.

So, I have suggested two options for handling this issue earlier on. One is for all workers to elect the three representatives by "one person, one vote" under a proportional representation system, similar to the Legislative Council election; the other is to allocate the seats to the three trade union syndicates with the greatest influence. What does it mean by having the greatest influence? It means trade union syndicates with the largest membership. In other words, trade union syndicates representing a considerable number of workers can join the MWC. This is my proposal. Given the present circumstances, Mr LEE Cheuk-yan's amendment, when compared to Mr IP Wai-ming's amendment, is closer to my proposal. In fact, it is best not to name the trade union syndicates, and whichever syndicates with the largest membership will be the three organizations to be given the seats. It is most desirable not to specify their names, so as to obviate the need to make amendments frequently. Otherwise, legislation would have to be amended in future, but the underlying principle does not have to be revised frequently; nor does it require legislative amendment in future. This is the underlying reason of my proposal, and only in this way can solidarity be forged among a great majority of workers. My proposal is to ensure that the three trade union syndicates with the largest membership can join the MWC, and this is the first point. I think putting it this way is clearer than the clarification that I made earlier on.

The second point I wish to clarify is that I really hope the Secretary and in particular, the Government, can hear that what we are fighting for involves three seats out of the 12 seats, and compared with the whole MWC, this three twelfths is insignificant and yet, we are still willing to discuss the arrangement for just three seats, we do not ask for a revamp of or drastic changes in the arrangement for all the 12 seats. Those seats have not been arranged having regard to our perspectives, but why do we still hold such a view? Some people may say, "Frederick, you may end up being bullied and oppressed, as the Government may make use of those nine persons to make drastic changes and cause the so-called minimum wage to exist in name only". I agree that this can happen, but if we do not conform, the mechanism for setting a minimum wage will not be passed.

Deputy Chairman, this mechanism is important. This mechanism is like a push-button light switch. There was no push-button light switch before and the light was on and off suddenly. I could only wait for luck to have the light on, but you never know when the light would go out. Now that there is a push-button light switch, and even though I am not the one to decide whether it should be turned on or off, at least there is a switch button, since everybody can see this button, it can exert an influence. Certainly, if the Chief Executive will be returned by universal suffrage, he will have the substantive power to decide when to turn on the light. We need a switch button, so that we can see whether the person who has the power to turn on the light is acting in a reasonable way. Of course, if that person's act of switching on the light is entirely unreasonable, I think many Hong Kong people and many workers will come forth to express their dissatisfaction, disapproval, or even strong protest and opposition, and in the most extreme case, they may stage a riot. The person responsible for controlling the push-button switch is our Chief Executive.

So, a mechanism must be in place. If, in Hong Kong, the degree of transparency or the information provided by the media can be so extensive and profound that even some information which we consider confidential can be openly disseminated, it is still better to set up this mechanism than not having it. In order to put in place this mechanism, even though we will take up only three seats out of the 12 seats, as I have just said, we still hope that this can be handled in a better way. This can be achieved on the premise that trade union syndicates representing the greatest number of workers should be allocated a seat, so that everybody can rest assured that there will be no more power struggle, that we will not be split up as a result of the sharing of benefits, and that there will no longer be arguments over the political values of different factions, whether they are leftists, rightists, or independents. All these have driven a wedge among us. Let us stand united to deal with issues relating to the interests of workers.

Thank you, Deputy Chairman.

MR WONG KWOK-KIN (in Cantonese): I agree with a remark made by Frederick FUNG earlier on. He said that what we are arguing now seems to be about three seats out of the 12 seats. The Minimum Wage Commission (MWC)

under the minimum wage system can only propose an amount, and after it is accepted by the Chief Executive and the Executive Council, it will be submitted to the Legislative Council for its final decision and approval. Such being the case, in this MWC, are the three seats to be taken up by the labour sector really so important? I think they may not be that important and yet, everybody seems to be very determined in fighting for these seats. I think the disputes among trade unions and in the labour sector over this issue are unwarranted. In this Council, we argue over the representativeness of trade unions, and we have even dragged in the election of the Labour Advisory Board (LAB) with regard to the membership of trade unions. I think we are departing farther and farther away from the topic of our discussion.

(THE CHAIRMAN resumed the Chair)

Concerning this amendment, we only wish to make a few points. First, there are deficiencies on the part of the Government in the formulation of legislation on minimum wage and in the overall operation of the minimum wage structure in future. This is because the Government has marginalized its most important advisory body on labour matters. We can see that in the entire system, the LAB does not have any role to play and this has aroused great dissatisfaction among members of the LAB. This is why we have proposed an amendment that the Government must have regard to the LAB in appointing members representing the labour sector in the MWC. This is our motive in proposing our amendment. In other words, the Government cannot marginalize its most important advisory body on this most important labour issue.

Second, we see problems with Mr LEE Cheuk-yan's amendment in two aspects. First, I think the names of trade unions should not be written in the legislation. If express provisions are made in the legislation to specify the names of the three organizations, does anyone dare to guarantee that these organizations will exist forever? Or, will these organizations be renamed in future? If so, does it mean that legislative amendments will have to be made accordingly? I think these issues must be taken into consideration in the legislative process, why should their names be written in the legislation? We

oppose this approach because trade unions are still developing and there will be changes, and they will not always remain in a fixed mode. Or, what if a new trade union which is even stronger may emerge in future? Do we have to amend the legislation again? How should the amendment be made? So, I think writing the names of trade unions in the legislation is in itself a big problem.

Second, I thank Mr LEE Cheuk-yan very much for having so high an opinion of us as to propose that the name of our trade union be written in the legislation. But frankly speaking, I am very worried that other trade unions would scold us, saying, "You think you are dominant and we represent nobody? You think that only you can represent us?" Honestly, now you propose that these three trade unions be written in the legislation, but how many members do we represent? We know this only too well. There are currently about 700 000-odd people who have joined trade unions. If these three trade unions are written in the legislation, they will represent close to 500 000 members altogether. Can they be considered representative of the entire labour sector? Anyone who thinks this way is, in my view, arrogantly overrating himself. So, we dare not accept this proposal put forward by Mr LEE Cheuk-yan of writing the names of trade unions in this Bill.

Mr LEUNG Yiu-chung was very generous earlier in saying that he does not mind even if his organization is not included, and better still, he also told us a very important principle and that is, we have to accept reality, or to accept the political reality. He said that since these three organizations are now the largest in scale, it is out of a practical need that the representatives of these three organizations should sit on the MWC. Mr LEUNG called on Mr IP Wai-ming not to insist on democracy in an abstract sense. He said that we must not insist on an abstract sense of democracy and that we must accept the reality. This, I fully agree, and I think this cannot be more correct.

But to put it frankly, I hope that Mr LEUNG Yiu-chung can adopt the same attitude in handling other issues, including political issues. This, I believe, will considerably reduce a lot of disputes among us.

Thank you, Chairman.

CHAIRMAN (in Cantonese): Members, I think it will still take quite a long time before we can complete the deliberations on this Bill. I have heard many Members expressing concern about the Secretary's health earlier on, showing that Members are indeed concerned about standard working hours. In view of this, I now suspend the meeting for 20 minutes, so that the Secretary can take his lunch in our Dining Hall.

1. 05 pm

Meeting suspended.

1. 25 pm

Committee then resumed.

MR LEUNG KWOK-HUNG (in Cantonese): Chairman, I actually have nothing special to say. I will not repeat my views. My views are new ones. I heard Mr WONG Kwok-hing — a Member who claims to be a Marxist — raising opposition against one trade union representing all other trade unions or arguing that this cannot be considered as solidarity in the working class. I think he was accusing me, but I will not demand an apology from him. I will only explain to him why this is not true.

This is certainly related to the subject matter. In fact, the topic of our discussion now is that the Government has introduced legislation to provide for a Minimum Wage Commission (MWC) comprising 12 members. Now, Members of this Council seem to be at odds over how those representatives should be elected, and this has also been reflected in the amendments. So, it is meaningful to continue with the discussion on this issue.

First, solidarity is certainly most desirable, because had human beings failed to stand united, the chance of their survival would have long vanished. This is a fundamental principle in a society where primitive communism is upheld. What did Karl MARX say? He advocated that all proletariat in the

world be united, which means that all workers in the world be united. There is proof to this. But Karl MARX did not say that all trade unions in the world be united or all proletariat who have joined trade unions in the world be united. He did not say so.

What is the problem? Mr IP Wai-ming advised me earlier on not to talk about Marxism with the Chairman, as he has read books on this topic since he was a teenager. Friedrich ENGELS had said to the effect that the more impartial science is, the more beneficial to the working class. It means that the proletariat, who have nothing to lose and nothing to fear of, can only argue for the right reasons. So, I am arguing for the right reasons today. In fact, with regard to the disagreement between Mr LEE Cheuk-yan and Mr WONG Kwok-hing, there is one point not mentioned by Members and that is, why do workers join trade unions? Workers join trade unions for improving their remuneration and condition of work, that is, how much will a worker get for selling his labour as a commodity, and how will he be remunerated during the process from his creation of social wealth by his labour to the transfer of such wealth to the buyer. The purpose is just that simple.

So, concerning this point, I do not see that the two Members are in any way at loggerheads. As long as workers can freely join trade unions and this trade union can freely allow workers to elect their leaders, there would not be any problem. Many people have the misconception that Marxism advocates dictatorship by one party. They are wrong. Mr WONG Kwok-hing should know the Paris Commune. What Marxism advocates is like the Paris Commune in that workers can elect their representatives by themselves. These representatives can be replaced and their wages cannot be any higher than the wages of skilled workers.

CHAIRMAN (in Cantonese): Mr LEUNG, while I deeply admire your knowledge, please speak on the composition of the Minimum Wage Commission.

MR LEUNG KWOK-HUNG (in Cantonese): It is because Mr WONG Kwok-hing said that if Karl MARX's soul in Heaven is listening to us now, he must be seething with anger. Quoting the words said by a poet, Heinrich

HEINE, to his disgraceful disciples, Karl MARX once said, "I have sown dragon seeds but reaped fleas." This remark is most appropriately applied to Mr WONG Kwok-hing, if he claims to be a Marxist himself.

CHAIRMAN (in Cantonese): Please speak on this amendment.

MR LEUNG KWOK-HUNG (in Cantonese): If he is unbecoming to a Marxist, on what ground can he say that other people are not Marxists? He simply knows nothing about this, right?

So, all in all, the most central idea of Marxism is definitely not to stress merely on solidarity. What is the most central idea of Marxism? It must be admitted that there is a distinction of classes, which leads to class conflict and class struggle, and the outcome of class struggle is actually the reason motivating advancements in society. Why is there a distinction of classes? It is because in the division of work in the course of social production or in the division of work in society, a fixed position is formed for a class which has special interest.

CHAIRMAN (in Cantonese): How is your speech related to the several amendments under discussion now?

MR LEUNG KWOK-HUNG (in Cantonese): Yes, they are related. So, if a trade union is an organization intended only to fight for the working class some interests, or the interests in the initial stage, solidarity among trade unions is not the most important. Solidarity among workers must develop into a political struggle, and this is said in the Communist Manifesto, which you should have read, and that is: Raise to a political struggle.

Mr WONG Kwok-hing has accused me today behind my back for not supporting solidarity. Why do I not support solidarity? I support solidarity underpinned by full democracy. The principle of the Paris Commune is "one person, one vote", which allows taking turns and replacement. The problem now is that the system is corrupt, so why should I be taken to task? If he is not

convinced, I can give this book to him since I have many copies of it. Volume II is all about the French civil war, from which I have cited earlier. So, let me say again, perhaps you have been under too much harmful influence. In this world, there is indeed a situation under which one trade union exists, that is the All China Federation of Trade Unions. This is the case in the Mainland where there is one political party, one trade union, one ideology and dictatorship by one political party, while all other trade unions are illegal. He asked earlier whether, if this method is adopted, the intention is to set up one single trade union. The answer is yes if it is the wish of workers, and the answer is no if it is not the wish of workers. His criticism should not be directed at me. It should be directed at the All China Federation of Trade Unions. This is exactly an instance of sowing dragon seeds but reaping fleas.

I can explain this again. Why do we have to make such painstaking efforts sticking to our guns, and why does the working class not tell the Government, the class you represent has strangled the power that we should have in society and we, therefore, have to put up a fight by ourselves? It is because the labour union movement in Hong Kong is not politicized and worse still, it even submits to the politics of small-circle elections. Marxism opposes to such a situation. Now, I do not have the guts to announce that I am a follower of Marxism, because MARX is now in Heaven and I do not know whether he would take me as his disciple. The point is that you must argue for the right reasons, and when you are pointing an accusing finger at other people, you must also argue for the right reasons. I will not ask him to withdraw that remark, because this is personal business. I will not demand an apology from him, as this has to do with his personal integrity.

I only wish to make one point, Chairman. What problems will Mr LEE Cheuk-yan's amendment lead to? If the names of trade unions are written in the legislation, the only problem arisen is that the legitimacy of the three major trade union organizations in the working class will be queried. As mentioned by Frederick FUNG or other Members, the three major trade union organizations are a legacy of history. In handling a problem left over by history, our attitude is very simple, that is, we must admit the historical facts and we must also set eyes on the future. Concerning the issue of "three seats out of 12", if we adopt the Government's proposal, we actually should propose a long time ago that the representatives of these three syndicates should join the MWC. Certainly, I am not inciting a revolution today and so, I am not going to talk about this any

further. In fact, I am tired of speaking on this issue. I have been stopped from speaking, so I am not going to say anything further. My view is simple. The development of labour movement in Hong Kong certainly hinges on the emergence of a workers party; but in Hong Kong, the workers' party is an underground party called the Communist Party of China. I cannot join it, because I am a member of another political party.

So, the problem is that in the final analysis, Chairman, please forgive me for not putting it less bluntly, the FTU has since its inception been nurtured by the Communist Party of China, and the policy implemented by it in Hong Kong will decide the ultimate fate of the working class. In this respect, we in Hong Kong are different from our compatriots in the Mainland in that we do not have to join one single trade union, and we will not be arrested or detained for organizing other trade unions. I hope that friends in the FTU will seriously cherish this opportunity as you are not subject to In this society, since you do not have to

CHAIRMAN (in Cantonese): Mr LEUNG, I think the contents of your speech have departed from the topic of our discussion now.

MR LEUNG KWOK-HUNG (in Cantonese): In that case, I have nothing special to say. I only wish to reply to Let me cite from a poem in response to Mr WONG Kwok-hing, or to make clear my attitude, and meanwhile, this is also dedicated to that person in Heaven — Karl MARX. This is the concluding part of a famous poem by George ORWELL entitled *Homage to Catalonia*, which is about the Spanish civil war. He said that he met an Italian soldier in the beginning and they subsequently lost touch with each other. I am not going to talk about how he described that soldier but he said, "Your name and your deeds were forgotten. Before your bones were dry, And the lie that slew you is buried. Under a deeper lie". This is to describe those persons who claim to be working for the working class but are actually not doing so in reality. This poem has actually been translated into Chinese and to save colleagues the trouble of having to interpret it, as they always say that it is difficult to interpret what I said, let me say this in Chinese: "你的屍骨還未乾枯，你的名字和事蹟已被遺忘，殺死你的謊言已被埋葬，在一個更深的謊言之下". I hope Mr WONG Kwok-hing understands the meaning of these lines of the poem.

CHAIRMAN (in Cantonese): Does any other Member wish to speak? Mr IP Wai-ming, you may speak for a second time.

(Mr WONG Kwok-hing raised his hand in indication)

CHAIRMAN (in Cantonese): Sorry. Mr WONG Kwok-hing requested to speak again.

MR WONG KWOK-HING (in Cantonese): Yes, Chairman, I did press the button.

Chairman, since Mr LEUNG Kwok-hung has mentioned my name a number of times, I would like to say something in response. I do not wish to take up too much time of colleagues. From the angle of "Working men of all countries, unite!" in Karl MARX's Communist Manifesto as cited by Mr LEUNG, the amendment proposed by Mr IP Wai-ming today serves to implement the resolution passed by all trade unions in Hong Kong on 26 April, which represents the view of all trade unions in Hong Kong. If, as suggested by Mr LEUNG Kwok-hung, the Paris Commune's principle of electing representatives by "one person, one vote" should be adopted as the benchmark, Mr LEE Cheuk-yan's view of writing the names of three trade unions in the legislation has departed even farther away from the principle of the Paris Commune.

Chairman, I would like to say that solidarity counts on all trade unions, regardless of the date of their establishment or the scale of the establishment. What I wish to say is still this: I very much hope that all trade unions in Hong Kong, regardless of their political affiliations and convictions, will join forces and make concerted efforts to fight for the interests of workers. Lastly, I would like to say: What is true cannot be false, and what is false can never be true. Thank you, Chairman.

MR ALBERT CHAN (in Cantonese): Chairman, do trade unions, workers' unions and the proletariat have the same interests? This is reflected by their actions and what they have actually done. Bearing the name of a workers' union does not mean that the interests of the working class will be protected. In this Chamber, we have seen time and again that when it comes to vote, the so-called

representatives of workers' unions leave the Chamber on the excuse of going to the washroom or they just abstain from voting. At the time of the reunification, some legislation for the protection of the interests of the working class were repealed and some trade unions also abstained in the vote, right? So, bearing the name of a workers' union and forging solidarity among workers' unions do not mean uniting the proletariat or the working class. Solidarity among workers' unions does not mean that the interests of the working class will be protected.

So, in citing those verses just now, Mr LEUNG Kwok-hung only intended to remind the people of Hong Kong and in particular, to remind those representatives of workers' unions that when they call on workers' unions to stand united to forge solidarity among the working class, how do they define the position of their class? We have seen too many cases in which organizations of workers' unions are nothing more than a tool of those in power to control the working class; ultimately, these organizations will only execute the orders of those in power, rather than fighting on workers' behalf for their rights. Representatives of the working class must stand firm to safeguard the interests of the working class and they must say no to those in power. So, when faced with any law, legislation and regulation which threaten the working public and the proletariat, or affect their interests, the workers' unions should come forth boldly to defend the interests of the working class, rather than being at the service of those in power. So, those who are familiar with

CHAIRMAN (in Cantonese): Mr CHAN, please speak on this amendment.

MR ALBERT CHAN (in Cantonese): Alright. So, those who are familiar with Marxism or social democracy should understand clearly the historical mission and responsibility of workers' unions, they should represent the working class and must not sell out the interests of the working class under the false pretence of being representatives of workers' unions.

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

(No Member indicated a wish to speak)

MR IP WAI-MING (in Cantonese): Chairman, concerning this amendment, I have explained earlier on the justifications for proposing it, and some colleagues have further elaborated my points.

First of all, our amendment is not intended to benefit a particular party. In fact, I think in this Chamber many colleagues have engaged in labour-related work for many years. On the questions of how we have served workers and whether we are truly committed to serving them, I think these have to be testified by members of the public and also by the number of members who have joined us.

The most important point that I wish to make is why we wish to follow the mechanism of the Labour Advisory Board (LAB)? As our Vice President, WONG Kwok-kin, said clearly earlier on, we are dissatisfied with the Government for marginalizing itself, and insofar as consultation on labour issues is concerned, the LAB has always been described by the Government as a major mechanism.

Second, as we have stressed time and again, this is the conclusion made at the general meeting of trade unions in Hong Kong held in late April this year by the three Members of the Legislative Council from the labour sector and the six employee representatives of the LAB. In any case, we must accept a reality and that is, in places all over the world, and even in Hong Kong, while we all work for the benefits of workers, we may not see eye to eye with each other in the approach adopted or in our political beliefs and positions. But is such divergence of views so serious that it is impossible for us to co-operate on labour issues and even to the extent that we have to attack each other? I hope Members can think about this point.

As for Mr LEE Cheuk-yan's amendment, we have already explained the reasons why we do not support it. It is because if the names of three labour organizations are specified in the legislation, even though the FTU is included, we are concerned that this will create special interest groups in the labour sector, which is all the more unfavorable to achieving solidarity in the labour sector in Hong Kong.

Here, I call on colleagues to support my amendment. Thank you.

MR LEE CHEUK-YAN (in Cantonese): As expected, the question of how to return the workers' representatives will be the last item discussed towards the end of this debate today. It is because this is the crux of the entire issue. I would like to add a few points in response for Members' consideration.

First, as a matter of fact, what we are talking about does not only relate to the election of the Labour Advisory Board (LAB). Rather, it is about the method for electing members of the LAB, the functional constituency (FC) seats in the Legislative Council, 40 members of the Election Committee, as well as representatives of the labour sector, because the same method of "one trade union, one vote" has been applied in all these elections. So, what is involved here is not only the LAB, but also the FCs. If the method of "one trade union, one vote" is considered to be fine, then, I would like to ask Members First of all, I have to make one thing clear, many people said that LEE Cheuk-yan is a representative of the labour sector, let me specify, I am not a FC Member. I am absolutely not a representative of the labour sector. I am elected by voters in New Territories West. Such being the case, who are the representatives of the labour sector in this Council? I really would like to ask the public whether they know the answer to this question. In this Council, there are three members from the labour sector, two members from the FTU and one member from the Federation of Hong Kong and Kowloon Labour Union (FLU). For how long has this composition, two from the FTU and one from the FLU, been maintained? Why has this situation never been changed? That is all because of "one trade union, one vote".

In fact, how does the method of "one trade union, one vote" actually operate? It enables large syndicates or trade unions to do it all by themselves. For instance, with regard to the FTU, it may have, I am not too sure about the figure, it may have about 200 or 100-odd votes, the FLU may have dozens of votes, while some other trade unions may also have dozens of votes, and altogether they may have hundreds of votes, and they can win the seat if they have 250 or 300 votes. They can exchange their votes and by doing so, they can scoop the seats.

Why do I say so? We hold such strong views not because we will not be elected, but because we consider that the system itself has problems, and as Members all know, we have been calling for the abolition of FCs. But I have to

point out the problems with this system. I have stood for the election of the LAB once but I was defeated. Why? Because the syndicates or trade unions did not want me to join the LAB and so, they pooled their votes together to oust me. I do not feel aggrieved, for this is the way the system works, and this is the way to play the game. I knew only too well that I would lose.

So, Members must understand that the system of "one trade union, one vote" may sound fair, but at the end of the day, it is actually manipulated by a syndicate or trade union, or even by several syndicates or trade unions, including the civil servants unions and some major syndicates, as they will simply pool their votes together. This is the first point. So, why are we so dissatisfied with this system? It is because while "one trade union, one vote" sounds pleasing to the ears that each trade union is on an equal footing, the fact is that it is primarily controlled by major syndicates and trade unions.

Second, Ms LI Fung-ying questioned earlier that my proposal would be even more restrictive, as it is not necessary to hold any elections, and not even a vote would be cast. With one representative from the CTU, FTU and FLU, no voting is required and would that be even more restrictive? Let us not forget that it is actually not easy to recruit members, as people who have engaged in the work of trade unions all know. This is like farmers toiling hard to grow every grain of rice. To people engaging in the work of trade unions, strenuous efforts are required to recruit each and every member and every member can only be won over after much hard work. What is more, these members not only have to vote, but also have to pay a membership fee, and frankly speaking, the membership fee of our CTU is most expensive. Under such circumstances, as they have to pay a fee and they also have to cast a vote, the price they paid is even higher and so, our members should be all the more cherished.

The third point I wish to respond to is the principle for organizing trade unions which we have been discussing earlier. Mr WONG Kwok-hing has stressed solidarity over and over again. According to the principle of solidarity, it is best to have one single trade union and as I also said earlier, it is best to have one major trade union. They said that I am contradictory, for if having one major trade union is that good, why does LEE Cheuk-yan or the CTU not call on all trade unions to join the FTU instead? I would like to explain this point. It is because apart from the principle of solidarity, there is another very important

principle of trade unions, which is equally important as the principle of solidarity, and that is independence and democracy. Trade unions must be independent and their leaders must be returned by democratic means. What is the meaning of independence of trade unions? It means that the trade unions are not under the control of any political party, political rule or employers' organization or syndicate. They must be loyal to workers and workers should have the final say.

But if a trade union is Mr WONG Kwok-hing said earlier that what is false can never be true. That is right, what is false can never be true. The All China Federation of Trade Unions, for instance, is blatantly false. Why? Because its constitution states that the Federation must submit to the leadership of the Communist Party, which well illustrates that it is not an independent trade union. Think about this: Why did workers of Honda Motor Company go on strike in the Mainland? When workers of Honda went on strike in the Mainland, what aspirations were put forward by them? Why is the strike considered to be a breakthrough event, why has it shaken the entire world? It is because the workers did not simply ask for a wage increase, they also requested for the setting up of an independent labour union.

To be honest, Chairman, after reading this news, I think the establishment of independent trade unions for workers in the Mainland is as important as the implementation of universal suffrage in Hong Kong. Both share the same objective of shaking off control and fighting for democracy. So, we in the CTU have always supported the setting up of independent trade unions in the Mainland. We also support independent trade unions in Hong Kong, and the most important principle of independent trade unions is that they must be free from the control of any political party. Another principle is that it must safeguard the interests of the working class. This is more important than the views of any political party or political power.

However, with regard to the interests of the working class, what I must say is that in response to Mr IP Wai-ming's remarks earlier about forging co-operation on labour issues, I am willing to co-operate with them, including the FTU and all the other trade unions, on labour issues. But there is one labour issue which is fundamental and that is, the right to elect by "one person, one vote". That is a fundamental labour issue, not politics. That is the right of workers. If workers do not even have the right to elect, this would be most fatal.

Why are the capitalists so keen about FCs? Because they know how important this is, and they want to obtain this right. Some people said that workers should not care about politics. But it is precisely this political issue that will put workers to death. The capitalists have obtained over 20 FC seats in the Legislative Council, using FCs to control so many people. But what do workers have? In direct elections, yes, workers have a part to play, but in FCs, workers have no part to play at all.

So, the right to elect by "one person, one vote" is, in fact, a most fundamental issue concerning labour rights and interests. On this point, it is obvious that the CTU and the FTU hold completely different views.

I remember the first time I felt most indignant at the FTU was that it had betrayed workers. Seldom do I mention this matter. The FTU opposed direct election in 1988, that is, the right of workers to elect Members of this Council by "one person, one vote". In 1988, they opposed the idea. Think about this: Workers are deprived of the right to elect Members and yet, the FTU was in support of this decision. Why? Because the FTU is not an independent trade union. So, this has already separated the CTU from the FTU, because the CTU supported direct election in 1988, though the CTU was not yet established at the time. Our independent trade union supported direct election in 1988, whereas the FTU opposed it. There was already great divergence of opinions between us then, and this has remained the same even now.

Today, we support the abolition of FCs. I urge the FTU to state its position later as to whether they support the abolition of FCs. I do not mean abolition in future, but immediate abolition. With regard to dual universal suffrage in 2012, the FTU has never indicated support for it and in fact, this often has to do with the rights and interests of workers. I must point out in particular that I am not trying to dredge up all political issues relating to workers, but this is a cardinal question of right and wrong. I must state my position clear.

Lastly, Chairman, I have to appeal to Members to throw weight behind my amendment. While Mr LEUNG Kwok-hung mentioned the model of the Paris Commune earlier, I am actually most supportive of the election of workers' representatives by "one person, one vote". I entirely support it, and I think there is entirely not any problem with it. But under the current circumstances, this

amendment, which proposes that the representatives of the labour sector shall be nominated by joint organizations of trade unions, can best suit the actual situation of all sides. Thank you, Chairman.

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Chairman, to start with, I would like to thank you for approving a special break just now, (*Laughter*) so that I can have a chance to enjoy some fast food with Honourable Members. Chairman, the Government's stance is that it does not subscribe to the amendments put forth by Mr IP Wai-ming and Mr LEE Cheuk-yan today. Basically, we object to these amendments with very clear reasons. First of all, regarding Mr IP Wai-ming's proposal of including members of the Labour Advisory Board (LAB) elected by employee unions as members of the Minimum Wage Commission (MWC), I have to stress that we absolutely have no intention to marginalize the LAB. I dare say that I have some knowledge about the LAB for I had been its Chairman for four years when I took up the posts as the Commissioner for Labour and later as the Permanent Secretary for Labour and Welfare. Given that I have witnessed the development of the LAB for quite a long period of time, I fully understand its role. Moreover, I know the conclusion drawn up at a forum held by the labour sector that they also attach great importance to the role and status of the LAB.

However, why is the Government's stance so clear this time? It is because in appointing members of the MWC, we really make such appointments by merit, so as to ensure that they can bring their competence, expertise, experience, integrity and enthusiasm in serving the community into full play, both in terms of function and nature of work. After all, what is the most important criterion? They should have independent, objective and unbiased analysis and deliberations, and they should serve for the overall interests of Hong Kong. I am not saying that representatives from the labour sector cannot play this role. The problem is, if they join the MWC in such a capacity, they have to submit to the organization they belong to. Unless they join the MWC on an *ad personam* basis, it is very difficult for them to achieve an unbiased status and put forth views which are relatively objective and impartial. After all, a subordinating relationship exists and there is a lack of independence.

In view of this, we have considered such a proposal earlier on. But eventually, we opine that independent members should be appointed on an objective and ad personam basis. This applies not only to members from the labour sector, but also representatives of employers and academics. We should not appoint people based on which education institutions, organizations, employers' associations or trade unions they belong to. Such kind of relationship should not be taken into consideration. Rather, they should be appointed on an ad personam basis. However, they should of course be well known in the labour sector and have a labour background. I wish to reiterate here that we absolutely have no intention to marginalize the LAB. In particular, I have a great affection for the LAB. Some of its members are my old friends, many of them are still working with me. I always describe the LAB as the Government's crucial think-tank for labour policies and also our working partner.

Mr LEE Cheuk-yan's amendment has specified three labour organizations. This may also give rise to problems. As pointed out by some Members just now, even though these three organizations are well-organized and well established, there are still many other organizations and bodies engaging in labour affairs in Hong Kong. As we all know, in view of a considerable number of registered labour unions, these three organizations may not necessarily be able to represent all of them. If the names of the trade unions are written into the law, will it give rise to any problem? Therefore, we should handle this issue cautiously.

Chairman, in appointing these members, the most important factor is that we should assess their knowledge and experience about the labour sector. I have stressed time and again that we do not wish to see that a member has a subordinating relationship with an organization or that he is a representative of certain organizations. If such practice is adopted in the labour sector, the business sector may follow suit. Shall we specify a number of business associations then? It is indeed very difficult.

As I have just mentioned, the objective of setting the minimum wage can be summarized into four words — to strike a balance. We all know that it is not an easy task at all. Therefore, I hope we can view this issue in a pragmatic approach and work together with mutual understanding and concession.

I oppose these two amendments. Thank you, Chairman.

CHAIRMAN (in Cantonese): Before I put to you the question on the Secretary for Labour and Welfare's amendment to clause 10(2)(b), I wish to remind Members that if the Secretary for Labour and Welfare's amendment is passed, Mr IP Wai-ming may not move his amendment to the same provision, while Mr LEE Cheuk-yan may move the addition of subclause (3A) to clause 10.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by the Secretary for Labour and Welfare 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 IP Wai-ming rose to claim a division.

CHAIRMAN (in Cantonese): Mr IP Wai-ming has claimed a division. The division bell will ring for three minutes.

CHAIRMAN (in Cantonese): The question now put is: That the amendment to clause 10(2)(b) moved by the Secretary for Labour and Welfare be passed.

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

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

Dr Raymond HO, Mr LEE Cheuk-yan, Mr Fred LI, Mr CHEUNG Man-kwong, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Mr LEUNG Yiu-chung, Dr Philip WONG, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Ms Emily LAU, Mr Andrew CHENG, Mr Timothy FOK, Mr TAM Yiu-chung, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Frederick FUNG, Ms Audrey EU, Mr LEE Wing-tat, Dr Joseph LEE, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong, Mr Ronny TONG, Prof Patrick LAU, Mr KAM Nai-wai, Ms Starry LEE, Dr LAM Tai-fai, Mr CHAN Hak-kan, Mr Paul CHAN, Mr CHAN Kin-por, Dr Priscilla LEUNG, Mr CHEUNG Kwok-che, Mr WONG Sing-chi, Mr IP Kwok-him, Mrs Regina IP, Mr Paul TSE and Mr Alan LEONG voted for the amendment.

Ms LI Fung-ying, Mr WONG Kwok-hing, Mr WONG Kwok-kin, Mr IP Wai-ming and Dr PAN Pey-chyou voted against the amendment.

THE CHAIRMAN, Mr Jasper TSANG, did not cast any vote.

THE CHAIRMAN announced that there were 46 Members present, 40 were in favour of the amendment and five against it. Since the question was agreed by a majority of the Members present, he therefore declared that the amendment was passed.

CHAIRMAN (in Cantonese): As the Secretary for Labour and Welfare's amendment has been passed by the Committee of the whole Council, Mr IP Wai-ming may not move his amendment to clause 10(2)(b).

CHAIRMAN (in Cantonese): Secretary for Labour and Welfare, you may now move your amendment.

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Chairman, I move the amendment to clause 10(3).

*Proposed amendment***Clause 10 (see Annex I)**

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by the Secretary for Labour and Welfare 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 amendment passed.

CHAIRMAN (in Cantonese): Mr LEE Cheuk-yan, you may now move your amendment.

MR LEE CHEUK-YAN (in Cantonese): Chairman, I move the addition of subclause (3A) to clause 10 and amendments to clause 16.

*Proposed amendments***Clause 10 (see Annex I)****Clause 16 (see Annex I)**

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendments moved by Mr LEE Cheuk-yan 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 LEE Cheuk-yan rose to claim a division.

CHAIRMAN (in Cantonese): Mr LEE Cheuk-yan 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 and Mr CHEUNG Kwok-che voted for the amendment.

Dr Raymond HO, Mrs Sophie LEUNG, Dr Philip WONG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Timothy FOK, Mr Abraham SHEK, Mr Tommy CHEUNG, Dr Joseph LEE, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Prof Patrick LAU, Dr LAM Tai-fai, Mr Paul CHAN, Mr CHAN Kin-por, Mr IP Wai-ming, Mr IP Kwok-him, Dr PAN Pey-chyou and Mr Paul TSE voted against the amendment.

Ms LI Fung-ying abstained.

Geographical Constituencies:

Mr LEE Cheuk-yan, Mr Fred LI, Mr LEUNG Yiu-chung, Ms Emily LAU, Mr Andrew CHENG, Mr Frederick FUNG, Ms Audrey EU, Mr LEE Wing-tat, Mr Ronny TONG, Mr KAM Nai-wai, Mr WONG Sing-chi, Mr Alan LEONG, Mr LEUNG Kwok-hung and Mr Albert CHAN voted for the amendment.

Mr CHAN Kam-lam, Mr LAU Kong-wah, Mr TAM Yiu-chung, Mr WONG Kwok-hing, Mr CHEUNG Hok-ming, Ms Starry LEE, Mr CHAN Hak-kan, Dr Priscilla LEUNG, Mr WONG Kwok-kin and Mrs Regina IP voted against the amendment.

THE CHAIRMAN, Mr Jasper TSANG, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 23 were present, two were in favour of the amendments, 20 against them and one abstained; while among the Members returned by geographical constituencies through direct elections, 25 were present, 14 were in favour of the amendments and 10 against them. Since the question was not agreed by a majority of each of the two groups of Members present, he therefore declared that the amendments were negatived.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clause 16 stands part of the Bill.

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

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): Mr LEE Cheuk-yan has given notice to move amendments to clause 10(2)(c). Besides, Mr IP Wai-ming has also given notice to move the addition of subclause (3A) to clause 10. Both amendments are in relation to the voting rights of members in the Minimum Wage Commission.

Irrespective of whether Mr LEE Cheuk-yan's amendment is passed, Mr IP Wai-ming may move his amendment.

CHAIRMAN (in Cantonese): Members may now debate the original provision as well as Mr LEE Cheuk-yan's and Mr IP Wai-ming's amendments jointly. I will call upon Mr LEE Cheuk-yan to speak and move his amendment first.

MR LEE CHEUK-YAN (in Cantonese): Chairman, I move the amendment to clause 10(2)(c). I will canvass votes in this way. If I speak for less than two minutes, will Members please vote for my amendment? I hope Members can support me.

Why do I think a two-minute speech will suffice? It is because my amendment is really very simple. As we all know, the Minimum Wage Commission (MWC) has a "3-3-3-3" composition, consisting of three representatives from employees, three representatives from employers, three academics and three official members. In order to maintain the independence of the MWC, I think official members can only sit in its meetings but have no voting rights. This can convey a very clear message to the people of Hong Kong that the level of minimum wage is determined by some members who are relatively independent.

As I have also mentioned just now, the Chief Executive has fully manipulated the MWC. All members are appointed by him and they all have voting rights. Moreover, after determining the level of minimum wage, the MWC has to seek approval from the Chief Executive in Council. Indeed, all these mechanisms are controlled by the Chief Executive. Now, the question is,

is it necessary to include three official members in the MWC? In fact, it is already sufficient to have those nine members.

Let me cite the Low Pay Commission in the United Kingdom as an example. It does not have any official members. Government representatives are merely responsible for providing information. The Commission is totally independent. I think Hong Kong can make reference to it. In fact, I do not mean that no official members should sit on the MWC. Official members can be included, provided that they are merely responsible for providing information and statistics. Moreover, they can take part in all debates and deliberations, only that they have no voting rights. This is the fairest and most independent practice.

Thank you, Chairman.

Proposed amendment

Clause 10 (see Annex I)

CHAIRMAN (in Cantonese): I now call upon Mr IP Wai-ming to speak, but he may not move his amendment at this stage.

MR IP WAI-MING (in Cantonese): Chairman, I have, in fact, mentioned this point in the previous motion. We simply put forth our argument from a more positive perspective. We hope that, in the MWC, apart from the chairperson, only nine other members should have voting rights, meaning that the three official members should not have any voting rights. Chairman, we put forth such a proposal merely for the Government's sake, for there are bound to be troubles if those three members also have voting rights. Chairman, first of all, as mentioned by Mr LEE Cheuk-yan and me just now, we note that in the United Kingdom and Australia, no official members are included in similar committees. We have conducted a thorough discussion on the composition of the MWC just now. As all members are appointed by the Government, the Government can control the stance of those three academics. Put it harshly, the safety index is already very high. Moreover, the Chief Executive and the Executive Council

will act as gate-keepers. Under such a situation, if three official members are included, we are afraid that the safety index may become unreasonably high.

Secondly, why do we think that we do this for the Government's sake? We hold that those three official members are appointed in the capacity of public officers, as such, they will perform their duties for the Government. In other words, when they speak in the MWC, they will, very often, represent the Government's stance. Does it imply that in voting on the level of minimum wage in future, they will represent the viewpoint of the Government? If that is the case, those three official members are subject to attacks easily. The employee representatives may accuse them of being partial to employers, whilst the employer representatives may accuse them of being partial to employees. As a result, these three official members will be attacked on both fronts.

Moreover, if the Government has three votes in the MWC, accounting for one fourth of members with voting rights, the public or the labour sector will be aware of the Government's influence in setting the level of minimum wage, and hence, frankly speaking, I believe many labour organizations will approach the Secretary each year, hoping that these official members can reflect, on their behalf, the hourly wage rate in the MWC. By that time, will the Government be exposed to an even greater pressure? Therefore, we think that the relative independence of the MWC should be maintained. Secondly, in order to avoid the Government from offending employers or employees easily, we think that the three official members should not have any voting rights.

Chairman, I so submit.

MR WONG SING-CHI (in Cantonese): Chairman, as I have expressed my views on the previous amendments, I will not spend too much time on this issue. In fact, we do hope that the Government will not be too dictatorial. So long as the three civil servants have no voting rights, the decision made by the MWC will not be fully manipulated by the Government. I hope the Government can accept the amendments put forth by Mr LEE Cheuk-yan and Mr IP Wai-ming. The Democratic Party will support their amendments.

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

MR LEUNG YIU-CHUNG (in Cantonese): Chairman, I wonder if the Secretary would say later that the Minimum Wage Commission (MWC) is an independent body. If he declares that it is an independent body, why does it have official members, who even have voting rights? In such case, can the MWC still be regarded as an independent body?

If this is really the case, I cannot see any element which can tell us that it is an independent body. As a matter of fact, what we are discussing today is the determination of the minimum wage, which is closely related to people's livelihood. Just like many other issues on people's livelihood, we expect that this body can have a certain degree of autonomy and can be accountable to the public independently. However, we find that the MWC is already loaded with problems. One of the problems is, after determining the minimum wage, it should submit a report to the Chief Executive, and it can only release the report with the endorsement from the Chief Executive in Council. In my opinion, there is already a lack of independence, giving the public an impression that if the Chief Executive does not accept the report, he can simply ask the MWC to rewrite it. Therefore, the MWC does not have any autonomy at all.

Worse still, it is now proposed that civil servants will sit on the MWC and they also have voting rights. The credibility of the MWC will certainly be hampered. Therefore, if the MWC is to perform its duties in a pragmatic and fair manner, so as to secure trust from the public, the voting rights of official members should be scrapped and their role is restricted to the provision of information only. However, this is not the case at all. The Government has already assumed a leading role in the MWC, for there are a considerable number of official members in it. Moreover, the capacity of these official members may affect other members, thereby hampering their independence and autonomy. In fact, such problems have already existed.

We opine that the best solution is to set up a secretariat and the role of official members is to provide information only, just like those working in the Secretariat of the Legislative Council, they are only responsible for providing information to us. Moreover, they should have no right to speak, for this will

definitely affect the content and direction of discussion as a whole. I think this point is very important.

Moreover, many Honourable colleagues have also mentioned just now that members of the MWC are appointed by the Chief Executive. I consider that there is an inherent lack of independence, for they are selected by the Chief Executive. This is already a lack of objectivity. I think these members will be partial to the Government, which is also a drawback. Due to such an inherent shortcoming, I really do not wish to see the MWC having many other problems. In fact, the fewer the problems, the better. Therefore, I hope that official members should not have any voting rights. In future, I think it is most appropriate for them to take up the role as a secretary by providing information only.

I so submit.

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

(No Member indicated a wish to speak)

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Chairman, I strongly oppose the amendments put forth by Mr LEE Cheuk-yan and Mr IP Wai-ming. I think Members have a very serious misunderstanding. Their arguments are also generated from a conspiracy theory, thinking that if official members are included, they will act in an authoritarian and dictatorial manner. I think Members have made such remarks out of misunderstanding.

Why does the Government decide to appoint three public officers in the Minimum Wage Commission (MWC)? In fact, there are actual needs and merits in doing so. First of all, please understand, members should of course be independent, and their credibility is very important. However, we should not query the role of civil servants in the MWC. As a matter of fact, these three public officers have a crucial role to play. Regarding the scope of purview, the duties of the three official members concerned are closely related to minimum wage. For example, in the existing Provisional Minimum Wage Commission, the three official members are the Government Economist, Permanent Secretary

for Labour and Welfare and Permanent Secretary for Commerce and Economic Development. They have made great contributions and have provided updated information in areas such as economy, commerce, small and medium enterprises (SMEs), the labour and welfare sector and the macroeconomic development as a whole. They wish to make objective and holistic analysis, bearing the public interests in mind. They have no selfish motive at all.

However, I wish to stress that as representatives of the Government, the official members can act in a fair and impartial manner without any selfish motives. This is precisely what I mean by striking a balance. They have no selfish motives at all, for the minimum wage will not affect the Government. We all understand this point. As such, they can think out of the box, take a wider and overall perspective without subjecting to any pressure, and serve for the overall interests of Hong Kong in a fair and impartial manner. Consequently, the entire process of discussion and deliberation can attain a higher and more professional standard. I think it is necessary for us to understand these points.

Another point I wish to stress is that if we look into the legislation, we will find that it is stated very clearly in Schedule 4 that the MWC has the right to regulate its own procedure. Moreover, it has the autonomy to decide whether voting or other modes should be adopted. I think we should neither interfere in nor impose any regulation on its operation. In making decisions, its members need not vote by a show of hands each time. The members may also reach a consensus among themselves. Is there anything wrong? Why should we impose any regulation on it? Why should we pinpoint at public officers? I think such an intention is utterly wrong. Therefore, I hope Members can understand that we are sincere in serving the community. The Government has not manipulated the MWC at all, nor has the Chief Executive controlled it behind the scene. This is absolutely not the case. I can simply tell you all, I am not the chairman of the MWC. In case I wish to manipulate the MWC, I may have appointed the Secretary as its chairperson. Moreover, the practice of giving public officers voting rights in statutory bodies has been established in the past. This is not a new measure.

Furthermore, I also wish to stress one more point. I hope Members can understand that presently, the overall environment is ever-changing. For example, in the midst of the economic downturn, it is advisable to appoint a

Government Economist to the MWC. In particular, we all concur that minimum wage is closely related to issues on labour and welfare. In this regard, the Secretary is not the chairperson. We all know that the incumbent chairperson is not a public officer. As stipulated in the Minimum Wage Bill, the chairperson should not be a public officer. We have considered why the Secretary for Labour and Welfare should not act as the chairperson. If the Secretary is the chairperson, co-ordination work can be facilitated. However, I firmly refuse to take up this post, because if I do so, it will give the public an impression that the Government is manipulating the MWC. As we all know, the incumbent chairperson is neither an employer nor an employee. She is a self-employed professional from the legal sector. In this way, the chairperson will be fair and just. She does not come from the business sector, nor does she come from the labour sector.

By the same token, all public officers in the MWC are appointed in consideration of their professional background. Such appointments are not made arbitrarily. I have made it very clear just now that there are several major considerations. First of all, as minimum wage will definitely affect the operation of SMEs and the market, there should be an official member with expertise in commerce and economic development. Secondly, the policy areas labour and welfare are closely related with each other. For example, Members have asked if the minimum wage should somehow be linked to the Comprehensive Social Security Assistance; how we can assist the grassroots; and in particular, how the level of wages can be determined. This is exactly our role in the areas of labour and welfare. Thirdly, we should take macroeconomics, economic data and unemployment rate into account. We should understand that as the determination of minimum wage will involve a lot of economic data in future, the Government Economist should have an impartial status and no one can affect his views. He merely does his job in a pragmatic manner, affirming what is right and what is wrong. He can make everything clear, for he is not subject to any pressure. As we all know, minimum wage will not affect Government's wage. This morning, some Members have asked the Government the minimum wage of civil servants, the rate ranges from \$8,000 to \$9,000. In view of this, there is no reason for the Government to manipulate the MWC.

Therefore, please rest assured, there is really no need to worry at all. The Government will not manipulate or interfere. If it wishes to do so, as I have

mentioned very clearly just now, why do I not act as the chairperson? If I were the chairperson, there will not be any trouble, for I can take charge of everything and determine the minimum wage. However, I firmly refuse to take up this post. I have to leave it for professionals in our community. It is because I wish Members can understand that the Government does so out of its goodwill for Hong Kong, hoping to bring the MWC into full play and operate effectively. The MWC may not need to vote. Let us take a look at the paper on the Bill. It is stated clearly in Schedule 4. Perhaps, I read it out here, so that all of you can have a better understanding about it. As stipulated in Schedule 4, "the Commission may regulate its own procedure". That is to say, they may not need to vote. There is no need to vote at all. When do we say we have to vote? It is meaningless to talk about voting rights, for we can make a decision through fostering a consensus. As such, why do we impose any regulation on them? In fact, what is the purpose of doing so? Therefore, I hope Members can understand our intention that we really act out of goodwill.

Chairman, I therefore hope that Members can bear in mind that in implementing the minimum wage, I have stressed time and again that we should strike a balance, adopt an evidence-based approach and have mutual understanding, concession and trust. If people do not trust the Government, thinking that it is manipulating the MWC behind the scene, it is better to scrap the whole project. I think this is the fact. Therefore, I strongly oppose this amendment, for it expresses extreme distrust in public officers, which will have adverse influence on their morale. We all know that it is an enormous task to determine the minimum wage. We have spent a lot of time on it. Our staff working in the Labour Department and the Labour and Welfare Bureau, as well as the Government Economist have worked day and night, hoping that the Bill can be introduced into the Legislative Council as soon as possible. If Members cast a vote of no confidence, it will deal a great blow to the morale of civil servants. I hope Members will oppose these two amendments. Thank you.

CHAIRMAN (in Cantonese): Mr IP Wai-ming, do you wish to speak again?

MR IP WAI-MING (in Cantonese): Chairman, after listening to what the Secretary has said, I think he has put a very big hat on us, saying that we move

this amendment as if we wish to lodge a motion of no confidence in civil servants, which will deal a great blow to their morale. I think such remarks are too serious. In fact, we just wish to determine the minimum wage jointly.

I have stated my justifications clearly when I move my amendment. We are not saying that we have no confidence in civil servants, nor do we wish to deal a blow to their morale. I hope the Secretary can reconsider if this hat is too big for us. Frankly speaking, I really dare not put it on. As I have made it very clear just now, we have made reference to overseas experience and personally, I have also paid a duty visit to the United Kingdom. Moreover, the Administration has arranged us to meet with the chairperson of a relevant institution in Australia. According to our understanding, they do not have any official members. It is not the case that we do not trust official members. If the Government does consider that official members can facilitate the work of the Minimum Wage Commission (MWC) and enhance its professionalism, we think, first of all, as all members of the MWC will be appointed by the Chief Executive, he should believe that these people have such expertise and efficiency before making such appointments.

However, why should three official members be included? As we have just mentioned, this proposal is put forth for the Government's sake. It is because irrespective of the stance held by the official members, it will give the public an impression that their views represent the Government's stance on the level of wages. Is it advantageous to defend the Government's credibility? I hope the Government can think twice about it, for as I have just mentioned, the Government may be attacked on two fronts. Therefore, I hope the Secretary can view it from this perspective, rather than alleging that we have no confidence in civil servants.

Moreover, if the Secretary wishes to enhance the professionalism of the MWC, the three official members can, in fact, sit in and provide information, data and their views, so that the MWC can make reference to them in determining the level of wages. I think this can help enhance the credibility of the MWC. Thank you, Chairman.

CHAIRMAN (in Cantonese): Mr LEE Cheuk-yan, do you wish to speak again?

MR LEE CHEUK-YAN (in Cantonese): Chairman, the Secretary has asked us not to allege that the Government manipulates the situation, or else he would rather not legislate. In fact, he need not say so, for manipulation is a fact. With such great public power, the Government will of course manipulate the Minimum Wage Commission (MWC). As we all know, everything is under its manipulation. The members of MWC are appointed and approved by the Government, and three official members are also appointed. The first and last steps are, in particular, totally controlled by the Government. All members are appointed by the Government, and suggestions put forth by the members have to be approved by the Chief Executive. Therefore, manipulation is certainly involved. However, I will not say that the Government acts in a hegemonic way. It is the Secretary who has said so. In fact, the Government can hardly act in this way, for there are bound to be some opposition among so many members in the MWC.

Chairman, all in all, the Government's role is basically very manipulative in nature, and it need not be manipulative in this respect. On the other hand, if no official members will sit on the MWC, it will give people an impression that its operation is even more independent. The Secretary has just mentioned that we have no confidence in civil servants. I think such remark is not only unfair but also ignorant. Why do I say so? Secretary, excuse me for criticizing you. In fact, there is a big difference between civil servants and the Government. As we all know, even if civil servants have their personal views, they should, after all, follow the instruction given by the Government and the Chief Executive. Even if all official members support the minimum wage rate at \$33, do they dare render support in case the Chief Executive disapproves the rate? However, I do believe in the professionalism of civil servants, they will contribute wholeheartedly their knowledge and expertise to provide all information to members of the MWC. I absolutely trust them in this regard. However, we are not saying that they should not provide information to the MWC or sit in its meetings. We only consider that they should not vote. Civil servants should not be involved in voting. Rather, it is something that the Chief Executive should do. Therefore, the Secretary should not mix them up, alleging that we have no confidence in civil servants for no reason. We only do not trust the Chief Executive. I admit this point as the Chief Executive is not elected by the public. Therefore, under the existing system, we hope that the public can have more involvement and power in decision-making.

I hope Members can support my amendment. In fact, there is no difference between my amendment and Mr IP Wai-ming's. They are just two sides of a coin. My amendment suggests that official members should not have voting rights, whilst his amendment suggests that those nine members should have voting rights. It will be invincible in the entire world if they can be combined together. Therefore, I implore Members to support these two amendments. Thank you, Chairman.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by Mr LEE Cheuk-yan

(Dr Margaret NG stood up)

DR MARGARET NG (in Cantonese): Chairman, I have pressed the "Request to speak" button, but seemingly, it does not work.

CHAIRMAN (in Cantonese): As I think that the session for Members to speak is over, your request is not shown on the screen. Anyway, you may speak now.

DR MARGARET NG (in Cantonese): Chairman, I will be brief. I feel shocked suddenly, for I think this debate is to discuss how to strike a balance in a committee, so that the Government can participate in it on the one hand, and secure the public's confidence on the other. It is because the public know that the Government will not make use of its power at will to manipulate the committee, so as to enhance its independence.

Chairman, we have handled many similar issues before. However, I have suddenly heard from the Secretary that if we support the amendment moved by Mr IP Wai-ming, it is tantamount to casting a vote of no confidence in the Government and civil servants. Chairman, it is very serious to cast a vote of no confidence in civil servants and we should not do so arbitrarily. If Mr IP Wai-ming's amendment has suddenly become a vote to indicate whether we have confidence in the Government or not, we may have different considerations when we cast our vote.

Chairman, I therefore hope that the Secretary can clarify immediately if he is saying that in case we vote for Mr IP Wai-ming's amendment In fact, Mr LEE Cheuk-yan has also mentioned that his amendment is just the same as that of Mr IP. As such, no matter we support Mr IP or Mr LEE, in case the amendment is passed, is it tantamount that we have passed a vote of no confidence in the Government? If so, we may need to call upon more Members to come back and vote. Thank you, Chairman.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Secretary for Labour and Welfare, do you wish to speak again?

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): I wish to clarify. What I mean is that we should not query the role, function and contribution of public officials in the MWC. This point is very important. In fact, public officers are simply civil servants. This is what I wish to clarify.

MR RONNY TONG (in Cantonese): Chairman, simply put, the Government also has its stance. It does not wish that the Legislative Council can amend the minimum wage, nor can Members have any voting right. Does it mean that the authorities do not trust us?

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Secretary for Labour and Welfare, do you wish to reply again?

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Chairman, I have nothing to add.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by Mr LEE Cheuk-yan 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 LEE Cheuk-yan rose to claim a division.

CHAIRMAN (in Cantonese): Mr LEE Cheuk-yan has claimed a division. The division bell will ring for three minutes.

CHAIRMAN (in Cantonese): The question now put is: That the amendment to clause 10(2)(c) moved by Mr LEE Cheuk-yan be passed.

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:

Dr Margaret NG, Mr CHEUNG Man-kwong, Ms LI Fung-ying, Dr LEUNG Ka-lau, Mr CHEUNG Kwok-che, Mr IP Wai-ming and Dr PAN Pey-chyou voted for the amendment.

Mrs Sophie LEUNG, Dr Philip WONG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Timothy FOK, Mr Tommy CHEUNG, Dr Joseph LEE, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Mr Paul CHAN, Mr CHAN Kin-por, Mr IP Kwok-him, Mr Paul TSE and Dr Samson TAM voted against the amendment.

Dr Raymond HO and Prof Patrick LAU abstained.

Geographical Constituencies:

Mr LEE Cheuk-yan, Mr Fred LI, Mr LEUNG Yiu-chung, Ms Emily LAU, Mr Frederick FUNG, Ms Audrey EU, Mr WONG Kwok-hing, Mr Ronny TONG, Mr KAM Nai-wai, Mr WONG Sing-chi, Mr WONG Kwok-kin, Mr Alan LEONG and Mr WONG Yuk-man voted for the amendment.

Mr CHAN Kam-lam, Mr LAU Kong-wah, Mr TAM Yiu-chung, Mr CHEUNG Hok-ming, Ms Starry LEE, Mr CHAN Hak-kan, Dr Priscilla LEUNG and Mrs Regina IP voted against the amendment.

THE CHAIRMAN, Mr Jasper TSANG, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 24 were present, seven were in favour of the amendment, 15 against it and two abstained; while among the Members returned by geographical constituencies through direct elections, 22 were present, 13 were in favour of the amendment and eight against it. Since the question was not agreed by a majority of each of the two groups of Members present, he therefore declared that the amendment was negatived.

CHAIRMAN (in Cantonese): Mr IP Wai-ming, you may now move your amendment.

MR IP WAI-MING (in Cantonese): Chairman, I move the addition of subclause (3A) to clause 10.

Proposed amendment

Clause 10 (see Annex I)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by Mr IP Wai-ming 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 IP Wai-ming rose to claim a division.

CHAIRMAN (in Cantonese): Mr IP Wai-ming 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:

Dr Margaret NG, Mr CHEUNG Man-kwong, Ms LI Fung-ying, Dr LEUNG Ka-lau, Mr CHEUNG Kwok-che, Mr IP Wai-ming and Dr PAN Pey-chyou voted for the amendment.

Mrs Sophie LEUNG, Dr Philip WONG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Timothy FOK, Mr Tommy CHEUNG, Dr Joseph LEE, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Mr Paul CHAN, Mr CHAN Kin-por, Mr IP Kwok-him, Mr Paul TSE and Dr Samson TAM voted against the amendment.

Dr Raymond HO and Prof Patrick LAU abstained.

Geographical Constituencies:

Mr LEE Cheuk-yan, Mr Fred LI, Mr LEUNG Yiu-chung, Ms Emily LAU, Mr Frederick FUNG, Ms Audrey EU, Mr WONG Kwok-hing, Mr Ronny TONG, Mr KAM Nai-wai, Mr WONG Sing-chi, Mr WONG Kwok-kin and Mr Alan LEONG voted for the amendment.

Mr CHAN Kam-lam, Mr LAU Kong-wah, Mr TAM Yiu-chung, Mr CHEUNG Hok-ming, Ms Starry LEE, Mr CHAN Hak-kan, Dr Priscilla LEUNG and Mrs Regina IP voted against the amendment.

THE CHAIRMAN, Mr Jasper TSANG, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 24 were present, seven were in favour of the amendment, 15 against it and two abstained; while among the Members returned by geographical constituencies through direct elections, 21 were present, 12 were in favour of the amendment and eight against it. Since the question was not agreed by a majority of each of the two groups of Members present, he therefore declared that the amendment was negated.

CHAIRMAN (in Cantonese): Ms Emily LAU has given notice to move the addition of subclause (3A) to clause 10, proposing that regard must be given to

the participation of each gender in appointing the chairperson and members of the Minimum Wage Commission (MWC).

CHAIRMAN (in Cantonese): Ms Emily LAU, you may now speak and move your amendment.

MS EMILY LAU (in Cantonese): Chairman, I move the addition of subclause (3A) to clause 10, the content of which has just been mentioned by the Chairman, that is, to include the objective relating to the participation of each gender. Chairman, it is a new practice to add this requirement in the Bill. In fact, such practice is completely new for the SAR Government.

Chairman, the United Nations Economic and Social Council passed a resolution in 1990 to recommend various nations to set a target to enhance women's participation in leadership positions, hoping that 30% of such positions could be taken up by women by 1995.

Chairman, the colonial government had eventually invoked the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in Hong Kong before its withdrawal in 1996. As stipulated under Article 7(b) of the CEDAW, the government should ensure to women, on equal terms with men, the right to participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government.

Hong Kong had signed the CEDAW as early as in 1996. Although the Secretary is not in charge of it at present, he should know that the authorities are drafting a report for submission to the United Nations Committee on the Elimination of Discrimination Against Women (CEDAW Committee). Even with such responsibilities, the authorities only released the *Consultation Paper on Review of the Role and Functions of Public Sector Advisory and Statutory Bodies* in 2003. At that time, it was proposed that the ratio of non-official members of either gender in any government-appointed bodies should be at least 25%.

Chairman, the United Nations recommended in 1990 that the target of 30% should be achieved by 1995. However, the authorities only made a follow-up in

2003 to set the minimum participation rate at 25%. The paper released at that time had also mentioned another amendment to be moved by me later, that is, one may not be appointed as a member continuously for more than six years and may not serve as a member of more than six other public sector advisory and statutory bodies (ASBs) at any one time. The paper had also stated that the authorities should conduct a review on these ASBs, so as to enhance their openness, effectiveness, representativeness and transparency.

First of all, the authorities have not made such a review; and secondly, I think the MWC to be set up today completely fails to meet the above requirements. Therefore, although some criteria will be put forth, they can hardly be applied to assess the Government itself.

Why do I put forth such a proposal today? Chairman, it is because we consider that the authorities have no sincerity to put it into practice at all. Even though such a proposal had been put forth in 2003, the authorities have just decided to raise the target from 25% to 30% in June. In response to an oral question raised by Mr CHEUNG Man-kwong in April this year, the Government said that the rate was above 28% but had yet reached the target of 30%. As pointed out in its reply, among some 400 ASBs, 384 have Government appointed members. Amongst them, 171 ASBs record a women's participation rate of more than 30%. That is to say, less than 50% of such ASBs have achieved the target. Worse still, 40 ASBs have no women's participation at all.

At that time, Mr CHEUNG Man-kwong read out a list of ASBs without any women's participation, including the Board of Directors of the Widows and Orphans Pension Scheme, the Council of City University of Hong Kong and the Airport Authority. More ridiculously, he mentioned that there was no female appointed member in eight District Councils (DCs), namely the Central and Western DC, the Islands DC, the Kwun Tong DC, the Sham Shui Po DC, the Southern DC, the Tai Po DC, the Wan Chai DC and the Wong Tai Sin DC. Of course, we hope that such an appointment system can be abolished immediately.

Mr Paul CHAN queried why there was no female appointed member in those DCs. Secretary TSANG Tak-sing said that DC members were appointed by merit, having regard to the actual needs and participation of the districts. Mr CHAN requested the authorities to conduct a review, for there should be women's participation in all districts in order to comply with these criteria.

Chairman, what the authorities have done really gives us an impression that the Government has neither sincerity nor determination to enhance women's participation in these ASBs. As I have mentioned just now, the authorities are now drafting a report for submission to the United Nations. The CEDAW Committee, after assessing the report submitted by the SAR Government at its last meeting held in late August 2006, pointed out that the SAR Government should take sustained measures, including temporary special measures, such as the establishment of adequate numerical goals and targets, and timetables, so as to progress more expeditiously towards women's full and equal representation in elected and appointed bodies in all areas of public life.

I think the Secretary has simply turned a deaf ear to all these suggestions. As we all know, the Secretary has made efforts to implement gender mainstreaming for nearly 10 years. At the meeting of the Bills Committee, I was so surprised to note that there were only two female members in the MWC. Apart from the chairperson, there was just one female member. It was not up to standard at all. I asked if the Deputy Commissioner for Labour had ever heard of gender mainstreaming and why it should be implemented. What was the reply I obtained? Chairman, to my surprise, he had no idea about it and had never heard of it.

More ridiculously, the Secretary, who was in charge of gender mainstreaming, told us that a considerable amount of money was allocated to provide training for several thousands of civil servants. Definitely, the Deputy Commissioner had not received such training. Given that the policy bureaux and departments which are responsible for implementing gender mainstreaming have never heard of it before, should we intensify our efforts in this regard? Should we stipulate it in the law, so that they can make thorough consideration when handling the work concerned in future?

Chairman, I am really puzzled. Nowadays, females are becoming more and more competent. Many faculties in universities are dominated by female students. Some people even say that men may be eliminated several thousand years later. Given that women are so competent, why do we not give them more opportunities? Why are there no female members in 40 Government appointed committees? Chairman, we think the authorities can definitely make more efforts in this regard.

Members of the Executive Council are appointed by the Chief Executive. However, among 30 members, only seven are females. How come there is such a situation? Take the number of directorate officers as an example, there are 1 206 directorate officers in total. Among them, 838 are males and 368 are females. The women's participation rate is 30%, which can of course be higher. Moreover, the Legislative Council can also do better. Among 60 Honourable Members, only 11 are females, accounting for 18%. And among 509 DC members, only some 90 are females. Chairman, I understand that the Government can hardly guarantee the victory of female members in the election. As pointed out by the United Nations CEDAW I have just mentioned, political parties are responsible for ensuring that there are female candidates in the election list, and the positions they hold can enable them to have a chance to win in the election.

Chairman, some Honourable colleagues have pointed out today that the situation of the Democratic Party is not so satisfactory, either. In this regard, we should admit humbly that there is much room for improvement. Chairman, the situation of your political party is tantamount to the pot calling the kettle black. I think we should do our utmost. We also note that among 1 320 village representatives in the Heung Yee Kuk (HYK), 1 292 are males and 28 are females. Female village representatives only account for 2%. In view of this, the Democratic Party invited those female village representatives of the HYK to a meeting on the 29th day of last month. At the meeting, Ms CHAN Ka-man ridiculed us, saying that they would not take the Democratic Party as an example. This does not matter. If we need to make improvement, we will do so modestly. However, the HYK should make improvement as well. We therefore visited the villages in Tuen Mun and Yuen Long to meet with them again last week. In the coming two weeks, the Democratic Party will have discussion with them at the HYK again. Chairman, voter registration is already underway now. At the beginning of next year, various villages will conduct a re-election. I do hope to see some females living in these villages can stand in the re-election. When we met with some women in Yuen Long on that day, a female DC member told us that she was prepared to participate in public affairs. Her husband allowed her to do so, provided that she could handle all household chores currently taken up by her. I am really speechless.

Chairman, I mentioned on that day that we should not discuss with women, we should discuss with men instead. Today, I also wish to talk to men, for I

know that many of them oppose my amendment. Perhaps, some people may think that women should not be so meddlesome, nor should they take up so many posts. Chairman, in fact, I find this very important. You may also note that according to many surveys, women who are in certain top positions, in particular, those with great purchasing power Women may have very different way and mode of consumption, and they buy different things. What do men like to spend their money on? Chairman, please correct me if I am wrong. Men like spending money on luxurious cars, tobacco, wine and things that bring excitement, whilst women like to buy things for their families, such as health food, or things for babies and family members, so as to keep the whole family in harmony and in good health. At present, more and more women have taken up high positions and they have purchasing power, which has brought about changes to our economy. Mr Vincent FANG may also comment on it, as the business of his shops will boost if more women go shopping. At present, there is no such provision in the Bill. However, by taking this first step, we can convey a very clear message to the Government that it is necessary to make efforts in this regard.

Even though such a provision is not stipulated in the Bill, I hope that in future, when the Government submits papers to the Legislative Council which are related to any committee, it should state if its composition meets the participation target of each gender. In case of non-compliance, it should explain why the authorities fail to include females in these committees.

With these remarks, I propose the amendment.

Proposed amendment

Clause 10 (see Annex I)

CHAIRMAN (in Cantonese): The health food in my home is bought by me.
(*Laughter*)

MR CHEUNG MAN-KWONG (in Cantonese): Chairman, I rise to speak in support of Ms Emily LAU's amendment. As regards this issue, the Democratic

Party feels very embarrassed. If Ms Emily LAU had not joined the Democratic Party midway, there will only be male Legislative Council Members from the Democratic Party. As regards the suggestion raised by Ms Emily LAU, I have reviewed the male-to-female ratio of the Democratic Party, and the ratio is one to six, that is, there is only one female member out of every six male counterparts. This issue has made me feel very anxious, and I cannot give a full account of it. I can only say that women's aspiration to participate or engage in politics or join political groups is very low.

Until one day, I found my answer. Ms Emily LAU, Mr IP Kwok-him and I went to Yuen Long to visit some local women who participated in politics or social services. A female Yuen Long DC member told me that she had once intended to take part in some social services, and, as what Ms Emily LAU had mentioned earlier, she asked her husband for advice. The answer of her husband was very simple, "You should do what you have all along been doing at home, then you may use the remaining time to take part in social services." This line of thought is indeed very traditional, and this restricts women from taking part in social services. Her husband considers her the only one in the family responsible for family chores. Therefore, she has to do what she has all along been doing. Let us put it this way, I believe if I asked my wife for advice as regards my intention to stand in the Legislative Council election, and she replied, "You should do what you have all along been doing", I would not be able to stand in the election.

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

In a society of gender inequality, everyone takes this phenomenon as natural, but in fact this is abnormal, distorted, and unreasonable. Therefore, when I speak of this issue today, I have to point out that according to the recommendation of the United Nations Economic and Social Council Resolution in 1990, the proportion of women taking up leadership positions had to reach 30% by 1995. This figure is also a new promise recently made by the Government in response to a Legislative Council Member's question. However, even though such a promise has been made, it does not mean that we can meet the target. At present, among the 400 or so advisory or statutory bodies, 213 bodies

have a women's participation rate of lower than 30%. As such, we opine that whether women's situations and points of view are really taken into account during the Minimum Wage Commission's decision-making process is of great significance. In addition, we have to enhance the social and economic standings of women from an economic perspective.

According to a survey on earnings and working hours conducted in 2009, we found that the median hourly wage of female employees was in fact significantly lower than male employees. The median hourly wage of male employees was \$64.3, while that of female employees was \$53.4. In other words, the average hourly wage of women was \$11 less. As such, we very much hope that gender balance can be taken into account in appointing members to the MWC, so that at least there will be a reasonable proportion of female members to study from an economic perspective why women are paid lower wages in jobs. This may not have anything to do with their abilities, it may purely due to discrimination. We need more perspectives of women, who may convey their wishes and champion what they hope for from a first-person point of view.

Hence, I very much hope that the MWC — in fact, this request is very humble — has at least 30% of its members being women, so as to ensure that the labour force of both genders is adequately represented in the MWC. As a matter of fact, it is even not wrong to have 50% of its members being women, as the male-to-female ratio of Hong Kong is also around 50%. I hope that the views and aspirations of women and men regarding their work can be sufficiently reflected and fairly treated in the MWC. Thank you, Deputy Chairman.

MR LEE CHEUK-YAN (in Cantonese): Deputy Chairman, I support Ms Emily LAU's amendment on behalf of the Hong Kong Confederation of Trade Unions. This amendment is very important, as it looks into the issue of minimum wage from a female perspective. According to global statistics or studies on minimum wage, female employees actually benefit most from a minimum wage. Why is that so? In fact, it is not a good thing to benefit from a minimum wage. It only implies that female employees are in a disadvantaged position in the labour market, which forces them to accept a lower wage. Although female employees

are in a disadvantaged position, it does not mean that male employees are in a strong position. The two are in fact in a disadvantaged position, which is indeed a sad phenomenon.

I have been engaged in trade union work for so many years, and I actually find that some issues are difficult to cope with. If women are in a disadvantaged position, why does it not mean that men are in a strong position? The reason is that men do not accept an excessively low wage, while women are willing to accept. As a matter of fact, it is pitiable that women are forced to accept a low wage. Why do women accept a low wage? This may have something to do with the concept that "men go out to work while women stay home". This concept in fact should change with the times, and I think society will eventually put an end to this concept or tradition. In fact, everyone should have his or her own personality or background. Men need not necessarily go out to work and women need not necessarily stay home. This concept is absolutely incorrect. Relevant arrangements should be made by the family itself. Of course, this is just a theory. In fact, at present, men and women both need to go out to work. Although what I said just now is merely a theory, I believe that in future, we should consider whether men can play a more active role at home by taking up more gender-based work.

I would also like to point out that the situation where one is forced to accept a low wage is actually very obvious. When we dine in a Chinese restaurant, do you notice that we are mostly served by waitresses, whereas in the past, we were served by waiters. Why is it that waitress outnumber waiter? This has to do with the financial turmoil. What impact did the financial turmoil bring? All waiters were dismissed and when there is recruitment, the employer will consider, a waiter's monthly salary is \$11,000 to \$12,000, but for a waitress, he only has to pay \$6,000 to \$7,000, with working hours being the same. If the employer sees that there is room for a lower wage, he may pay \$8,000 or even \$7,000 to hire a waiter/waitress. As a result, only women are hired. Even though men come to the job interview, they will not accept such a low wage, while women will. As such, the current employment situation of the restaurant has been changed. This is actually very pathetic.

Why do we fight for minimum wage? One of the very important reasons is that if the cutthroat price competition persists, women will be the victims, and

it is unfair to them. According to global figures, studies on the ratio of those benefiting from a minimum wage reflect that women benefit more than men. Women are willing to accept a low wage, just as what I said earlier, because they think that they have not been engaged in the sector, and they have neither the working experience nor academic qualification. They are forced to accept a low wage as no other alternatives are available. They also want to get a job and their husband will get a job, and they do not mind earning a bit less. This is actually very pathetic. Why do husband and wife both need to go out to work? This is because the wage of the husband is very low, so the wife has to go out to work. The couple has to work very hard, but the most miserable thing is that the harder they work, the lower the wage. This is a true reflection of society. Under such a circumstance, if the proportion of female members in the MWC The present ratio is less than half of what Ms Emily LAU has requested. What she has suggested is only one-third, which is very basic, that is, 30%. It is unreasonable for not meeting the 30% ratio. If all members of the MWC do not consider the issue from the perspective of women, there will be a problem of lacking in sensitivity. Therefore, we very much hope that there will be an adequate number of female members in the MWC to bring their sensitivity into play.

The Secretary has a pet phrase "to strike a balance", but he definitely fails to strike a balance in this area. You have also heard him say repeatedly that the whole Bill is to strike a balance, but will he be able to do so this time? As a matter of fact, even if one-third or 30% of members are women, this is hardly an adequate balance. We only want to see some improvement made to such an imbalanced ratio, but the Secretary has all along refused to take actions. I would like the Secretary to explain how to strike a balance, as you fail to balance the male-to-female ration in this area.

I hope that Members will support Ms Emily LAU's amendment. Thank you, Deputy Chairman.

MR LEUNG YIU-CHUNG (in Cantonese): Deputy Chairman, I recall that in the mid-1990s, prior to the enactment of the Sex Discrimination Ordinance, many job types were taken up by men, including driving a bus. At that time, we

certainly did not see any woman driving a bus or a taxi. But after the enactment of the Sex Discrimination Ordinance, Members can see that many job types, such as driving a bus and a taxi, are also taken up by women today.

In other words, legislation certainly has its effect. In the past, Members clamoured for gender equality. We had discussed the issue for many years in the mid-1990s, but was there any effect? The answer is no. But after the enactment of the Sex Discrimination Ordinance, we can see that over these ten-odd years, women can, in many circumstances, choose some jobs on her own without being subject to sex discrimination in society. Improvement has really been made in this respect. Therefore, legislation is important.

What Ms Emily LAU proposes today is the enactment of legislation. Why? Ms Emily LAU has put forward much information earlier. I think she has made much effort in collecting the information, which is in great detail. She said that within the Government's existing consultative framework, the number of women is less than half or more. In other words, without the regulation of legislation, the Government will, just like what it did before, only indulge in empty talking by saying that the rights and status of both genders will be respected. However, as there is no legislation, no one in society will take any actions in this respect, or the actions taken are not adequate.

Therefore, I hope that today marks a signal that after the enactment of legislation, we have to strike a balance between both genders in the MWC, and we also have to respect each others, so that other committees or consultative bodies will follow suit. Of course, what we propose today is only a very humble request. We are not fighting for a male-to-female member ratio of 50:50, we merely hope that 30% or no less than 30% of the members are women. This is indeed a very humble request. I consider this very important, so in this regard, I greatly support Ms Emily LAU.

Today, in our discussion on the MWC, why do we think that women's participation rate can be enhanced? Why can we not do without the participation of women? Why is it that only 30% of the members are women? In fact, we are all aware that an unsatisfactory social phenomenon has emerged in the recent ten years or so. Very often, some female new immigrants have to go

out to work owing to their families' financial difficulties, and they are forced to accept some low-paid jobs in order to support their families. Some local workers say that these women have pulled the wage down. This is not an ideal phenomenon for the two parties. First, there are conflicts between local workers and new immigrants. On the other hand, new immigrants, mostly female workers, try hard to get a job at the cost of lowering their wage. This is actually not an ideal situation. It is evident that society has not addressed and shown concern to this problem.

In our discussion on the MWC today, I believe that representatives from the labour sector can definitely reflect these problems. But in our view, the three seats for the labour sector are hardly sufficient. If more female members can be involved, I believe these problems can, to a certain extent, be adequately reflected and supported. The reason is very simple, it is not enough just to reflect the problems, we also need the support and recognition from the MWC. If some people think otherwise, there may be implications on the wage level to be determined in future. In this respect, I think that in the long run and from a broad perspective, if this legislation is approved today, that is, if Ms Emily LAU's amendment is passed, all other commissions in future will attach importance to women's participation, and issues concerned by women can also be adequately reflected within the commissions; in this way, women can be respected and taken seriously.

Therefore, I support Ms Emily LAU's amendment.

MS AUDREY EU (in Cantonese): Deputy Chairman, today marks the third day of our sitting for the deliberation of this Bill. Deputy Chairman, I believe you also note that the Civic Party's views on many amendments have been conveyed by Mr Ronny TONG on our behalf. I agree to the opinions raised by Members, so I have not made any attempt to make a long speech. However, I do not know why coincidentally, when Ms Emily LAU stood up to move an amendment on wider participation by women, Mr Ronny TONG has to attend another meeting. Therefore, I am now speaking on this amendment on behalf of the Civic Party.

Deputy Chairman, I very much agree to the remarks made by Mr LEE Cheuk-yan and Mr LEUNG Yiu-ching that women, especially those with low income and those newly arrived in Hong Kong, should be offered minimum wage protection. All along, I agree to their viewpoints, so I will not repeat them. But Deputy Chairman, I would like to highlight one point. Mr LEE Cheuk-yan said that women are very sensitive, and are willing to take up low-paid jobs that men very often do not want to take up. In fact, this reflects the differences between both genders. Although women are regarded as weak, but in the most difficult times, women in fact have much stronger endurance. Therefore, a remark by Mrs ROOSEVELT of the United States is always my personal motto. She described that women is like a tea bag, you never know how strong she is until she gets into hot water.

Women are not only sensitive, but also persevere in work. Many senior members of the legal sector did not like women to be lawyers in the past, and they considered that it was not suitable for women to study law. After the establishment of the Faculty of Law at the University of Hong Kong, many law firms prefer recruiting female lawyers, as they find women to be reliable. Deputy Chairman, the number of female lawyers in the legal sector has increased continuously since then.

Deputy Chairman, I do not intend just to mention this issue when I rise to speak. What I intend to say is that many people, after listening to our debate, may think that Ms Emily LAU's proposed amendment is to ensure that women's participation will not be less than 30%. But I want to point out that this is not the case. In fact, as always, Emily LAU is very politically correct. According to her amendment, subsection (3A) actually means that in appointing the chairperson and members under subsection (2A), (2B) and (2C), the Chief Executive must have regard to a participation target of at least 30% of each gender. This ensures a rate of at least 30% for women, but also ensures a rate of at least 30% for each gender. Deputy Chairman, why do I raise this point in particular? This also explains why I mentioned the fact that Ronny TONG was absent when I started to speak. I do not know why he was absent. The Civic Party is a bit different from other parties and groupings — we do not know why the male-to-female ratio is tilted towards the female. Three of our five Legislative Council Members are women. As such, the current suggestion of having regard to a participation target of at least 30% of each gender is actually

more applicable to men than women. Therefore, I want to highlight that this amendment is not to ensure the participation rate of women, but to ensure a participation rate of at least 30% for each gender.

Also, many men in Hong Kong always complain that there are too many strong women, and that men have no status. I believe that Ms Emily LAU has a very long-term objective, though this objective is at present mainly directed to protecting women's rights in respect of minimum wage. But as every dog has its day, this provision may also be used to protect men in future.

Therefore, Deputy Chairman, I would spare no effort in supporting the amendment proposed by Ms Emily LAU, as men can also be protected. Thank you, Deputy Chairman.

MR WONG SING-CHI (in Cantonese): Deputy Chairman, fortunately, during the discussion on this issue today, you are sitting on the Chairman's seat, as this is a genuine demonstration of a more proactive participation by women. I think this is out of the goodwill of our Chairman, Mr TSANG. I do not know if this is the case. I hope it is.

Mr CHEUNG Man-kwong mentioned just now that many surveys indicated that low-paid women outnumber their male counterparts. Furthermore, there are about 600 000 to 700 000 housewives in Hong Kong. I once conducted some surveys on the circumstances of these housewives, among them, nearly 70% felt at ease that their husbands go out to work, and they were willing to play the role of housewife in the family. I also further asked about the related reasons. Of course, job stability might be higher at that time, so they could rest assured.

However, there is another circumstance, if these women go out to work, the first restriction is their time, and the second restriction is that they have no working experience. They are worried that when they go out to look for jobs, the wage will be excessively low. Such being the case, they prefer to stay home. However, after the passage of the minimum wage legislation, anyone who go out to look for a job — except those who are exempted, as mentioned earlier — will basically have a minimum wage. Under such a circumstance, more housewives

may consider going out to work when they do not need to take up household chores. But when they take the initiative to work, how can their rights and interests be protected, or how can they enhance their work performance? How can they bring their strengths into full play during the process? Secretary, as regards these circumstances, I, as a man, sometimes really do not quite understand. This is particularly so to us men who work everyday. I really do not quite understand the plight of my wife when she does household chores at home. Of course, I also do household chores, and I also know that it is very tough, so I try to work outside rather than work at home. But I know that my wife is working very hard at home and she has to handle everything.

Women have to manage household affairs, go out to work, and face such problems as whether there is any wage reduction, but men fail to have a good understanding of these situations. Very often, there is a need to have women to take part in the discussion in person, during which they can convey and persuade other men in attendance to understand their circumstances. I am worried that if most members of the future MWC are men, and the one or two women appointed to the MWC may be engaged in works outside the family, just like what men do, these women do not really understand the circumstances faced by an increasing number of housewives having the opportunity to go out to work after the passage of the Minimum Wage Bill. If this is the case, I believe that there will be some bias in views during the discussion of the MWC; worse still, the arrangements made may not cater to the actual situation due to an inadequate understanding of the plight of these housewives.

Therefore, Deputy Chairman, I support the amendment proposed by Ms Emily LAU. It does not only address the problems related to gender, but also the problems related to family. I think that in the Legislative Council, we always talk about the family-friendly concept. This concept can by no means be dominated by men alone, it should involve the participation by both genders on an equal footing and in a concerted manner. Therefore, Secretary, as you are in charge of both labour and welfare matters, and are concerned about family harmony, I hope you can really take into serious consideration Ms Emily LAU's views on this Bill. Of course, it would be best if the Secretary supports Ms Emily LAU's amendment, so as to attain a fairer male-to-female ratio in the MWC.

However, I am also worried whether Ms Emily LAU's amendment can be passed. Even if it cannot be passed, I hope the Secretary can indeed implement the direction proposed by Ms Emily LAU when he handles the MWC or other statutory bodies or other consultative committees in future. In this way, our society can take forward the implementation of gender equality and harmony in families and society. Thank you, Deputy Chairman.

DR PAN PEY-CHYOU (in Cantonese): Deputy Chairman, in the discussion on labour issues, women's contribution to society as workers has indeed been ignored very often, particularly by us men. Let me first talk about my personal experience. My father-in-law was physically weak when he was young, and my mother-in-law was uneducated, but they had four children. The family lived in a squatter area, and there was utterly no protection for livelihood at that time. As no other job options were available at that time, my mother-in-law was willing to take up any job. She had also been a coolie at a construction site, and so on. She would take up any jobs provided that she could earn some more money. She managed to raise four children by working so laboriously and strenuously.

There are in fact many female workers in our society, particularly in the previous generation. Many old ladies lived a very hard life when they were young. They were not educated, and they worked laboriously in the industrial society of Hong Kong regardless of wage. Very often, they had to take care of their children after work, because no one could help them in these respects.

According to surveys, in most societies, female workers actually earn less than men. Even they are engaged in the same sector, women's position is also inferior. Therefore, as regards the discussion on the MWC, as its work has more relevance to female workers in view of the fact that there are more low-paid female workers, I consider it proper to include a certain or an appropriate proportion of female members in the MWC.

However, when such a situation is taken into consideration, we also find ourselves in a dilemma. The reason is that the Government has already laid down some guidelines and principles in respect of the appointment of members to advisory and statutory bodies, including the gender proportion, as well as the term

of office and the year of service, which will be proposed by Ms Emily LAU later on.

We are of the view that it seems a bit improper to include this provision in the Minimum Wage Bill. If our concern is that the Government has not duly put these regulations and guidelines into practice I think that the Government should be reprimanded in this respect. I also hope that the MWC will not become another body where the Government violates its own regulations. However, if we hold that the Government should duly implement these regulations, we may have to consider introducing a separate legislation to require compliance by the Government. The legislation should provide that when the authorities appoint members and set up commissions or statutory bodies in future, it has to comply with the requirement on the participation target of each gender.

Therefore, the Hong Kong Federation of Trade Unions will abstain from voting on this amendment.

MS CYD HO (in Cantonese): Deputy Chairman, I have quoted some figures during the resumption of Second Reading debate, and now I would like to restate them quickly. In Hong Kong, the income of 85 500 women is less than \$4,000, while that of 414 000 women is only between \$4,000 and \$6,000. In fact, foreign domestic helpers have been included. After deducting the 200 000 or so foreign domestic helpers, the income of 240 000 Hong Kong women is still lower than \$6,000.

When we talked about women in poverty in the past, we would very often mentioned that women, particularly those of our generation or one to two generations before, gave the chance of schooling to the boys in the family since childhood for the sake of family responsibility. If the family had no money to pay the school fee, girls were the first to cease their studies. So, they were deprived of the opportunity to receive education. When they grew up, say in the 1960s, women had a very happy time in Hong Kong. At that time, there were factories, and people could be self-reliant. Some female employees in their teens or early 20s could earn a living by working in factories. They relied on themselves instead of their parents. Although women of that generation were neither highly educated nor highly paid, they were economically more

independent than before, and their awareness has been raised. Of course, there were also some other people who were as lucky as us, our families gave us an opportunity to receive education, so we could work and also have our own career.

Nowadays, women have the opportunity to work, but they cannot get a reasonable return as the decision-making and management level is dominated by men. Earlier on, the Equal Opportunities Commission has conducted a study on "equal pay for work of equal value". Here, I have to explain what "equal pay for work of equal value" means.

There are different jobs involved in a production process. Take the clothing and textile industry as an example. Workers engaged in ironing and packaging are mainly men. Why? This is because the temperature of the ironing room is very high, up to 40 or so degrees, so workers take off their clothes while they work, with only the pants on. How can women be engaged in this kind of work? Packaging involves moving things. However, the production value of ironing and packaging may only account for 20% of the whole production process, while sewing is the main part. Nevertheless, if we do some analysis on the cost of a piece of clothing, we will find that the wage of the ironing section is very high or disproportionally high. The reason is that the plant manager is a man. In working out the price, the male-dominated management will give rise to such practices. He will think that as men need to support their families while women do not, men should earn a higher wage. However, some positions can by no means be taken up by women, just like the example I raised just now, but this does not mean that the positions they take up nor the effort they contribute are unimportant in the overall production process.

Therefore, we have to continue to discuss the concept of "equal pay for work of equal value". As a matter of fact, for clerical posts, many of such posts are from the financial and service sectors. We see that the reception post is mostly taken up by woman who has to sit at the main entrance. Up till now, many receptionists are women. A receptionist gives people the first impression of the organization. This is actually very important and is part of the public relations work. However, the management of many companies considers such post to be merely in charge of dispatching documents, receiving lunchboxes or flowers for other colleagues in the office. The management is totally unaware of

the importance of this post. This again is attributed to the fact that the management is very often still dominated by men.

At present, we find that there are many changes among civil servants and government officials. Women may not be inclined to start a business nor take risk. They very often prefer to have job stability, but this does not mean that they are less productive. Due to their cherish for stability, and their nature to discharge fully their duties and work hard, there is an increasing number of women in the Civil Service and in the team of accountability officials, and they have brought about some fundamental changes. Some civil servants told me that, previously, meetings would be held during the happy hour after work when there was the offer of "buy one get one free". Nowadays, breakfast meetings are held instead. High-ranking female officials convene breakfast meeting at around seven after they have taken their children to school. The meeting ends at around nine in the morning. Women who manage to make their way to the management level with their own effort have brought changes to the culture of the entire working team. I believe that there will be even more changes in the culture in future.

Deputy Chairman, the situation in the commercial sector is more obvious. How did the management in the commercial sector conduct their business negotiations in the past? They would go to the bathhouse. How could women be involved? We can see that in some professions, where one can move upward with his/her own ability, such as Civil Service, government officials, lawyers or doctors, women perform very well. Many important posts have now been taken up by women, but why are there still so few women taking up important positions in the commercial sector? Just count the number of chairpersons of listed companies, how many of them are women? From the big difference in number, Members can see that the culture has to be changed in many aspects.

Women who manage to move upward start at low levels in the very beginning. If we fail to champion equal rights for women at low levels, they will not allow their children to receive education. Many women in single-parent families earn less than those of the same gender, thus hindering the growth of their children. Therefore, Deputy Chairman, I very much agree to the amendment proposed by Ms Emily LAU, that is, a participation ratio of no less than 30% for each gender. There is no need for men to be afraid. They do not need to think that this is the end of the world, do not think that since there are

currently more women than men studying in the Faculty of Law at the University of Hong Kong, men will be miserable in future. It does not matter at all. We are talking about gender equally, not female hegemony. Of course, we also do not hope that male hegemony will continue to exist in a paternal society.

However, gender refers not only to physical gender but also gender recognition. As women of our generation usually need to work harder than men so as to be on an equal footing, their way of thinking may be manlier than men very often. Members of the past generation, that is, Members aged 50 or so now, were once dubbed "a group of men in dress and high heels" by critics. How about new Members? I note that Miss Tanya CHAN has recently been dubbed a macho Member by a host. So, this is really awful. I hope that apart from the physical gender, it is most important for women in managerial or decision-making positions to recognize their own gender. As a matter of fact, men and women are in general different in nature or personality. For example, men like to keep pressing others to quarrel with them, as this is their only way of communication. Therefore, if women do not argue with them for the sake of harmony, this will make them angry. This is my personal experience of late. Of course, this is only a difference in general. Everyone still has his or her own quality and character.

I would like to raise a special point, I hope that women being appointed to the MWC or other women in the decision-making level should not just think that they are women in the physical sense. Most important of all, they have to recognize their gender, including the strengths of the gender, such as the fact that we are tenacious. Many men are also tenacious, but in general, women are more tenacious. However, women also have to accept some limitations of their gender. For example, women in general need to vent their emotions very often, but women with a successful career often think that crying is a damnable and immoderate act. Therefore, I consider it important for women who are competent to take up managerial positions to look back and accept the strengths and limitations of their gender. There is also a particular need to understand grass-root women, who still have to undertake many family responsibilities. They need to take care of their families, which is a barrier that has been stridden over by working women. However, many grass-root women are still subject to many similar limitations, and they need the understanding and care of women in public office.

Deputy Chairman, I support this amendment, but I have to point out that the quantity is only an express provision made under the law and the system. However, can women who accept the appointment eliminate women poverty and bring about equality for both genders? This actually depends on the joint monitoring and promotion efforts by men and women. Thank you, Deputy Chairman.

MR IP KWOK-HIM (in Cantonese): As Mr CHEUNG Man-kwong said earlier, in a visit arranged by the Panel on Home Affairs to the New Territories, we exchanged views with women and understand how they felt about participating in politics or village representative election. As a matter of fact, the proportion of women participating in politics or social services, or taking up high positions in the management level of companies or the Government is not high, and the number of people concerned is not that many. There are historical reasons for this situation. In China, the factor that it is a feudal society has to be taken into consideration. In overseas countries, these reasons are also present. Apart from the factor related to feudal thinking, there are also many other reasons, such as physiological factors and so on. How should we view this situation? Improvement should be made and such a situation should not arise.

Therefore, Ms Emily LAU mentioned that a provision be added in the legislation, providing that a participation target of at least 30% for each gender be attained when it comes to appointment. As regards this target, we agree to this target-oriented approach. Let us look at the situation of the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB), to which I belong. Among the Legislative Council Members from the DAB, there is only one female member, that is, Ms Starry LEE. We really need to make more effort. Even among our 132 District Council members, we only have 28 female District Council members, who account for 21% only. In our DAB leadership, there are 12 women in the 50-strong Central Committee, accounting for 24%. There are 5 women in the 20-strong Standing Committee, accounting for only 25%, which also falls short of 30%. Therefore, we will work hard to reach the target. But when it comes to enactment of legislation, which imposes mandatory requirement, we think everyone should put in efforts.

Therefore, we have reservations on making mandatory requirement through legislation. So, we will abstain from voting on this point. We are not against this target, and we will strive hard to reach it. As regards the amendment to be raised by Ms Emily LAU later on, that is, concerning the "six-six principle", we are actually heading towards this target. We do not think that it is a good idea to constitute an offence whenever the limit is exceeded. A more acceptable approach is to make concerted efforts to head towards this target. Therefore, we will also abstain from voting in that respect.

Thank you, Deputy Chairman.

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

(No Member indicated a wish to speak)

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Deputy Chairman, first of all, I would like to thank Ms Emily LAU for putting forward this amendment. I think this amendment is well-intentioned and much thought has been given to it. I heard her mention the Convention on the Elimination of All Forms of Discrimination against Women, which is actually under my purview, as I am now in charge of women affairs. All women affairs are handled by the Labour and Welfare Bureau. Therefore, the Women's Commission is one of the areas of work under my charge. The topic today is precisely under my charge.

However, there are difficulties in implementing her suggestion, and we really have no way to get this done. So, please forgive me for raising an objection. I will also explain the reasons for the objection.

We agree to the spirit in her suggestion, which in fact tallies with the Government's spirit at present. This can be said that different paths lead to the same destination, and where the same effect is achieved through different means. Her method is to resort to legislation for mandatory implementation, while what

the Government adopts is in the form of indicators. Why do I say so? I am going to mention some important facts.

First, among all existing consultative committees in Hong Kong, as of March this year — I am talking about women's participation. Despite the neutrality of the suggestion, I know that the main key should be on allowing more participation by women — among our consultative committees, as at the end of March, women's participation amounts to 28.1%. If only the Provisional Minimum Wage Commission is taken as an example, among the 13 members, including the chairman, there are four women, that is, 30.7%. We have achieved and slightly exceeded the target.

My intention of saying this is to point out why we cannot accept her amendment. First, we have all along been taking the merit principle as the starting point. And sometimes, some committees are of professional backgrounds, and the mandatory requirement that a position has to be taken up by women may not be complied with. Sometimes, in some committees or professional bodies, if the person appointed as the chairman is not a woman, what should be done? Should the man be substituted? If there is no substitution, what should be done?

As regards public officers, if a department head is denied access to a meeting because she is a woman, should a male deputy be designated to attend instead? Is it feasible? Therefore, we have to be flexible in handling many situations. Here, I will not talk about talent, experience or integrity anymore, as Members have heard of these already. What is most important is the balance that we are talking about. I totally agree to her remarks that we have to provide more room, make further effort and encourage more women, so as to allow them more opportunities to participate in politics and take part in the Government's public affairs. This is right. So, I just now said that our views concur and do not diverge from each others.

However, if legislation is to be enacted, I have talked to her about the drawbacks earlier. To put it simply, if a committee has currently achieved the target, that is, a participation rate of 30% for any gender, but suddenly out of different reasons, say, for example, a female member resigns because of illness, this committee will not be able to operate, as this is illegal. It is not allowed to

operate in law, that is, the committee has to cease its work immediately. This will pose a very big problem, a very big problem in respect of operation and functioning.

The Government has also announced earlier that from 1 June, we have an indicator that among all consultative committees of the Government, be it a statutory or consultative body, a 30% target has to be achieved with every effort. If the target is not achieved, effort has to be taken. I have also mentioned an example to her, that is, I have turned down a membership nomination of a committee under the Labour Department thrice because the target has not been achieved. I have urged the colleagues to keep the selection process going until a woman is identified. However, Members have to understand that in some occasions, even though we have identified a female candidate, we still need her acceptance of the offer. This can by no means be out of wishful thinking. Even though the woman is capable and has the time, is she willing to take up the role? We cannot force our way out.

Therefore, many factors tell us that flexibility is most important. However, I also agree that her starting point is correct. We have no disagreement about it, and we will make the effort together. We are of the view that there should be equality for both genders. We will make further effort, particularly in respect of women's participation. Therefore, please forgive me for opposing her amendment. I also urge Members to vote against her amendment.

Thank you, Deputy Chairman.

DEPUTY CHAIRMAN (in Cantonese): Ms Emily LAU, do you wish to speak again?

MS EMILY LAU (in Cantonese): Deputy Chairman, let me respond briefly to those who have spoken. I would like to thank those Members who have spoken, but it is very difficult for me to thank the Secretary, as he does not support me. In particular, I also feel very confused. Deputy Chairman, why do I think that he is not in charge of the Convention on the Elimination of All Forms of Discrimination against Women? This is because all issues related to human

rights are now under the charge of Stephen LAM. In fact, everyone is baffled as to why this is under his charge. As a matter of fact, his performance is very poor. In the past, when human rights affairs were under the charge of the Home Affairs Bureau, there were numerous exchanges with community groups.

As the Secretary is in charge of the business in this aspect, I really hope that the Secretary can make further effort, so as to ascertain that not only his own bureau, but all other committees can attain the 30% women's participation rate. When Mr CHEUNG Man-kwong raised that question in April, the authorities said that there was zero participation in 40 bodies. We also queried whether more efforts could be made. While there is other work to be done, but should the issue concerning those 40 bodies be tackled as soon as possible? Of course, I am not saying that you should replace some people to meet the target rate, but you should have the determination to tackle this problem. I fail to see that the Secretary has this determination, that is why Mr LEE Cheuk-yan asked him the meaning of "to strike a balance", as the Secretary makes no effort to attain a balance. We all think that this is very unjust. Deputy Chairman, I think the issue is absolutely worth tackling.

I mentioned 300-odd committees earlier. The Government has 400-odd committees, among them, more than 300 committees have Government-appointed members, for the other committees, the members are nominated by relevant organizations and there are no Government-appointed members. Hence, the Government has strong justifications not to take any actions. If this policy is established, the authorities should encourage professional bodies, the commercial sector and various organizations to appoint, as far as possible, women as members. The same rule applies to the Government, and the Government cannot just wash its hands off. If this policy is established, I hope that the authorities will issue guidelines in this respect. Ms Audrey EU and Mr Albert HO mentioned my amendment earlier. Of course, the participation rate for each gender should not drop to 30%. In fact, the rate in Northern European countries was previously 40%, but now, it seems to have elevated to 50%. Deputy Chairman, as regards both genders, there should be a balanced participation. In the case of Northern European countries, the gender participation rule does not only apply to government committees, but also to the boards of directors in the commercial sector. I am not sure whether women's participation rate should be 40% or 50%. I think Mr Vincent FANG will be shocked. In Hong Kong, I

believe that women's participation rate in the boards of directors — I do not have the information at hand — I believe it is lower than 10% or 5%. Therefore, as a matter of fact, it is very important that women should be allowed to participate not just in public affairs, but also in the commercial sector. I hope that the authorities should promote this practice as far as practicable.

Mr LEE Cheuk-yan and Mr WONG Sing-chi mentioned that many women I believe that in future, it is women who get the minimum wage. As such, I hope that in the MWC, there will be more members who have direct understanding of women's feelings. The Secretary said earlier that they have just achieved the participation target in this regard. Deputy Chairman, why do I say that the MWC fails to achieve the target? This is because when he gave the list to our committee, I could tell whether the member is a male or a female from the name. I note that the chairperson was a woman, while another member was also a woman. The Secretary just now said that there are four female members. Everyone knows that, as mentioned earlier, those two persons who cannot vote, that is, the three official members are anonymous. I do not know when he has put their names in. I also do not know whether he has violated the rule, because at this stage today, he has added two women to the list, such that the target can be achieved all of a sudden. But when I previously saw the list, the target was not achieved. Anyway, I hope that all targets can be achieved.

I always raise questions, because in raising questions, the true picture will be exposed. Therefore, even though the authorities do not support my amendment, I hope that during the course of actual implementation If the authorities can really achieve the target every time a question has been raised, it may not be necessary to enact legislation. As Mr LEE Cheuk-yan has said, prior to 1999, he made no request for minimum wage legislation, as there was no such need. But when things do not turn out right, it has to be tackled. In fact, when it comes to the promotional efforts, I believe that the Legislative Council has omitted some parts, that is, there is no baby-sitting room in the new Legislative Council Complex now under construction. We seem to think that no Members will give birth after joining this Council. In Europe, particularly Northern Europe, there are baby-sitting rooms in some parliament buildings. Female members are expected to bring their children to the meeting place and place them in the baby-sitting room until the end of the meeting. In fact, this practice should not be limited to the Legislative Council. We hope that many employers can do the same. In this way, we should However, we are actually not in

an all-lose situation, as we still have room for development. The Legislative Council Commission in the coming new term may open up some rooms for baby-sitting in future. I believe that it will be very good if some young mothers with little children can join this Council.

As regards Mr IP Kwok-him, I very much hope that the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) will show support, but I am very disappointed that neither the DAB nor the Hong Kong Federation of Trade Unions (FTU) do so. Ms Starry LEE comes from the DAB, while the four Members from the FTU are all men. I do not know when there will be a female Member from the FTU again. However, Mr IP is also very good in telling us that 12 of the 50-strong DAB leadership (that is, the Central Committee) are women. However, our performance is no better. In our 30-strong Central Committee, there are only four women. There are five women in their 20-strong Standing Committee, while there are two women in our 15-strong Executive Committee. Nevertheless, Deputy Chairman, the Democratic Party will catch up very rapidly. By the end of this year, we will hold a re-election. We certainly hope that many of our female members will contest in the election.

Deputy Chairman, you may not be aware that Mr CHEUNG Man-kwong is the Democratic Party's commissioner for gender mainstreaming who is responsible for public affairs; Ms Josephine CHAN is in charge of relevant affairs within the party; whereas Dr Helena WONG is our chief commissioner. We hope to turn over a new page. We also hope that after the re-election by the end of this year, although we may not be able to surpass the DAB's participation rate for women, we can compete with each other on this front. I believe that other political parties and groups should also spare no effort to compete, such that women will really have more room to bring themselves into full play.

Deputy Chairman, you said that the number of women is fewer because women are on the weak side. Actually, women are not on the weak side, but their participation level is on the weak side. If men's level of participation is 100%, women's is only as little as 10%. It is only the figure, not the women, that is on the weak side.

Deputy Chairman, frankly speaking, you and I will not admit that women are weak. However, when we look at the Government's figures, they are really a minority. Therefore, I really regret that there are so many Members who do not

speak today but will press the button to object to the amendment when the vote is taken. I really think that this is ridiculous. The Secretary has blatantly said that he will object to the amendment. He is in charge of women affairs, and he has to make a report to the United Nations on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women. I do not know what he will report next year. This is really outrageous. I have to lodge a complaint against him. All in all, I hope that Members will support my amendment. Thank you, Deputy Chairman.

DEPUTY CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by Ms Emily LAU be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Ms Emily LAU rose to claim a division.

DEPUTY CHAIRMAN (in Cantonese): Ms Emily LAU has claimed a division. The division bell will ring for three minutes.

(While the division bell was ringing, THE CHAIRMAN resumed the Chair)

CHAIRMAN (in Cantonese): 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 displayed.

Functional Constituencies:

Dr Margaret NG, Mr CHEUNG Man-kwong, Ms Miriam LAU, Ms LI Fung-ying and Mr CHEUNG Kwok-che voted for the amendment.

Dr Raymond HO, Dr Philip WONG, Mr LAU Wong-fat, Mr Vincent FANG, Dr Joseph LEE, Mr Jeffrey LAM, Mr Andrew LEUNG, Dr LAM Tai-fai, Mr CHAN Kin-por, Mr Paul TSE and Dr Samson TAM voted against the amendment.

Mr WONG Ting-kwong, Mr IP Wai-ming, Mr IP Kwok-him and Dr PAN Pey-chyou abstained.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Ms Emily LAU, Mr Frederick FUNG, Ms Audrey EU, Mr LEE Wing-tat, Mr Ronny TONG, Mr KAM Nai-wai, Ms Cyd HO, Dr Priscilla LEUNG, Mr WONG Sing-chi and Mr Alan LEONG voted for the amendment.

Mr LAU Kong-wah and Mr CHEUNG Hok-ming voted against the amendment.

Mr CHAN Kam-lam, Mr TAM Yiu-chung, Mr WONG Kwok-hing, Ms Starry LEE, Mr CHAN Hak-kan and Mr WONG Kwok-kin abstained.

THE CHAIRMAN, Mr Jasper TSANG, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 20 were present, five were in favour of the amendment, 11 against it and four abstained; while among the Members returned by geographical constituencies through direct elections, 24 were present, 15 were in favour of the amendment, two against it and six abstained. Since the question was not agreed

by a majority of each of the two groups of Members present, he therefore declared that the amendment was negatived.

CHAIRMAN (in Cantonese): Ms Emily LAU has given notice to move the addition of subclause (3B) to clause 10, proposing to set an upper limit on the terms of office of Minimum Wage Commission members who are not public officers, and to set an upper limit on the number of public sector bodies that these members may serve at any one time.

CHAIRMAN (in Cantonese): Ms Emily LAU, you may now move your amendment.

MS EMILY LAU (in Cantonese): Chairman, I move the addition of subclause (3B) to clause 10.

Just as the Chairman has said, this seeks to stipulate that people who are not public officers appointed to those advisory boards or statutory bodies should neither serve for more than six years nor serve as members on more than six boards at the same time. Chairman, I have proposed this amendment because the authorities do not observe the rule. Some Members said earlier that they actually support this principle very much, and that there are guidelines from the Government, so it is not necessary to do so many things. A Member said to me earlier, "You should not set begin with this law. Instead, you should request the Government to formulate an all-encompassing law." I certainly agree to it, but the Government is reluctant to do so. This is why I have to do so in a clause-by-clause manner. Do you think that I want to do it in this way? I certainly want the Government to do it. I hope the Secretary can relay the message that a Member hopes to formulate a law to apply this "six-six principle" to all circumstances. I most agree to it. But before the advent of such a law, we certainly hope to tackle it one by one.

Chairman, in my earlier remarks, I mentioned the consultation document in 2003. At that time, the authorities talked about the "six-six principle" — it might have already been mentioned at an even earlier time — but there was only lip-service without any concrete result. In fact, what kind of people will the

authorities look for for appointment? Why is it so difficult to identify candidates? Why is it not done? The authorities have said that in making appointments, the candidate's ability, expertise, experience, integrity and commitment to public service, the functions of the board or body concerned, as well as his work will be taken into account. But Chairman, with these criteria, it should not be very difficult to identify a candidate. The Secretary has even said that the authorities make appointments on basis of meritocracy. If so, why can they not always adhere to this rule?

Chairman, why do I say that the Secretary has not adhered to the rule? In end-April last year, Chairman, we raised this question, "How many people have served on these committees for more than six years?" The reply given at that time was that 167 people had served for more than six years, which was against the rule set by the Government. But in the Council meeting two days ago, on Wednesday, I raised another written question, and the number of people had risen to 243. Chairman, this means an addition of more than 70 people in a year. This is against the rule. I do not know whether the Secretary can give some explanation on behalf of the authorities as to whether there are no suitable persons in Hong Kong. As rightly put by Secretary TSANG Tak-sing, there are no women among District Council members. If the authorities were really sincere in adhering to the rule, those 160-odd people should have become a few dozens or even zero this year.

Chairman, I would also like to talk about another aspect, that is, there were originally two persons serving on more than six committees, but subsequently even these two have gone. This means that it has been dealt with. I hope that it will not make a return. However, how come there were 160-odd people last year but now there are 240-odd? Chairman, the only reason we can think of is not that there are no talents in Hong Kong, but there are no people in Hong Kong whom the HKSAR Government is willing to trust and appoint. Of course, some other people are talented, but they are unwilling to work for the Government. I believe that there are many who are willing to help the Government and zealous in public service. There are many names on its own roster, with thousands of them being women. But Chairman, the Government has kept on searching, but to no avail.

The proportion of gender I mentioned earlier is not provided for in existing laws. But Chairman, at present, there are laws which stipulate that no member

can serve for more than six years, and I have shown them to the Secretary. One of them is the Housing Managers Registration Ordinance, which stipulates that members of the General Council cannot serve for more than six years. There is another one which I have voted for, that is, the Construction Industry Council Ordinance, which also stipulates that members of the Council cannot serve for more than six years. Many Members also voted for its passage at that time. Another one is the Land (Miscellaneous Provisions) Ordinance, under which there is a Review Panel, and it is stipulated in the Ordinance that no member can serve for more than six years. In addition, the Regulations of the English Schools Foundation passed by us also stipulate that members of its Executive Committee cannot serve for more than six years. Therefore, Chairman, there are such provisions in current laws. Some Members said that it would be better to have an ordinance that imposes regulation in an overall manner, and I fully support it. However, as this Commission is under discussion here today, and a Member earlier put it very correctly that the work of this Commission is very important, I hope Members can support the inclusion of this provision. Moreover, whenever there is a discussion concerning committees in future, this "six-six principle" and the gender principle can be applied to make things more decent. I hope the Secretary can cease encouraging Members to oppose my amendment, particularly when he sees that this provision has been written into several laws by colleagues from other bureaus. For this reason, I hope this provision can also be included today.

With these remarks, I beg to move.

Proposed amendment

Clause 10 (see Annex I)

MR WONG SING-CHI (in Cantonese): Chairman, I was slow in raising my hand, my apologies. This "six-six principle" is actually very absurd. In fact, "six-six" is already too much, but despite this, the Government still intentionally continues not to comply with this "six-six principle". However, the Government has also said it is hoped that members of the public can take part proactively and that the participation of more professionals can be enabled. It has even said that there is no affinity differentiation, and that those who are capable can offer their views to the Government and take part in advisory bodies.

I recall that in a discussion on youth affairs, the Government said that if young people were interested, they could be nominated to advisory committees to take part in relevant affairs. This time, we just now hoped that the Secretary could consider appointing more women to the Minimum Wage Commission (MWC), but the Secretary did not agree and Ms Emily LAU's amendment was negated. In fact, this has already shown that the Government is preaching one thing but doing quite another.

As regards the "six-six principle", why do I think that six years are basically too many? The reason is very simple. Legislative Council Members serve on a four-year term, while the Chief Executive is elected every five years. In addition, District Council members are elected every few years, and their term of office is in no way over six years. However, as there is a new term every few years, we who have stood in an election have to run for another term of office after several years. But those appointed by the Government can serve for six years, not just six years, but possibly six after six. Obviously, insofar as those bodies which have the substantive power to monitor the Government are concerned, the Government actually seeks to control them through a time-limited term of office. That is, we cannot monitor them anymore after several years. If you would like to effect monitoring again, please run in the election again. However, government appointees may be those who are very obedient, and their term of office can be extended at will. This practice is uncivilized, unfair and undemocratic.

What we are now demanding is merely that the "six-six principle" be added to the ordinance. And as a matter of fact, the Government has all along been stating verbally that this principle has been adopted, only that it is not provided for in many laws. Ms Emily LAU also mentioned earlier that the fact is not that this is not provided for in the law. This principle is provided for in the ordinances governing some relevant bodies. Why can it not be included in this ordinance? Moreover, we see that this MWC actually needs to deal with matters that are very much multifarious and give consideration to many different periods. If a batch of people are now appointed and they consider things slowly in the subsequent six years before making a change, or some even serve for more than six years, they will very often fail to keep abreast of the changes in society and may not be able to keep close tabs on public sentiments.

Therefore, that the Democratic Party has put forward this amendment through Ms Emily LAU serves not just to address this ordinance. We hope that this can really be brought on a par with this elected Council of ours. Our term of office is time-limited, and we need to stand in an election again upon expiry of our term. However, why does the Government emphasize the meritocracy principle but end up in cronyism? In the process of practising cronyism, these "cronies" are even able to work in the Government continually, and the Government only takes the views of these "cronies" while turning a deaf ear to the remarks of watchdogs which are really useful to it. This is disappointing. Chairman, the Democratic Party fully supports Ms Emily LAU's amendment.

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

MR PAUL TSE (in Cantonese): I do not want to take up too much of Members' time, as Ms Emily LAU has said that if we do not speak but object to the amendment, she will kill us. So, I would like to make some brief remarks. I fully support the idea of the amendment. Be it to allow more women's participation or to allow more people to participate in politics and express their opinions, I would support it, but this is different from legislating for a mandatory requirement. I hold that laws in society should be kept to the minimum. It may not be necessarily good to have a law, for a law brings with it many enforcement issues and many confines. Chairman, if there is a target, this is also an ideal, and we can know where we should go. Legislation should be pursued as a last resort only when there is really no way out, when we have come to a stage where there cannot be any improvement to the matter. This is a question of philosophy, which is pointless to argue here.

However, if a target can be achieved without legislation, I still do not consent to legislation. Yesterday, I cited an example, that is, a provision in the Trade Boards Ordinance that provides that women can also be appointed as members. Members were shocked at seeing it. Times have changed. It is not necessary to state something in black and white in law. We can just do it, and that will do. By the same token, if it is purely a symbolic meaning, I certainly agree, but legislation is unnecessary. I also understand that the Government should take the lead. I would also like to know which party's constitution requires that 30% of its members have to be women or 30% of its executive

committee members have to be women, or whether it includes any restriction similar to "six-six". I believe no political party works in this way. Although this target is an ideal, it is different from legislation in black and white. Therefore, I object to the amendment. Thank you, Chairman.

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

DR JOSEPH LEE (in Cantonese): I heard Ms Emily LAU say that it is very bad to press the voting button without speaking. In fact, I would press the button even if I do not speak. I think this is very important.

I agree to Mr Paul TSE's remarks just now, that we are discussing an issue of legislation now. We are not to express some ideologies by way of legislation. I absolutely agree that there should not be sex discrimination. If I had the chance to amend Ms Emily LAU's earlier suggestion, I think there should be a requirement for both men and women to account for no less than 30%. Why is this requirement only applicable to women? I think that a many different circumstances can be named for illustration purposes. I fully understand it, but I think Mr Paul TSE has put it very correctly, that there is no need to include the relevant requirement in this ordinance.

I have to declare my interest. According to the "six-six principle", I have already gone beyond the limit for one "six". I will tender my resignation very soon. This is good. However, I think that there may not be any need to stipulate such a provision in this ordinance. Therefore, I respect the spirit therein, but I will object to this amendment. Thank you, Chairman.

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

(No Member indicated a wish to speak)

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Chairman, Ms Emily LAU's amendment strictly stipulates that a member of the MWC who is not a public officer may not be appointed as a member continuously for more

than six years and may not serve as a member of more than five other public sector advisory and statutory bodies at any one time, that is, the six-year and six-board rule or the "six-six guideline" as we call it within the Government.

On this "six-six guideline", Ms Emily LAU, in fact the Home Affairs Bureau gave a detailed analysis with respect to your written question the day before, and I have read that. In recent years, indeed the Government has been very stringent, and increasingly stringent with the "six-six guideline". A number of boards under the Labour and Welfare Bureau will look up the records, six months before the expiry of every term of appointment, to confirm if the term of appointment of the member concerned and the number of boards he is serving are in compliance with the "six-six guideline". We have made efforts indeed. Also, the Home Affairs Bureau will remind us of doing these checks six months beforehand. Hence, we have really adopted proactive measures in a bid to achieve this.

What I would like to say is — let me put it in the same way — we share the same goal, only that the methods we adopt to achieve that goal vary. We share the same goal, meaning that the "six-six guideline" is the essence on which appointments by the Government are premised. Nevertheless, I agree to what Mr Paul TSE and Dr Joseph LEE have said, that is, making this requirement mandatory in law may not necessarily be a good thing. For the members of some boards are experienced professionals, so if the terms of appointment of a group of members happen to expire (that is, the sixth year) at the same time, a drain of the majority of members all at once in this way may have impact on the operation of the board. Insofar as continuity and professional input is concerned, the entire structure may even experience a fault or vacuum period. Hence, flexibility is a good thing, but it should not be abused. As such, currently the Government is very stringent. Members can also see the relevant figures, that is, the number of members serving on more than six boards at present. From the reply provided the day before, Members can see that at this moment, the number of members serving on more than six boards is zero or none. While there are two recently, but they will no longer serve on the board. The 243 members she mentioned now accounts for 4.29% of the total members appointed by the Government. We have been watching this figure closely, and as the Secretary, I always tell the directors that two points must be carefully observed: Firstly, the current 30% female participation rate; and secondly, the "six-six guideline". In fact, as a current practice, we always bear in mind these two points whenever we make any appointment, and when doing so, our peers or

colleagues will keep reminding each other that we should avoid these pitfalls and must fulfil these two points.

Therefore, I hope she can understand that we do not disapprove of that; we approve of that indeed. We have no disagreement at all; it is the methods that vary. Some boards she mentioned just now have shown me the relevant information. For instance, the Construction Industry Council has stipulations on the term of appointment. Nevertheless, if the six-board rule is also applied, it will mean enhancing the restriction. If she only proposed the six-year rule, frankly, I would agree to that. But the addition of the six-board rule will deny us flexibility and create difficulties.

For this reason, please forgive me for objecting to it and calling on other Members to object to her amendment. Thank you.

MS EMILY LAU (in Cantonese): Chairman, the Secretary is really cunning, for if he could agree to the part related to the six-year rule in my amendment, he should have let me know. The Democratic Party has held a number of meetings with him. I have asked him to render his support in every meeting, but he always responded with an embarrassed look. Back then, had he said that if things were split up he would support the six-year rule but not the six-board rule, I think I would give it a thought and deal with that step by step. Chairman, he has said so only now, is that not "too early"? I think one should not do things in such a manner. What is the point of mentioning that now? The Chairman will not allow me to split up my amendment now, will he? If possible, I will do so, but he may probably take it back by then.

Chairman, I find the Secretary really Moreover, he failed to explain how come the number was 167 last year, yet it is now 243. Just now he said that they have been imposing stringent control, but still, the number has increased by over 70. In that case, he had better not apply such stringent control. I find the authorities extremely outrageous.

Dr Joseph LEE did not listen to our speeches. Several Members have already talked about this, and Ms Audrey EU has talked about this, too. "Buddy", please take a look, it is stated here. The amendment I put forth just now requires that the ratio of each gender should not be lower than 30%, yet he

failed to listen to that. Nevertheless, Chairman, he is a very nice person in that he took the initiative to confess. He said that if the "six-six principle" was applied, he would be in breach of the rule. The Rules of Procedure require that Members must declare their interest at voting. Insofar as this amendment is concerned, to avoid complicating the matter, he is not barred from voting indeed, Chairman, or else we may not be able to conclude the meeting even the day after tomorrow. In case there are Members currently serving on more than six boards, they should make a declaration like Dr Joseph LEE did. As Members all know, if he has exceeded the limit, certainly he will not support my amendment because he is in the same gang with the Government. But one should at least explain and declare that he is serving on six boards, as I think that will provide some degree of transparency. In fact, I once attempted to do a survey, but we have so many Members, it is impossible to cover them all. Dr LEE was very nice, in that he stood up and declared that he is serving on seven boards. What can you do about him? If the amendment is passed, he will be in trouble, so the amendment had better not to pass.

Chairman, I will claim a division later. I think any Member who is serving on more than six boards should declare his or her interest, as interest is involved. Now I propose to impose regulation, but in fact they are in the same gang with the Government. The colleagues who have been serving on such boards for over six years should declare their interest.

Overall speaking, Chairman, in the light of the number that has increased from 100-odd people to 200-odd people at present, we have a feeling that the authorities have not done their job well. If I raise this question again next year, probably 300-odd people may be in breach of the rule. What I find most laughable is that the Secretary still said they have been imposing stringent control. Chairman, I know that the amendment will be negated, but I hope the Secretary will clearly tell all Secretaries that whenever these boards are involved, they should state, in all documents submitted to the Legislative Council in future, whether the "six-six" requirement is met, if it is not met, give reasons for that and the expected time when it will be met. In addition, the standards for the genders should also be stated and elaborated every time.

Chairman, I hope Members will support my amendment.

(Dr Joseph LEE raised his hand in indication)

CHAIRMAN (in Cantonese): Dr Joseph LEE, do you wish to make an elucidation?

DR JOSEPH LEE (in Cantonese): I do not know if I can raise a point of order. I would like to make a brief clarification actually.

Of course, I have to thank Ms Emily LAU for mentioning my name. First of all, I have read her amendment relating to the gender proportion. Nevertheless, perhaps I was inarticulate when I spoke just now, failing to make my point clearly, probably because this meeting has been excessively long. What I mean is, even if the amendment stipulates that the proportion of male and female shall not be less than 30%, it is still inappropriate as this point should not be made a law. This is the first point I meant.

Secondly, in respect of the "six-six" rule, I do not know if I was inarticulate again just now, in fact, I did not say more than "six boards". Yes, I am already serving on six boards, but does this involve any receipt of benefits, or does it have any influence on my voting preference? I think this has nothing to do with the Bill. But I feel uncomfortable with one thing, and that is, Ms Emily LAU said those of us serving on six boards were a den of snakes and rats (meaning a gang of bad guys), so of course we would not support her amendment.

The principle of my disapproval is not about whether I am in the same gang with him. It happens that I cannot see the Secretary's face now, and I cannot see that very clearly indeed, but to me he has never been anything like a snake, and I am not a rat. Besides, we are not in the same gang. Though we once had a meal together upstairs as the Chairman wanted to show understanding for his hard work, hence we had a meal with him and we ate some very tasty roasted pork, but we are not a den of snakes and rats.

I hope Members can understand that in principle, I think these scenarios should not be written into the legal provisions. This is what I meant. I will press the button later, but this means neither I remain silent, nor I am in the same gang with him. Thank you, President.

CHAIRMAN (in Cantonese): I notice that Dr Priscilla LEUNG is very concerned about this remark.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment, moved by Ms Emily LAU, 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 IP Kwok-him rose to claim a division.

CHAIRMAN (in Cantonese): Mr IP Kwok-him has claimed a division, the division bell will ring for three minutes.

(While the division bell was ringing)

CHAIRMAN (in Cantonese): Mr LEUNG Kwok-hung, are you present?*(Laughter)*

(Mr LEUNG Kwok-hung was obstructed by a placard in front of him)

CHAIRMAN (in Cantonese): I have to count how many Members are present.

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:

Dr Margaret NG, Mr CHEUNG Man-kwong, Ms LI Fung-ying and Mr CHEUNG Kwok-che voted for the amendment.

Dr Raymond HO, Mr LAU Wong-fat, Ms Miriam LAU, Mr Abraham SHEK, Mr Tommy CHEUNG, Dr Joseph LEE, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr CHIM Pui-chung, Dr LAM Tai-fai, Mr CHAN Kin-por and Mr Paul TSE voted against the amendment.

Mr WONG Ting-kwong, Mr Paul CHAN, Mr IP Wai-ming, Mr IP Kwok-him and Dr PAN Pey-chyou abstained.

Geographical Constituencies:

Mr LEE Cheuk-yan, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Ms Emily LAU, Mr Frederick FUNG, Ms Audrey EU, Mr LEE Wing-tat, Mr Ronny TONG, Mr KAM Nai-wai, Ms Cyd HO, Dr Priscilla LEUNG, Mr WONG Sing-chi, Mr Alan LEONG and Mr LEUNG Kwok-hung voted for the amendment.

Mr LAU Kong-wah voted against the amendment.

Mr CHAN Kam-lam, Mr TAM Yiu-chung, Mr WONG Kwok-hing, Mr CHEUNG Hok-ming, Ms Starry LEE, Mr CHAN Hak-kan and WONG Kwok-kin abstained.

THE CHAIRMAN, Mr Jasper TSANG, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 21 were present, four were in favour of the amendment, 12 against it and five abstained; while among the Members returned by geographical constituencies through direct elections, 24 were present, 15 were in favour of the amendment, one against it and seven abstained. Since the question was not agreed by a majority of each of the two groups of Members present, he therefore declared that the amendment was negatived.

CLERK (in Cantonese): Clause 10 as amended.

CHAIRMAN (in Cantonese): As the Committee has earlier on passed an amendment to clause 10, I now put the question to you and that is: That Clause 10 as amended stand part of the Bill.

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

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): The Secretary for Labour and Welfare and Mr LEE Cheuk-yan have separately given notice to move amendments to subclauses (1) and (4) of clause 11.

The wording of the amendments of the Secretary for Labour and Welfare and Mr LEE Cheuk-yan are substantially the same, so I shall only invite the Secretary for Labour and Welfare to move his amendments. Irrespective of

whether the Secretary for Labour and Welfare's amendments are passed or not, Mr LEE Cheuk-yan may not move his amendments.

CHAIRMAN (in Cantonese): Members may now have a joint debate on the original clause and amendments of the Secretary for Labour and Welfare and Mr LEE Cheuk-yan. I shall call upon the Secretary for Labour and Welfare to speak and move his amendment first.

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Chairman, I move that clauses 11(1) and 11(4) be amended. The details of the amendment are set out in the paper circularized to Members.

Pursuant to the recommendations of the Bills Committee on Minimum Wage Bill (Bills Committee), we will delete clause 11(1) which requires the Minimum Wage Commission (MWC) to make recommendations with respect to the timing and frequency of reviewing the statutory minimum wage (SMW) level. In addition, we will later on move an amendment to clause 13 so as to clearly stipulate that a report made by the MWC under clause 11(1) shall be made at least once in every two years, and in response to the recommendations of the Bills Committee, the transparency of the MWC's work will be enhanced by stipulating that the Chief Executive must, as soon as practicable, cause a copy of the report made by the MWC according to its function, including the report on the recommended SMW level made under clause 11(1) and the report made according to other functions granted to it under clause 11(2).

Chairman, I would like to explain briefly the amendment to clause 13. The Labour and Welfare Bureau submitted the proposed amendment to the Bills Committee in June. The initial proposal was adding a new provision to clause 11 to stipulate that the MWC shall report on the SMW level at least once every two years. However, having carefully reviewed the clauses of the Bill subsequently, we formed the view that given that clause 13 contained regulation on the making of report and the timing of doing so, in principle, the amendment that the MWC is required to report at least once every two years should be dealt with under the same clause. Hence, adding the relevant proposal to clause 13 is an appropriate way of law drafting.

Also, the Labour and Welfare Bureau has submitted the amendments to the Legislative Council on 5 July, that is, last Monday. As Members all know, 5 July was the deadline for the submission of amendments to the Bills by the Government and Members. Submitting the amendments by the deadline is totally consistent with the procedure.

As for the amendment to clause 11(4), it is technical in nature. Given the proposed deletion of clause 11(1) relating to the MWC recommendations on the timing and frequency of reviewing the SMW level, in the English text, the plural word "recommendations" should be deleted (to delete the "s") and substituted by the singular word "recommendation".

As for the amendments proposing that clause 11(5) added to stipulate that a report made under clause 11(1) shall be made at least once every year to be moved separately by Mr WONG Kwok-hing and Mr LEE Cheuk-yan separately later, the Government objects to the relevant amendments. I will give a detailed explanation of the Government's rationale in my speech later.

Chairman, I so submit. I hope Members will support the passage of the Government's amendment.

Proposed amendment

Clause 11 (see Annex I)

CHAIRMAN (in Cantonese): I now call upon Mr LEE Cheuk-yan to speak, but no amendment will be moved at this stage.

MR LEE CHEUK-YAN (in Cantonese): Thank you, Chairman. Just now the Secretary for Labour and Welfare said his amendment is exactly the same as ours. He proposes a two-year review cycle, while we propose a one-year review cycle. Given that we will stipulate the review cycle later on, we have to amend clause 11(1), meaning that the Chief Executive will not give the MWC his recommendations on the frequency of review.

Chairman, originally I did not intend to speak too much, but I must respond to a point raised by the Secretary just now. He has explained the amendment

moving the two-year review cycle from clause 11(5) to clause 13. He indicated that this is purely a technical amendment, and they find this position more suitable. However, Chairman, I have openly said that I think the Secretary has played "dirty tricks". Why? I would like to do some explaining now.

Chairman, just now the Secretary also admitted that the amendment about a two-year review cycle was originally put under clause 11(5) in their proposal to the Bills Committee. As we saw that he had put the stipulation of a two-year review cycle under clause 11(5), we also sought to amend clause 11 by revising it to a one-year cycle; our positions are parallel indeed. Chairman, as you know, according to the Rules of Procedure, insofar as the parliamentary procedures are concerned, the Council will vote on the amendments proposed by the Government first, and Members' amendments will only be put to vote afterwards. Why did I describe those as "dirty tricks"? My original strategy is to vote on the Government's amendments first, as all parties and groupings that have joined the Bills Committee support a one-year review cycle. Yet unexpectedly, the Secretary proposed a two-year review cycle. He is bargaining, and certainly he has lobbied many Members to support the two-year review cycle proposed by him.

My strategy is that as separate voting is not required, we have enough votes to negative the Secretary's amendments in the same way as we negated his proposal to abolish the Trade Boards Ordinance yesterday. My original idea is that if we negative the Government's amendments frankly, I intended to force Members to support the one-year review cycle, for if they do not support the one-year review cycle, the situation will be even worse as there will be no review at all. Either to adopt a one-year review cycle or to have no review at all, I think Members will consider this from their conscience. Of course, the one-year review cycle is better, and it is also backed by Members. This is the original plan in my mind. Unexpectedly, the Government played "dirty tricks" and moved it from the original clause 11(5) into clause 13.

Chairman, what he said about the timing is right; 5 July was the deadline, hence I did not see his amendment to clause 13, and he proposed the amendment to clause 13 only after the President had made the ruling. In fact, Chairman, I have thought about one thing, but I did not do it eventually, and I believe it is infeasible, unless the Rules of Procedure in future Perhaps you can indicate

to me whether this is feasible later. Originally, when I saw his amendment to clause 13, I wanted also to move my amendment to clause 13 so as to keep my amendment parallel with his. But I found that time is pressing, and I had heard that I do not know if this is correct, I once made an enquiry and was told that this might not necessarily be appropriate and feasible, hence I did not do so. For a situation like this, the final scenario is that in the deliberation later on, the Secretary's amendment will fall on clause 13, that is, in the back, while I have to fight in the front. I know it is doomed to failure and my original plan has fallen apart. I thought I could force Members to support the one-year review cycle after the two-year review cycle has been negated. Secretary, good game, I will remember you. Thank you, Chairman.

MR WONG KWOK-HING (in Cantonese): Chairman, I do not want to say that the Secretary is playing "dirty tricks" on this occasion. Nevertheless, no matter what the motive is, it will be known when the result or effect comes out.

What is the effect? I have this to say to all Members present. As the current situation is that the Government has proposed to amend clause 13, while I and Mr LEE Cheuk-yan have proposed to amend clause 11, and Members' amendments must go through separate voting first. With regard to the functional constituencies, we may not get enough votes in the separate voting. This is exactly the "crisis" that we are now facing, and it also explains why the Government has placed the amendment in clause 13. For the Government's amendment to clause 13, as separate voting is not required, it stands a much bigger chance of passage.

I find such a voting procedure most regrettable. Therefore, I implore Members — regarding the one-year review cycle proposed by me and Mr LEE Cheuk-yan, we will explain that in detail when we discuss that topic later on — we are now in a very dangerous situation, I call on all Members to support our amendments to be moved later on.

Thank you, Chairman.

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

DR MARGARET NG (in Cantonese): Chairman, given that Mr WONG Kwok-hing has made this appeal, I would like to help him to make an appeal to the Secretary. In fact, he has a solution, and that is, to withdraw the amendment to clause 13 to be moved later on.

On this issue, insofar as the legislation on minimum wage is concerned, I really do not think that setting the first minimum wage level will be the most controversial issue faced by the Government in future, as all people know that this is the most thorny and controversial issue. Secretary, given that the Government has come to a point where the legislation on minimum wage is put to the vote and expected to be passed, Members all think that this is a good thing. It is also hoped that the prescribed minimum wage level will not arouse great anger or disappointment among the people and intensify confrontations and conflicts between employers and employees. Therefore, if the one-year review cycle is adopted, people will understand that even if they do not like it, say, the employees find the prescribed level too low, they only need to tolerate it for a year, and there is hope of improvement next year. Everything is difficult at the start, at least they can tolerate it for a while. This is also the same with employers. When it occurs to them that they still have to wait for a long period of time, say, they have to be in a confrontational position for a year or two, Chairman, that will really turn a blessing into a curse.

Certainly, some people do not like legislating for minimum wage. They are already very unhappy with the legislation and think this is a wrong move that is going to undermine Hong Kong's economy. We are not going to talk about these people. In principle, Members agree that workers' dignity should be respected and a minimum wage should be stipulated, but there are also worries that if a minimum wage level is stipulated at an inappropriate level, it would have impact on all people.

To the public, the best solution is to ease everyone's concern. Hence, firstly, given that so many people request a one-year cycle, there is no harm accommodating the aspiration of the majority. Secondly, a one-year review cycle can at least ease some pressure. Thirdly, the worst scenario is, even this issue of two-year or one-year cycle turning into a dispute that injures both sides.

Hence, Chairman, on this issue, even though we have come to this stage, according to my memories of some episodes in the past, things can be resolved,

only that it depends on the Secretary's decision in the split of a second. It is not something that cannot be achieved now. So, if something is obviously achievable and the Secretary fails to do it, then it is not unachievable, only because he is unwilling to do so. I hope that at this stage, all of us can really take this step forward, so that the future outcome will be more acceptable to everyone.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Mr LEE Cheuk-yan, do you wish to speak again?

MR LEE CHEUK-YAN (in Cantonese): Chairman, the only thing I want to say is, just now Mr WONG Kwok-hing said that we would die in the hands of the functional constituencies later, yes, we would actually die in the hands of the separate voting system as well. Therefore, I would like to say in advance that the Basic Law should also be amended next year. I am going to propose motions on making amendments to the Basic Law and abolishing the separate voting system. I hope Members will render me their support by then.

CHAIRMAN (in Cantonese): Secretary for Labour and Welfare, do you wish to speak again?

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Chairman, I have nothing to add.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment, moved by the Secretary for Labour and Welfare, 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.

CHAIRMAN (in Cantonese): Mr WONG Kwok-hing and Mr LEE Cheuk-yan have separately given notice to move amendments to clause 11(3).

If Mr WONG Kwok-hing's amendment is passed, Mr LEE Cheuk-yan may not move his amendment, which is inconsistent with the decision already taken.

CHAIRMAN (in Cantonese): Members may now have a joint debate on the original clause and the amendments by Mr WONG Kwok-hing and Mr LEE Cheuk-yan. I shall call upon Mr WONG Kwok-hing to speak and move his amendment first.

MR WONG KWOK-HING (in Cantonese): Chairman, I move that clause 11(3) be amended.

Honourable colleagues, what is the original intent of clause 11(3)? It aims at specifying two aspects to which the MWC shall have regard when performing its functions: Firstly, to maintain an appropriate balance between the objectives of forestalling excessively low wages and minimizing the loss of low-paid jobs; and secondly, to sustain Hong Kong's economic growth and competitiveness.

My amendment has highlighted that giving regard to these aspects is indeed a detachment from our practice to help the grassroots with the lowest competitiveness and bargaining power. Therefore, in my amendment, I propose that we should consider two points: Firstly, the minimum wage must not be lower than the comprehensive social security level, as it should be set at a level

sufficient to support the worker himself and his family if we really mean to help people. In fact, no theory is needed, for this is the basic aspiration and vocational right that everyone can understand and would like to pursue. Secondly, the wages they earn are only used to support themselves and afford their families' necessary living expenses.

Here I would like to point out that according to the statistics of the Census and Statistics Department, currently Hong Kong families have an average family size of about three members and an average workforce of 1.5 persons, meaning that each working member have to support 1.5 family members (including the working member himself) in order to meet the family expenses. Given this reason, if the wage level stipulated by the MWC fails to take account of these two factors, I will be very disappointed. I think that pondering on economic factors and productivity is not supposed to be the job of the MWC.

Chairman, I wish to point out that since the year 2001, the Government has been assessing economic factors and productivity on basis of the principle of "big market, small government", and as a result, most of the elementary jobs have been outsourced gradually. In principle, currently all jobs have been outsourced. The outsourced jobs may even be subcontracted to other contractors who offer the lowest prices, thus pushing the wages of elementary wage earners down to a miserable level. How miserable is it? It is similar to the miserable situation of "Old Uncle YIM" seen by Members. Why have we come to this pass? What has swept away all the street cleaners who were once so familiar to us? Given the Government's pursuit of "big market, small government" and its emphasis on the so-called economic factors, the basic needs of living of those workers with the lowest competitiveness and bargaining power have been sacrificed.

Under this circumstance, during the Government's consultation exercise on the budget this year, we put a detailed question to the Government. From the reply to this question, what kind of development in the last 10 years have we noticed? Not only has the Government outsourced the jobs, it has even hired recruitment agencies to act as an intermediary to provide labour services for many jobs. On the number of agencies hired, the Leisure and Cultural Services Department (LCSD) has hired 230, the Education Bureau has hired 170, the Customs and Excise Department has hired 107 and the Food and Environmental Hygiene Department (FEHD) has hired 54. These agencies have employed an

enormous number of people. In respect of the contracts granted to these intermediary companies, take the LCSD as an example, it has granted up to \$32 million worth of contracts, making it rank the first among all government departments.

Under this circumstance, jobs are not only subcontracted, recruitment agencies are also hired to provide labour services, how can wages not be suppressed? This is the fact. Moreover, we should also look at the situation of contracted jobs. We should not talk about things like productivity and economic factors under the terms of reference of the MWC, for this is beyond its powers and functions. Take outsourcing as an example, since the Government has taken the lead to implement outsourcing and abolish permanent employment over the last 11 years, outsourcing has become the mainstay in elementary services. Let me cite another real example. The FEHD has employed up to 11 674 workers on outsourced jobs at present, as such, they have failed to catch rats and fix the leakage problems. Why are they so lame? This is exactly the reason behind.

We will have an adjournment debate on trees later on, which is also one of the areas that have seen blunders by the Government. Chairman, the LCSD has 8 060 civil servants at present, but it has hired some 10 100 employees from contractors. The LCSD has hired more outsourcing workers than civil servants. This is the result of the "big market, small government" pursuit and the emphasis on the so-called productivity and economic factors. And it is also the fundamental reason for workers being offered increasingly lower wages.

From 2000 onwards, since the Government, as the largest employer, has taken the lead to set a bad example of outsourcing, contracting, hiring recruitment agencies and phasing out civil servants, other private organizations have followed suit accordingly. This is interconnected, for in tandem with the sharp and rapid fall in the salaries of junior civil servants, the salaries for jobs in the private sector drop even quicker. Therefore, yesterday I said that the population of people earning less than \$4,000 a month had substantially increased to hundreds of thousands, having doubled when compared to that in 1998. This is the real situation. As such, I hold that the MWC must consider, among other things, how best the wages of low-income workers can be ensured to be sufficient to sustain their living. The MWC should not purely consider the economy as a whole or the so-called productivity of households.

On the other hand, Chairman, my amendment proposes that their income must not be lower than the comprehensive social security level. What does it mean by not lower than the comprehensive social security level? Simply put, it refers to the Comprehensive Social Security Assistance (CSSA) level. According to the document submitted to the Panel of Welfare Services of the Legislative Council by the Census and Statistics Department on 9 November 2009, what is the CSSA level at present? The monthly CSSA payments (exclusive of rent) by the number of eligible members in a household is \$3,874 (one member), \$6,357 (two members), \$8,409 (three members), \$9,920 (four members) and \$11,660 (five members) respectively. On rental support, the maximum rent allowance for eligible households is \$1,265 (one member), \$2,550 (two members), \$3,330 (three members), \$3,545 (four members), \$3,550 (five members), and \$4,435 (six members or above) respectively. The information comes from the question asked at the Council meeting on 28 October 2009.

I think the major function of the MWC is to ensure that the hourly rate of workers will not be lower than the CSSA level when setting the minimum hourly wage rate. If it fails to reach even the CSSA level, that is, the amount I mentioned just now, Chairman, simply, what is the point to work? It would be better applying for CSSA. This is exactly the picture.

We had moved three motion debates during the previous term of the Legislative Council. At the end, Miss CHAN Yuen-han said that if the Government did not implement the minimum wage, we would call on those people to apply for CSSA. We had made such a remark, and there are really such cases. Is this a very practical and realistic issue? Members can try to think about that.

Chairman, in respect of the minimum wage level, the four of us from the FTU have put on T-shirts showing "\$33". In fact, we have made repeated and comprehensive studies with reference to the information collected from various sources before arriving at the rate of \$33. Moreover, it is also based on the reason put forth in my amendment: A rate not lower than the CSSA level, and which is also sufficient to sustain oneself or a family of three; it is that simple. If society fails to achieve even this, is it not a very miserable one? In other words, if the income from the sale of labour is so low that it is insufficient to feed oneself or one's spouse and children, if people cannot afford having any offspring, this society is going to fall apart.

Hence, Chairman, on the rate of \$33 proposed by the FTU, the labour sector, that is, all labour unions in Hong Kong has animously agreed to this rate. This is not purely a pursuit of class interests and labour interests, Chairman, this is a pursuit of a harmonious, stable and healthy society. Come to think about this. The number of low-income families earning \$4,000 a month has surprisingly doubled over the last 11 years, and we have more than 1 million people living in poverty. The disparity between the rich and the poor has intensified to such a state. If this deep-rooted conflict remains, it will only lead to confrontations and divisions in society. We do not wish society to become like this. We are in the same boat, and I do not wish this boat of Hong Kong to sink. As such, we in labour sector have put forth this proposal. The FTU does not selfishly champion the interests of this class, we are doing this in the interest of society as a whole. I hope Members from various sectors and trades in this Chamber can put themselves in the shoes of others, and consider if our argument is tenable and worthy of support.

CHAIRMAN (in Cantonese): Mr WONG, your speaking time is up.

MR WONG KWOK-HING (in Cantonese): Thank you, Chairman.

Proposed amendment

Clause 11 (see Annex I)

CHAIRMAN (in Cantonese): I now call upon Mr LEE Cheuk-yan to speak, but no amendment can be moved at this stage.

MR LEE CHEUK-YAN (in Cantonese): Chairman, my amendment is related to the principles of stipulating a minimum wage, that regard must be given to the needs of employees and their families.

Indeed, the drafting of the provisions by the Government is very ridiculous and negative. The stipulation of a minimum wage by the Government is originally a good thing, why should it be drafted in such a negative manner? The Government's wording is, in performing its functions of setting a minimum

wage level, the MWC must maintain an appropriate balance between the objectives of forestalling excessively low wages and minimizing the loss of low-paid jobs, as well as taking into account Hong Kong's economic growth and competitiveness.

This is very negative. It sounds like once a minimum wage is implemented, everyone should be careful as it may lead to the loss of low-income jobs or affect Hong Kong's competitiveness. What does it want to imply?

Why does it not draft such a well-intentioned Bill positively, and require that the minimum wage should be enough for workers to feed their families? Why does the Government not draft it like this, instead of wording it so negatively?

In connection with the wordings used by the Government as I pointed out just now, "forestalling excessively low wages", Chairman, what do you consider as excessively low wages? There are no objective criteria, and it depends very much on subjective perception. The other day I hosted a press conference with an old uncle who was paid an hourly rate of \$7 nine years ago. Some heartless people may say that an hourly rate of \$7 is not excessively low. There are no objective criteria. What is considered not an excessively low level? In fact, this remark is empty and meaningless, which is tantamount to saying that the objective of legislating for minimum wage is to stipulate a minimum wage, what is the point?

What exactly is the objective? Notwithstanding the Government's repeated talks, it has never talked about the real objective of legislating for minimum wage. This piece of legislation put forth by the Government is just like a body without a soul, and now I am going to give this piece of legislation a soul. I hope Members will support this. Where is the soul? I must make clear what is the objective of stipulating a minimum wage. What is my basis? I have used Convention No. 131 of the International Labour Organisation as my basis, in which the reason for stipulating a minimum wage is clearly stated.

I request that it should be set out in the legislation that, in stipulating a minimum wage, regard must be given to the needs of living of workers and their families, the social security level and the index of living into consideration; all this is the needs of workers and their families. The second part is about the requirements of economic development. Hence, my amendment has made

mention of the economy. I think a balance should be struck between these two aspects, and also, the needs of living of workers and their families should be set out clearly.

Why do I insist on adding this point? Chairman, there is this very basic question. What is the purpose of working? If it is not for supporting the family, if workers are not allowed to work for feeding their families, are we doing justice to workers and their children?

During the Second Reading of the Bill, I cited Adam SMITH's theory, and that is, the wages paid to workers by employers should be sufficient to sustain the worker himself, but on top of that, it should be at least sufficient for him to support his offsprings, otherwise, the labour supply to employers is limited to this generation, for the next generation will become extinct.

Adam SMITH's theory of free economy is that, if the next generation is almost extinct, labour supply would reduce, and wages would rise. But this is a cross-generation free market adjustment that will happen only after the death of many people, when the raised wages will be enough to support a family. But this society should not be as cruel as that.

I believe that in a conscientious society, there should be a price for labour, one that can sustain a family. Hence, I have once thought that the minimum wage law should be called the living wage law. A living wage means a family wage in Catholic terms, as the Catholics have particular regard for family. The Catholics and the Pope have clearly indoctrinated that workers should be able to support their families through labour. Therefore, here I call on all Catholics, including Mr Abraham SHEK, to follow their faith instead of the instructions of their boss when casting their votes later on.

Hence, I hope Members will support this. In fact, besides the convention of the International Labour Organisation, the International Covenant on Economic, Social and Cultural Rights (ICESCR) also mentions the needs of workers and their families. Article 7 of the ICESCR mentions the living wage, and states that a living wage should be provided. Members should not forget the constitutional status of the ICESCR. Since Article 39 of the Basic Law states that the ICESCR is applicable to Hong Kong, this article is applicable to Hong Kong.

What we are now doing is simply to inject the ICESCR spirit into this minimum wage law. This is the key principle. We hope that through work workers can at least support their families, and when a worker returns home, he can happily tell his children that he has income after a day's work and the family can have meal happily. A contrasting scene is, when a worker returns home, as his children ask him for money to pay the tuition fee, school fee as well as books and stationery, his answer is "sorry, daddy has no money". We do not wish to see such a scene.

Chairman, to achieve the goal of meeting the basic needs of living, the Hong Kong Confederation of Trade Unions (CTU) has made some calculations. Why do we wear a tee showing \$33 today? This is primarily meant to make Members understand the stance of the CTU: The minimum wage level should be \$33. How did we arrive at that figure? Our principle is that the wage level should be sufficient to support a family, and must not be lower than the CSSA level.

How can this humble request be met? The calculation method is, in Hong Kong, one should be able to support two persons (including oneself). And how much CSSA payment will be granted to a household of two? About \$6,000 on average. In travelling to work, one should at least afford the transport fee. I assume that the transport fee is \$800, that means the wages should be \$6,800, and that sum, if divided by 26 days and further divided by eight hours, it will roughly come to \$33. In reverse, if we use \$33 to do the calculation, the monthly salary will be only \$6,880.

Therefore, we should give this some thought. A worker goes to work in a bid to support two family members, including himself, with a monthly salary of \$6,880. It is tough indeed, and it is utterly impossible for him to support a family of three. If he has to support a family of four, his wife must go out to work. However, as I have repeatedly stressed, if the wife goes to work, who will take care of the children? In some cases, the worker, as the only breadwinner in the family, really has to support a family of four or five members. What are they supposed to do? I am not going to talk about the situation of these people. Members, I am talking about the situation of those relying on an hourly rate of \$33 to feed two persons. Members may say, "LEE Cheuk-yan, the hourly rate of \$33 proposed by you is also unable to support a family." Yes, frankly, my proposed rate of \$33 may not necessarily be enough to support a family, as it can be a family of three, four or five, hence the rate may not be enough to support that.

Nevertheless, the key objective of my amendment is that whether the rate is enough for supporting family members must be taken into account when setting the minimum wage level. Of course, insofar as living assistance to families are concerned, other instruments are also needed, but can we not just give a thought to that? The biggest problem now is that the authorities do not even allow us to give a thought to that; they have not taken account of this factor. No regard is given to the fact that workers have to support their families, so what are they supposed to do? Hence, we propose to add this item.

On the idea of supporting a family, recently there is this saying, which is originated from the business sector. Dr David WONG said that the minimum wage should be set at a lower level at the outset. All of a sudden, the business sector said to us that a living subsidy can be introduced, and I agree to that. Year after year, I have talked to the Financial Secretary that in addition to a minimum wage, we must also provide a living subsidy to the low-income people, as the two together can really resolve the problem of working poverty. Depending on the minimum wage alone is infeasible, we cannot count on the minimum wage as the only solution to the problem of working poverty. As even though a worker is paid a minimum wage of \$33 for his work, his family of four is still living in poverty, and that is not going to work. However, the business sector's wish that the minimum wage be stipulated at a lower level is a trick in my view. For if a minimum wage is stipulated at a lower level, and if it is complemented by a living subsidy granted by the Government, it will be tantamount to using public money to provide subsidy, and taxpayers will have to subsidize an unreasonable and most exploitative wage level. This is unreasonable and absolutely unacceptable to us. If we do so, we are not offering the subsidy to workers, rather we are subsidizing the employers who exploit workers, as these employers do not need to pay higher wages. For instance, if the hourly rate is set at \$20, the \$13 shortfall will be met by the Government. Those employers will be happy, as they can employ a lot of workers at an hourly rate of \$20. But we will be in trouble, as the shortfall will be subsidized by the Government, which is not fair.

I have been a supporter of living subsidy all along, but I have a principle of priority, and that is, no matter what, a minimum wage should be implemented as a base to ensure the provision of reasonable wages, and a further subsidy may be granted on this basis. For example, many countries in the world have adopted two methods, the first one is called tax credit, which was once advocated by the United States economist Milton FRIEDMAN. There is now another method

which is called earned income tax credit. Similar to tax credit, it means that one is given a tax quota (which is not tax allowance), and a subsidy will also be provided directly on top of this tax quota. Let me cite an example. According to the practice in the United States in 2009, if one has a family of five but only has an income of US\$20,000 (equivalent to approximately HK\$160,000), how much will the government grant in subsidy? The government will grant an annual subsidy of US\$5,000, and in Hong Kong dollar terms, that means one has a monthly income of \$13,000, and will receive an additional \$3,000 from the government for supporting a family of five. But Members should note that \$16,000 is barely enough to support five persons. Under the systems in the United States and Britain, workers manage to sustain their living only with a minimum wage plus a living subsidy. However, the minimum wage must not be set at a low level, for if the level is too low, the Government will be subsidizing the unscrupulous employers, not the workers.

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

This is what we wish to achieve all along. I have debated this a number of times. I remember that Mr Andrew LEUNG once debated with me in a radio programme. He remarked that employers had no responsibility to ensure that workers could support their families, and workers' welfare should be the Government's responsibility rather than that of employers. I found that rather irritating to the ear, as I believe that to workers, the purpose of work is not asking for welfare from the employer. Rather, work is a sale of labour, and they only want to get what they deserve, which is but a sum that can support their families. Are they not allowed to support one or two family members? They only have such a humble request. Nevertheless, whenever the discussion touches upon this issue, they would say employers have no responsibility to feed workers' families, how come workers would ask employers for welfare? This is not welfare. The workers deserve all these. In a society, workers who sell their labour naturally have the right to feed their families.

Of course, some may say that the market prices are low, so you deserve only a low reward, say, an hourly rate of only \$20 or \$21. If you do not take the job, many people are prepared to take it. Many people think that prices in the free market are most accurate, but I hope we can make a change. If the free

market has developed to the state that a worker cannot even feed his family, what is the point of having this free market? Why does the whole society promote economic development? It is hoped that, by promoting the economy, people can form families and raise children. This is the major objective of promoting the entire economy. Many people are concerned about environmental protection now. I always say to the environmentalists that all of us should care about the Earth, but save for the Earth, human beings are in trouble, and the poor people are also in trouble; they are almost on the verge of extinction. When we pursue economic development, we should have regard to the environment, and we should also have regard to the needs of workers and ensure that through work they will be able to meet the needs of their families. If economic development fails to achieve even this, what is the point of pursuing economic development? What is the point of talking about making a bigger "pie" all the time? After the "pie" is made bigger, but our children cannot share any of it, not even the "crumbles", what is the point of making this "pie"?

Therefore, I hope Members can think about this. This is essentially a basic question of philosophy. In any society, be it capitalist or socialist, the ultimate aim of promoting economic developments is to enable those who work to feed and support their families. This is the underlying principle of promoting economic development. If even this principle is abandoned, I do not know what is the point of promoting the economy.

Hence, Deputy Chairman, lastly, I wish to emphasize that this request is the most crucial one among my various amendments relating to minimum wage, as this is about the basic philosophy that through work workers should manage to support their families, and they should be paid a living wage. Sometimes I find this very ridiculous, for we are only talking about the basic living, yet the process is already so difficult. I really find this very ridiculous, and I feel heart-stricken by this.

MR RONNY TONG (in Cantonese): Deputy Chairman, this part of the debate and this amendment have touched upon a deep-rooted conflict in the SAR, that is, the perception on the entire economy.

Article 5 in Chapter I of the Basic Law clearly states that we may continue to uphold capitalism, yet many democratic societies in the world, especially the

capitalist societies, are unlike Hong Kong which has its eyes on one thing only, and to put it crudely, in their eyes, there is nothing but the dollar sign on the notes. When I was elected a Legislative Council Member in 2004, the first thing we intended to study was the areas in which Hong Kong needed to catch up with the international standards and core values including, among others, the remunerations offered to general wage earners in Hong Kong, their due reward in society and how could they share the fruit of economic development.

Deputy Chairman, the motive is set out in Article 7 of the ICESCR. This Article states clearly and concisely that "The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular: Remuneration which provides all workers, as a minimum, with:", and in (ii), it states that "A decent living for themselves and their families in accordance with the provisions of the present Covenant". Deputy Chairman, this is an international covenant of the United Nations signed by both Hong Kong and China. It represents some basic core values that are recognized universally. Moreover, constitutionally, of course we should remember that Article 39 of the Basic Law has made particular reference to that, so there is also a constitutional responsibility to request the SAR Government to implement this through legislation.

From the Article 45 Concern Group to the Civic Party at present, we have been consistently holding that this constitutional responsibility cannot be shirked. Suppose the Government has this constitutional responsibility, but it failed to perform it, it is not only disrespect for the Basic Law, but also disrespect for this system as well. When we first managed to convince the Government to submit the Minimum Wage Bill (the Bill), we were rather disappointed indeed, as clause 11(3) of the Bill utterly makes no mention of the universally recognized core values I mentioned just now. It only provides that "to maintain an appropriate balance between the objectives of forestalling excessively low wages and minimizing the loss of low-paid jobs". Honestly, when I first read this clause, I really did not know what it was talking about. It says that the wages cannot be too low, but it should not lead to any loss of jobs. In fact, are the two definitely related? I really do not understand. Most importantly, "to sustain Hong Kong's economic growth and competitiveness" is stated after that. It sounds as if once a minimum wage is stipulated, Hong Kong's economic growth or competitiveness will be undermined.

Deputy Chairman, these concepts are totally unacceptable to me. As I mentioned just now, almost all capitalist societies in the world, particularly those with prosperous development of capitalism, have stipulated a minimum wage. Does that mean they do not have any proper or reasonable economic development or competitiveness? Of course not, and this notion is already proved wrong by historical and factual evidence. Why should this piece of legislation set out something like this, without mentioning the only constitutional requirement that the Government should meet, that is, the provision of wages that can afford a reasonable living standard. Why is there no mention of that? If none, is our formulation of this piece of legislation useless indeed? The genuine objective of this piece of legislation is neither to realize the constitutional responsibility nor to provide reasonable wages to workers. It only seeks to further maintain Hong Kong's economic growth and competitiveness.

Given that these are the right things that can boost Hong Kong's economy, and we will be very successful, so what? If the general wage earners in Hong Kong have no way to share these fruits, what is the point for everyone to work so hard? Is this the fundamental goal of society? That is to say, irrespective of the consequences, as far as there are economic achievements in society as a whole, this society is still successful although members of the public may not be able to share or benefit from these achievements. Deputy Chairman, we absolutely disagree to this kind of perception and logic of thinking. I think no other place in the world than Hong Kong would have such logic of thinking.

Deputy Chairman, hence, we are extremely discontented with clause 11(3). Of course, regarding the amendments by Mr LEE Cheuk-yan and Mr WONG Kwok-hing, we should give our support. Nevertheless, when I read the content of the amendments, I have some reservation still. Why? Mr WONG Kwok-hing's amendment points out that "must not be lower than the comprehensive social security level; and is enough to afford employees' personal and their families' necessary living expenses". Frankly, I am really not very clear about the meaning of the first part: "must not be lower than the comprehensive social security level". I do not think the minimum wage is something that can replace the comprehensive social security; they are complementary indeed. Of course, the minimum wage can bring about realistic economic effects, for it may induce more people to work, which will help reduce

the number of CSSA recipients. But the CSSA protection is meant not only for the workers. Hence, I have reservation about this amendment.

As for Mr LEE Cheuk-yan's amendment, he has mentioned "the needs of employees and their families". Of course, this responds to the key requirement of Article 7 of the ICESCR mentioned just now. But then, he has added a line: "economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment"; it seems that he would like to make his amendment equivalent to the existing provisions proposed by the Government.

Deputy Chairman, in respect of all of these arguments, I think I have a bit of reservation. Perhaps I am a perfectionist who is overly picky. If I have to choose between the two, certainly I will prefer any one of the two amendments to the original provision in clause 11(3). On the two amendments, personally, I am inclined to accepting Mr LEE Cheuk-yan's amendment. Anyway, this does not matter, for I will support both amendments. Let us see which one will be passed. But unfortunately, I think it is probable that both of them may fail.

MR PAUL TSE (in Cantonese): Deputy Chairman, a number of colleagues, including Mr Ronny TONG who spoke just now, Mr Albert HO, Mr LEE Cheuk-yan and Mr Frederick FUNG who delivered their speeches in the debate earlier, have mentioned the ICESCR respectively. Members have also criticized this Council is of its rather low standard. Originally, I did not intend to spend time discussing this issue, but given that many Members have mentioned the ICESCR's constitutional status in Hong Kong, I would like to present a different view in the interest of preserving the humble reputation of the Legislative Council.

From the legal perspective, the ICESCR is not applicable to Hong Kong for the time being. Even Article 39 of the Basic Law has made no mention of incorporating the ICESCR into the laws of Hong Kong formally. I would like to cite a case (it should be familiar to those in the legal sector), and that is, the case of CHAN Mei Yee (HCAL 77/1999). Having made a detailed study of the background of the whole incident, Justice CHEUNG Chak Yau made a clear judgment. Since this is not a court, it is impossible for me to elaborate the

process and background of that case in every detail. Nevertheless, as Members may have noticed, an experienced barrister's failure to refer to some cases that were unfavourable to him had led to some relatively serious consequences. If a colleague of the Legislative Council is aware of something unfavourable to him, should he not voice out or avoid talking nonsense? Otherwise

(Mr Ronny TONG stood up)

DEPUTY CHAIRMAN (in Cantonese): Mr Ronny TONG, do you have a point of order?

MR RONNY TONG (in Cantonese): Yes.

DEPUTY CHAIRMAN (in Cantonese): What is your point of order?

MR RONNY TONG (in Cantonese): I request Mr Paul TSE to clarify as to whether he means

DEPUTY CHAIRMAN (in Cantonese): Mr TONG, before indicating which part you wish him to clarify, please sit down, as I have to ask Mr TSE first. Mr TSE, are you willing to clarify?

MR PAUL TSE (in Cantonese): I am.

DEPUTY CHAIRMAN (in Cantonese): If you are willing to clarify, please listen to Mr TONG's request first.

MR PAUL TSE (in Cantonese): Alright.

MR RONNY TONG (in Cantonese): Does Mr Paul TSE accuse me of misleading this Council? If yes, I hope he will withdraw his remark as it is offensive and in breach of the Rules of Procedure.

MR PAUL TSE (in Cantonese): I have to clarify that I have no intention to offend any Member. However, if the entire Council fails to make clear some facts, in particular, if a colleague with legal or even rich experience on the Bar fails to do so, I think it is regrettable. I do not mean to focus on the issue of deliberate misleading, for I only wish to explain the other side of the coin.

MR RONNY TONG (in Cantonese): Deputy Chairman, that is to say, that is not what he means. If so, I may sit down.

MR PAUL TSE (in Cantonese): My answer is "no". But whether it is the truth, Members can make their own judgment.

As I explained just now, I am not trying to turn this Chamber into a court by elaborating the relevant case in full. In fact, if colleagues are interested, they may refer to the document (CB(2)169/09-10) submitted to the Council by the Secretary for Justice, in which clear explanations are given on the entire background, the relationship between the ICESCR and Article 39 of the Basic Law and whether the ICESCR has any constitutional status in Hong Kong. Hence, I do not wish to spend too much time on this. After reading the document, if Members think that my view is wrong, I stand to be criticized, or even purged.

However, if there is no such status in law, we have to admit that we are not binded by that provision now. On the contrary, Article 5 under Chapter I of the Basic Law — I must stress that it is Article 5 — has clearly pointed out what system and measures shall be implemented in Hong Kong. While the provision is clear, it seems that we have not paid much attention to this provision, not even addressing the obstruction posed by the Basic Law properly. In fact, no matter what will be done, it is most imperative that we must make clear the legal provisions and what we are doing, rather than addressing the issue vaguely with

knowledge of only part of the truth. I think this is not a desirable attitude that we should hold.

Colleagues (I am not going to name them so as to avoid causing unnecessary disputes) questioned that many capitalist countries have established the minimum wage system, are there any problems? Today, a popular newspaper reported on the happiest countries in the world. I notice that several Scandinavian countries, including Sweden, Denmark and Finland, are ranked top on the list. I would like to point out that all of these countries do not have a minimum wage system. Even our strongest rival, Singapore, has no minimum wage system in place. In Germany, a country mentioned by some colleagues yesterday, they do not have an "across-the-board" and trade-specific minimum wage system. Hence, when we are having this debate here, we should figure out the truth before moving into the discussion.

On the concept of the so-called "living wage" mentioned by Mr LEE Cheuk-yan just now, I believe Mr LEE or many books have borrowed the definition of the so-called "Harvester Decision" devised by an Australian judge in 1907. This relates to the minimum wage concept, that is, how a man and his wife and two children can be enabled "to live in frugal comfort". I do not wish to spend too much time on explaining the relevant background, but on the whole, what I mean is, if we have to debate afresh the pros and cons of minimum wage from the philosophical perspective, I am afraid I may have to repeat many points already mentioned yesterday. I reiterate my strong view that Hong Kong is facing many problems at present, and we must make some efforts, particularly with respect to the problem of the disparity between the rich and the poor. After all, I have to emphasize, and I wish to explain again that I object to the current legislation on minimum wage not because I am totally nonchalant to the plight of the people or the imbalance. Rather, it is because I think this is not the right solution to the problem.

This morning, Mrs Regina IP put forth an amendment relating to the exemption of people with intellectual disabilities. Many colleagues have great sympathy for the underprivileged in Hong Kong society. The rationale explained by colleagues then happens to justify why I hold or insist that the minimum wage is not the right solution, as the underprivileged will only be rejected as a result of the institutionalization. We can stipulate a minimum wage by way of legislation, but we cannot create jobs by the same way. If the

legislative process causes the loss of many existing jobs and welfare, or even a worsening of the original conditions, we are doing a disservice out of good intentions indeed.

Many colleagues remarked that in the light of the high land price policy and the heartless behaviour of the big landlords, a small pay rise should be no big deal. I think that they are two separate issues. I object to the high land price policy and the exploitation by big landlords, but we should not exacerbate the problem. One should not say that given the expensive rent, one might as well raise the wages and all kinds of charges and fees as well. If we buy this theory, it will only lead to incessant price hikes.

Take a look at Hong Kong's background. For years it has been a very free economy, and a particular feature is that we do not have rich resources. The majority of the forerunners in legislating for minimum wage are countries rich with resources. If a minimum wage is stipulated at a very high level, it may not produce an obvious effect, since the wages of many people are already far above the minimum wage at present, and so the small increase is not going to have significant impact on them. Nevertheless, insofar as Hong Kong is concerned, I believe the legislation on minimum wage will lead to obvious but negative results. Yesterday, I cited the example of the Deutsche Bank sorry, it should be the Deutsche Post. When I double-checked the figures afterwards, I found that it had slashed 1 000 jobs immediately, the reason being its rival had retreated from the market soon after the enactment of a law on minimum wage, and that had resulted in the loss of 1 000 jobs immediately. This is a real case, and also a rather dramatic case.

Overall, I have to stress once again that in face of the enormous Mainland market with cheap labour supply, many problems confronting Hong Kong I recollect that it is probably a remark made by Mr Tommy CHEUNG Hong Kong's problems are mostly caused by an ageing population and the influx of new immigrants. They are a toiling mass with relatively lower competitiveness, and coupled with the serious disparity in the Mainland, they all strive to leave the Mainland. I always hold that the work force is like running water, in that it moves from a height to downstream, so they can always find a way to leave. If the wages are too low, there will certainly be some means or forces prompting workers to give up their current jobs and take up another one, or even leave their hometown.

I do not disapprove of and have no sympathy for those who "work from hand to mouth" or who are unable to feed their families despite their hard toil. But if we set up a system to strictly control wages, it would only end up like the United States — we all know that they have plenty of illegal workers, the United States has stipulated a minimum wage, but there are innumerable illegal workers, a fact known by all. Even if a minimum wage is stipulated in Hong Kong, but the Indonesian domestic helpers — I do not know if Members have learnt about this, I have heard many cases. Although the current minimum wage for them is three thousand-odd dollars, most of them have to refund part of their wages to their employers, hence, in fact they are paid a thousand-odd dollars only. I believe that in future, we are going to hear more and more cases like these. I just want to point out that if the legislative exercise is going to create serious and negative effects, is it worth doing so?

Given that I am the only Member voting against the Bill, I am prepared to take any criticisms. Nevertheless, I still hold that a free capitalist society advocating freedom without excessive restrictions has been an important cornerstone for Hong Kong over the years. Hence, if we want to make a change all of a sudden, we must be very careful and proceed slowly, and we should conduct detailed deliberations. However, many of our discussions are groundless, and even the factual basis, including whether the ICESCR is applicable to and legally valid in Hong Kong and whether it has any constitutional status in Hong Kong, is unclear. If we talk rot without even making clear these things, I think it will substantially undermine the credibility of the Council. I believe the Secretary may clarify when necessary, because this is an important legal basis indeed. Originally, I did not wish to discuss this problem in detail, but given that we have such a notion, I think a clarification is necessary.

With a little bit of time left, I would like to add some comments on the relationship between labour and capital. If we set the minimum wage at a certain level, or keep raising the minimum wage level, will it lead to improvement in the overall economy? There is a theory called "Cobb-Douglas Production Function", it is a formula, I have no idea how to translate it into Chinese. According to this theory, the general ratio between labour and capital is almost fixed, meaning that the creation of a minimum wage is not going to beef up the whole economy, rather, it will be diluted. This may not necessarily be a good development in the long run.

Overall speaking, I only want to emphasize that, firstly, I hope there will be other opportunities for me to explain, from the perspective of principle and concept, my view on abruptly altering the foundation of Hong Kong without giving prudent regard to a number of issues; secondly, having considered the background, historical reasons and economic conditions of Hong Kong, and in the light of our being close to an enormous market, in lack of natural resources and strongly dependent on the efforts of the working population, many of our conditions may not be favourable to the implementation of minimum wage; and thirdly, I have mentioned that under the current framework, given the definitions of many provisions, including the definition of hours worked, it is infeasible to implement the minimum wage protection in the tourism industry.

(THE CHAIRMAN resumed the Chair)

Today, in respect of some news reports on tour guides attempting to "persuade" group tour members to shop by radical means, this may also be a problem caused by the excessively low wages or the absence of minimum wage restriction. Nevertheless, the tourism industry has been adopting a relatively flexible approach in reward sharing, perhaps it is now time we conducted an overall review. In particular, if the legislation on minimum wage is passed, it may become a catalyst prompting major changes to take place in the ecology of the tourism sector. It may lead to a healthier economy, but it may also lead to massive unemployment among the disadvantaged or less competitive people, though that will happen only later. But I still hope that my views on whether the ICESCR is part of the laws of Hong Kong will be recorded. Thank you, Chairman.

MR LEUNG YIU-CHUNG (in Cantonese): Chairman, I remember there is a popular saying which reads: who would want to shave his head bald when he has got hair? This is true. Mr Paul TSE has said earlier that the happiness index of some countries is very high. We hope that Hong Kong people will all be very happy, but this might not be possible. Right? I do not know if Mr Paul TSE has ever had this feeling. If a person has to worry about how to make enough money to feed himself all the time, how can he be happy? Problems like these are real. What should a person do if he has to bear the burden of his family,

knowing only too well that his income is not enough to make ends meet? This is really a problem. About the countries which Mr TSE has cited as examples, my impression is — I do not have the relevant information on hand — their Gini coefficient is often 0.3 or less. What is the figure for Hong Kong? It is 0.45 (*a Member interrupted*) so it is now 0.533? Sorry, I got it wrong. Now it is already 0.533. This shows how serious our wealth gap is and how far we lag behind those countries. People in these countries are happy because there are causes for being happy. He must see that point. And he cannot just say part of it and fall short of saying anything about the other. Furthermore, we do not necessarily have to legislate, nor should we need to impose a minimum wage. Then why do we make so much fuss about this? Two years ago the Secretary introduced the Wage Protection Movement. Had he been successful, there would be no need to legislate today. He smiles and nods in approval. Did the employers care at that time about his call? No, they did not care. And that is why he has to legislate. Paul TSE, please think, does the Secretary love doing that? He has been forced to do so. Do you think that he really wants to do that? Frankly, I do not believe he really wants to do that. He has been forced to do so. So he must see that point first.

There are really many employers in Hong Kong who hire their staff at very low wages. As a result, these staff lead a very difficult life and there is a great gap between the life they lead and that of others. Hence we have to legislate to protect these employees. This is the most important point. But he disregards this and considers only the free market in the tourism sector and its free operation. I also feel upset about that tour guide mentioned by him. I thought, had that tour guide been able to make enough money, she would have no need to do that. If her income is high enough, why should she coerce tourists into buying things? Why does she have to work so hard? Some people have even uploaded the video clip about her onto the Internet. Why did she have to do that? As Mr TSE has said earlier, it is because of her low income and she does not have any wage protection and so she has to do it. I remember that two or three years ago, many tour guides told us that they were forced to sell counterfeit goods. Why? Because their income was unable to make ends meet and so they were forced to do so. Of course, we do not encourage this sort of acts or praise them for doing that, but the point is they are forced to do so. Members must realize this situation.

About the amendment proposed by Mr LEE Cheuk-yan, it is precisely the crux of the matter. What is the most important point about this present

legislation to impose a minimum wage? It is about the purpose of a minimum wage. If a minimum wage is to be stipulated, but the wage level set is very low, then would the situation become worse than before? What then is the point of it? We might as well not to legislate. So a minimum wage must be set at a level that can enable our living to reach a reasonable standard and be reasonably protected. This is based on Article 3 of the International Labour Convention No. 131 which also makes reference to Article 7 of the ICESCR — I hope Paul TSE would care to take a look at that — which states: "The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular: Remuneration which provides all workers, as a minimum, with: A decent living for themselves and their families in accordance with the provisions of the present Covenant". This is clear enough. As to the question of whether or not we should comply with this Covenant, may I ask Mr Paul TSE to look at Article 39 of the Basic Law which stipulates that: "The provisions of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and international labour conventions as applied to Hong Kong shall remain in force and shall be implemented through the laws of the Hong Kong Special Administrative Region." This provision tells us clearly that the Basic Law has stipulated the work to be done, then why is it said that there is no constitutional status for it? Why is it not something that should be done? Therefore, it is totally not in contravention of any law. In contrast, it is a contravention of the law not to comply with it. It is very important that LEE Cheuk-yan and WONG Kwok-hing include these concepts in this minimum wage law, which is compliant with the aspirations found in the Basic Law. It would be wrong not to do so.

That particular mention is made of family life is because the ICESCR provides that the remuneration must be able to provide a decent living "for themselves and their families". The word "families" is explicitly included. This is not something we crave for unrealistically, but something most basic. Of course, some people would say that it is unnecessary to set a wage level that is too high and we need just to set it at a level comparable to CSSA payments. This is what many people are saying. But this is really not sufficient. Why? Because the real income may be comparable to CSSA payments, but additional supplements are also granted to families on CSSA for health care, tuition fees and books and stationery expenses other than the standard CSSA payments. So it

would not be sufficient if the wage level is merely set at a level comparable to CSSA without regard for these supplements.

Therefore, when we propose \$33 today, as Mr LEE Cheuk-yan has said, the monthly salary is only about \$6,880. This is a most basic requirement for living. If we do not include the expenses for family life, I really do not know what the point of enacting this piece of legislation is. It is because the purpose of this law and its meaning is to provide individuals and their families with — that is, as is stipulated in the ICESCR I have just mentioned — a decent living for themselves and their families. This is where the whole idea lies, a point we cannot deny.

Hence it is correct to add this requirement. Many reporters said to us earlier today that when so many provisions were added, the result would be one of the gains being unable to make up for the losses. Companies would close and there will be layoffs. Such things would happen whenever we talk about issues of workers' rights. It happens every time. Employers and those people representing the employers will always say that if the law is really passed, then they will have to dismiss the staff and effect retrenchment. This happens every time. Many employees are very scared and they would rather hope that the law would not be passed. This is their reaction. But is this really the fact? I cited some examples yesterday. Such things also happened during the discussions on Mandatory Provident Fund. Many people said that while they had three employees then, in future they would only hire two. Is this really the case? No, we have not seen such things. There has been no massive unemployment. In contrast, the surge in the unemployment rate only happens when there is an economic downturn. This is a socio-economic issue, not that of law. Even if this happens, such as during the SARS outbreak when a huge number of workers was forced out of work, the Government should be doing something. What should it do? It should put in efforts of poverty alleviation and create some related posts for poverty alleviation in order to solve the unemployment problem.

In our opinion, if a minimum wage is set, apart from providing individual workers and their families with a decent living, it can in fact spur the internal operation of the economy and drive economic growth. And as a complementary effect is resulted, there will be some effect of mutual benefit. This will be good to everyone. When the Government proposes legislating to impose a minimum wage, it is only hoped that the wage level will not be too low. This kind of idea

will not help solve the problem. The wage level must be set at one which gives consideration to the cost of living, especially that related to the family. It is only when this is done that the wage level set is meaningful. This is also an aspect I consider important.

I would like to respond to what Mr Paul TSE has talked about and that is the question of happiness. I hope every wage earner and citizen of Hong Kong can live a happy life. The question is: if the economy turns bad, just who would be happy? Mr TSE says this is his personal experience. He had gone through some trying times and solved the problems by himself. So he does not feel unhappy. Well, this could be his own experience. But for many people, when they have to face the heavy financial burden of their families, they would be wearing a long face and they do not know what to do. Many people will even break the law. I believe Members must have heard of this story. I cannot remember whether it was last year or the year before last that an unemployed person stole some buns from a bakery. His story moved even the Judge. I think Mr TSE must have heard of this news story. It is things like these that show us where the problem lies. If we are not leading a stable life and we cannot meet our needs, just how can we be happy? So I support fully the amendments moved respectively by the two Members in order that the living of the workers can be assured.

Chairman, I so submit.

MR WONG SING-CHI (in Cantonese): Chairman, the Democratic Party has all along maintained that a minimum wage should be set based on humanitarian principles and that a mechanism should be established to undertake annual reviews and make adjustments as appropriate in the light of economic conditions, the labour market and the employment situation. Since we are talking about humanitarian considerations, I would hope of course that every member of the working population can earn an income that will suffice to meet his needs of living. This idea of meeting the needs of living is really a very humble wish, for we are talking about things as basic as feeding oneself.

Indeed, Members should think very carefully why a minimum wage should be set. Obviously it is because it is hoped that some members of the working population can find a stable life with the meagre income they earn through work.

A stable life means being able to meet the basic needs of living, or even satisfying the other needs of living or undergoing some activities. Only in this way can this be called humane. It would really be bad if one's income is barely able to make his ends meet. Would we call it humane if a person can only pay for his meals, rents and he is forced to stay at home after work? This kind of life is animal life. Animals are fed and locked up in a cage. They cannot move about, for doing so means waste of resources. It would be really inhuman if this is the case.

I am worried that the purpose of the Government in introducing the minimum wage is only to silence the labour groups and even some Members. It does not consider humanitarian grounds and the basic needs of living of the people. It would just say that its job is finished and the minimum wage law is in place. So they should not complain and grumble. Is this the case? If so, the problem would really be serious. If a government cannot meet the needs of the people, then it should be replaced. Unfortunately, we cannot replace our Government. What a pity! Secretary Matthew CHEUNG seems not to be such a person. He was very enthusiastic and positive when he worked with us. He is amicable and he has put in the best of his efforts. I think there is no reason for the Secretary to reject the amendments from Mr WONG Kwok-hing and Mr LEE Cheuk-yan.

These two amendments only present some very humble demands. The major premise held by Mr WONG Kwok-hing in his amendment is merely that the minimum wage set should not be lower than the CSSA payments. This is indeed a very humble demand. People think that those CSSA recipients are pitiful and they would die if no assistance is given by the Government. This is the line set, and that is it. What is so difficult about setting a minimum wage at a level not less than the CSSA payments? We may as well forget about the minimum wage if it is lower than the CSSA payments. It would really be bad if after working so hard, the income one gets is not even able to make ends meet and pay for the basic needs of living. I therefore do not think the proposal made by Mr WONG Kwok-hing will present any difficulty to the Government. He has also made it clear that the wage level should enable workers to maintain themselves and their families. Of course, Mr WONG Kwok-hing has not talked about how much money would be required for a person to support a given number of people. But in this regard, Members will know that a person's CSSA payments would be enough to support 1.5 persons or even two. This is as

simple as that. This is also the barest minimum. And you may use it to support two persons or two-point something persons. We reckon that if someone makes some \$6,000 a month, it is really not that much. I would think that this sum of some \$6,000 would be able to support the living of a family.

As for the amendment proposed by Mr LEE Cheuk-yan, mention is made that when the Government is to determine the minimum wage level, it should consider the needs of living. By the needs of living, it does not mean all kinds of needs, but only the basic needs of living. These basic needs mean meals, accommodation, transport, and so on. These are the most basic needs. But, as I have said, these are not all and there are also activities and entertainment and other expenses that add a little spice to life. Consideration should be given to all this. But the CSSA payments cannot meet such needs. The CSSA recipients would be very hard up after paying for the children's spectacles, fees for their interest classes, and so on. As a result, the children cannot take part in more than one interest class. They will be put under financial restraints and if they want to travel, they cannot travel very often. Or else they will spend all the CSSA payments. Is this a decent living? So the minimum wage level must in any case be higher than the CSSA rates. Hence the amendment proposed by Mr WONG Kwok-hing is very reasonable. And the amendment proposed by Mr LEE Cheuk-yan is also something we should consider.

It is unfortunate that some of the representatives for the SMEs are not bosses of SMEs. I am talking about the representatives for the SMEs; I am not sure if they are real or fake representatives. I am not talking about Ms Miriam LAU. She is very nice, and she supports our position. Honestly, \$24 is in fact too little. These representatives say that the minimum wage levels of \$30 or \$33 are way too high. The Democratic Party does not oppose \$33, but we think that the minimum wage should at least be \$30. This is only half of the median income and it is just raising the amount from \$29.25 to \$30. If the Minimum Wage Commission sets the minimum wage at \$33, the Democratic Party will certainly give support it. We will not oppose it. We consider \$30 the lowest wage level which can be considered reasonable. But some representatives of SMEs — they may also be false representatives of the SMEs — say that if the minimum wage is set at this level, all they can do is to dismiss the staff. This line will make their operation not sustainable.

In my opinion, if \$30 or \$33 is used as the minimum wage level so that the employees can meet their basic needs of living, and if the employers cannot offer such a wage level or if they think that their companies would fold after it is offered, I think that the companies had better fold. If the employers want the employees to work so that they can earn a living, but if the employees cannot make enough money to earn a living, then these companies are being unreasonable, out of touch with the times, unable to meet business principles and not cost-effective. Then in such circumstances, these companies had better be run by other people and the employers should stay out of the business.

My restaurant is in fact operating difficultly and it is never easy to do business. However, I hope that after business has become steady, I can pay workers at an hourly rate of \$33. Actually, some of the workers are getting an hourly rate of more than \$33, but for the time being, some workers do not have an hourly wage at this rate. We cannot cope. So I have also considered closing the restaurant if I cannot solve these problems. I do not want to have people working for me but they are being exploited by me. I do not want to see workers' life not being able to reach a level that they should have, whereas for me, I cannot make any profits. In such a situation, why should I continue running the business? So it is not an unreasonable demand to set the minimum wage at a level proposed by Members.

Chairman, I cannot see why Members would oppose this humble demand — one that will enable workers to earn an income that will make them live a life that they should lead. From another perspective, those employers who oppose the minimum wage level care not about the life and death of workers and all they want is to make more money. The fast-food chain Café de Coral which Mr LEUNG Kwok-hung has slammed only offers an hourly rate of \$19 to \$20. This is despicably low. On the other hand, the prices of Café de Coral shares in the stock market do not fall and the company makes money — and the sum is more than what the company needs for mere survival. There are many companies, especially the big corporations and fast-food chains, which pay a deplorably low wage to their staff. This is because the companies want their profits to increase all the time. In fact, the living of the employers would not be affected in any way. They will not become any richer. But I just cannot figure out why they will want to make money this way. This is the most undesirable mentality I can possibly find.

Chairman, I hope Members can take a humanitarian approach to this issue. This will enable our society to offer a wage which can meet the basic needs of the workers after they have put in their hard effort. This is actually not a harsh demand, but a demand based on some basic principles and genuine needs.

Chairman, some companies say that if workers in Hong Kong enjoy a minimum wage, many companies will fold, workers will lose jobs and the economy of Hong Kong will flounder. I do not think this way. When the wage which an employee gets is able to offer him a stable life and prospects, and when he knows that he will not have to worry about his life if he continues to work hard and that he may even have more resources to take part in other activities or to spend, then such a society will become stable and its economy will see spiral growth. For those employees who did not have any minimum wage before, after the implementation of a minimum wage, they may think that their income has increased, so they may spend more money to take part in more activities. We would also encourage them to do so and spend more when they have spare time. If hundreds of thousands or even more than a million workers can spend more each day, our economy will only go better instead of worse.

Initially, the profits made by the companies may be reduced, but when the life and income of more people become stable or even get better, the business of these companies will also improve. So Chairman, I do not think there is any big problem with the minimum wage legislation or even setting it at a level that can meet people's basic needs of living. This may give a chance for the Hong Kong economy to become stable and grow. So in the interest of Hong Kong, I hope all Members of this Council can support the amendments proposed respectively by Mr LEE Cheuk-yan and Mr WONG Kwok-hing on the factors which should be considered when setting the minimum wage level.

Thank you, Chairman.

MR LEUNG KWOK-HUNG (in Cantonese): Thank you, Chairman. Article 5 of the Basic Law states Paul TSE talked about Article 5 of the Basic Law. What is it? It says the previous capitalist system and way of life shall remain unchanged for 50 years. According to this, from the very first day when the Basic Law was promulgated, Members do not have to come to the Legislative Council, for everything shall remain unchanged. So this provision is

meaningless. Unless there are people who say, "The socialist system and policies shall be implemented." Article 5 of the Basic Law goes like this: "The socialist system and policies shall not be practised in the Hong Kong Special Administrative Region". The subject of that sentence and the most important point is "the socialist systems and policies" and they shall not be practised. Having said that, I would think that this may not necessarily be correct.

Then what is meant by "the previous capitalist system and way of life shall remain unchanged for 50 years"? A capitalist system encompasses such areas as wages, profits, interests and land rents. All these are issues which were resolved during the times of RICARDO. We cannot get rid of these concepts. This morning I quoted some remarks by Karl MARX to illustrate that wages and profits are an ever-changing variable, not a constant. How to make it change all the time? This is an incessant struggle between the workers and the capitalists. So in any case, minimum wage as an institution is also a kind of struggle. This is because a minimum wage will change. It is not a constant. It is only an institution. So Article 5 is futile. For if not, the President would not have to be the President. This is because the motto that used to be found hanging above the Chamber is already gone. Donald TSANG said that it had been replaced by the regional emblem of the Hong Kong SAR.

After all these passing remarks, the next point I wish to make is that Mr Paul TSE said that minimum wage was not found in many capitalist countries. As a matter of fact, it is practised in some places as a national policy, some as a trade-specific policy, some related to certain regions and some related to certain types of work. What are the examples of minimum wage being practised nation-wide? They are the United States, Japan, France, the Netherlands, Spain, Portugal, Singapore and Brazil. Minimum wage as a trade-specific policy is found in Germany, Sweden, Denmark, Finland, Italy, Austria, South Korea and Australia — such examples really abound. But he has said part of this, but not the other. In Germany, they have wages for specific trades because they have trade unions. Actually, there is no minimum wage in Britain. At that time the trade unions there did not want it. The TUC was worried that once minimum wage was introduced, things would really be bad if the Conservative Party came to power. So the trade unions would rather use the issue of minimum wage as a bargaining chip and they wanted to make use of the right to collective bargaining of the TUC which monopolized trade union affairs and strove to get what they wanted. Of course, the kind of action they put up was a bureaucratic form of

wildcat strike. We are not that sure about the academic level of this Council — well, actually, it is not so much an academic matter but common sense. I do not think reckless remarks should be made here.

Having made remarks that should not be made recklessly, I wish to switch to another topic. The motives and intentions of the Government are known to everyone. They are to create a middle point between the strong forces of the employers and the employees. This is a function which all governments should perform. The existence of a government is like the result of a battle of forces between the various kinds of vectors in physics. It would be much better if there are elections, for in the parliamentary assembly nowadays, it defies the laws of physics, for the vectors are unequal.

Forces with a direction are called a vector and that is vector with a direction. As I was educated in a Chinese-medium secondary school, so I have used these terms in Chinese. Put simply, we can see that under the thrusts of these two strong forces, and plus the fact that the minimum wage is practised in our Motherland, can we have a third choice? When this struggle between the classes and the resistance there are so great, can there be a third option? I am afraid there is none.

First of all, the minimum wage is practised on the Mainland. Apart from making the income of the workers stable, they are based on one theory and that is, if the costs of the enterprises are raised, that is, when the variable costs increase — variable costs refer to labour costs or wages which can fluctuate — those inefficient enterprises will have to close down. Hence the competitiveness of the enterprises is enhanced. Then the enterprises will engage in improvement efforts at their own initiative. But this idea is open to question. Minimum wage is imposed for various reasons and one which is found on the Mainland is that when the industries are to be upgraded, the minimum wage is employed to force those small enterprises to close down. Now it can be said that many factories in Guangdong Province are finished. Actually, there are many theories associated with minimum wage. Members may just think that there is only one use of minimum wage and, that is, for workers to strive for a better reward. This is not necessarily the case. The Mainland uses it as a method to eliminate enterprises which the Mainland considers not desirable. So we should read more, and this idea is clearly laid down in the think-tanks of the Mainland. Now those enterprises which are not so good will need to upgrade and Guangdong

Province needs to make improvements, too. Members have paid a visit to the Honda plant and Foxconn. When other people make more than US\$200, the workers there who make RMB 13 yuan are considered terrific.

So what is the point of this? The background as we see it is that we do not have any intention to improve the enterprises by resorting to the imposition of a minimum wage. Not at all. Honestly, the SMEs in Hong Kong are regarded as nothing more than accessories — it was the case in the colonial times, and now it is still so under the SAR Government. The spare money which people have can all be gone with the fall of the Lehmann Brothers. When people deposited money in a bank, the staff could entice them to buy Lehmann Brothers minibonds. And so they were robbed. I have said in this Council countless times that when the Government is willing to lend 50% or 70% of the loan to the SMEs, the banks will take care of the remaining 30%. Of course, the banks will try to find premium clients

CHAIRMAN (in Cantonese): Mr LEUNG, what you are saying now should have been said during the Second Reading debate.

MR LEUNG KWOK-HUNG (in Cantonese): Right, but I want to prove one point

CHAIRMAN (in Cantonese): Please return to this amendment.

MR LEUNG KWOK-HUNG (in Cantonese): Many SMEs There is a guy called Andy CHAN who is a fan of the League of Social Democrats. He rang me up and rebuked me for being too much overboard. I wish to respond to his remark. Those who drive the SMEs — from the Hong Kong-style cafes to the small factories — out of business, are not the workers. It is not the workers who demand to eat more bread, but those greedy land developers and bankers who slaughter them. They are slaughtered. It is because of the extreme avarice of

CHAIRMAN (in Cantonese): Mr LEUNG, you have put forward this view in the Second Reading debate already.

MR LEUNG KWOK-HUNG (in Cantonese): then all right, I have already answered Andy CHAN. He has heard my reply.

Second, it is under this kind of pressure, when hard pressed by the vectors with a direction and vectors with magnitude, the authorities have attached strings to this. Conditions are attached to the minimum wage. First, it would not do to have a wage that is too low. This is mentioned in the Trade Boards Ordinance. Human rights ideas 70 years ago pointed out that it would not work. Now one more condition is attached and, that is, not too many jobs should be lost. These are like fetters to the minimum wage, put in a birdcage.

Secretary, you have conducted so many surveys, but what did you do during the two years when the Wage Protection Movement was in force? Do we have to convince these people to practise minimum wage? You just want to find out a figure so that when minimum wage is put into practice, it will meet the least resistance and cause the least impact. Now when someone proposes that the minimum wage be set at \$27, CHAN Yu-kwong issues a profit warning instantly. Samson TAM, I do not think you will do that. When you were the boss of a football club, I do not think you paid your players that badly. You would not pay \$50 to hire some football players from Africa to join your team. I do not think you would do that.

Now the key is that with these conditions in place, the 12 people on the Minimum Wage Commission (MWC), what kind of criteria do you reckon they will use as reference? There are three self-styled scholars there and most of them are neo-liberalists. Why do they not pick me for the MWC? If I were picked, there would be one more vote in support of a higher wage level. Three officials can produce a situation like this. And with three from the employers, the votes will be nine versus three. And these two criteria are used. They say that \$24 is the best equilibrium point because less people will lose their jobs as a result. Is this a hoax? This is the most important point. Chairman, all along it is obvious that reducing the jobless population and protecting the SMEs are not the objectives of imposing a minimum wage. The objective is to address the difficulties faced by SMEs, especially their hardships under the Government's

"three high" policy. Chairman, I am sure you must have already known this problem when you were young. However, and to this day, this "three high" policy is still in existence. Why is a water jar, so to speak, that should have been put elsewhere is put here?

There are presently two self-contradictory premises. But of these two premises, nine persons have adopted a premise which is unfavourable to the employees. It is because of this that the Liberal Party will make a proposal of \$20, then raises it to \$24

(Ms Miriam LAU stood up)

CHAIRMAN (in Cantonese): Ms Miriam LAU, are you seeking an elucidation?

MS MIRIAM LAU (in Cantonese): Mr LEUNG Kwok-hung just said that the Liberal Party had proposed \$20. I hope Mr LEUNG can clarify as to when the Liberal Party has ever proposed \$20?

MR LEUNG KWOK-HUNG (in Cantonese): I got it wrong. The Liberal Party has never proposed \$20. It is \$24. How terrific is that \$24. Four more dollars. Thank you. Thank you, Ms Miriam LAU for correcting me. These \$4 are really terrific. They are a panacea, a potion of longevity. If one eats on preserved vegetables, these \$4 would be quite enough for a meal. What a good grace.

Chairman, you can see that a seed of destruction is sown here. MARX also says and I quote to this effect: "The benevolent owners of English manors have lowered the wages of their farm hands to a level that is even below the limits of a bare biological subsistence, and as for the sustaining of the physical existence of the workers and for the procreation of their race," — it is race — "the shortfall in the materials necessary to maintain life, they would just leave it to be taken care of by the charity law". It was the 19th century when MARX wrote these remarks and the charity law can be dated back to the 16th century. That law was meant for the abject poor, the poorest of the poor, and they would be given something to barely sustain their life. This is what we are doing today. If you

think that the minimum wage is too low, then go and apply for CSSA. This remark by our trade unions, that the minimum wage should be no less than the living standard of a recipient of CSSA is in fact falling into the trap.

Chairman, productivity transforms into objects like labour, machines, raw materials and technology. Besides, productivity in the ultimate form and which has got life is the humans. Human beings are endowed with four limbs, a brain and creativity. Children of the proletariat are destined for exploitation unless they become capitalists. They are robots forever. They are slaves of wages. They are slaves and they have to raise their own slaves — slaves who will be exploited. It follows that when the wage of a worker is so low that he cannot support his family, it is not his fault, but that of those who exploit him. A remedy as a whole should be effected in the secondary distribution. In other words, apart from workers being compensated in the form of wage, those people who have got too much from interests, profits and land rents should hand over their wealth by paying tax. If the SMEs cannot do this, then LI Ka-shing should do it. Or that developer which has skipped the numbering of the floors of a building built by it should do so. This is what the League of Social Democrats advocate. A minimum wage is only protection in the minimal degree. Wealth has to be redistributed. And so are the rights to education and health care. But these are not the topics of our discussion today

CHAIRMAN (in Cantonese): Please come back to this amendment.

MR LEUNG KWOK-HUNG (in Cantonese): I was furious when I heard this. It is because this Council only knows about primary distribution. It only knows about wages, profits, interests and land rents. It does not know anything about secondary distribution. It does not know that wealth in society has to be redistributed. It does not know anything about social democracy. Even if this is not democratic socialism, we cannot say that people in this Council know much about political theories.

The Labour Party practises social democracy to a certain extent. This is also practised in Scandinavia. The entire Western Europe once tried to adopt this system. This was tried in Canada, too. But why can Hong Kong not practise this system for sure? Why can this idea of secondary distribution not be

advocated? Now the people are clearly short-changed in the primary distribution. A scholar says that it is fooling people when the hourly wage rate reaches \$28. Because if one has to support 1.5 persons, an hourly wage rate of \$28 would translate into a monthly salary of some \$8,000 and this is nothing but the amount of CSSA payment.

Chairman, I am actually grumbling. I cannot stand it. I am grateful for your patience. However, I have to tell Members that they should think with their brains. How you treat the workers now, you will be treated in the same way by the workers tomorrow. This is the way things are. And this is also the cause of the riots back in 1967.

MS MIRIAM LAU (in Cantonese): Chairman, I would like to talk about the amendment proposed by Mr LEE Cheuk-yan first. He suggests amending clause 11(3) to provide that when the MWC is to set the minimum wage, it must have regard to "the needs of employees and their families" in subclause 3(a) and the "economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment" in subclause 3(b).

By all appearances, the amendment seems to attach great attention to the striking of a balance between economic development and the job market when imposing a minimum wage. It seems to be a good. But after looking at it carefully, this proposed amendment actually neglects the realistic situation of Hong Kong. And the two, that is, subclauses 3(a) and 3(b), which I have just read out are in fact self-contradictory and cannot be put into practice at all. The Liberal Party is most unwilling to see the wages of the grass-roots workers become too low. In this debate, many of the speeches made have referred to an old man who said nine years ago that he only got an hourly wage of \$7. This is most pathetic.

Therefore, the Liberal Party supports this legislative exercise to implement minimum wage. The main reason is that the Government states from the outset that this legislative exercise is based on the principle that wages should be prevented from getting too low. This is a very important point related to the principles of legislation which the Liberal Party and the business sector would

agree. In the view of the Liberal Party, wage is the reward for work done by an employee. It is a reward which an employee obtains and the amount of which depends on the nature of work and abilities of the employee. Wage should not include other factors, that is to say, wage should be no more than the reward which an employee receives in accordance with the nature of his work and his own abilities. But Mr LEE Cheuk-yan mixes up wage and some social welfare elements in his amendment. He demands that when minimum wage is to be set, consideration should be given to the needs of employees and their families, including the cost of living, social security benefits and the relative living standards of other social groups.

First of all, the inclusion of these requirements into the law is undesirable. Why? Because the demand requires consideration for the needs of the employees and their families. When Mr LEE Cheuk-yan spoke earlier, he said that he was referring to the needs of a family of two persons. When Mr Paul TSE spoke, he said that in the case of Australia, it meant a family of four persons. Should the MWC consider the needs of a two-person family, a four-person family or a family with three generations living under one roof? If the requirements of the law are put down in such an unclear manner, the MWC will certainly meet difficulties in determining the wage level.

Another point is that the amendment requests that the relative living standards of other social groups should be taken as reference by the MWC. The standards can vary greatly. Should living standards mean that a family takes annual vacation every year by making a seven-day trip to Southeast Asia, or a 10-day trip to Japan, or a 14-day trip to Europe? There can be huge differences. Then what should the MWC do to make reference to these social groups in order to set a minimum wage level? If the MWC has to consider so many factors, and these are all requirements stipulated in the law, it would be at a loss as to what it should do in practice.

Mr LEE Cheuk-yan said that if the minimum wage were set at the level of \$33, then the basic needs of a two-person family that he talked about would be accounted for. But at the same time Mr LEE said that economic factors should be considered. He uses the conjunction "and" in his amendment and this means family factors and economic factors, and the latter includes the desirability of attaining and maintaining a high level of employment. Mr LEE Cheuk-yan

knows very well the great importance of a "high level of employment" to Hong Kong. We do not want to see any rise in the jobless rate. But can things be so ideal? We want high wages while we do not want to lose jobs. This is of course a situation which we would love to see, but I think, given the realistic conditions of Hong Kong, this is only some wishful thinking on the part of Mr LEE Cheuk-yan.

Now I would like to cite the findings of a survey conducted by the Liberal Party last year. I would not go into the details. Basically, we point out in our survey that if the minimum wage is set at \$24, it is estimated — the survey was conducted in around May or June last year — that about 36 000 grass-roots wage earners would be laid off or replaced. If the minimum wage goes to \$32, 170 000 people would be affected. According to the projections, if the wage level is set at \$33 as suggested by Mr LEE Cheuk-yan, 245 000 people would be laid off or replaced because of the implementation of a minimum wage. Why will people be replaced? Those workers of a low educational attainment and low level of skill will be replaced by younger workers with a higher level of skill. Such are the projections of our survey. Although this is not a prediction with scientific accuracy, this is definitely worth considering and making reference to.

Members from the labour sector, including Mr LEE Cheuk-yan, have always said that the Liberal Party has cited these figures only to scare off people. They often quote the example of Australia and say that the impact on Australian society after the introduction of a minimum wage has been slight. Actually, the socio-economic conditions of every place are different and we cannot say that when no adverse results occur after a place has introduced a minimum wage then it means that there would be no problems when minimum wage is introduced in Hong Kong. We know that minimum wage is practised in many places, but there are also many places where a minimum wage is absent. These places include our rival, Singapore. So is it necessarily the case that when minimum wage is introduced in Hong Kong, it would not lead to any problems as in the case of Australia?

In Britain, when introducing the minimum wage, it used the wage floor idea to prevent wage levels from getting too low. It did not use a living wage. In practice, the first 5% of the workers were taken care of. The process of implementing minimum wage in Britain was smooth. The Liberal Party now

suggests \$24 and likewise, the first 5% of the workers will be taken care of. The case is very much similar to that in Britain. We hope very much that a similar effect as that in Britain can be achieved in Hong Kong, that there will be no concussions in the economy and our companies will not be forced out of business. We hope a minimum wage level which is acceptable to all can be set so that everyone can have a job and society can stay prosperous.

Chairman, is this scaremongering? Concerning the minimum wage issue, I have been exploring it with many friends, including people from my sector. On the situation in the logistics industry, generally speaking, our ports and the airport are all very busy. The situation looks very good this year. Air cargo volume has risen by more than 30% and so things should be very satisfactory in the logistics industry. On the surface, everyone thinks it looks good. However, people in some job types in the logistics industry are very concerned about the setting of a minimum wage. A group of operators of logistics firms has told me that if the minimum wage in Hong Kong is set at a level over \$24 or at most \$25, some of the work procedures in the industry will have to move out of Hong Kong into the Mainland because of cost considerations. When shipments of cargo come to Hong Kong, some people in the logistics industry will undertake some processing such as doing some simple tasks like affixing labels. Now these workers are paid less than or at \$24 an hour. So if the wage level exceeds that, the conduct of such work procedures in Hong Kong will not be justified. Actually, I hope to see further growth of these work procedures in Hong Kong so that there can be more value-added services provided by the local logistics industry. As a result, more cargoes will be attracted to Hong Kong, and so our economy will grow and more people can have a job. This is my hope. But some operators in the logistics industry have actually told me that if the minimum wage is over \$24 and up to \$25, they will be unable to bear the financial pressure and these work procedures will have to be relocated to the Mainland.

The Liberal Party has never said that if the minimum wage is set at \$33, all the companies will fold. We have never said that. In fact, we know that most SMEs may not have any problems. We are worried about those SMEs which are weak. They will certainly run into problems. If they have to cope with a minimum wage level which is high, they may really have to take the action mentioned by Mr WONG Sing-chi earlier. I heard him say clearly that if companies cannot cope, they had better close down. This is something we are

afraid of hearing: if they cannot make it, then they should close down. What will be the results? The boss may go home or embark on a trip to Europe. But the employees will lose their jobs. So this is a very important factor to consider.

We do not want to see too many companies closing down because of the minimum wage. Why am I so worried? Because I am aware of the business operation of many trades. According to information from the Census and Statistics Department which I have at hand, the first quartile earnings rate for some low-wage trades is very low. The earnings rate for SMEs in this group, including those in the security services, is only 1.8%. If the minimum wage is set at \$33 per hour, its earnings will be adjusted downwards to -14.7%. The situation is the same in the cleaning services. Now the earnings rate is 5.5%. When the minimum wage is set at \$33, the earnings rate for the trade will come down to -13.9%. For the elderly homes trade, now the earnings rate ranges from a small amount of profit to 0.05% in losses. If the minimum wage is set at \$33 an hour, it will instantly result in a loss of 5.6% to 5.7%. These are the companies that I am worried about. Actually, there are many other examples, but owing to the constraints of time, I would not read out all of them.

Of course, Members can say that the operators can shift the increase in costs as a result of minimum wage to the clients. But that is easier said than done. Can every trade shift the increase in costs to the clients? If this cannot be done, in the end the operators will have to decide whether or not to continue with their operation. What I have just cited are trades in which the salary of the staff accounts for a large proportion of their earnings. We agree that trades that hire less staff will not be affected so much, such as the wholesale and import trading sectors where staff remuneration only accounts for 4.2% of the total operation costs. These trades do not have to worry too much because an increase in salary will not affect the overall operation costs that much. Actually, there are many other examples, but I will not talk about them. However, although the minimum wage level of \$24 proposed by us is not an absolute level, this can serve as reference. We have to take this into account. If the level set is much higher than this level, we should consider whether certain situations which we do not want to see will appear.

About such situations that we do not want to see, actually, some economists have done many researches. One such economist is called David NEUMARK and his name has been mentioned many times in this debate. I am

sure Members are quite familiar with him. He says that many studies on minimum wage over the years all proved very convincingly that minimum wage will lead to a drain of low-income jobs and workers with a low level of skill and young people are the first to bear the brunt. This is a conclusion reached in many countries. The impact of this may have a lagging effect and it may show up gradually even one year after minimum wage is implemented. NEUMARK says that in some countries, the minimum wage system will have another wage level which is lower than the minimum wage level, and it is especially designed for the young people, the purpose of which is to take special care of the young people so that they would not become jobless because the minimum wage level set is high. Such an arrangement is found in Britain. But the Hong Kong Government firmly refuses to introduce it, saying that it is too complicated. Actually, this arrangement can help the young people who are the most vulnerable group because they have the highest unemployment rate. Later on when the minimum wage is put into practice, we should be concerned about its effect and see whether the young people are affected.

When Mr LEE Cheuk-yan spoke the day before yesterday during the resumption of the Second Reading debate, he likened the attempt to strive for legislation on minimum wage to the Spanish national football team in the World Cup. When the law is passed, it is like Spain beating Germany; and when the wage level of \$33 is secured, it is like beating Holland and winning the World Cup. First of all, I think minimum wage is not a zero-sum game and it is not like the World Cup that when a side loses, the other side will win. If the minimum wage level is set too high, then the grass-roots workers, employers and society as a whole will have to bear adverse impacts like unemployment, reduced competitiveness, and so on. In the end, it could be that everyone will become a loser and there is no winner.

As for the amendment by Mr WONG Kwok-hing which deletes clause 11(3) of the Bill completely and rewrite it as follows: when the MWC is to set a minimum wage, it "must have regard to the need to assure the minimum wage — (a) must not be lower than the comprehensive social security level; and (b) is enough to afford employees' personal and their families' necessary living expenses". With respect to this amendment, it is really hard for us to support it. It is because he has not considered other factors like economic conditions, unemployment, level of productivity, and so on. All these are not counted except the cost of living. I would think that if the above factors are completely

neglected in determining the minimum wage, it is very, very dangerous. Therefore, we agree with the policy principle of the Government at present, that is, achieving a suitable balance between the objectives of trying to prevent wages becoming too low and reducing the drain of low-paid jobs; as well as to sustain Hong Kong's economic development and competitiveness. We agree very much that the MWC should consider these three principles. It should be extremely careful during the initial stages of implementing the minimum wage. We think that these three principles are appropriate because they can address our concerns and preserve flexibility.

Thank you, Chairman.

MR ALBERT HO (in Cantonese): Chairman, I speak in response particularly to the views expressed by Mr Paul TSE on the ICESCR. According to the remarks made by Mr Paul TSE earlier, I think he may have misunderstood some of the remarks made by certain colleagues. Why do we consider the ICESCR one of the major and primary considerations for supporting this amendment today? I think that he may have misunderstood something after all. And that is the reason for him making insinuated criticisms against certain colleagues who are barristers earlier. This is really unfair. I hope he will listen to my speech carefully.

First, I believe not only colleagues who are lawyers, but also many colleagues who are veteran Members will have some knowledge of the two covenants, that is, the ICESCR and the International Covenant on Civil and Political Rights (ICCPR). As stipulated in Article 39 of the Basic Law, the two covenants should be applicable to the SAR and should be implemented through legislation. I think Members will understand this, too.

Second, local legislation on the ICCPR has been enacted, that is, the Bill of Rights, to enable the covenant to have overriding binding effect. However, local legislation has not yet been enacted for the implementation of the ICESCR. According to my understanding, since many of the provisions in the ICESCR are guiding principles of social polities, it has been difficult for many countries around the world to legislate on its implementation. Many countries will include these social policies as part of their constitutions, but under this arrangement, these policies can hardly be invoked in legal proceedings. Take

the definition of reasonable welfare as an example; this can hardly be invoked in legal proceedings. Hence, in most of the cases, the Court will not give binding interpretations of such terms arbitrarily, for the Court considers that it should only help the public to understand the spirit of the law concerned and nothing more.

Third, when the Commission on Human Rights scrutinizes reports on the ICESCR, it will appreciate the different conditions or levels of economic development of individual countries, and thus the requirement imposed on those countries may not necessarily be the same. For this reason, the Commission has adopted the margin of appreciation approach, which means the Commission may consider certain countries should be able to do more, while appreciating that other countries may not necessarily be able to advance quickly. However, the objective is certain, and every country should make their best effort to comply with the requirements of the ICESCR.

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

Today, Hong Kong is going to legislate on minimum wage. In view of the existing standard of economic development in Hong Kong and the values we held at present, should the relevant provisions of the ICESCR be incorporated into local laws? We should consider this today. We as legislators should exercise discretion in lawmaking.

Rightly because of this, I think colleagues have made reference or given serious consideration to the provisions in the ICESCR, and they considered it very fair to incorporate Article 7 of the Covenant into local laws. We have not confused the nature of the two Covenants, nor have we failed to understand the difference between them. I believe Mr Ronny TONG and I know the difference clearly, and many Members know that clearly too. Perhaps after I have finished speaking, Mr Paul TSE will also know clearly the difference in question. We as legislators consider that Hong Kong should incorporate Article 7 of the ICESCR into the local laws.

Besides, Members may indeed look at clause 11(3) of the present Minimum Wage Bill. Though this is a provision in the legislation, this can hardly be enforced, though not entirely impossible. But in my view at least, its

enforcement is impossible. I can hardly imagine how this provision can be used as the basis for applying for judicial review, unless the applicant can prove that the Minimum Wage Commission (MWC) or the Chief Executive has not consider in any measure the factors stipulated in the provisions. If those factors have already been considered, no matter what the result is in future, we can hardly query that the conclusion thus arrived has not taken care of the needs of living of workers. It is impossible to so.

As I said in the debate on the resumption of the Second Reading of the Bill, despite the availability of relevant figures and compliance with the provision, it is impossible to come up with a conclusion or a certain amount of wages, for no clear method with binding effect in the law can be adopted. Though a basket of figures is stipulated under the law for consideration, there is no clear methodology, method or formula for the calculation of the figure. Hence, by all accounts, if this factor is included in the basket, what effect will it have? It will form a checklist that sets out the factors to be considered by the MWC, where some of the factors involve the concept of values. I strongly think that concepts of values should be set out in the provisions. Deputy Chairman, this is extremely important. Certainly, these provisions on principle may result in completely different conclusions if they are put in different hands, as I said earlier. Hence, a common set of criteria is deemed essential at the start, though the conclusions thus drawn may not necessarily be consistent.

Honestly, we may look up the history of the constitution of the United States. Do Members know a ruling made by the Chief Justice of the Highest Court of the United States during the *Lochner* era in the 1920s? It was ruled that the legislation on minimum wage had deprived the freedom of contract and private property rights. One can hardly imagine that such a court precedent was found in a certain period. Besides, it was a judgment made by the Highest Court and only overruled in the 1930s. We can see from this example the importance of concepts of values. Take the case of *Brown v Board of Education* in 1950 as another example. We all know that in the history of the United States, segregation in education had at one time been regarded as fair, and it was only prohibited after this case. Hence, the concept of values is overwhelmingly important in these laws of principle. If these concepts of values are not set out, I wonder what attitude members of the MWC will adopt in implementing this provision.

Earlier on, Ms Miriam LAU said that ambiguity was found here and there. But when we look at other provisions, we will find that they are also ambiguous. What is competitiveness? What is the meaning of minimizing the loss of jobs? These issues are also ambiguous. But the point is that those issues she mentioned belong to another set of values, that is, the concept of values of economics, whereas those mentioned by me are values of humanitarian care. If these values cannot be included in the legislation, then sorry, we will not pass it. This is the first point.

As for the second point, even if this concept of value is incorporated into the legislation, it will only be specified under the requirement to meet the needs of living that the right to work includes earning a wage that can maintain a decent living. It will only be that — the right to maintain a decent living, which is a fundamental right. For this reason, when certain colleagues said that minimum wage was unimportant and that social welfare could be the solution to the problem, I find their views unacceptable. If a man with normal capability chooses to labour normally should earn a decent living, I think it is a fundamental right. For he has the right to choose to earn a living with his own labour, as well as the right to refuse receiving social welfare, which is also a fundamental right.

Based on these points, I consider it only rational and natural to set the minimum wage at a level where the basic needs of workers can be met. Certainly, the definition of needs of living may vary from place to place, but a computation method has been put in place in Hong Kong, that is, the averaging-out method. By means of that method, the number of dependants a worker may support in a family can be established, which can be used as an index for reference.

Deputy Chairman, in summary, no matter how the provisions of the legislation are drafted, it cannot go without a checklist that includes the concepts of values, and that is all. Finally, I do not believe that with the passage of this amendment, this provision will become the deciding factor in the law in setting the minimum wage. All along, I think that there are some inadequacies in the legislation. In fact, the entire framework of the legislation is simple. The MWC will submit reports to the Chief Executive, and the Chief Executive will refer to those figures and make decisions according to his political judgment or certain concepts of values by himself. He will then submit a certain figure to the

Legislative Council, but before that, there is no participation of the Legislative Council. The entire law is just that simple, which includes only three points. Though other issues may not form an integral part of the entire law, we as legislators should strive for perfection in every detail and reflect the spirit and values of legislators, for these are similarly important. Hence, I hope colleagues will support the amendments proposed by the Members, including the amendments of Mr WONG Kwok-hing and Mr LEE Cheuk-yan.

DR MARGARET NG (in Cantonese): Deputy Chairman, I very much agree with the remarks made by Mr Albert HO on the status of the ICESCR under the system of Hong Kong, and I have to thank him for this. Deputy Chairman, I would like to respond to the remark of Mr Paul TSE, which stated that Mr Ronny TONG has misinterpreted some fundamental facts of law. Actually, one of the basic principles under the common law system is that international covenants will not automatically come into effect legally, and these covenants will become binding only by means of domestication. Before domestication, those international covenants will only be regarded by the Courts as an instrument for interpreting the laws or understanding the provisions. However, Deputy Chairman, we must be clear about the work of the Legislative Council.

First, insofar as the ICESCR is concerned, the SAR Government has never said that those covenants are not binding on the Government, for our Government, that is, the signatory State and its territories, has the international obligation to fulfil these covenants.

If the domestication of international covenants has not been carried out, we cannot invoke those international covenants in Courts as if they are legally binding automatically. As a lawyer — the role of lawyers and the Court is to carry out the proceedings according to existing laws in effect. However, the role of the Legislative Council is different. The Legislative Council is a place for making laws, legislation. Hence, we have to consider the laws we enacted, and the Basic Law. First, the legislation must be constitutional. Second, by way of legislation, we have to fulfil our obligations under the constitution, which includes the fulfilling of our duties and obligations under international covenants. Hence, Deputy Chairman, the role of lawyers is different from that of Members. I think you know this extremely well. A number of Members of this Council are

lawyers. However, if we think that we can tell judges in Court the inadequacies of existing laws and how the laws should be amended, or that they should enforce the laws we consider desirable, it is incorrect to think so. On the contrary, if we consider that this Council definitely cannot amend existing laws or implement new laws, it is incorrect either.

Therefore, Deputy Chairman, about this legislation on minimum wage today, it is pointed out in the report of the Bills Committee that certain Members have proposed in the course of scrutiny that the Administration should specify in clause 11(3) the methodology for setting the statutory minimum wage rate to comply with Article 7 of the ICESCR. In Article 7 of the ICESCR, only the so-called "living wage" is mentioned, which is the concept that wages earned should be able to maintain workers' living, and this concept should be included in clause 11.

Deputy Chairman, I share the views of Mr Albert HO, and in addition, I have another point of view. Mr Albert HO considers that this is the core, and that minimum wage should be set. But how? In the course of setting a minimum wage, what basic principles and conditions should be considered in deciding how the minimum rate should be set? Actually, Mr Albert HO has pointed out that it is important to specify certain concepts of values, and I agree with him. However, in addition to the specification of concepts of values, the future Minimum Wage Commission (MWC) has to enforce this law, but how will the MWC enforce this law? How will the minimum wage rate be set? The guideline lies in clause 11. Hence, as legislators, we must examine whether clause 11 can serve the purpose of providing adequate guidelines to the MWC, so that they can fulfil their duties under the law unequivocally.

As the clause is now worded, Deputy Chairman, I am afraid it cannot serve this purpose. For it is specified in clause 11(3)(a) that excessively low wages should be prevented, but what is the definition of "excessively low"? Other conditions laid down aim mainly at preventing excessively high wages, which is reflected in the requirement of minimizing the loss of low-paid jobs. As the Deputy Chairman said earlier in her speech, if the minimum wage is set excessively high, it will result in the loss of jobs. In other words, excessively high wages should also be avoided and that an appropriate balance should be struck to maintain the economic growth and competitiveness of Hong Kong. Hence, it means that the minimum wage should not be excessively high or

excessively low, whereas the economic growth and competitiveness of Hong Kong should be maintained at the same time. The clause is meaningless in that case. Besides, the concept of maintaining a living is not included. When the MWC fulfils its duties under the ordinance, it may think whether preventing excessively low wages is an economic concept, or a concept of living wage. I am afraid they may not consider it necessary, or they cannot take into account the concept of living wage. They cannot take this factor into account. Do we wish that the future MWC will be prevented from considering the living wage rate? That means they cannot consider this point. In that case, I think the commission to be provided for in law today should not be named the MWC, but it should rather be called "The Commission for preventing excessively high wages". Deputy Chairman, why do I consider it necessary to specify unequivocally in clause 11 certain practical elements to serve as pragmatic and specific guidelines? Though I know that it will be left to the MWC to decide how various factors should be balanced.

Deputy Chairman, the Legislative Council is a council for handling political issues. Insofar as political issues are concerned, I am not referring to the Civic Party or the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB). I am not referring to this kind of politics. I am referring to the interests involved, for there are various elements of interest in society and a lot of needs to be met. We have to balance the interest of various parties and set priorities. Naturally, it is impossible to achieve 100% on every issue, but how much can we achieve? Which issues are important? Here, we will handle these in a political manner — in other words, we will consider the aspirations and needs of various strata of society and make a decision after debate here. This is what we should do in enacting legislation.

In the course of enacting subsidiary legislation or forming certain committees, task forces or authorities for purposes of enforcement, should they again handle the issue from the political aspect? They should follow certain principles, certain principles specified in laws, in seeking the best method to implement this. For instance, more often than not, in the legal context Recently, there is a new bill relating to marriage procedures. If anyone applies to the Court for relief, what factors should the Court consider in deciding whether or not relief should be granted? What factors will the Court consider? For this reason, certain technical committees and professional committees should be formed. We may say that those considerations are not purely technical, but are

based on certain principles and certain technical and objective factors, such as economic statistics, employment figures and standard of living, founded on objective facts. With the foundation of objective facts, when they try to strike a balance, it will be left to employers and employees or members of society to examine how to arrive at a decision acceptable to all parties.

However, Deputy Chairman, if certain basic political issues are not dealt with under clause 11, we will be shifting all the responsibilities to the MWC. Why it is undesirable to do so? For the legislative procedure of this Council is open and it embodied a process of debate, so each Member has to be accountable to their electors. We have to face squarely the aspirations of society. So, in the course of discussion, not only that a host of factors has to be considered, and that each of us has to be accountable, a balance of interest of various sectors has to be struck, too. However, in the course of political bargaining, if responsibilities are shifted to a commission that is not opened and lacks transparency, it will actually make the setting of the minimum wage rate a black-box operation.

Deputy Chairman, we understand that quite often it is impossible to for the Legislative Council to discuss everything. But I think it is problematic to give up the approach of handling an important issue for which a balance is most essential in the political context in the legislature. We should not shift the responsibility to a commission appointed by the Chief Executive that adopts black-box operation and allows it to do the bargaining behind the scene, particularly when the relevant guidelines are inclined to keeping the minimum wage rate at a low level. Deputy Chairman, we may look at the other parts of the Bill. For instance, when the MWC discusses the minimum wage rate, what power does the Legislative Council have? The Legislative Council can only accept or veto it, but not making any amendment to it. Deputy Chairman, if clause 11 can make such amendment possible, we will not object to this approach. Since the issue has already been dealt with in the political context and is then passed on to the MWC for dealing in the technical or professional context, we should not again argue how the minimum wage rate should be set, for it will be inconducive to the implementation of minimum wage. However, if the content of clause 11 is specified in this way, there will be a great problem with the operation of the Bill as a whole.

Deputy Chairman, I agree that the Committee stage amendments proposed by Members are invariably less than perfect, but I think that the two Members

have mentioned certain important factors, particularly the two factors put forth by Mr LEE Cheuk-yan in his amendment. The amendment on the one hand mentions the need of employees and families and briefly explains those needs, and on the other hand, it mentions the economic factors, stating that a balance should be struck between the two. I think this is a most neutral description and indicator. We may perhaps include in certain provisions our obligations under the ICESCR, and I consider it absolutely appropriate to do so. However, even if this point is not included, the two factors should be specified to the very least to ensure that a balance will be struck.

Deputy Chairman, I often consider it regrettable that the Government does not work on issues involving principles, right and wrong and obligations. They will not put forth comprehensive provisions, and Members have to propose amendments in a hasty manner with limited resources. Indeed, it is extremely unfair. However, at least I can see that the amendment of Mr LEE Cheuk-yan is sound and practicable. Hence, Deputy Chairman, I urge Members to support the amendments proposed by Mr LEE Cheuk-yan and Mr WONG Kwok-hing, for their amendments do not only strive for a living wage for workers, their views pass the justice test. From the perspective of taking forward legislative work steadily, I think we have to support the amendments. Thank you, Deputy Chairman.

MR IP WAI-MING (in Cantonese): Deputy Chairman, I shall be brief, talking about my views on the amendments proposed by Mr WONG Kwok-hing and Mr LEE Cheuk-yan.

When it comes to the discussion of the functions of the Minimum Wage Commission (MWC), we seem to have returned to the stage of the Second Reading of the Bill, examining, why a minimum wage should be set. Actually, the important function of the MWC is to examine why a minimum wage should be set. Why have we proposed amendments? I notice that Mr LEE Cheuk-yan has proposed his amendment to maintain the relative standard of living of other groups.

Deputy Chairman, someone mentioned going to Thailand earlier. Should workers in Hong Kong also go to Thailand? Actually, we do not mean that. When I watched the television in the Ante-Chamber earlier, I saw reporters interviewing some grass-roots workers, asking about their views on the minimum

wage rate. We notice from the interview that sometimes workers will appreciate the situation of their employers.

Deputy Chairman, Members should not have the perception that workers in Hong Kong are extremely concerned about small interest. I often say that workers in Hong Kong are kind and humble, rarely found in other parts of the world. More often than not, they will appreciate the predicaments faced by their employers, prepared to ride over the difficult times with their employers. At present, we are still saying that the legislation on minimum wage aims only to get what we deserve.

However, I would like to raise one point. All along, Members have different views on minimum wage. It is stipulated unequivocally in the Minimum Wage Fixing Convention of the International Labour Organization (ILO) that the objective of setting a minimum wage is to ensure that the needs of all workers and their families are met. This is a very important obligation. We must ensure that the needs of all workers and their families are met. However, many colleagues have mentioned that the MWC only serves two functions, that is, to maintain an appropriate balance between the objectives of forestalling excessively low wages and minimizing the loss of low-paid jobs; and to sustain Hong Kong's economic growth and competitiveness. It seems that the legislative objective of "ensuring the needs of all workers and their families be met" is not mentioned at all. But this is precisely one of the requirements laid down in the Minimum Wage Fixing Convention of the ILO.

In respect of these two objectives, the Provisional Minimum Wage Commission (PMWC) has issued a host of indicators for setting the minimum wage, which runs on as long as five pages. The reference indicators include the economic condition, the labour market condition, competitiveness and the standard of living. The first three indicators all seem to be related to economic growth. I definitely will not deny the importance of economic growth. However, we must consider whether the function of sustaining economic growth and ensuring smooth development in Hong Kong should fall on the PWMC in future? What have other government departments done?

As I said yesterday, according to the studies of the Research and Library Service Division of the Legislative Council, the impact of wages on inflation is insignificant. On the contrary, the impact of other monetary measures and the rate of interest is more profound. In view of this, we think that if the

Government defines the function of the MWC in this way, it will indeed restrict the thinking and vision of the members of the MWC in setting the minimum wage. Why? For the MWC will only serve these two functions.

However, when Mr WONG Kwok-hing put forth this amendment earlier on behalf of the FTU, he made it very clear that we think the setting of a minimum wage is meant to ensure that workers can sustain their families, where the basic needs of each family member should at least be met.

Moreover, we consider it necessary to prevent wages from falling below the level of Comprehensive Social Security Assistance (CSSA), and we have mentioned this point a number of times. We have once explained to Chief Executive Donald TSANG why we consider the legislation on minimum wage a must. If wages fall below the level of CSSA, people might as well apply for CSSA. Under such circumstance, why are these two points not mentioned in the functions of the MWC? Even in the amendment of Mr LEE Cheuk-yan, daily expenses and social security are mentioned, and the MWC exactly should consider and take into account these issues. We think these two points are important functions of the MWC.

Earlier on, we mentioned the composition of the MWC, which actually includes three members from the Government. If my memory has not failed me, they include economists and other staff members from departments responsible for industrial and business issues, that is, civil servants. Hence, we believe the Government will have three official members sitting on the MWC. It means the views of the Government on the impact of setting the minimum wage at a certain rate will be fully reflected by these members. If so, why should this function be included? We consider that sustaining, protecting and promoting the economic growth of Hong Kong should not be the most important function of the MWC. The function of maintaining economic growth and competitiveness, which should indeed be handled by the Government and other government departments, is now imposed on the MWC. This does not seem to be the function of the MWC, for it is after all only one of the many committees under the Government. If certain member on the MWC can shoulder this responsibility, we might as well let him be the Chief Executive. Deputy Chairman, am I right?

Deputy Chairman, I would like to a brief point. We think these two functions are not the functions of the MWC in actuality, but will restrict the MWC instead. Economic growth is not an issue the MWC must consider. The MWC indeed only needs to consider how to maintain workers' basic wages at a level adequate to sustain their living and to ensure that workers are fairly treated.

Thank you, Deputy Chairman.

MR FREDERICK FUNG (in Cantonese): Deputy Chairman, though a number of Members have read out the content of the covenant earlier, I would like to read it out once again, for this is the focus of the debate on the amendment as a whole. It is stipulated unequivocally in Article 7 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Labour Convention that insofar as the purpose of work is concerned, workers should be ensured to receive reasonable wages and rewards, so that they can maintain a decent living. Members should have noticed that these two points are very clear. We have to ensure that workers will receive reasonable wages and rewards, so that they can maintain a decent living. What is meant by a decent living? Is it a decent living to live on CSSA? Is it regarded as a decent living only if one lives in luxury flats? I think different people will have different views. However, according to the primary understanding of the two covenants, I think the existing fundamental principles for setting the minimum wage should be ensuring wages earned by workers, to the very least, be adequate to sustain themselves and their families. When it comes to sustaining families, in the actual cases in Hong Kong, what is the reasonable wage that can ensure workers sustain a reasonable and decent living for their families?

Deputy Chairman, I may cite a few figures for Members' reference. First, assume that I quit my job and apply for CSSA from the Government now. Families receiving CSSA are classified into single, two-member, three-member or four-member families, and so on. They may cope with their daily and basic expenses and rent with the amount of CSSA granted by the Government. From this perspective, it seems that the Government has now drawn a line here in providing financial assistance. In other words, if anyone is living below this

line, and the Government considers his or her assets and income are at reasonable level after investigation, the person will be granted CSSA.

Let us look at the situation in Hong Kong. There are now around 7 million people in Hong Kong, among whom more than 3 million are wage earners. With a rough calculation, we know that the 7 million people in Hong Kong are now maintained by some 3 million people, which means each person has to maintain two persons. Certainly, some people are very rich, and each of them may maintain a lot of people or even tens of thousands of workers. However, if we use this method to calculate the working population and the total population, we can roughly arrive at the answer that one person who is working has to maintain two persons in Hong Kong.

The second figure I would like to provide to Members for reference is family size. At present, the family size in Hong Kong is 3.1 persons. From the angle presented earlier, the size of certain families will certainly be less than three, but some may exceed three. However, if we use the method mentioned earlier, that is, one man maintaining two persons, we may have to look into the situation of three-member families. Let me quote two figures for Members' reference. The first one is the median wage. The Government always suggests that the poverty line of Hong Kong should be drawn at the level of CSSA payment. But all along, we acknowledge — the community, the labour sector and the social worker sector also acknowledge — that the so-called poverty line should be drawn at half of the median wage.

In the case of Hong Kong, the current median wage of individuals ranges from around \$4,500 to \$5,000. For a 3.1-member family, half of the median wage of the family will be around \$9,000 to \$9,500. If the above computation method is used, that is, one working person maintaining two persons, and that workers earning more than half of the median wage is not regarded as living in poverty, we will get around \$6,000 by dividing the relevant figure by two instead of by 3.1. Deputy Chairman, the amount of CSSA payment granted by the Government to a two-member family ranges from \$5,000 to \$6,000. These figures match perfectly well. In other words, if one working person has to maintain two persons and the wage earned is around \$6,000, it will be a reasonable wage figure for workers to maintain their families. By coincidence, the Government has announced another figure, which Members should know, and

it is the income ceiling for applying transport allowance, which is \$6,000. For a person earning \$6,000, he will be granted transport allowance of about \$500 to \$600. Actually, these figures are all around \$6,000. I wonder if it is mere coincidence, or it is so incredible. Hence, I have provided these figures to Members for reference.

Certainly, some people may say that the figure is so special and it is such a coincidence. Are Hong Kong people really capable of maintaining their families with this level of income? Can Hong Kong cope with this with its wealth? I would like to quote another figure for Members' reference. Members may know that the per capita GDP of Hong Kong for 2009 is US\$30,000. If it is calculated in terms of Hong Kong dollar and a population of 7 million, it will be around \$20,000 per head monthly. If the wealth generated by all the people of Hong Kong in 2009 is to be shared among the population, each person will get \$20,000 monthly. In other words, in respect of the wealth generated by us, every person will get \$20,000 monthly. At present, the minimum wage is only calculated on a two-person basis, which is around \$6,000, and it thus seems to be adequate. Counted per head, the requirement will only be \$3,000, which may be slightly, and very slightly indeed, better in comparison with the CSSA payment. Hence, I think this figure can serve as reference for the MWC in setting the minimum wage in future. The minimum wage rate should not be set at a level below several reference lines: First, half of the medium household income, which I have mentioned earlier; second, the average wage for one working person to maintain two persons; third, the existing per capita GDP. We have the capacity to meet these humble requirements.

Deputy Chairman, in the entire course of amendment today, we have no power to set the minimum wage, and the Bill of the Government has not provided an opportunity for the Legislative Council to participate in the setting of the minimum wage ultimately. However, I think Members should fight for establishing the principles for setting the minimum wage. We should also insist on the setting of a minimum wage to let people see that in a wealthy society as Hong Kong, workers can actually maintain the living of a reasonable number of family members through work. I think that the amount needed for a person to maintain two persons is around \$6,000 or more, which can be regarded as reasonable. Earlier on, we mentioned several figures used by the Government now as reference, including CSSA, the transport allowance and half of the

household median income of a two-member family, which is an international recognized poverty line, and I consider all these figures tally with that amount. I hope the Government will consider this.

I support the two amendments. Thank you.

DEPUTY CHAIRMAN (in Cantonese): Mr Ronny TONG, you will now speak for the second time.

MR RONNY TONG (in Cantonese): Deputy Chairman, I admire Mr Paul TSE for having the courage to protect the good reputation of this Council. Surely, I am not in a position to comment whether the good reputation of this Council is built on such remarks of Mr Paul TSE. But I think that certain fundamental facts and principles must be clarified.

Deputy Chairman, the first fact is that Hong Kong is a signatory to the International Covenant on Economic, Social and Cultural Rights (ICESCR). This is the fact, which is also basic common sense.

Second, it is stipulated in Article 39 of the Basic Law that this Covenant shall remain in force. It is not that the Covenant was in force in the past but not at present, or that it is not in force now but will be in force in future. It is stipulated that it shall remain in force. This is the second fact.

Article 39 of the Basic Law goes on stating that the Covenant shall be implemented through the laws of the SAR. The phrase "be implemented" means that the Basic Law devolves the responsibility to the SAR Government for enacting legislation to implement this Covenant. This is the third fact.

Actually, I have made it very clear earlier that this is a constitutional obligation, not legal obligation. I have never said that the laws of Hong Kong have such a provision. The explanation given by Mr Albert HO earlier is very clear. It is precisely because of Article 39 of the Basic Law that the Government is obliged under the constitution to enact legislation. And since we are now in the legislative process, should we not follow the provisions of the ICESCR? Otherwise, how can this be regarded as implementing the Covenant?

Deputy Chairman, a fundamental difference is also found in principle, that is, the difference between laws and constitution. Some people may consider they are the same, but actually there is a difference between them. The Basic Law is a constitutional document, not a constitution. However, both Hong Kong and Beijing regard this as having constitutional effect. So, we cannot regard the constitution as a general law, and this is basically common sense. A constitution is different from general laws for it is aspirational and guiding in nature, which may be something we dream for and pursue. It is directed at an objective. Usually, we say that constitutions are aspirational and aspire to a higher purpose; they are invariably directed at an objective which has not yet been achieved.

Deputy Chairman, the second fundamental principle is that though this is an aspirational objective, it does not mean that it is a constitutional obligation. The ICESCR is an international covenant laid down by the United Nations, and various countries have signed the Covenant as an indication of their recognition of a set of core values. These core values should be respected. But the SAR Government is trying to get around them, making flimsy excuses to avoid the application of these core values. Insofar as these facts and principles are concerned, we should not only make it clear in this Chamber, but also in other places.

Mr Paul TSE reminded me politely that I am a lawyer and should thus be comprehensive in giving remarks. I have to thank him for the reminder. Sometimes, I feel a bit ashamed about the sector, for the sector of lawyers is different from other professions, where many people have different views. I often hold extremely different views from that of Dr Margaret NG, but it does not matter. What I consider regrettable is that certain lawyers in the sector hold different views not for upholding justice, fundamental principles or core values, but only for winning a lawsuit or achieving certain political objectives, or just a battle of words. As a result, members in the sector are dubbed "two-hand lawyers", which means a "left-hand lawyer" and a "right-hand lawyer" who often hold different views.

Nonetheless, I think there is no problem with holding different views. We may respect the different views expressed by each other. But most importantly, certain fundamental facts and principles must be made clear.

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

MR PAUL TSE (in Cantonese): Deputy Chairman, I hope I am not engaging in a battle of words, for certain issues must be clarified. If my remarks have offended other colleagues in the Chamber, particularly colleagues who are lawyers, my apologies here. I definitely did not mean it. I said so only because, when certain colleagues quoted the ICESCR, probably at an earlier time, they roughly pointed out that the ICESCR is part of the laws of Hong Kong or the constitution and is thus binding on us.

I have to thank the many colleagues, particularly those with a legal background, for coming forward to speak to further clarify this question, so that Members can know what we are discussing. I would like to take this opportunity to tell Mr Albert HO, in particular, that I have not failed to see the difference mentioned him, nor the issues mentioned by Dr Margaret NG about international laws and whether procedures have been introduced into the laws of Hong Kong, and the differences, and so on. I definitely have not mixed up any of those issues.

On the contrary, I would like to take this opportunity — if I am allowed more time — to explain the relevant provisions of the ICESCR. Article 7 of the ICESCR is about working conditions. In addition to wages, it has laid down the ideals in many aspects, including equal remuneration for work of equal value without distinction of any kind, the provision of safe and healthy working conditions, and equal opportunity for promotion, and so on. Truly as mentioned by Mr Ronny TONG, these are aspirational ideals. Certainly, some of them may not be achieved immediately, whereas some can be achieved shortly. In respect of wages, it states clearly that the wages provided should be able to maintain a reasonable standard of living for workers and their families. This point is crystal clear.

However, I would like to point out that an important premise has been laid down in the ICESCR under Article 2 of Part II. It states that each State Party must: first, take steps to the maximum of its available resources and by all appropriate means to adopt legislative measures; and second, which is more important, achieve progressively the realization of certain aspirational ideals. This is very important. As in the case of the Basic Law, there are many aspects, which we wish to strive for, that have to be implemented progressively.

Hence, in the legislative process, we should at the same time take into account the original background in Hong Kong, particularly when Hong Kong is one of the most, if not the most, capitalistic place in the world. Under such circumstance, or in view of the consideration of the maturity and advancement of the economy currently, or the disparity between the rich and the poor, the background is changing gradually. In the course of such change, this may be the first step, but I hope it will not be the last. The Secretary made it very clear earlier, that this is an extremely sensitive or delicate process, where a balance between left and right has to be struck in an extremely carefully manner. In this respect, I naturally and absolutely understand that certain colleagues have to tilt the balance by all means towards the interests of the sector they represent, but I have to represent the views of the other side. In the course of change, we have to act in a cautious, sensitive and balanced manner. If the ICESCR has to be quoted, all provisions should be quoted clearly rather than just quoting favourable provisions without presenting the full picture. I think it is more important.

I do not want to be drawn into a dispute on some legal matters with colleagues, for we should not do so now. I only hope that Members will not have any misunderstanding about that. I hope Members will treasure this opportunity and bring out the problems, so that the scope, understanding and application of the ICESCR can be presented more clearly.

Thank you, Deputy Chairman.

DEPUTY CHAIRMAN (in Cantonese): Secretary for Labour and Welfare, please speak.

(The Clerk reminded the Deputy Chairman that Mr LEUNG Kwok-hung had indicated a wish to speak)

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

MR LEUNG KWOK-HUNG (in Cantonese): I shall be very brief.

The State Parties of any international covenants on human rights, of course, have the ultimate right to decide when to implement — unless it is just like the United States which thought that Iraq possessed weapons of massive destruction and thus sent in forces to attack Iraq — we of course understand this situation. In fact, these two covenants originated from the Covenant on Human Rights of the United Nations in 1948, during the time of the Cold War. The party that claimed itself as upholding communism did not want to comply with the ICCPR, while the Western countries did not want to comply with the International Covenant on Economic, Social and Cultural Rights (ICESCR). We all know the story.

In fact, what is meant by within one's capacity? The GDP and the Gini coefficient of Hong Kong can clearly spell this out. Our per capita GDP is at the top of the world. The size of our population living in poverty is also at the very top of the world. Compared with other countries with similar economic conditions and per capita GDP, the degree of disparity between the rich and the poor in Hong Kong is also record breaking. When talking about within one's capacity, Hong Kong actually has the capacity to do things which others have already been doing for a few decades. Therefore, even according to the premise cited by Mr Paul TSE earlier, it is still too late if Hong Kong implements it today.

The other problems that arise from the implementation of minimum wage are exactly the problems that the community has to deal with. For instance, if the small and medium enterprises (SMEs) have to face any difficulties because of this, it is the Government's responsibility to help them overcome the difficulties. In the event that unfortunately due to the implementation of minimum wage, some marginal workers fell out of the employment net, it will be the responsibility of the Government to introduce unemployment protection allowance and vocational re-training. This is time when the Government can show its leadership and execution ability. Some people always say that Hong Kong is not mature enough to implement minimum wage. What is the reason? It is because people with power and influence refuse to implement it. And now at this last moment, I rather think that Mr Paul TSE is right. He opines that it should not be implemented and thus he raised his hand and said that it should not be implemented. However, at present, everyone says that it should be implemented as the Chief Executive has already given an instruction, and bargaining is the only outstanding issue.

First of all, I am absolutely sympathetic to those SME operators. Most of them are actually in the service industry. Insofar as the difficulties faced by them are concerned, we have, in fact, discussed them numerous times. Their difficulties do not arise from the wages of workers. Even if the wages of workers are further reduced, they can still hardly survive. I always patronize local bistro cafés. The price of a breakfast has jumped from \$15 during the SARS period to \$25 now. It is not because of the rise in wages, but because of rental increases. This is imported inflation due to the pegging of Hong Kong dollar with the United States dollar. All these problems should be solved by the Government. How can it help to build up a confrontation between the workers who are already very helpless and the SME operators?

Coming to the tourist industry, how can there be "zero-fee" tours? Is it because the workers ask for zero fee so that they can earn the commission? It, of course, is not true. It is due to the competition between China and Hong Kong, right? As a matter of fact, I think it is wasting my efforts if I talk about this further. However, I have no other alternative but to speak further. Currently in Hong Kong, there are more than 1 million people living in poverty, and nearly 500 000 workers living in poverty. Today, what we are giving to them is only a painkiller, merely to make them feel less painful. Therefore, Mr Paul TSE, I know what you are trying to say, as the ICESCR is also involved in the lawsuit between the Government and me. Thus, I of course know that, otherwise I could have won the case much earlier and do not need to get entangled with it. Hence, you do not need to worry about my problem. I think I get your point, but you have to understand Deputy Chairman, I shall speak for two more minutes. If the hourly wage of workers is \$33, they can have one more bowl of instant noodles and this will lead to an increase in demand. Do you understand? When a family of four patronizes a local bistro café, they may originally order only three set meals. However, if the hourly wage is \$33, they may order four set meals. The turnover of local bistro cafés will thus increase.

The implementation of minimum wage will not increase the consumption of luxuries, for it will only increase spending by the grassroots. The consumption of grassroots in Hong Kong can aptly be reflected in local bistro cafés. In fact, there is a saying in the trade: when the local bistro cafés are booming, that means Hong Kong is I cannot say that Chinese word. When the local bistro cafés are booming, that means Hong Kong is failing, as everyone is patronizing local bistro cafés. On this issue, I find it similar to the situation in

my mother's era when people had to work for seven days a week so that everyone would have no time to spend money. Later, when one day of rest per week was implemented, Hong Kong did not collapse as a result of it. Every time when a reform is launched, we will feel scared. But now, there is no need to be scared.

I have to say this the operators of local bistro cafés and those small owners who have to work so hard in their operation that firstly, the shop rentals and charges of public utilities are so high that imported inflation is induced. This is their deadly problem. I also would like to offer them help, but I also have no other means as it would be useful only if they reflect this to the Government. Secondly, I ask them to rest assured, as the increase in the minimum wage now will be beneficial to their business. As regards the problem of landlords trying to share the benefits with them, I am also helpless, as the landlords will "kill" them all after two years. Deputy Chairman, my speech ends here on this question.

I hope Members can understand that workers want to earn some more money to maintain a more decent living. It is only a very humble wish indeed. I hope Members can understand that when they earn some more money, they will help the most basic consumption in Hong Kong. Thank you.

MS CYD HO (in Cantonese): Deputy Chairman, I would like to talk briefly on the formulation of international covenants.

As clearly stated in Article 39 of the Basic Law, the Hong Kong Special Administrative Region (SAR) is protected by two international covenants. However, they of course have to be implemented only through local laws.

First of all, these international covenants only provide the principles and directional guidance to Hong Kong. Many of their provisions are not protected by law. However, every time when the SAR submits a report to the United Nations, it will give an account on the implementation of these provisions in Hong Kong. The Government and the United Nations Commission on Human Rights will say that they know these international covenants actually do not contain legally binding provisions. However, through the implementation of these covenants and writing of reports to promote community discussion in the

State Parties, the awareness of basic human rights in society as a whole can be enhanced in the process. This certainly includes the areas under the International Covenant on Civil and Political Rights as well as the International Covenant on Economic, Social and Cultural Rights (ICESCR).

The formulation of these international covenants is actually very complicated. The provisions concerned only reflect the lowest degree and the most basic consensus reached by 200-odd countries in the whole world, which is different from the notification on anti-terrorism. The notification on anti-terrorism can be implemented only when agreement is reached by the several member states of the United Nations Security Council. However, if you want to seek agreement from 200-odd countries to sign these international covenants, you actually have to draft the provisions in the light of many different cultures and religious backgrounds, as well as many different economic conditions, before they are willing to sign the covenants. If the provisions are too harsh or carry a medium-high or even medium level of requirement, there may be more than 100 countries showing disagreement to sign. Not only the ICESCR is like this, even the Convention on the Elimination of All Forms of Discrimination Against Women also has the same situation. It is because there are many countries of Islamic culture whose value on gender equality may not be the same as that of countries of Christian culture. The United Nations Convention on the Rights of the Child also meets the same situation. It is because under in social culture of many countries, children are still subsidiaries of a family. Therefore, every time before signing these covenants, various member states will argue incessantly until they reach the lowest degree and the most basic consensus, and then they can finish drafting the provisions.

Nevertheless, does Hong Kong need to compare with those 200-odd countries which seek the lowest degree and the most basic consensus? Our per capita saving is within the top five on the world list, but our Gini coefficient and the wealth gap rank first in Asia, which is as high as 0.533. Therefore, today, it is absolutely the right moment for Hong Kong to implement minimum wage so as to provide a low degree of protection to the grass-roots workers, and it is also what Hong Kong can do and should do within its capacity. Through these remarks, I hope to explain some of our preparatory work for signing these international covenants. Of course, some people will say that a covenant also states that it shall be gradually implemented in accordance with the capacity of

each place. However, this does not apply to Hong Kong, as Hong Kong has long since had the capacity. On the contrary, some third world countries can only implement it after they have taken off in their economic development.

Besides, under the ICESCR, apart from the economic right, there is also cultural right. It is stated clearly therein that everyone has the equal right to participate in culture. However, as reflected by many poor grass-roots families, they have not watched a movie for three years. To many people, going to the movie is just a very usual thing, right? To those who can afford it, they may spend nearly \$200 for a ticket to watch 3D World Cup, for instance. Nevertheless, to many grass-roots families, a family of three will need more than \$200 to watch a movie. And this is a great luxury. Thus, they could not even afford to pay for their children to access the Internet. It is only when the budget was passed this year that they are provided with some subsidies.

Nonetheless, we always say that the various minor subsidies provided by the Government are only piecemeal measures. The subsidy for Internet access charges is \$1,300 per year. However, if we implement minimum wage protection, and if the shop rental is not so high, the consumer prices can be drawn down. Who will then need the subsidy of \$1,300 for Internet access per year? If our policies can render the living expenses of the public more reasonable and free from monopolization, and if our policies can provide protection so that people are willing to work hard to earn a reasonable level of income, these measures of exempting electricity charges, rates waiver and providing subsidy for Internet access can be implemented at a later time. Thank you, Deputy Chairman.

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

(No Member indicated a wish to speak)

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Deputy Chairman, Mr WONG Kwok-hing and Mr LEE Cheuk-yan have respectively proposed very similar amendments to clause 11(3), and I fully understand the

objective of the two Members. However, I would like to emphasize that we really cannot agree with their amendments. Let me briefly explain our justifications and reasons.

First of all, as we all know, Hong Kong is a highly externally-oriented economy and we, at the same time, also implement a linked exchange rate system. Therefore, the elasticity of wages and prices is crucial to maintaining Hong Kong's competitiveness and capacity in resisting external forces. The objective of the Minimum Wage Bill (the Bill) is to formulate an appropriate statutory minimum wage system under which the lowest wage level will be set. This is very clear. Apart from forestalling excessively low wages, this will at the same time ensure that the flexibility and competitiveness of the local labour market will not be seriously impaired, while the employment of the disadvantaged workers will also not be severely affected.

Based on this objective, the original clause 11(3) has very clear provisions. I mentioned earlier the four pillars, namely forestalling excessively low wages — this is the first point, which is also the aim. I have to stress that this is the aim. Mr IP Wai-ming said that this was not paying enough attention to the problem and was economy-oriented. In fact, this is not the case — the most important point is to forestall excessively low wages, and at the same time to maintain a balance by all means in order to minimize the loss of low-paid jobs. This is the first objective. Secondly, we have to strive for an appropriate balance and also maintain Hong Kong's economic growth and competitiveness. This is a kind of balancing act. We have said many times today that the overall concept and layout of legislation on minimum wage is, in fact, a balancing project. This is very important. And this is also the spirit and foundation of the entire legislation. Therefore, the amendments by the two Members have in effect removed this basis. We can say that none of it is left.

Let me first of all talk about Mr WONG Kwok-hing's amendment. He rigidly requires that the Minimum Wage Commission (MWC) must have regard to the following needs: first, to prevent the minimum wage from being lower than the comprehensive social security level; and second, to assure the minimum wage is enough to afford employees' personal, apart from personal, and also their families' necessary living expenses. Let me put it this way. These two needs actually run against the entire system and the entire legislative basis I mentioned earlier.

Let me do some explaining first. During the resumption of the Second Reading debate, I clearly mentioned that the statutory minimum wage (SMW) and the CSSA are two totally different issues. The SMW is the lowest level of remuneration that an employee as an individual obtains from an employer for his work. That is the first point. CSSA uses the family as a unit instead of individuals. This is a kind of financial subsidy provided by the Government to members of the public, an effective safety net provided to families in need. That is the second point.

Secondly, wages are the reward for the labour of employees. Therefore, the SMW is the lowest wage level, and it is not the living wage. In other words, the former may not be enough to meet all the living expenses of an employee's family, that is, personal expenses plus the necessary living expenses of all family members. It really cannot do that. In fact, as I also mentioned earlier, the family expenses of many employees can be very different, and it is the same with personal expenses. If a family is qualified, no matter there are family members working or it is facing financial difficulties, it can actually receive assistance through the CSSA Scheme. We provide financial assistance to low-income households. Perhaps let me explain a little more its operation later. I understand that the intention of Mr WONG and Mr LEE is to ensure there is enough wage protection for workers. However, the two basic concepts of minimum wage and CSSA are genuinely different. Hence, we should not mix them together in the discussion.

For instance, in regard to the one-person, two-person, three-person and four-person families just mentioned by Mr WONG, let me make a specific analysis for him. If we take only the unemployment cases into calculation, that is, in respect of those unemployed CSSA recipients, the average CSSA amount of one person is \$2,820 (which is the latest figure), while it is \$5,464 for two persons (this is the CSSA amount for an unemployed two-person family), and \$9,878 for a four-person family. If it is a four-person family, does the employer need to pay \$9,878? If it is a one-person family, does he have to pay \$2,820? Thus, when Members mention the slogan or concept of not lower than the CSSA level, we do understand. However, Members have to pay attention to what they are saying. "Not lower than the CSSA level" is actually another issue. If employers are required to pay wages according to the number of members of each family, it is beyond the MWC's ability. Therefore, Members have to understand the concept concerned.

Nonetheless, I fully appreciate Members' worries. The objective of Members is labour protection, and this is shared by me. In fact, I am more concerned than you are. Therefore, in the process, as I mentioned earlier in my speech, judging from Members' arguments, they actually hope that the MWC can be more concerned about the needs of the grassroots. I reiterate that when the MWC determines the minimum wage level, it will consider a host of indicators. This host of indicators — I reiterate — consists of four main areas: First, the overall economic situation; second, the situation of the labour market; third, competitiveness; and four, living standard. This is already very clear. They have already given regard to the living standard, not having turned a blind eye to it.

What are the relevant indicators of other policies? They include social harmony, encouraging employment — when encouraging employment is mentioned, we all know that we are looking for the so-called decent wage or decent pay as mentioned by the International Labour Organization. The MWC will consider all these factors — raising living quality, enhancing purchasing power and other chain reactions that may occur. Therefore, Members do not need to over-worry and insist that this must be written into the Bill, or worry that the level will be too low. We have to provide some room. The MWC has really listened to the views and met with a lot of people. Members all know that they have met with a lot of stakeholders, trade unions, business associations, and so on. They keep tabs on the public views. Let us give the MWC some room to study the views. This is the first point.

Secondly, Mr LEE Cheuk-yan's amendment also rigidly requires that when studying the SMW level, the MWC must have regard to the needs of employees and their families. As I analysed earlier and Members are also aware, our difficulty is that it is not easy to put these two issues together. It is difficult to attain both targets at the same time.

The other point is Mr LEE's reference earlier to consideration being given to the general level of wages, needs of living, social security benefits and the relative living standards of other social groups. As I said earlier, the MWC will adopt the principle that our consideration will be based on the data. The few words of "our consideration will be based on the data" will appear regularly in our future discussions. Besides, there will be a balanced option, and this is very

important. If Members can remember that, our discussion in the future will be more rational and meaningful.

Besides adopting a host of indicators, our aim is to be prudent, objective and comprehensive. In order to be objective, we definitely need to take into account public sentiments and the plight of the grassroots in living. We need to observe objectively the actual situation. Therefore, there will be a lot of data. Why does the Census and Statistics Department (C&SD) have to conduct such a large-scale survey? Why does it need to survey 10 000 enterprises (including small and medium enterprises) and 60 000 employees? The survey is especially conducted for minimum wage, which is unprecedented. The aim is to obtain these data, in addition to the living conditions of the grassroots (about which Members are very clear), as well as the data on CSSA. In this connection, I wish to say that under the circumstances, I really find it inappropriate to incorporate rigid provisions into the law concerning those indicators and needs mentioned by them.

There is also a point worth mentioning. We have taken reference from overseas experience. Under the minimum wage laws of the United Kingdom, New Zealand and Canada, there is no provision which sets out the indicators, that is, the factors which form the basis for determining the minimum wage level. Generally, only the major principles are stipulated, and it is not possible to have any actual indicators written into the law.

Based on the series of considerations that I mentioned earlier, we hold that the existing original provision, that is, the principles set out in clause 11(3), are realistic and, as I always say, practicable. The word "practicable" is very important. I hope Members can understand why we cannot agree with the amendments of two Members. I also hope that other Members will oppose these two amendments. Thank you, Deputy Chairman.

DEPUTY CHAIRMAN (in Cantonese): Mr LEE Cheuk-yan, do you wish to speak again?

MR LEE CHEUK-YAN (in Cantonese): First of all, I would like to respond to the speech of Mr Paul TSE, who is the only one Member opposing the legislation

on minimum wage. I do not know whether he is representing the tourist industry. I believe he opposes this legislation on behalf of the tourist industry. However, as we all know, very lately another news story has broken out.

What is that news story about? I believe all of you must have already known it. Worse still, all people in China must have also seen it. One Hong Kong tour guide said to the tour group members, "I also have to support a family." What she said is exactly the same as I say today. Today, since the very beginning, I have also been saying "the workers have to support their families". That tour guide also said, "I have to support a family." However, how does she support her family? She supports it by robbing members of the tour group. She said to them, "If you do not make any purchase, you will put me to shame. If you do not repay me in this life, you will have to repay me in your next life." I was shocked at hearing that. What is meant by repaying her in their next life? Then, she said, "When you arrive at the hotel tonight, I will lock the doors."

(THE CHAIRMAN resumed the Chair)

I do not mean to criticize this tour guide, but she has indeed brought Hong Kong into disrepute. Why has she brought Hong Kong into disrepute? Because the tourist industry is not willing to give her a wage that can enable her to support her family, and it is surprising that you dare oppose the legislation on minimum wage. When you oppose the legislation, you are also doing harm to your industry. Is your industry so mean that it cannot agree to the legislation on minimum wage? Should the existing system carry on? I hope the tourist industry can think about it. Tour guides need to support their families, while workers also need to support their families. And the minimum wage is merely a very basic request.

Chairman, the second point is that I have to respond to the remark of Ms Miriam LAU earlier, and that is also the remark of the Secretary. They always say that my amendment is "not clear". However, is the existing Bill very clear? I have to criticize the Secretary, too. Your law and your amendment are not clear at all — When you said "forestalling excessively low wages", was that very clear? There is no objective standard for this. When you said "minimizing the

loss of low-paid jobs", you were only making an empty promise. You said that we "have to consider the economy", but all people know that they have to consider the economy. Then, the Secretary also cited some indicators, saying that the MWC had to consider social harmony and the cost of living index. However, I really cannot understand why every time when they mention the cost of living index, they are not referring to the need of supporting families. They always explain to me that the cost of living index refers to inflation. However, we are actually referring to the need to support families. The cost of living index refers not only to changes in inflation, but the actual need to support families. Therefore, the factors mentioned by them are totally not clear.

Besides, I have to reiterate one point. My amendment as a whole is not meant to turn the provision into a rigid formula. If people want the law to be clear, would it not be the clearest way if I draw up a formula? In fact, Mr Albert HO did ask me at the most preliminary stage, "Is there a formula of this kind in the world?" I said, "None in the whole world." Hence, I told him there was no way to draw up a formula, and all along, I have not adopted this means. Had I adopted this means, I would not have to consider other factors indeed. What I need to do is to follow the formula and the target will be reached. I am not following this way. I only ask Members to consider this factor, only to weigh it. Can this not be done? I only request weighing the factors for raising a family, the social security level, and the living standards of relative social groups. I only ask that the economic development and everything be weighed. I do not have any formula. I am only trying to incorporate some principles into the Bill. However, I really do not understand why people are so resistant to the principle concerning the workers' need to support themselves and their families.

Ms Miriam LAU just asked me: Are you meaning the need to support a family of two persons, three persons or four persons? In fact, I have already explained that I am not asking that it be tailor-made for workers. The Secretary seemed to have interpreted my approach as tailor-making for workers — During an interview, if you say that you have to support a family of four persons, you will receive a salary of \$9,800. If you need to support two persons, you will receive \$5,900. If you need to support only one person, you will receive \$2,800. Is that the way? I certainly will not be so careless. Members also know that it is not possible to be like this. I only ask that such consideration be made. When I proposed the hourly wage of \$33, my computation was based on one worker supporting two persons, and suggested it as reference. I am not

requesting that it be tailor-made for workers to the effect that a worker will tell the employer the number of members in his family and then negotiate the amount of wages. In that case, setting the minimum wage will be tantamount to encouraging giving birth. If you have more children, you will have higher wages. Is that really the case?

As you also know, I am not looking for this. Do not think that I am so absurd! In fact, my approach is very simple. The major principle is that workers have to feed their families. We are not pursuing calculations based on whether there are two, three or four persons in the family. We only hope that consideration can be given to the factors, putting them on the scale. Chairman, I hope Members will not distort my amendment.

Ms Miriam LAU said, "LEE Cheuk-yan, you are asking for a high level of wages as well as employment." Then I asked her whether she thought that the hourly wage of \$33 was very high. When she said that I was asking for a high level of wages as well as employment, what about her? She is expecting a horse to run fast without feeding it any fodder. Workers are not horses. We are humans. We do not feed on grass and we have to support our families.

Ms Miriam LAU thinks that if we ask for a high level of wages, many workers will be made unemployed as a result. The Liberal Party always keeps mentioning this, and says that I often criticize them for intimidating people. But they are really intimidating us. The figures she cited earlier are meant to scare people. She said that the result of the survey conducted by them showed that if the hourly rate of \$33 was set as the minimum wage, 170 000 people would be sacked or replaced. According to her, the meaning of being sacked or replaced is that once the hourly rate of \$33 is set as the minimum wage, those disadvantaged workers or marginal workers will become unemployed, replaced by younger workers.

My view is very simple. I always ask: Are there young people queuing up for cleaning or security work? If you care to look at this fact, then you do not have to argue anymore. The outsourced security guards at the housing estates under the Housing Department (HD) work for eight hours daily and their monthly salary ranges from \$6,300 to \$6,400. This is much better than those who have to work 12 hours a day a monthly salary of only \$5,000 to \$6,000. Then, have the contractors of the HD already sacked all the elderly workers? No. I know

many workers who are 50 to 60 years old. They are still working for the HD, with a monthly salary of \$6,300 and eight hours of work per day. They have not been replaced or substituted. Therefore, Members should not always raise alarmist talk, saying that middle-aged workers and workers in their prime will immediately become unemployed.

Of course, during the resumed Second Reading debate yesterday, Dr Philip WONG mentioned that workers of the Mainland enterprises had been laid off due to the enforcement of the Labour Law. Nevertheless, Members have to think deeper, that a high level of wages is actually related to economic development. When Members consider the factors of economic development, it is not necessary to suppress the wage level. It is wrong if you think that a low level of wages is equal to good economic development. At present, the measure that the Mainland will also adopt is to push up the wage level in order to knock out those low-skilled enterprises or those enterprises which exploit workers, with a view to creating domestic demand to bring about economic development. The consideration of this measure is based on economic development.

However, what about Hong Kong employers? Failing to exploit workers in Hong Kong, they turned to exploiting workers in the Mainland. If they are unsuccessful again, they would just close their business. I hope people can change their mindset by not merely resorting to property speculation or exploitation of workers in order to get rich. Can people change their mindset so that Hong Kong, by depending on people's wisdom, technology and service attitude, continues to strive for economic development and a better wage level for workers? This is what I am asking for.

In fact, the implementation of minimum wage will enhance productivity ultimately. This will fundamentally induce better economic development, and people will not get rich merely by exploiting workers. If exploitation is what we only know, Hong Kong will never prosper but will become worse and worse.

Chairman, the Secretary also mentioned earlier that consideration would be based on the data ultimately and thus there will be a lot of statistical data. I also hope that consideration of the need to support families can be based on some data. Let us look at the data pertaining to supporting families. I have been hoping very much that the Government can conduct a survey on the basic necessities of living so that we can also have some data as the basis of

consideration. Nonetheless, why does the Secretary only know to ask the small and medium enterprises (SMEs) of their wage level of the existing workers and only collect these data? Why does he not ask each and every family what its basic necessities of living are? He can also provide the data on this aspect afterwards. I also hope our consideration can be based on the related data. With the relevant data, we can consider the need to support families, economic development and the impact on enterprises. All these factors will be considered.

Chairman, finally, I also have to talk about whether the hourly wage of \$33 is too high. Ms Miriam LAU kept saying earlier that I was asking for a high level wages as well as employment. However, why are we asking for the hourly wage level of \$33? In fact, during the resumption of the Second Reading debate, I already provided Members with the figures. Let me provide more information now. If the hourly rate of \$33 is set as the minimum wage, it only accounts for an increase of 1.6% in the overall labour cost or remuneration expenses. Given the existing economic situation of Hong Kong, why is it not possible to increase 1.6%? Some people say that only low-waged industries will be affected. What will happen to these industries then? In fact, there will not be any problems. When the entire economy can afford it, that means even low-waged industries can also pass the increased cost onto the entire community. How can the overall economy of Hong Kong not afford an increase of labour cost by only 1.6%?

However, I am also a fair person. There are some figures from the Census and Statistics Department here which can illustrate by how much the wage level of various industries should be increased so as to offset the cost increase due to the implementation of minimum wage at the hourly rate of \$33. The turnover of Chinese restaurants only needs to increase 1.7%, and it is 1.6% for non-Chinese restaurants, 4.5% for fast-food restaurants, and 3.4% for local bistro cafés. The retail industry only needs to increase its turnover by 0.4% in order to offset the impact of a minimum wage set at an hourly rate of \$33.

Many Members mentioned the security and cleaning industries just now, but what did the Hong Kong Cleaning Association (HKCA) say? It said that it would not propose an hourly rate lower than \$24, and that an hourly rate of \$27 or \$28 was also acceptable. Why is the HKCA so nice, saying that it would also accept the hourly rate at \$27 or \$28? Because the case of the cleaning and security industries is very simple. Once the minimum wage is set at a certain

level, they will calculate a bidding price according to the wage level when they bid for a contract. If the minimum wage is set at \$27 or \$28, they will also bid at the price of \$27 or \$28. Do we not need any cleaning services? We definitely need such services, unless the owners and tenants will take the brooms and sweep the floor together, but this is not possible. Therefore, these industries are fine. They do not feel concerned, and they are even better than the Liberal Party. The Liberal Party proposes an hourly rate of \$24, while they propose a rate of \$27 or \$28. Hence, so long as the increased cost can be met by the fees for cleaning services, they can totally cope with that situation.

In regard to people's criticism of me knowing only to insist on a rate at \$33, irrespective of the consequence that there will be workers out of job, and that the situation now is similar to that of doomsday as the enterprises have to lay off employees and also increase charges, and many other problems, I only want to respond briefly that the persons who cause Hong Kong to collapse are only the developers, and it is the hegemony of developers that pushes up the rental level. Many people have asked me: After a minimum wage is implemented in the future, will some workers be sacked, and will the commodity price increase? I always answer, "We have no minimum wage today, but some workers are being sacked every day. Why do you not care? At present, the commodity price is increasing every day. We have to pay much more when we dine out, and Café de Coral has also increased its meal prices. Why do you not care?"

I am often scared by this. Hence, I have to put it on record today. I guarantee that after the implementation of minimum wage, all people will put the blame on us, accusing the Hong Kong Confederation of Trade Unions of aggravating the situation by working on the minimum wage and forcing them to close their businesses in the end. At that time, they will condemn me. At this moment, I have this to say for the record. You do not need to condemn me, as it is already the existing situation. Even before the implementation of minimum wage, it is already the case every day. Thus, do not put all the blame on us in future. This is very clear.

Finally, I hope that Members will not always say that I help to foster confrontation between employers and employees. I only ask for one thing, and that is, people need to have dignity and this is the common value that everyone in society should have. I am now asking for a change in the sense of value, and I hope you can recognize that workers work, they want reward for their labour.

When a worker works hard, he should be able to feed his family. I only ask you to agree with this value and then work together towards it. Thank you, Chairman.

CHAIRMAN (in Cantonese): Mr WONG Kwok-hing, do you want to speak again?

MR WONG KWOK-HING (in Cantonese): Chairman, in regard to clause 11 concerning the functions of the Minimum Wage Commission (MWC), it is, in fact, another focus and crux of the entire legislation, apart from the frequency of reviewing the minimum wage level. It is because our discussion on this legal framework does not involve the specific hourly rate, and one function of the MWC is exactly to determine the hourly rate. However, the Government is self-contradictory in prescribing the functions of the MWC. It has added some duties that the MWC should not perform, thus rendering the provision a little out of focus.

Among many of the Members who spoke earlier, Dr Margaret NG's speech commands the most praises from me. Her speech is really good. She has clearly illustrated why the functions of the MWC should be decided as such, and why should there be such a rule. Precisely because of such a rule, no matter who will become members of the MWC in future, they also have to consider these major principles.

However, the Government has preserved a high degree of flexibility and many grey areas in the Bill, and incorporated some self-contradictory elements. Therefore, if we pass this Bill today without making any amendments, we are being derelict in our duty.

Mr Ronny TONG raised a very good question in his speech earlier. He said he did not understand why I had to state that the wage level should not be lower than the CSSA level. I do not know whether you have listened to what Dr Margaret NG said earlier. If you did not hear her clearly, you may ask Dr Margaret NG who is sitting on your right, and she will tell you. I wish to highlight the following. The Government says that it has to "forestall excessively low wages". I would like to ask Members what "excessively low" is

meant. Firstly, what is meant by low? Secondly, what is meant by excessively low? There are no definitions. Therefore, we have proposed to use the situation of CSSA recipients who cannot support themselves without the allowance as the basis. When determining the minimum wage level, the MWC has to consider this factor. Therefore, we clearly propose that it should not be lower than the CSSA level, and we do not need to suggest any figure. If a worker receiving CSSA will have a better living than earning from his job, he would rather apply for CSSA. What is the point of working? This is what I mean.

If the minimum wage level determined by the MWC should make people feel that they had better find Secretary Matthew CHEUNG and Donald TSANG instead of looking for employment, this will be a complete failure. I need not cite any grounds for this statement, as this is the truth that everyone knows. Thus, in my opinion, if this cannot be written into the functions of the MWC, a very serious problem will arise and we are being derelict of duty.

I still recall what the Chief Executive said earlier when he was attending the Chief Executive's Question and Answer Session of the Legislative Council. He said that the formulation of minimum wage was to prevent excessive exploitation — this is not the original wording, but only the rough meaning. We exactly are to solve this problem, as exploitation will render the market imbalanced and losing its competitiveness. The grass-roots workers, who have no bargaining power, will be cruelly exploited, really cruelly exploited. Does our society allow this to happen?

Let me cite some figures again, which have already been mentioned actually. In 2008, there were 167 400 households (or families) whose monthly income was below \$4,000, but in 1998, the number was only 142 300. The number has increased, and there are more poor households now. In 2008, there were 266 000 employees making a monthly income below \$4,000 (that is, between \$3,000 and \$3,999). Compared with 169 600 employees in 1998, there are also more workers living in poverty now. The formulation of minimum wage is exactly to solve this problem, so that grass-roots workers can earn their living and live with dignity.

The second element in my amendment is that employees should be able to afford their personal and their families' necessary living expenses. The survey

figures from the Census and Statistics Department that I just quoted indicate that according to the statistical data from November 2008 to 2009, there is an average of three persons in one household, while the average labour force is 1.5 per household. In other words, one person's salary has to support the living of two persons. In fact, my request is very humble. I only ask to incorporate these two points into the legislation. It will be most unsatisfactory if the MWC does not even have these two basic functions. And in future, more and more conflicts will be created.

According to clause 11(3)(b) of the original Bill, when determining the minimum wage level, the MWC must have regard to the need "to sustain Hong Kong's economic growth and competitiveness". But should the MWC be responsible for this? This should be the responsibility of other committees. The Government has many economic committees and they should study how to enhance Hong Kong's competitiveness, instead of leaving this to the MWC. As Mr IP Wai-ming said earlier, if the MWC can be successful in performing this function, its members will be capable of taking up the office of the Chief Executive.

Therefore, the Government is making a mistake in incorporating this element into the legislation. It has left out the functions that it should perform but incorporating those that it should not perform. As Dr Margaret NG said earlier, it was incorporating some contradictions into the legislation, rendering the MWC at a loss. Should it solve the problem of excessive exploitation, or should it enhance the competitiveness? This is self-contradictory. Hence, this is why I hope that Members can support my amendment.

As regards the arguments from the Liberal Party, Mr LEE Cheuk-yan has just substantially responded to them and I will not spend more time on that. However, during the resumed Second Reading debate, the Liberal Party mentioned the knock-on effects, and to this I will respond slightly. They have quoted a lot of examples and data, as they are worried that there will knock-on effects after the implementation of minimum wage.

Chairman, due to the policy blunders of the Government over the past decades, it has failed to put concentrated efforts on solving the problem of widening of the wealth gap. As the biggest employer, the Government is very poor in its performance, and it has set a bad example. We have already quoted

many examples of this. In fact, this has created a wide range of knock-on effects. As a result of this, to date in Hong Kong there are nearly 200 000 low-income workers, more than 10 000 low-income households, and more than 1 million people who are living in a low standard — this is the genuine knock-on effect. Under this caused by excessive exploitation and serious exploitation, the Government has introduced outsourcing standard contracts, which however cannot solve the problem. The Government has also launched a trial Wage Protection Movement, which still cannot solve the problem, failing to forestall the knock-on effect due to excessive exploitation. It was subsequently due to our pressure that the Government turned to legislation on minimum wage. This is the situation goes.

In my opinion, Members should not take effect for cause. It is due to policy imbalances of the Government over these years that the living of grass-roots citizens is so seriously exploited. As a result, the Government is now forced to legislate for minimum wage. This is the situation. I think that one should be clear of the cause and effect and should not shift the responsibility onto others. The purpose of our legislation on minimum wage is to render the community a little less of contradiction, a little less of confrontation and resistance, so that society can be more harmonious and people can devote more efforts to boosting the economy, but not the contrary. Therefore, I have to spell out the cause and effect relations clearly. If someone mentions the knock-on effect, the effect at the present moment is to legislate for minimum wage.

Chairman, due to all of these reasons, we cannot support the original clause of the Government and the two amendments. In regard to Mr LEE Cheuk-yan's amendment, we in the FTU have conducted discussions on that. Mr LEE Cheuk-yan's amendment to clause 11(3) consists of two items. Item (a) is similar to my two-point amendment both in content and in meaning. They are compatible. Concerning clause 11(3)(b) proposed by Mr LEE Cheuk-yan, we think that it is similar to clause 11(3)(b) proposed by the Government in the original Bill. The Government says that it has to sustain Hong Kong's economic growth, while Mr LEE Cheuk-yan says that it must have regard to economic factors, including the requirements of economic development. The Government says that it has to sustain competitiveness, while Mr LEE Cheuk-yan mentions productivity. We think that it seems to carry a meaning similar, to the original clause of the Government. Hence, we can only abstain on Mr LEE Cheuk-yan's amendment.

Chairman, I very much hope that Members can give some thoughts to the remarks of Dr Margaret NG. I think that what she said is very reasonable. Therefore, I hope that Members can support my amendment.

Thank you, Chairman.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by Mr WONG Kwok-hing 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 Tommy CHEUNG rose to claim a division.

CHAIRMAN (in Cantonese): Mr Tommy CHEUNG 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:

Dr Margaret NG, Ms LI Fung-ying, Mr CHEUNG Kwok-che, Mr IP Wai-ming and Dr PAN Pey-chyou voted for the amendment.

Dr Raymond HO, Mrs Sophie LEUNG, Dr Philip WONG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Abraham SHEK, Mr Tommy CHEUNG, Dr Joseph LEE, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Prof Patrick LAU, Dr LAM Tai-fai, Mr Paul CHAN, Mr CHAN Kin-por, Mr IP Kwok-him, Mr Paul TSE and Dr Samson TAM voted against the amendment.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Ms Emily LAU, Mr Andrew CHENG, Mr Frederick FUNG, Ms Audrey EU, Mr WONG Kwok-hing, Mr Ronny TONG, Mr KAM Nai-wai, Ms Cyd HO, Mr WONG Sing-chi, Mr WONG Kwok-kin, Mr Alan LEONG, Mr LEUNG Kwok-hung, Mr Albert CHAN and Mr WONG Yuk-man voted for the amendment.

Mr CHAN Kam-lam, Mr LAU Kong-wah, Mr TAM Yiu-chung, Mr CHEUNG Hok-ming, Ms Starry LEE, Mr CHAN Hak-kan, Dr Priscilla LEUNG, and Mrs Regina IP voted against the amendment.

THE CHAIRMAN, Mr Jasper TSANG, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 23 were present, five were in favour of the amendment and 18 against it; while among the Members returned by geographical constituencies through direct elections, 28 were present, 19 were in favour of the amendment and eight against it. Since the question was not agreed by a majority of each of the two groups of Members present, he therefore declared that the amendment was negatived.

CHAIRMAN (in Cantonese): Mr LEE Cheuk-yan, you may now move your amendment.

(Mr LEE Cheuk-yan was not sure about which page of the Script)

CHAIRMAN (in Cantonese): Page 61 of the Script.

MR LEE CHEUK-YAN (in Cantonese): Chairman, I move the amendment to clauses 11(3).

Proposed amendment

Clause 11 (see Annex I)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by Mr LEE Cheuk-yan 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 LEE Cheuk-yan rose to claim a division.

CHAIRMAN (in Cantonese): Mr LEE Cheuk-yan 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:

Dr Margaret NG, Ms LI Fung-ying and Mr CHEUNG Kwok-che voted for the amendment.

Dr Raymond HO, Mrs Sophie LEUNG, Dr Philip WONG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Abraham SHEK, Mr Tommy CHEUNG, Dr Joseph LEE, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Prof Patrick LAU, Dr LAM Tai-fai, Mr Paul CHAN, Mr CHAN Kin-por, Mr IP Kwok-him, Mr Paul TSE and Dr Samson TAM voted against the amendment.

Mr IP Wai-ming and Dr PAN Pey-chyou abstained.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Ms Emily LAU, Mr Andrew CHENG, Mr Frederick FUNG, Ms Audrey EU, Mr Ronny TONG, Mr KAM Nai-wai, Ms Cyd HO, Mr WONG Sing-chi, Mr Alan LEONG, Mr LEUNG Kwok-hung, Mr Albert CHAN and Mr WONG Yuk-man voted for the amendment.

Mr CHAN Kam-lam, Mr LAU Kong-wah, Mr TAM Yiu-chung, Mr CHEUNG Hok-ming, Ms Starry LEE, Mr CHAN Hak-kan, Dr Priscilla LEUNG, and Mrs Regina IP voted against the amendment.

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

THE CHAIRMAN, Mr Jasper TSANG, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 23 were present, three were in favour of the amendment, 18 against it and two abstained; while among the Members returned by geographical

constituencies through direct elections, 28 were present, 17 were in favour of the amendment, eight against it and two abstained. Since the question was not agreed by a majority of each of the two groups of Members present, he therefore declared that the amendment was negatived.

CLERK (in Cantonese): Clause 13.

CHAIRMAN (in Cantonese): Mr WONG Kwok-hing and Mr LEE Cheuk-yan have separately given notice to move the addition of subclause (5) to clause 11, while the Secretary for Labour and Welfare and Mr LEE Cheuk-yan have also separately given notice to move amendments to clause 13. These amendments are related to the frequency of making reports under clause 11(1) by the MWC, as well as matters relating to the publication of such reports.

As Mr WONG Kwok-hing's and Mr LEE Cheuk-yan's amendments to add subclause (5) to clause 11 are substantially the same, I will only call upon Mr WONG Kwok-hing to move his amendment. Irrespective of whether Mr WONG Kwok-hing's amendment is passed, Mr LEE Cheuk-yan may not move his amendment.

If Mr WONG Kwok-hing's amendment is passed, I have given leave for the Secretary for Labour and Welfare to revise his amendment to clause 13. If Mr WONG Kwok-hing's amendment is negatived, and the original amendment proposed by the Secretary for Labour and Welfare is also negatived, Mr LEE Cheuk-yan may move his amendment. But if the Secretary for Labour and Welfare moves revised amendment to clause 13, Mr LEE Cheuk-yan may not move amendments to this clause irrespective of whether the Secretary's amendment is passed.

CHAIRMAN (in Cantonese): Members may now debate the original clause, and the amendments by Mr WONG Kwok-hing, Mr LEE Cheuk-yan by the Secretary for Labour and Welfare jointly. I will call upon Mr WONG Kwok-hing to speak and move his amendment first.

MR WONG KWOK-HING (in Cantonese): Chairman, this amendment is actually critical to the entire Minimum Wage Bill. Chairman, concerning the Government's amendment to clause 13, we mentioned earlier that its approach is very unfair to us, tantamount to sending Mr LEE Cheuk-yan's amendment and that of mine, which are substantially the same, to death in the first place. However, whether they will die or not will depend on Members. I hope Members can support them.

Why do we have to propose this amendment? First of all, the trade unions in the whole territory held a general meeting in April. After discussion, the meeting unanimously agreed that a review be conducted once every year. There were 213 representatives who agreed to this resolution, accounting for 93.8% of the representatives present. As I said earlier, the representatives present that night come from the trade unions of different backgrounds and trades, so they carry sufficient representation and represent the voices of workers in the whole territory. Our proposed amendment originates from this.

Chairman, a review every year is actually a normal practice, and it is also a natural cycle in the operation of society. Why can the review of minimum wage not be synchronized with the natural cycle of the operation of society, to the effect that it can be conducted once every year? Why should it be distorted to become once in every two years? Although the Government says that there will at least be a review within two years, it can be once, twice or even thrice, and can also be only dreaming. In fact, it only wants to cheat us so that we will fall into the pit. Frankly, this is totally irrational.

In respect of the operation and the financial situation of the Government, everyone knows that the Financial Secretary has to review and formulate a budget once every year. People who do business need to settle their annual accounts and pay tax once every year. Dr LAM Tai-fai, is that right? You are a businessman. Do you need to fill in your tax return once every year? Do you need to pay tax? This is the natural operation of society. Do our workers get their double pay at the end of the year? This is also once every year, right? Since the establishment of the Census and Statistics Department, all kinds of surveys, whether on economic indices, living conditions and wage levels, are conducted once every year. The entire society is operating in this way, throughout four seasons in a year. This is the rule of nature, just like a circle, year after year and moving in cycles. Why can the review of minimum wage

operate naturally in the same way? I think that the Secretary must answer why this review cannot be conducted once every year. The Chief Executive says that exploitation has to be prevented, and states that the formulation of minimum wage is meant to prevent exploitation. If the review is conducted once every two years, cases of exploitation will accumulate. Will that not be too cruel when the account is settled only once in every two years?

Chairman, I also want to tell you a truth. At present, there are a few Members from the functional constituencies sitting in this Chamber, and most of them are businessmen. I would like them to listen to this truth. If the review is conducted once in every two years and once a minimum wage is implemented, what will happen? The study that is being done by the Provisional Minimum Wage Commission is based on the data in 2009. Please listen carefully. They are the data in 2009. The result derived by them will be announced at the end of this month or the next. Chairman, no matter what wage level is determined, it is still based on the data in 2009. For instance, if a certain amount is prescribed, and I assume that it is \$33, when will that be implemented? It should be the first half of next year, but I am not sure which month. There is anyway a lag of one year. Businessmen will be very clear about it. When the wage level, that is the hourly rate, is prescribed in July or August, it will not be implemented until early next year. After this is implemented next year, the wage level will only be reviewed two years afterwards, which will be around 2012 to mid-2013. It is altogether five years' time from the beginning to the end. In other words, the result of the review will only come out after five years. Although it is already seriously delayed, it still has to wait for two years before a review can be conducted. Is that not very unreasonable?

Therefore, when workers in the whole territory ask for a review once every year, they are absolutely not demanding or asking too much, right? The result of the review may be a wage cut. Why is one review in every year not allowed? Why is it insisted the review be conducted once in every two years? Chairman, I am very worried that this is tantamount to passing the bomb to the SAR Government of the next term to handle. It is because the term of the existing SAR Government will end in 2012, and this bomb will then be left to be handled by the Government of the next term. When the new Government takes office, it immediately will have to face the review of minimum wage together with the problems accumulated for a few years.

In fact, have Members ever considered whether this will be beneficial to society, conducive to maintaining social harmony, or bringing more percussion to society? Why do we have to leave this tail instead of cutting it off completely and thoroughly now, so that the minimum wage review can be conducted once every year according to normal rule and system? Why does the Government have double standard? As I said earlier, when so many things are done once every year, why should the minimum wage alone be reviewed once in every two years? Why should there be double standard? This is double standard, right? There are absolutely no reasons to do that. Will businessmen settle their accounts once every two years? If Dr LAM Tai-fai says that he delays payment for two years and pay tax once every two years, that will be fine. I will then follow his way and give up my proposal. However, I am only taking it as an example. In my opinion, any proposal must be rational.

Chairman, I would also like to talk about the experience overseas and of other places. I shall take Shanghai of Mainland China as an example. It implemented minimum wage in 1993, better than Hong Kong. Within 14 years, it has raised the minimum wage standard 15 times and that is really great. There is one year when it raised the standard concerned twice. The other example is the United Kingdom. Although its National Minimum Wage Act does not specifically prescribe a time limit for minimum wage, it already has an established practice of adjusting the minimum wage in October every year. This is the situation in the United Kingdom. In France, for another instance, there is also a review every year. It will first make some adjustments on 1 July. And then in June the following year, the National Collective Bargaining Board will make the corresponding adjustments. They will do that in June and July every year. This is the situation in France. In Australia, the convention is that the adjusted minimum wage rate will be announced in July every year.

Therefore, experience from overseas and other places tells us that instead of piling up these problems which originally need to be solved low-income workers originally can have the chance to have their plight eased or obtain a more reasonable minimum hourly wage through the review. However, the Government is not dealing with the problem now and let the conflict accumulate. We all know that when playing basketball or football, the higher the pressure, the stronger the resistance. When something is pressed harder, the rebound will be stronger.

Therefore, in my opinion, to review once every year is exactly conducive to harmonious labour relations and social relations. When the problems are handed to the MWC which makes an adjustment once every year, many arguments can be avoided, right? If Members support the proposal that a review be conducted once in every two years, when low-income workers, facing rental increases, price inflation and increases in transportation fares, cannot cope anymore, they will come here again to stage a petition and put forward their request. Why do we not set up a system to review once every year and to handle the problems? If the problems can be tackled, they will not be forced to take to the streets, right?

Hence, I very much hope that Members can consider my proposal from a rational angle which is also in line with nature and normal practice. Of course, I totally agree that Mr LEE Cheuk-yan's amendment and mine are substantially the same, but only according to the procedure, my amendment has to be put to the vote first. I am very fair. I hope Members can support my amendment, not only in the interest of low-income workers, but also in the interest of the entire community. Why do we not want to have a more harmonious social environment? Businessmen also want the community to be harmonious, to be free of arguments. This is similar to the final take-off of the package of political reform, when the Government repeatedly called out "act now", "act now". We do not want to have so many arguments. After so many years of argument, we finally take off now. We should set aside political arguments for the time being and focus on dealing with matters concerning people's livelihood. This is a good example. Then why can the minimum wage not be reviewed once every year so as to pre-empt arguments?

I know that many Members here have been lobbied by the Government to oppose this amendment. But I ask them not to listen only to the lobbying by the Government, but also listen to what I say and see if my proposal is really reasonable and worth their support. Second, to those Members who have already promised the Government to oppose my amendment, I hope that even if they do not vote in favour of my amendment, they can choose to leave the Chamber. This is also a way to show their support. It is because we should not leave the problem to the SAR Government of the next term, nor should we let this problem give rise to further arguments on labour confrontation or opposition. Today, if they oppose my amendment, they have to bear the responsibility for any troubles in future. I really think this way. Really. Thank you, Chairman.

CHAIRMAN (in Cantonese): Mr WONG Kwok-hing, you did not move your amendment in your speech just now. Will you please move your amendment now.

MR WONG KWOK-HING (in Cantonese): Thank you, Chairman. It is because I was too excited.

CHAIRMAN (in Cantonese): You may now move your amendment.

MR WONG KWOK-HING (in Cantonese): Chairman, I move the addition of subclause (5) to clause 11. Thank you, Chairman.

Proposed amendment

Clause 11 (see Annex I)

CHAIRMAN (in Cantonese): I now call upon Mr LEE Cheuk-yan to speak, to be followed by the Secretary for Labour and Welfare; but no amendments are to be moved at this stage.

MR LEE CHEUK-YAN (in Cantonese): Chairman, the Government has proposed an amendment, and so have I. What was originally stipulated in the Bill? The answer is: Nothing. The Chief Executive would control everything, that is, the Chief Executive might recommend to the MWC the review cycle, in total control. When discussing this issue at meetings of the Bills Committee, we demanded that annual reviews be conducted. I would like to remind the meeting of Members' positions back then. At the meeting of the Bills Committee on 13 April this year, I moved a motion that a review should be conducted once a year. Sixteen Members voted for the motion and no Member voted against it. Therefore, come to think about it, Members supported conducting a review once a year at that time.

Actually, the Government is really weird in that it always wants to bargain. Sorry, I do not mean to offend vegetable traders or people buying vegetables in the market for their act of bargaining. Neither do I mean to offend housewives, but the Government really behaves very much like a housewife. I have to extend my apologies to housewives first, and I just want to put it in layman terms. The Government always insists on acting this way. Why can it not generously accept conducting a review once a year? Why does it insist on conducting a review once in every two years? I simply do not understand what justifications the Government has. I challenge the Secretary to provide justifications for it. I heard that his justification was it would allow more flexibility. What flexibility will be allowed? Why is flexibility needed? Whenever it comes to labour issues, the Government always talks about providing more flexibility. When I talked about standard working hours, the Government proposed giving more flexibility to employers. We have been discussing a minimum wage for years, and one of the reasons why we were beaten was we had to give employers more flexibility. I always say that flexibility has already inflicted much misery on workers, and this time, the Government is saying again that we have to allow for more flexibility. I hope the Secretary will explain later what other justifications there are apart from flexibility.

Come to think about this. What is so unreasonable about conducting a review once a year? When it comes to pay rises, all members of the public hope a review can be conducted once a year. Even though a pay rise may not be offered in the end, the employer should not say that a review should be conducted only once in every two years. No employer should say so. At most, they may only say, against their conscience, that no pay rise will be offered after the review. In that case, there is nothing we can do about it, but labour unions will certainly demand collective bargaining, and I will definitely request that negotiations be held on pay rise proposals. However, pay rises should not be discussed only once in every two years. How many years has the Secretary served in the Civil Service? I believe he has worked as a civil servant for almost 40 years. No? Maybe, some 30 years then. During these 30 years or so when the Secretary served in the Civil Service, in which year did the Government not conduct a pay review? A review is conducted every year. The Government conducts a civil service pay trend survey annually, although whether a pay rise is offered is another issue. The Chief Executive in Council conducts a review annually, taking into consideration six factors, which include the cost of living,

results of the pay trend survey, economic conditions and pay rises offered by private enterprises. All these factors are taken into consideration every year. I do not understand why the Secretary has adopted a double standard, under which annual pay reviews are conducted for civil servants but not for workers. Why? Is it discrimination? Secretary, I think the Government should refrain from constantly playing this game of discrimination.

I also do not understand why the frequency of review has changed to become once in every two years because, as Members of the Bills Committee may recall, it was agreed that a review should be conducted once a year. Have some Members changed their mind and suddenly suggested to the Government that a review should be conducted once in every two years? If a particular Member has done so, will the Government tell me which Member has made such an unreasonable proposal of conducting a review once in every two years? As Members have agreed at the meeting that a review should be conducted once a year, I believe no one would lobby the Government, just after a short while, to conduct a review once in every two years. Then, the only explanation is the Government initiated this proposal. Why did the Government do so? I really do not get it at all. Secretary, our request for conducting a review once a year is only a very simple one.

Come to think about it, many changes may occur in one year. For example, the discussion on whether public housing rentals should be increased by 4.8% has just commenced. If a rental increase is imposed on public housing, what will happen to inflation? The MTR Corporation Limited conducts an annual review in accordance with the mechanism which allows for both upward and downward fare adjustments and decides, upon completion of the review, whether a fare increase will be implemented. So, it also conducts reviews. Many changes may occur in one year. There may be changes in the economy and the cost of living. I believe inflation will be as high as 4% next year, which is indeed very serious. The inflation rate is about 2.8% now, and it may rise to 4% next year. If it further increases by 4% the year after next and the Government does not conduct a review once a year, the minimum wage rate prescribed at a certain level will be eroded by inflation and become a negative increase. Will this be fair to workers? If the economy suddenly picks up, will workers be able to share the fruits of economic prosperity? On the contrary, if the economy is in poor shape, a wage freeze may be implemented after the review. It is open to discussion, and we have never said that a pay rise must be

offered after review. My amendment proposes not a pay rise once a year, but a pay review once a year. The wording is "review" instead of "rise". How can Members not support such a humble request?

I do not understand why Members returned by functional constituencies would change their mind even at this stage, given that they have undertaken to support conducting a review once a year. Will those Members give their justifications? I do not want to listen to other reasons, and all I want is to ask them this: Why are you gainsaying what you advocated in the past? Why would you change your stance, after being lobbied by the Government, from supporting conducting a review once a year to supporting conducting a review once in every two years? Who has the courage to tell me? "Tai-fai", Abraham SHEK, Philip WONG, CHAN Kin-por, you cannot refrain from pressing the button. Today, I am prepared to persist in discussing this issue with you till tomorrow. Why? On what basis did the Government lobby you, or was there a secret political deal? Let me use the way in which the League of Social Democrats rebuked the Democratic Party — is there any closed-door politics or secret deal? What have you sold?

Chairman, certainly, I am not saying that you have betrayed us, because if I say so, all of you will not support me. Therefore, I appeal to Members' reasons and hope they will support conducting a review once a year. In order to win the greatest support, I will just speak for eight minutes.*(Laughter)*

Thank you.

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): First of all, I am grateful to Mr WONG Kwok-hing and Mr LEE Cheuk-yan for their amendments. Perhaps, let me make a brief clarification. As I said earlier, the amendment to clause 13 was proposed out of legal and drafting considerations. So, do not concoct any conspiracy theory, saying that it is a dirty trick, a dishonourable act. We did so truly out of drafting considerations. Let us go back in time and take a look at the development of the issue, and I will give you a reply on behalf of those Members who were forced by you to state their positions.

Actually, the whole case was: At a meeting of the Bills Committee, Members passed a motion urging the Government to stipulate in the legislation

that a review should be conducted once a year. At that time, we already expressed clearly that the Government's position was the Bill was clearly silent on a review cycle. Our position was that we should be open and flexible. Why? Because many countries are open in this regard. The United Kingdom is totally silent on it, and so are France and many other places (Appendix 1). However, the fact that no provision is stipulated on it does not mean that reviews will not be conducted. It should be borne in mind that it does not necessarily have to be laid down in law, and once it is, there will be no flexibility; but the fact that it is not laid down does not mean that reviews will not be conducted. Do you get it? Therefore, many Members subscribed to your view at the meeting, and when the motion was placed before me later, I expressed respect for this view. You should know that I respect Members' views very much. Therefore, after consideration, I suggested that we should seriously consider whether or not to address Members' demand — Mr WONG Kwok-hing has just left the Chamber, otherwise I would give a more detailed account of it — because Members have made lots of effort with the only purpose of helping the grass-roots workers. We proposed prescribing a minimum wage not for the sake of putting up a dispute, but for the sake of helping the others, right? Why have we spent more than 30 hours on a debate here? We only hope to improve and refine the Bill, and that is all. We are not here to find a handle for disputes, so please do not get me wrong.

Then, I actually got together with some colleagues and pondered over how the three factors could be blended. I must state those principles, which are the three pillars. The first pillar is that it must be regularized in order to address Members' demand concerning a review cycle. We understand the expectation of grass-roots workers for a frequency of reviews so that they feel confident and assured. However, apart from the frequency, we also have to consider the flexibility, which is also very important. We have to ensure that, besides being flexible, it will not be counter-productive, so that employees' rights and interests will be protected. These are the three aspects. That is to say, first, it has to be regularized, second, we have to protect employees' rights and interests; and third, it has to be flexible. Given this premise, I spent a few evenings meeting with my colleagues until very late at night to discuss this issue, and we also made reference to overseas experiences and examined the actual situation of Hong Kong.

Why did we propose conducting a review at least once in every two years? It seems that we are playing the bad guys and you the good guys. Actually, we are good guys all the same, and we are really helping the workers. Why? First of all, many people have a misunderstanding about us, thinking that we always give regard to employers' interests. This is not true. I have repeatedly said that our task is all about striking a balance. In proposing a minimum wage, the Government is making a major policy move and a change in its philosophy of governance. Members should know that in 1999 — you said it was 28 April — when you first proposed a debate on minimum wage, I was the Commissioner for Labour, and we were already good partners back then. It can be said that a minimum wage has just come into sight today, 11 years down the line. You can imagine that we have been working together without any differences in views, right? You were the first one to propose this debate, and now, 11 years since, we have actually achieved some results. Therefore, we should refrain from creating any confrontation this evening. The situation is really not what you have imagined.

Second, why is our proposal more desirable than yours? My argument is substantiated. Please listen to me, and I believe you will be convinced after this and there will no longer be any misunderstanding between us. First, as I said just now, since our economy is externally-oriented and the Linked Exchange Rate system is implemented, we must maintain flexibility in the labour market. As we all know, given our short economic cycle and the ever-changing external factors, and coupled with the fact that we have gone through SARS and the financial crisis, we must maintain the flexibility and vitality of our economy. This is the first point. In order to achieve this, however, we have to protect grass-roots workers at the same time. Striking a balance is no easy task, but what should we do? We think that as we have to implement a minimum wage now, we must do a good job of it. Why did we come up with the idea of conducting a review at least once in every two years? That means we can conduct additional reviews whenever necessary. You mentioned conducting three to four reviews, but actually, it is impossible to conduct so many reviews because we have to analyse the data collected, and it is not meaningful to conduct reviews too frequently. The data must be meaningful. Otherwise, it is meaningless to conduct a review once in every two to three months.

We have three justifications. The first one is we have to consider the issue from employees' perspective. What are the disadvantages of conducting a

review once a year? When it is rigidly laid down in the legislation, some employers — as we all know, there are many small and medium enterprises (SMEs) in Hong Kong, and they account for 98% of all enterprises in the territory — may adopt what I would describe as a shorted-sighted approach and switch to short-term employment arrangements. Why? If the Government reviews this law once in every two years, employers may have a feeling that the minimum wage rate will be adjusted, probably upward and not very likely downward, only once in every two years. As we all know, we will have to lower the minimum wage rate when the economy is in the doldrums, but psychologically, people will think that the wage rate will be increased. In that case, if a review is conducted once in every two years, employers may safely offer contracts of longer duration. So the advantage is that they will not adopt a short-sighted approach and short-term employment arrangements. There is still the second point. If it is stipulated in the law that a review should be conducted once a year, employers may offer fragmented employment contracts as a result of their short-sighted approach. There is a possibility that more contracts for a continuous period of four weeks with 18 hours of work per week will be offered. We cannot tell whether this will happen, right? Will it be beneficial to low-paid workers? This is the first point.

The second point is we have to give regard to employers, SMEs in particular. If it is stipulated in the law that a review should be conducted once in every two years, they will still carry out annual budgeting and planning in most cases. However, if the minimum wage rate may be adjusted every year, they may have to make extra contractual arrangements, especially in service contracts and business contracts. They will have difficulties in budgeting and face additional uncertainties. Will it be beneficial to SMEs, which account for 98% of all our enterprises?

The third point is the overall economic climate I mentioned just now. As you may know, our economy may undergo adjustment when it is battered in times of adversity. If the MWC is given more time and flexibility, it may conduct a review after a greater time interval instead of annually in times of an economic downturn. If it so happens that a review has to be conducted in a particular year when the economy is in poor shape, all of us know what the outcome will be. In that case, when the economy is in bad shape, should we conduct a review later for the benefit of employees? Will it be more beneficial this way?

I would like to cite a real-life example, which happened in the United Kingdom. When the United Kingdom was under the impact of the financial tsunami, the United Kingdom Government requested its Low Pay Commission to defer submitting its proposal for two months. Why? Precisely because it would allow the Low Pay Commission to gain a thorough understanding of the latest situation and development to make appropriate adjustments. If we insist on introducing a provision which does not allow for flexibility, we will have to conduct a review regardless of whether or not the conditions are favourable, and all of us know very well that the data so collected will definitely be unfavourable. In that case, how should we deal with the situation? More conflicts will arise as a result.

Insofar as this issue is concerned, we have actually acted out of good intentions, and no conspiracy was involved. As you have known me for so many years, you should know that I do not play dirty tricks. I just play the "Yang Style" but not dirty tricks. As all of you know, I practise the "Yang Style Tai Chi". I am not "practicing Tai Chi" by adopting a delaying tactic, I am really an honest and open person, not one who plays dirty tricks. Therefore, after listening to us, you will find that our proposal is balanced, pragmatic and open. I would also like to undertake that we will conduct additional reviews when necessary. Mr WONG, please rest assured. The fact that we put down conducting a review at least once in every two years does not mean the Government will evade conducting reviews. We will conduct a review whenever necessary. After all, the Census and Statistics Department (C&SD) will conduct an annual survey — you may be aware that we devoted much time and manpower to conducting a large-scale survey in 2009, which was the first of its kind. It is a statutory survey. In other words, employers may commit an offence if they refuse to fill in the questionnaires, and participation in the first one was voluntary.

I will now respond to Mr WONG Kwok-hing's question. Just now, he mentioned that there was a lag in the data for the second quarter of 2009. We are aware of this, but how can we ensure that these published data in recommending a wage rate in the future, actually the MWC Members may know that the so-called problem of lagged data is inevitable. The lag phase of the data in the United Kingdom is one and a half years. While a statistical survey is conducted in April each year, the data are not adopted until October the following year, that is, one and a half years afterwards. This happens all over

the world, and nothing can be done about it. It is the same with surveys on unemployment rates, which are also lagging, and everyone is well aware of it. However, what remedies can we take? Mr WONG, we fully understand that the objective is to protect workers. The C&SD will also provide assistance in this regard. In the first place, it is now trying to draw a conclusion on the 2009 Annual Earnings and Hours Survey to identify areas for improvement, so as to streamline the work procedure to reduce the lag. This is the first point. Secondly, in the recommendation to be made to the Government at the end of August, the Provisional Minimum Wage Commission will also take into consideration the latest economic data for the period immediately following the period covered in the 2009 survey. In other words, apart from the data for 2009, it will also take into account the latest data, including those on economic forecasts, inflation, estimated GDP, unemployment rates and others. That is to say, the base data — the data for 2009 are basically the base, which are very important and serve as the basis — will be supported by supplementary data, so that the outcomes can better reflect the prevailing market conditions. Honestly, we have indeed done our utmost to implement a minimum wage, in the hope that it will be implemented effectively and the public will know that the Government cares about them.

Chairman, I do not intend to go any further, but I would like to reiterate that mutual trust is most important in the relationship between the executive and the legislature. In implementing a minimum wage, we are truly people-oriented, and we have to balance the interests of various parties. Nevertheless, it is really implemented for the benefit of workers. If it is not for the purpose of providing labour protection, why should we implement it? There is yet another point. I have to make a clarification as Mr WONG Kwok-hing has misunderstood my earlier remark about ensuring that the economy will not be affected, that is, about clause 11(3). Allow me to digress a little. He has misunderstood it. The provision does not mean that the MWC will be responsible for maintaining the competitiveness of Hong Kong. Rather, it is to ensure that in determining a minimum wage rate, the MWC must have regard to the need to avoid undermining the competitiveness of Hong Kong. The MWC's function is not to promote the external trade of Hong Kong, but to give regard to some factors, and the four pillars. As I said just now, one of them is to forestall excessively low wages. At the same time, it has to ensure that there will not be a tremendous loss of low-paid jobs, which is very important to the employment of the grassroots. Besides, it has to give regard to the competitiveness and growth of

our economy. So, is this not an all-win measure? With these remarks, I hope Members will refrain from adopting a hostile attitude, thinking that the Government intends to trap them, I have played "dirty tricks" and some others have to curry favour with electors. Actually, all of us are trying to do a good job of this. Thank you, Chairman.

MR LEUNG YIU-CHUNG (in Cantonese): Chairman, earlier I suggested that you should allow the Secretary some time to take his meal. Why?

CHAIRMAN (in Cantonese): I did ask the Secretary, and he said he already had his meal.

MR LEUNG YIU-CHUNG (in Cantonese): Good for him. However, I find it rather strange. Chairman, why did I say so? Because I thought he had not had his meal and, as a result, he was unable to think clearly. *(Laughter)*

Why? Because the Government has stated clearly in the amendment that a review will be conducted at least once in every two years. Following this line of logic, conducting a review at least once in every two years does not rule out the possibility of conducting a review once a year. Secretary, is this interpretation correct? Following this logic, I really do not understand why the Secretary said if a review is conducted once in every two years, operators of SMEs will have greater certainty and will therefore offer two-year contracts instead of making excessively short-term contractual arrangements, thereby forestalling fragmented employment and the aggravation of problems arising from contractual arrangements for a continuous period of four weeks with 18 hours of work per week. Is this logic problematic? If you agree that the original legislative intent was to conduct a review at least once in every two years rather than once in every two years, the situation is different. However, the problem is the Secretary's thinking and remarks just now were based on the idea of conducting a review once in every two years. Therefore, I think there is a lack of clarity. If you are not full yet, I think you need to eat more because this will strike home a wrong message with far-reaching implications. You may think you mean well, but actually you are doing a disservice. Why do we think

that a review should be conducted at least once a year? As we all know, civil servants also have a pay review each year, as LEE Cheuk-yan said just now, but whether they will have a pay adjustment depends on the actual data. We can only conduct a review, after which their pay may be adjusted either upward or downward, or even remains unchanged. This is the situation.

However, you have given us an impression that the Government will only conduct a review once in every two years. In that case, you have completely abandoned your original thinking. There is another issue of greater importance, Chairman, and I hope the Secretary will consider it clearly. If it really turns out, as you have thought, that a review will be conducted once in every two years, a very serious problem will arise. Members have mentioned just now that if inflation is on the high side and rises every year, a serious problem will arise. If a review is conducted once in every two years, the rate of adjustment will definitely be very high. In that case, the Government will be afraid of being rebuked by SME operators, who will indicate to the Government that they have to close down their business, or else they have to lay off staff. If the Government does not adjust the wage rate upward, it can only act against its conscience and deliberately play down the data collected from the review by administrative means. In that case, what protection will the working masses receive?

If a review is conducted once in every two years, SME operators may be under pressure originally, the wage rate will be increased by \$1 after a review, but now an increase of \$2 is required, thereby imposing an increased burden which may be too heavy for employers. Perhaps you may think that an increase of \$2 is too much, and it is better to increase the wage rate by \$1, but this will be unfair to workers. Therefore, you claimed that this practice would allow flexibility in the protection of workers, but I think that in the end, it will in effect be — I would not say "exploiting" — unable to protect the due rights and interests of workers, and this is where the problem lies. Regarding this, you really have to consider it thoroughly before responding to our question.

Besides, Mr WONG Kwok-hing has just pointed out, after repeated calculations, that we may only be able to review the data five years later. However, we should look farther ahead after enacting the legislation instead of only considering the situation of such a short period of five years. As we all know, it is not easy to introduce amendments to a law after its enactment. For

example, only one amendment has been dealt with seven decades after the enactment of the Trade Boards Ordinance. If we legislate for conducting a review at least once in every two years, but you interpret it as conducting a review once in every two years, I do not know what the situation will turn out to be in the future. I think the working masses will still be in great hardship for a long time to come without any improvement in their living. Therefore, this is a very serious problem.

Chairman, the third point I would like to make relates to the Secretary's frequent reference to "flexibility, flexibility, flexibility". However, regarding our proposal of conducting a review once a year, why can there not be "flexibility, flexibility, flexibility"? What difficulties will there be when a review is conducted once a year? If it is technically infeasible, I will have nothing to say, but it is not the case in reality. Many large organizations and even the committee responsible for the civil service pay review can manage to conduct a review once a year. Why can we not do so? Therefore, it is technically feasible. Yet, what does flexibility mean? It means a review can be conducted when necessary and not conducted otherwise. The same reasoning applies if it is prescribed in law that a review be conducted once a year. Why do we have to fix the cycle at two years? Regarding this, I really do not understand the rationale for it. Just now, I have paid close attention to the Secretary's 10-minute speech, in which he tried to explain the reasons for setting the interval at two years. However, what are the objective considerations for setting it at two years? I could not see any justification for it, but neither could I get your points. You have not given any justification for setting it at two years. Regarding the lags you mentioned, we understand that there are bound to be lags under various circumstances. However, it is precisely because of these lags that we demand that the interval be shortened to reduce the impact brought by the lags. It is only in this way that the desired results will be achieved and the lagging effect be reduced. The longer the interval, the more serious the lagging effect will be, right? Logically, this is how it is. You know what the reality is, but you made a conclusion contrary to it. I really do not understand it at all, and I think it is not justified.

Besides, there is yet another important issue. Many SME operators have indicated that if the minimum wage legislation is introduced and implemented and a minimum wage rate prescribed, they would regard the minimum wage rate as the real wage rate. They said they would follow the Government in whether or not to offer a pay rise. If a two-year cycle is adopted, how long do workers

have to wait? They will have to wait for at least two years before they may have the opportunity to get a pay rise. How deplorable it is for a worker to have to wait for two years before a pay rise may be offered. As we all know, we use a one-year cycle as the basis for various calculations, such as the calculation of the annual inflation rate, business performance and tax rate. Under what circumstances do we not use one year as the basis for calculation? It really beats me. Therefore, please provide some objective scientific data and justifications to convince us that a two-year interval is a reasonable arrangement. In your speech just now, apart from the term "flexibility", there is not any other convincing justification.

Therefore, we feel very much concerned. Chairman, if the review cycle is not shortened, workers will not be benefited. Delaying the wage review will only prevent the minimum wage from achieving any real effect because a minimum wage seeks to ensure that workers will be remunerated at a reasonable wage level. Prices are constantly rising, but we are leaving the workers waiting without looking for a solution. In a way, this will result in a lower wage level because when wages are not increased, they drop in real terms.

We should not do this. This is not our objective in making this law. Rather, we hope to enable workers' wage level to catch up with the living standard. Therefore, I do not understand why you would insist on conducting a review at least once in every two years.

Besides, our greatest worry is that workers' expectation will not be met. As we all know, Chinese people always wish to know after the New Year the rate of wage increase for the coming year. However, this expectation will not exist anymore because a review will be conducted at least once in every two years. We do not know whether we will have to wait until the beginning or the end of the second year, nor do we know how long we have to wait. This is worse than not setting a fixed timeframe.

Regarding the countries cited by you as examples, I do not know why the examples cited by you and those cited by WONG Kwok-hing are contradictory. In a country cited by WONG Kwok-hing, a regular review is conducted once a year, but you said this is not true. Therefore, I do not understand why the two of you would come up with different conclusions in citing the same country as an

example. Nevertheless, you have made it very clear just now that these countries will announce, on a regular basis, a certain timeframe, such as in July. In other words, workers can look forward to this. However, there is nothing we can look forward to. Although a review will be conducted at least once in every two years, no one knows exactly when the review will be conducted. We even do not have any specific timeframe to look forward to. This is indeed hard to understand.

Now, the amendment moved by the two Members proposes that a review be conducted at least once a year, that is, we do not have to wait for more than 12 months to get the result. In this way, workers will have something to look forward to, which I think is very important.

I do not know whether the Secretary will change his mind. Just now, you have conveyed a clear message, that you attach great importance to Members' views and you intend to work together with Members to improve the rights and interests of employees. This was stressed by you repeatedly. In that case, I hope you will attach great importance to the fact repeatedly mentioned by Mr LEE Cheuk-yan just now, which is that the Bills Committee passed a motion by 16 votes that a review should be conducted once a year. That being the case, why do you not attach importance to this decision instead of proposing that a review should be conducted at least once in every two years? Is this a display of co-operation? Is this the way to work together? If the answer is in the positive, will you tell me why you would think so? When there is such a discrepancy, how can you still tell us that we are working together for the benefit of the working masses? Is this claim somewhat inconsistent with the reality?

Chairman, I so submit.

DR LAM TAI-FAI (in Cantonese): I am very disappointed that both Mr WONG Kwok-hing and Mr LEE Cheuk-yan are not in the Chamber now that I am about to speak, and actually I will devote the major part of my speech to addressing their concerns.

Mr WONG Kwok-hing mentioned my name repeatedly, perhaps I should say "time and again" instead. Those who have no knowledge of the situation

may think I oppose conducting reviews, or I have even taken the lead to oppose it. However, this is not the case. I very much respect the need for reviews, and I also think reviews should be conducted. Just now he asked me whether it was right to pay tax biannually. Those who have no knowledge of the situation may, only by listening to this part of the debate, think that I really do so. However, I do not pay tax biannually. I am a law-abiding citizen, and my enterprise also abides by the law and pays tax annually. Therefore, here I would like to allay his concern first. Besides, he also heralded that I intend to leave this issue to the next Chief Executive or the next term of Government. This charge seems to be too heavy for me to bear, and I am not that influential.

On the other hand, Mr LEE Cheuk-yan asked whether those of us who supported the passage of the motion at the previous meeting of the Bills Committee, with 16 votes versus one, were involved in closed-door politics, that is, whether Secretary Matthew CHEUNG has made any deal with us and whether any betrayal is involved. Frankly, if the Secretary did not lobby us, he would have failed to do his job properly, and he would have been incompetent. It is his duty to explain the relevant provision clearly and analyse the details thoroughly to me. If he did not do so, it would be a fault on his part. As a matter of fact, he did lobby us, and he had even done so on two occasions, but it was not closed-door politics. On both occasions, he had a meeting with us, the five non-affiliated Members in this Council, in a Members' Room on the second floor. However, we were the ones to blame because we kept going in and out of the room, making it impossible for him to give an explanation to us in a focused manner. I believe Secretary Matthew CHEUNG's lobbying was not very successful this time because not all the five non-affiliated Members in this Council will necessarily support him. Anyway, people may have different views and ideas. I only wish to state, once and for all, that I support conducting reviews.

The term "review" is actually very important. We have to engage in reviews constantly from the day we were born to the day we die, in education, work, marriage and friendship. We have to review how we lead our lives and handle different situations, how we should review ourselves and others and allow others to conduct reviews of us. Reviews are indispensable under all circumstances. What is wrong with not conducting reviews? If reviews are not conducted, how do we know whether or not the results are satisfactory? In the absence of reviews, how can we tell whether too much or too little effort has been

made? Without conducting any review, how can one tell whether adequate effort has been put in? When reviews are not conducted, how can one be sure whether any effort has actually been made at all? Without reviews, how do we know that certain things can be done while others cannot? Therefore, reviews are necessary. How can we do without reviews? After a new measure has been introduced and implemented for some time, a review has to be conducted, and adjustments have to be made before the measure is implemented again, which will be followed by another review and further adjustments. Therefore, reviews are necessary. As for how long the measure should be implemented, how much time the review should take and how long the whole cycle should last, these should be discussed in detail among all parties. Therefore, I definitely support conducting reviews. As for what should be done after a review has been conducted, it can be decided in the light of the details of the legislation enacted. Any inadequacies identified in the review should be rectified, any harm done should be healed, any room for improvement should be addressed and any mistakes and omissions found should be avoided, so that there will be better chances of success. If success is not achieved, one should try again with dedication and determination. Therefore, constant reviews are necessary. It is only through reviews that one can tell whether any mistakes have been made, and it is only through reviews that good value-adding approaches can be identified, and it is also only through reviews that one may know whether the relevant practice, measure and act should continue. Therefore, I would like to tell Mr WONG Kwok-hing that I very much agree to conducting reviews.

I would like to come back to Mr LEE Cheuk-yan's remark concerning the fact that at the previous meeting of the Bills Committee, almost all Members put up their hands in support of conducting a review once a year, with 16 votes versus one. It is true that I was the first one to express support, thanks to Mr LEE Cheuk-yan for coming to me for this, and I have not changed my mind. I did express my support at that time. Why? Because when he raised the question with me, it got on my nerves. How? I think the legislation is no golden rule, and so it should be subject to review after enactment. However, when the Government introduced the Bill, no provision was made for review. I remember that when the Government said no reviews would be conducted, I felt indignant indeed. How can a piece of legislation not be subject to review after enactment? Does it mean that it is a golden rule? The fact that section 39E enacted in 1986 has not been reviewed so far has put the public into misery and caused the industry to be unable to undergo upgrading and restructuring and subject to tax

recovery actions. This is precisely the result of the absence of reviews, right? Actually, minor reviews were conducted, and amendments were made in 1992, but it has already been over a decade since 1986 or 1992. I would definitely disagree to the Government's not conducting reviews. It is now 2010, and no review has been conducted for over a decade since the amendment in 1992. Therefore, when I heard that no reviews would be conducted — Secretary Matthew CHEUNG, please excuse me for saying so — I was very furious. Given that both the employers and employees were so concerned about the minimum wage issue, I just wondered how it would be possible not to conduct any reviews after the relevant rate or level is set. Therefore, when Mr LEE Cheuk-yan approached me and told me that he thought it was not right, I very much agreed with him that it was unreasonable, and I thought reviews must be conducted. At that time, I would have agreed with him even if he had proposed conducting a review once in every five years or 10 years, not to mention once a year, because conducting a review once a year, once in every five years or 10 years is better than not conducting any review at all.

Following this line of logic — Mr LEUNG Yiu-chung, you used to teach mathematics, so your logic must be correct. According to your analysis, do you think my logic is correct? It is not that I am gainsaying what I advocated in the past, but the fact that section 39E concerning depreciation allowances has not been reviewed for years has induced this logic in me, thinking that no matter how often a review is conducted, it would be better than not conducting any review at all. This is my response to Mr LEE Cheuk-yan's remarks. Frankly, I have not yet decided how I am going to vote today. Anyhow, I support conducting reviews, and I abhor the idea of not conducting any reviews.

Certainly, I have no idea whether Secretary Matthew CHEUNG will continue to serve in the next term of Government or be transferred to another department. However, it would be perfect if he is transferred to the department responsible for conducting a review of section 39E because he is now proposing that a review should be conducted once in every two years, and so by the time he is transferred, it would just be the right time for him to conduct a review of section 39E. It would even be better if amendments can be made because if a review is to be conducted once in every two years, he would have accumulated much experience by then, well-versed in how to conduct the review

CHAIRMAN (in Cantonese): Dr LAM, please focus your remarks on clause 11 and refrain from talking about section 39E of the Inland Revenue Ordinance.

DR LAM TAI-FAI (in Cantonese): I only want to give an explanation, just in case he would have any query over the button I am going to press in the voting later. Therefore, I must explain my logic to Mr LEUNG Yiu-chung.

It is said that as companies have to conduct reviews annually, the Government should do likewise. However, I think the two should not be considered in the same context. Even the tycoon in Hong Kong by the surname of LI is unable to engage in all industries in the world, and neither can he engage in all trades and businesses in Hong Kong. Even if he conducts reviews, he can only do so on his own trades and businesses. However, if I am correct, when the Government conducts a review of the minimum wage legislation, the review has to cover all sectors, right? It is simply not reasonable to conduct reviews only on the industrial and catering sectors but not the retail sector. In conducting a review, therefore, the scope to be covered and the factors to be considered by the Government are far more extensive than those by a company, which only operates a single business. Even a diversified company may only operate 10 businesses or so, and will definitely not engage in as many as 72 or 82 businesses. The review concerning minimum wage is more complicated, and one cannot compare them rigidly. If a certain company switches to conducting a review once in every two years, does the Government have to follow suit? This is not what it should be. Does it mean that when certain companies switch to conducting a review once in every three years, the Government also has to do likewise? One should not compare them this way. I did not major in mathematics, but in my view, I think one should not make such a comparison.

After putting in years of efforts, Hong Kong has ultimately succeeded in fighting for a law on minimum wage. Representatives of the labour sector have surely made the greatest contribution in this regard, and we also agree that success was only possible with the help and support of employers and the industrial sector. However, what positive or negative effects will arise from the initial prescribed wage rate or other details after the enactment of the legislation? As we all know, we can only make rough predictions. Those of us who are engaged in enterprises have all along been concerned that the minimum wage

legislation will have an impact on the sustained competitiveness of enterprises, and we are also worried that we will do a disservice despite our good intentions, not being able to offer any help with regard to the unemployment or employment rate, because we can only make predictions. Just as the question raised during the discussion this morning on persons with physical or mental disabilities, will excluding them from the coverage of minimum wage help them secure employment without causing unemployment among them? Is it possible that originally 10 companies may plan to employ persons with physical or mental disabilities, but after the passage of the legislation, probably only four, that is, six less companies, will employ these people? Will this cause their employment opportunities to reduce on the contrary? These are yet to be seen. Therefore, we should exercise great caution, make reference to more data, observe market responses and conduct thorough analyses, particularly at the initial stage, because we are all taking a step at a time and learning in the process. We are unable to predict what impact the legislation will have, and the effects may be either positive or negative. In any case, however, the best tactic is to exercise great caution in every step we take.

No legislation or measure is a golden rule which always applies. While section 39E has not been amended for a long time, excessively frequent amendments will give an impression of caprice and cause confusion. For example, if we are to make a comparison to find out whether it is more desirable to conduct a review once in every two years, once a year, or once in every three years — as no one proposed conducting a review once in every three years, I might as well only compare conducting a review once in every two years and once a year — to my understanding, provided that the information given by the Secretary is not misleading and I have not heard him wrong, the timeframe for conducting a review once in every two years includes the time for conducting a review, compiling a report, making analyses and conducting consultation. I think the timeframe is already very tight because it will involve the collection of both information and data. As for the data of various sectors, while some of them are readily available, others may lag behind the economic conditions and may not be able to reflect the prevailing situation. As many sectors are involved, the authorities cannot regard five of them as representatives and only collect data from them. I will not let this happen. The authorities must collect adequate data from various sectors and conduct overall analyses longitudinally, within individual sectors and across different sectors. As these analyses are different from each other, we must allow the authorities ample time to complete

the relevant work before preparing the analysis reports. I believe it is more desirable to allow ample time for carrying out such work. Besides, it is unnecessary to conduct the initial review in haste. Actually, no one knows whether it is the employers or the employees who will benefit, or whether both parties will benefit or otherwise.

Probably because I am always prudent and unhurried, I maintain that we should set a timeframe which can easily be adapted to by all. As the Government is proposing that at least — the Secretary must make it clear in his remarks and refrain from always referring to "once in every two years" — a review will be conducted once in every two years, it means that a review may be conducted once in every one and a half years or once a year, or even once in every nine months in urgent cases. Therefore, the Secretary must make an undertaking and refrain from blurting out "once in every two years" without thinking about it clearly, as Mr LEUNG Yiu-chung may be misled as a result. So, it should be "at least once in every two years".

I dare not analyse his logic, and so I can only analyse his remarks and papers because it is indeed hard to analyse one's logic. As I have only met with him twice, I can only analyse the papers and data provided by him. Given the choice, I still think that it is better to adopt a prudent approach by taking a step at a time. Actually, the business cycles of different sectors differ. While the business performance of some sectors may be reflected in a three-month cycle, the business performance of other sectors may not be reflected even in a period of two years. For those of us who are engaged in the industrial sector, for example, it may take over one year from getting an order and shipping the goods to receiving payments because in the wake of the financial tsunami, default payments are not uncommon. For some people, it may take a few months to get an order, organize an exhibition, manufacture the goods and receive the payment in the end; and for many, they even have no idea how long their business cycle is. When they get an order, the exchange rate may be very favourable, but subsequent movements in the exchange rate, such as in the case of Euro, may incur serious losses to them. Different sectors have different business cycles, and not all businessmen run a store, whose business performance can be reflected immediately after transactions are made, which is only the situation of the retail sector.

Precisely because the minimum wage legislation covers various sectors, and in order to give regard to these sectors, I think it is more appropriate to

provide for an arrangement which applies to a wider spectrum of situations and has a longer timeframe. Therefore, I may — I will certainly also listen to the speeches of various Members later — tend to support the Government's idea. I believe Mr WONG Kwok-hing will speak again later, and I will certainly listen to him and take into account his analysis before we analyse the situation together again, OK?

In sum, all of us may speak to our hearts' content. As long as we are comfortable with and happy about the timeframe to be agreed on, we should not mind who the proponent is. It will be a happy ending if everyone feels comfortable about the outcome and society as well as employers and employees will benefit from it. Besides, as long as we act according to our conscience, we should not feel pressurized in any way, right?

Chairman, I so submit.

MR ABRAHAM SHEK: LEE Cheuk-yan challenged me to speak, so I will take up the challenge.

Mr Secretary, after tonight you will be judged, measured and weighed, not because of the many hours you spent labouring in your chair, but you will be judged, measured and weighed by your dedication and your commitment to the well-being of many poorly paid workers. This I take off my hat to you.

Your name is Matthew. You remind me of the Biblical story of Moses. Moses led the Israelis out of Egypt across the Red Sea, and like Moses, he never entered the Land of Milk and Honey, the Promised Land. You have given them the Minimum Wage Bill, but you have forgotten to give them the protection, that is the annual review. So you fail to give them something that they need for their protection.

The amendments made by WONG Kwok-hing and LEE Cheuk-yan to require a review of minimum wage level at least once a year, in fact, deserve our consideration, if not our support. Although it is not a key to all solutions, the annual review enables the wage levels of workers be adjusted subject to any spontaneous changes in our economy. Unlike the more privileged who may not have a clue of how a dollar matters, the grass-roots workers with only minimum

wage would be the first to suffer if another economic dip caused by the surging inflation rate were to erupt in future.

I would like to stress that since many workers do not even have the safety valve against the residing tides of waves in the market, the annual review will be the societal concern, not only is it a timely mechanism that ensures the workers are paid in accordance with the market rate, low as they may be, but it also indirectly insures them from short-term changes in the market that may leave them cold with bare foot.

Moreover, as highlighted by both WONG Kwok-hing and LEE Cheuk-yan, the annual review mechanism is not experimental in our labour market as it has already been widely applied. From the evaluation even of our civil servants' salaries yearly, I believe that most of our Members here have no qualms about the point that the mechanism's nature is to ensure our workers are paid and treated without fear or favour. It is the spirit of fairness and equality that our social harmony could be attained and maintained. It is beyond question that the issue concerning the wage level setting will never cease to be a bone of contention.

One thing I believe we will all come to agree is that, like the discussion of Minimum Wage Bill, that may have taken us a decade's time for the consensus, it is right and necessary for the erection of annual review's mechanism for the sake of the thousands of workers on minimum wage level. As mentioned earlier, I have to concede that the first talk of whether the annual review mechanism instead of the biannual one really holds water in the framework of macro-economics did cross my mind.

As some of our Members may state that the two main reasons against the former mechanism, such as exorbitant administration costs involved and the possible lagged effect resulting in the incumbent wages failing to address the actual economic changes, I do understand and respect the economic postulates as doubts over the annual review. Nevertheless, it is important to stress that the argument between the biannual and the annual review mechanism is not a zero-sum game? It may be reasonable to take stock of the possible consequences of an economic model before it is too little, too late. We shall all bear in mind that it is the degree of necessity that matters at the eventual stage. While there are always remedies to rectify the problems occurred on an economic hypothesis, the workers far from being protected by the annual review mechanism may not bear

the same luck when they are met with the economic hardship that others may regard it as a storm in the teacup.

Chairman, I have to stress that, in front of us, there may be millions of workers crowding before the television for a fair response that is long owed to them. In fact, although their calls may not sound as loud and fervent as shouts from some of our Members, their frail and feeble voices full of humane and hope should not be left unheard. Deep down their minds, it is not actually the difference between \$24 and \$33 that really matters. It is the well-deserved justice and equality they keep fighting from cradle to grave. In front of us, the frequency of how the review is conducted should no longer be another debate that takes another decade to reach the consensus, neither should it be deemed as a twist between a rock and a hard place. It is a *fait accompli* that the minimum wage will be implemented by the middle of the coming year. Shall we all come to understand and give a favourable consideration to the amendments moved by WONG Kwok-hing.

Chairman, as an adage goes, one year's seeds, seven years' weeds. Procrastination is the teeth of time. I hope all our Members would consider their stands in relation to the annual review mechanism under which the general labour interest in Hong Kong would further be protected. Thank you.

MR IP WAI-MING (in Cantonese): Chairman, I would like to thank Mr Abraham SHEK for supporting our motion on conducting a review once a year.

I hope Dr LAM Tai-fai will express support for our amendment without listening to my entire speech because he said conducting reviews is always better than not conducting any review at all, and he said no review has been conducted on section 39E since 1992. I hope the minimum wage legislation will not be reviewed too infrequently after enactment. Therefore, I would like to call on Dr LAM Tai-fai here again to support our proposal of conducting a review once a year.

Chairman, just now the Secretary has spoken at length on why a review should be conducted once in every two years and reiterated the arguments that employers may offer employment in a fragmented manner or switch to offering employment on contract terms. Actually, Secretary, the issue of whether

reviews should be conducted once in every two years has been discussed extensively when the proposal of legislating for minimum wage was put forward. I think the argument that it will cause an increase in jobs being offered in a fragmented manner or on contract basis cannot justify conducting a review of the minimum wage rate at least once in every two years. Regarding employment offered in a fragmented manner or on contract basis, I maintain that the Government is still the major culprit. We can see that the Government has been employing many contract staff whose contracts are renewed every three months, six months or nine months. This practice has been adopted for a number of years and workers are still being treated this way. Therefore, we do not think the situation will worsen after the enactment of the minimum wage legislation, or even if the minimum wage rate is to be reviewed at least once in every two years. This problem already exists. Therefore, Secretary, do you have other justifications to convince us?

Chairman, many Honourable colleagues have mentioned one point: What is the problem of conducting a review once a year? This proposal of conducting a review once a year is not necessarily a demand for an increase in the wage rate. Rather, it is only a proposal for conducting reviews. This point has been raised in the Bills Committee. We hope that such reviews will be conducted in a timely manner, and conducting a review once a year does not mean that the wage rate will necessarily be increased once a year. We only hope that such reviews will be compatible with the normal practice in society and in line with the expectation of the community and workers.

I do not quite understand why the Government has to do so. Dr LAM Tai-fai said lots of data have to be collected; and even the most wealthy person, Mr LI, is not engaged in all sectors; and even if he may have been engaged in many sectors, and even if he owns a company in each sector, he may only consider the situation of a particular company, right? You said that in many cases, the Government may have to consider the situations of many sectors and collect a lot of data. Dr LAM, in a piece of legislation scrutinized earlier, the Government empowered the Census and Statistics Department (C&SD) to collect statistics for the second quarter each year to facilitate the compilation of data on the implementation of minimum wage, including a host of data on sampled company wage levels. These data are collected for submission to the Minimum Wage Commission (MWC) for reference. Therefore, the MWC has always

stressed that it will adopt an evidence-based approach, but actually it is a statistics-based approach. The C&SD also said that after collecting the statistics for the second quarter, the relevant work will be completed within the next few weeks for submission to the MWC as reference. Therefore, there is indeed no cause for concern. If the Government claims that it will take two years to collect data for the whole territory for submission to the MWC, I think either the Government has lied to you or you have heard it wrong. Therefore, I think this situation does not exist.

The second point, which was also raised by the Secretary just now, is vitally important. He said the data will be lagging. It is precisely because of this lagging effect that some of our policy decisions, including the minimum wage level to be prescribed by the MWC, may be subject to limitations.

Why do we consider it appropriate to conduct a review once a year? Because economic changes can vary in magnitude and may sometimes be very drastic. Secondly, if the statistical data are lagging, we are afraid a few scenarios may occur: First, if inflation is serious, the situation discussed extensively by LEUNG Yiu-chung just now will emerge. If a review will only be conducted every other year, the accumulated increase may be very appalling. The dispute thus arisen may be more difficult to resolve, and enterprises may claim that they cannot afford to offer such a high rate of wage increase all of a sudden. Frankly, should you rebuke Michael CHAN of Café de Coral and call him "Nineteen-dollar CHAN"? Some Honourable colleagues have fired rebukes at him. However, when you put yourself in his position, you will see that he has to make such remarks. Why? It is indeed a very high rate of increase from \$19 to our requested level of \$33. From his angle, the situation seems to be very deplorable; but from our perspective, it is not so, and it occurs only because the wage level in the past was indeed too low and so employers should pay their employees this wage level now and bear the pains, right? Now that the damage is done, we should legislate for a minimum wage. Should we continue to allow such a situation to exist? Therefore, if a review is conducted once in every two years, the accumulated rate of increase may cause even greater disputes. Actually, it will give rise to constant disputes and the conflicts between employers and employees will become more severe and acute.

What is another possible scenario? When a review is conducted at least once in every two years, the economy may be very prosperous in the first year, and workers should be offered a pay rise. However, when changes in the economic conditions occur, and the economy is not in very good shape in the second year, wage adjustments may not be offered. In that case, will workers be offered a raise in the light of the economic conditions in the first year? Should workers be given a raise? If a raise is given, employers may query why the minimum wage rate should be increased when the economy is in the doldrums and business operation is difficult. This will also give rise to disputes. If a raise is not given, is it fair to workers? If a review is conducted once a year, workers will have received a pay rise in the first year, right? Why should a pay rise not be offered at the end of the second year just because the economic conditions in the second year have deteriorated? Under this circumstance, employers will probably require workers to tide over the financial hardship together. Is it fair to workers? Therefore, Secretary, I hope Members will give further consideration to our justifications.

I have always said that workers in Hong Kong are the most obedient and modest in the world. I said earlier that when I was watching the television in the Ante-Chamber, I saw that when workers were interviewed about their views on adjustments to the so-called minimum wage rate, their first response was, unexpectedly, that they understood the hardship faced by employers. This is actually the view held by many grass-roots workers. They will not turn a blind eye to their employers' hardship. Under this circumstance, however, we also hope that employers will also appreciate their plight. They only want to maintain a living with dignity. For these reasons, I hope the Secretary will understand their situation.

I am lobbying Dr LAM Tai-fai and other Members who have not decided on whether or not to support our proposal of conducting a review once a year Dr Joseph LEE is smiling to me. Have you made up your mind? If you have not, I also hope you will support our proposal of conducting a review once a year. Come to think about this. If it is decided that a review be conducted once in every two years, will it give a wrong impression to society that the wage rate will only be increased once in every two years? If the Hospital Authority tells you that nurses will only get a raise once in every two years, what would you do? Right? We hope you will support us. We also hope the Secretary will — this is quite an impossible request — if he could hear us, give consideration to our

points and the points made by colleagues. I think it would be the best if he is willing to withdraw his amendment, so that our amendment will be passed. Thank you. Thank you, Chairman.

DR LEUNG KA-LAU (in Cantonese): I have not prepared any script. "Brother Tai-fai" has left the Chamber. After listening to his speech, I would now like to give a response. Perhaps I will respond to the Secretary's remarks first.

A few officials said earlier that they had no idea why their lobbying effort to me would achieve only the contrary and make me run even farther away in the end.*(Laughter)* While claiming on the one hand that fragmented contracts will be offered as a result, the Secretary claimed, on the other, that a review should be conducted once in every two years, or sometimes once in every one and a half years or half a year, as "Tai-fai" said just now. These two claims are contradictory to each other. In other words, employers will have no idea how often a review would be conducted, which is even worse. Does the Secretary get it? When the Secretary lobbied me, he said a review might probably be conducted once in every one and a half years or thrice in every two years. As an employer, I would face even greater uncertainties. Conversely, it will be easier for me to make arrangements if I am told a review will be conducted, say, every October, disregarding the varying situations in each year. After all, both parties may stand a chance of either benefiting or suffering from this arrangement, depending only on their luck. Therefore, the Secretary's argument about fragmented contracts is not really convincing.

Second, the Secretary said it would make budgeting difficult. I believe all businessmen should know that apart from expenditure on remuneration, there are various other operational costs, such as rental, electricity tariff and gas charges, as well as many other costs. For employers, the requirement of conducting a review once a year or once in every two years — putting aside whether it should be conducted once a year or once in every two years for the time being — will actually give them a relatively definite timeframe. That is, a review should be conducted at almost the same time every year. If a review is to be conducted once a year, I believe the discrepancy will not be too great, and so the wage rate will not be increased by 10% all of a sudden, right? The wage rate may probably be adjusted by 3% to 4%, in line with the rate of inflation or economic growth. Businessmen will definitely be able to take this into account in

estimating changes in expenditures. If the adjustment really turns out to be an increase of 3%, it will just meet their estimation. If the adjustment is, unfortunately, an increase of 6%, they will suffer a small loss. However, if the adjustment is not an increase in the wage rate, they will make even more profit. In bidding for commercial contracts, employers will have a wider profit margin if staff cost is reduced. This is how business operates, and it is not the situation of a single year that counts.

Besides, most business operators should know that not all staff members will be affected by the minimum wage arrangement. There are bound to be some staff members who are relatively high-paid and some who are paid just at the minimum wage level. Adjustments to the minimum wage level will not cause the expenditure of the entire business to increase significantly all of a sudden, and business operators will certainly make more long-term budgeting. "Brother Tai-fai" has not returned to the Chamber yet. Perhaps I will talk to him about this later on.

Putting aside other necessary considerations, what would be a more desirable frequency of review? For example, if we were to fire a rocket to the moon, the more frequent the review the better, and the higher the accuracy of the review the better. The rationale is just very simple. If we intend to fire a rocket to the moon and it is found that it has gone off the flight path and we do not conduct a review because it is not yet the time for review, the rocket will land not on the moon but on Mars or even the outer space. Why did I say that the higher accuracy of the review the better? Because a lagging effect will be involved, and there will be discrepancy between the data and the actual situation. Assuming that the wage rate will be adjusted according to the economic conditions and inflation rate, and an inflation rate of 4% is recorded, so if enterprises are required to offer a wage increase of exactly 4%, and the inflation rate of the following year is 1%, a great discrepancy will result. In practice, therefore, the wage rate should not be increased or decreased straightly according to the outcome of the reviews. If reviews are conducted frequently, discrepancies may be rectified in subsequent reviews. Therefore, reviews are usually conducted frequently, as this is the safest and soundest approach, especially when there is little experience in this. In the absence of experience, more and frequent reviews should be conducted when a new system is established. We may prescribe the wage level at \$30 or even \$33, and when we find, after half a year, that everyone is in a state of panic, with many enterprises

closing down and the unemployment rate surging, we may adjust it immediately. Therefore, when new initiatives are introduced, the sooner the review the better; and the more frequent the review the better; and the degree of accuracy of the review should be high. This is the safest and soundest approach of all.

Another justification advanced by the Secretary in lobbying me for my support was that many countries do not have the requirement of conducting a review once a year. I have looked up the information note prepared by the Library of the Legislative Council Secretariat in 2008. It pointed out that many countries do not have the statutory requirement of conducting annual reviews. However, are annual reviews conducted in practice? The finding is most interesting for Australia, France, Shenzhen in Guangdong, Japan, South Korea and the United Kingdom will conduct a review once a year. The United Kingdom does not have any requirement of conducting annual reviews, but in practice, annual reviews are conducted. The United States does not conduct annual reviews, but any Congressman may introduce a motion to require that a review be conducted immediately. Is this our case?

Back to the situation of Hong Kong. The original Bill stipulated that the Chief Executive may require the Minimum Wage Commission (MWC) to conduct a review. I just wondered what criteria the Chief Executive would use in deciding to require the MWC to conduct a review because the Secretary keeps saying that an evidence-based approach will be adopted and the outcome will be based on data and a host of considerations. However, what criteria will the Chief Executive adopt in deciding when a review should be conducted? Will a review be conducted immediately after many people have taken to the streets? Or will more reviews be conducted in view of an imminent election? What criteria will be adopted? Is it correct to make the relevant decisions based on evidence? The evidence should be examined by the MWC but not the Chief Executive. What criteria will the Chief Executive adopt in deciding whether a review should be conducted once a year, once in one and a half years, or once in every two years? I can say that no matter what the voting result will be later, at the end of the day, a review will be conducted once a year because it is the convention. Why are annual reviews conducted in the United Kingdom even though no requirement has been put in place? Because it has become a convention. When a review is normally conducted once a year, there is no way to explain why a review is not conducted in a particular year. An

evidence-based approach is supposed to be taken, but there is no knowing what the outcome will be before a review is conducted. Then, how can we decide whether a review should be conducted? Therefore, in reality, I cannot think of any other reason why the Government or the Chief Executive will suddenly require the MWC to conduct a review once in every nine months or once in every one and a half years, or sometimes once a year and sometimes once in every two years. If the convention is to conduct reviews annually, no one can put any blame on the Government.

Just now, the Secretary said that the United Kingdom Government was once requested to postpone a particular review for two months because of the sudden and drastic fluctuations in the economy. I do not agree to this practice. If a review is supposed to be conducted when the economy is in the trough, workers may only sigh about their lousy luck. It would be unfair to employers if the review is postponed for two months in order that a better outcome can be expected when the economy is in better shape. I really do not agree to this practice. A review should be conducted straightly according to the established timeframe.

"Brother Tai-fai" has not returned to the Chamber yet.*(Laughter)* I do not necessarily have to speak for the entire 15 minutes because I have not prepared any script. I will speak again when I can think of any response to Members' views.

MR WONG SING-CHI (in Cantonese): Chairman, I would take the trouble to reiterate that the minimum wage rate should be set on humanitarian grounds, and the relevant mechanism, which will allow both upward and downward adjustments, should be reviewed in the light of the prevailing circumstances and labour market conditions in a timely and reasonable manner.

Actually, I do not need to make any further elaboration because various Members have already spoken on the subject, and even Mr Abraham SHEK has expressed support for conducting a review once a year just now. "Tai-fai" is still considering it, and I hope he will take on board our views in the end. He has not returned to the Chamber, despite the Honourable doctor having spoken for such a long time. I think we should fetch him back here to nag at him. I believe he is now outside the Chamber, being nagged at by the Permanent Secretary for

standing firm and not supporting conducting a review once a year, or else serious consequences will result.

I do not know what drawbacks annual reviews may have. The Secretary was unable to explain why annual reviews are impracticable. Now, it is proposed that reviews should be conducted at least once in every two years, and actually, it also implies that reviews may be conducted once a year. I have speculated the Government's move on the basis of a conspiracy theory because the Government is now Ms Cyd HO will move an amendment later to enable the Legislative Council to set the minimum wage level. If the Legislative Council is empowered to make such a decision, the Chief Executive will no longer have the final say, which will contravene the executive-led concept. This is simply out of the question. Even the proposal of conducting a review once in every two years was put forward reluctantly. Initially, there was even no requirement on conducting a review once in every two years, and reviews would only be conducted whenever the Chief Executive sees fit. This is a display of the executive-led authority. Besides, they do not wish to allow the Legislative Council to challenge the executive, so as to avoid giving people the impression that the powers of the Legislative Council will override the executive powers, rendering the Government legislative-led instead of executive-led. I do not know whether it is the underlying reason. Why? If a review is conducted once a year, I am afraid the Government will think that it has to submit annual reports, the statistics in which may be rejected by the Legislative Council. In other words, the Legislative Council may conduct discussions and then reject the outcome of the review if it is unreasonable. Therefore, they would not allow the Legislative Council to enjoy this power. Should this be the case, the relationship between the executive and the legislature would really collapse. I hope this is not the case.

However, I simply cannot see why the Secretary or the Government cannot conduct a review once a year. As a matter of fact, annual reviews may be conducted because conducting a review at least once in every two years means that a review may be conducted once a year. I simply cannot figure it out. "Tai-fai" said individual cases of different sectors have to be considered separately and in the light of the circumstances involved. However, this is not true. As all of us can see, a host of factors should be considered in the discussion on the minimum wage arrangement. We only have to consider these factors instead of looking at the circumstances of different sectors separately, and

we only have to consider the labour market conditions, which apply to Hong Kong as a whole rather than a particular sector. Therefore, I do not think the Government would compile such statistics, data and information on the prevailing conditions only approaching the time of the review. These statistics and information should be examined and the relevant studies conducted on a regular basis. I believe that in order to examine the overall conditions of Hong Kong, the incumbent Government Economists do not collect the relevant information and conduct the various studies only once in every two years. Actually, they have to prepare charts and indexes on the conditions of Hong Kong constantly in order to watch the situation closely and in a systematic manner. Therefore, I really think it is absolutely feasible to arrange for a review once a year.

If the Government proposed conducting a review once in every three months, I believe it would also be capable of doing so. Yet, if a review is conducted once in every three months, not much change may have taken place. However, many fluctuations in the economy may have taken place in a year, and we may examine the various conditions from the changes identified during the year. Yet, the Government still insists on conducting a review once in every two years, which actually also implies that a review may be conducted once a year. I cannot help but think that the Government simply wants to save face. It does not want to grant this power casually to the Legislative Council, and it tries to achieve this in the name of the executive-led concept. If this is the case, it is indeed unacceptable.

Therefore, Chairman, I very much want to listen to the justifications of the Government and Members who oppose conducting a review once a year today. I hope that if Members do not have any reasonable justifications or cannot offer any justifications at all, they will support the proposal of conducting a review once a year put forward by Mr WONG Kwok-hing and Mr LEE Cheuk-yan. It will actually do no harm to society, and neither will it do any harm to workers and operators of enterprises, because annual reviews will allow both upward and downward wage adjustments. Therefore, I simply cannot think of any other justification. We can only express all our views, hoping that Members will cast their votes according to their conscience. I hope Members will truly act according to their conscience and vote in support of the amendment on conducting a review once a year proposed by Mr LEE Cheuk-yan and Mr WONG Kwok-hing. Thank you, Chairman.

MR ALBERT CHAN (in Cantonese): Chairman, the Government's opposition to the proposal of conducting a review once a year has fully reflected the closed mindset of ossified technocrats.

Actually, Chairman, at around six to seven o'clock in the afternoon, I wanted to ask the Secretary to take a rest, freshen himself up and take some food because he had been sitting here for a long time today. When I was speaking at that time, I thought of telling him that there was no need for him to sit here to listen to my speech, and he might take a break outside. However, I very much hope that he can stay and listen to my following remarks because I think the Secretary needs to understand thoroughly the importance of an annual review to the implementation of the entire law. The importance lies not only in the comprehensive implementation of the minimum wage law but also in whether the message conveyed by the issue of conducting a review once a year will intensify the conflicts between different classes in society and the dissatisfaction of the low-income group with the Government. I would also like to call on those Members returned by functional constituencies (FCs) who may still be considering the possibility of not supporting the proposal of conducting a review once a year to think about the issue thoroughly.

Many Honourable colleagues have mentioned that various existing wage reviews and determination arrangements in Hong Kong are conducted annually. These include the relevant arrangements for 160 000 civil servants, and the remuneration review and setting arrangements for directors and staff of many large consortia and those for Members of this Council. For remunerated FC Members, as your own remuneration is reviewed annually, why do you not support conducting annual reviews of the minimum wage rate? This is double standard. When annual reviews are conducted for most people and under the majority of regimes and systems, you are practising discrimination against the lowest-paid group out of the blue. In proposing that a review should be conducted once in every two years, you are creating conflicts between classes and social groups. This is an unnecessary deep-rooted conflict caused by ossified bureaucracy. Over the past decade or so, whether it be the time of TUNG Chee-hwa or Donald TSANG, many policies were formulated on the basis of ossified bureaucracy. Such policies have caused confrontation and conflicts between social groups. Sometimes, even "dishing out money" may cause conflicts and disputes between social groups and dissatisfaction among them.

Therefore, I call on the Secretary to consider this issue carefully. It involves not only whether some workers will receive a pay rise but also whether the issue of annual reviews will create confrontation between social groups and classes.

The aim of prescribing a minimum wage is to provide some protection to the lowest-paid members of the public. In the course of enacting this legislation, many people, in particular, "Yuk-man" and "Long hair" of the League of Social Democrats (LSD), have insisted and proposed, during their participation in the work of the Bills Committee, that a review should be conducted once a year. I did not join the Bills Committee, but their stance is very firm, and they also said that the greatest controversy in the entire legislation involves the proposal of conducting a review once a year. Let us take a look at the actual implications. If a review is conducted once a year and even if a wage increase has to be given, Secretary, what will be the amount of increase involved? The minimum wage rate under discussion now is only some \$20 to \$30 per hour, right? Even if a substantial increase, say an annual wage increase of almost 10%, is deemed necessary in a particular year, which would already be quite considerable, only \$1 to \$2 will be involved in real terms. Now, you are avoiding any increase because it may affect a small group of capitalists or some employers, yet you are depriving hundreds of thousand workers of the right to remuneration reviews. Putting aside the right to remuneration increases for the time being, you are now depriving workers of the right to remuneration reviews. This is class confrontation and class discrimination. You are discriminating against the lowest-paid group, the most helpless group. They are your major subject of discrimination and your acts are targeted at them. Can you tell me whether you are causing class confrontation and conflicts? This is the deep-rooted conflict in Hong Kong repeatedly mentioned by Premier WEN Jiabao. One of your major aims of prescribing a minimum wage rate should be to seek an avenue for airing grievances arising from this deep-rooted conflict so as to alleviate grievances and reduce disputes and conflicts. However, you are so ridiculous and foolish that — this is extremely foolish politically, Secretary, you should not have been so foolish as to aggravate class conflicts and confrontation between social groups. This group of workers is asking for annual reviews. If it so happened that in a particular year a review is not conducted, and all the other workers get a wage increase but this group of workers is not offered any wage increase because of the requirement of conducting a review once in every two years, will there be

widespread grievances in society? Why should you deprive this group of workers of their legitimate, equal right to remuneration reviews only for a technocratic reason? Why should you be so foolish?

Therefore, in handling this issue, I have indeed sighed in despair over such ossified bureaucracy. The only reason I could think of is that those officials were unwilling to take up this task, thinking that: leave me alone and do not bother me with annual reviews, because in doing so, I have to put in lots of efforts. Not only do I have to collect lots of information, but the Census and Statistics Department also has to provide information to the Bureau for consideration, and staff members of the relevant Policy Bureaux have to give presentations, explanations and carry out lobbying. So, just leave me alone. Obviously, the only reason why the Government opposes conducting annual reviews so strongly is that the technocrats do not want to take up this task, or they adopt the working attitude of doing less or even doing nothing to avoid mistakes. That is why the longer the interval between reviews the better. However, you have to consider the political consequences and sequelae. When a certain policy put forward by you causes class discrimination and confrontation, you have to think about the social resentment and repercussion caused by such confrontation and discrimination. You cannot simply sit back and do nothing about the social group which receives the lowest pay in Hong Kong. As a Member, you have a remuneration review every year and your companies conduct annual pay reviews. As directors of certain large companies, you also have a remuneration review once a year. Why do you oppose legislating for annual reviews? The right to remuneration reviews is a basic right of this group of lowest-paid workers in Hong Kong. This is unscrupulous, shameless and ignorant. This is blatant discrimination, exploitation and oppression.

Therefore, I call on all the working masses and all members of the lowest-paid group in Hong Kong to watch clearly how these FC Members cast their votes later. Just go on adopting this ossified and closed mindset of FCs and this condescending way of thinking to oppress and exploit the disadvantaged and low-income group in Hong Kong.

Dr LAM Tai-fai has not returned to the Chamber yet. I urge him to handle this subject carefully, not only because of the issue of FCs but also because the Chief Executive election will be held two years later. I now tell him ahead of time that this voting will definitely be one of the major subjects of

contention in the 2012 Chief Executive election. If an election is to be held in the future, it may be one of Henry TANG versus LEUNG Chun-ying. Regarding the vote to be cast by LAM Tai-fai today, I can tell in advance that if he has the guts to cast an opposition vote today, we will use this to attack Henry TANG, leaving him "dangling in the air", and we will see how long he can "dangle" on. I will call on the working masses in Hong Kong to use their votes to tell Henry TANG that if LAM Tai-fai casts an opposition vote today, it is Henry TANG's instruction for him to do so, and they will not vote for Henry TANG at that time. I tell you, we are talking about at least some 100 000 to 200 000 votes here. The LSD will definitely make use of this subject. At that time, this subject can be used by any FC Member supporting any candidate as a subject of contention in electioneering.

Therefore, Secretary, with regard to the political and social aspects and the financial arrangements, many Members have mentioned that there is no need at all to adopt such an ossified and high-handed approach to bully, and I underscore "bully", this most disadvantaged group. Besides, all of us know that there is obviously not much chance that a pay reduction will result from an annual review of the minimum wage rate, and basically a pay rise will result. Some people said that the adjustment may be either upward or downward. Nonsense. Not even a daredevil will dare to make a pay cut, right? Therefore, the reason for you not to conduct a review is very obvious, which is that you are afraid that it will result in a pay rise of a couple of dollars, and so you are unwilling to conduct a review annually.

Therefore, regarding the voting to be conducted later, I can tell you that this is a voting which reflects one's orientation with regard to social classes and the interests of social groups. Any Members who are going to cast opposition votes later, unwilling to accept the proposal of conducting a review once a year, are antagonizing the grassroots. These Members are putting themselves above the interests of the disadvantaged groups of Hong Kong. I call on Members to treat this issue seriously. Minor as it may seem, this issue may cause political after-effects which will definitely be more significant than you can envisage.

Thank you, Chairman.

DR JOSEPH LEE (in Cantonese): I am not sure if I am lucky or not, for I am precisely a Member returned by FCs. I do not want to take the condemnation personally, but it is indeed a coincidence that I also support the amendment of conducting a review at least once in every two years. I have no idea whether any closed-door politics are involved, but the Secretary did lobby me once. It was not as good as what they got. There are five of them, and the Secretary lobbied them twice, and it took place on 18 February, while I was lobbied on 17 February, for about half an hour. The Secretary told me the whole process of the discussion because I was not a member of the Bills Committee. Actually, I only have one view on minimum wage, namely, it should be established. When the Bill was read the Second time yesterday, I already expressed my support. It is indeed necessary.

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

Insofar as I am concerned, a minimum wage seeks to protect grass-roots workers. I am a FC Member, but I am not an employer. I am one of the wage earners, and I also hold a FC seat in this Council. I do not know whether we have a remuneration review annually, but it seems that we got a pay rise not long ago. I only know that our remuneration is related to inflation/deflation but not linked to the inflation/deflation rate. The discussion between the Secretary and I has been seen as closed-door politics, but I only consider it a meeting with him conducted in a room to enable me to acquire some understanding of the subject. Actually, not only the Secretary but also Mr LEE Cheuk-yan and Mr WONG Kwok-hing have met and discussed with me. I do not know whether it should also be regarded as closed-door politics. All in all, the case was like that. For me, at least I have informed choices. This was what happened over the past week.

I have only one view, which is that I think both parties have their own justifications. Why? I fully understand that Mr LEE Cheuk-yan and Mr WONG Kwok-hing as representatives of grassroots workers must advocate conducting a review at least once a year, or better once in every three months or six months. As Dr LEUNG Ka-lau put it, it must be conducted as frequently as possible, and the more frequent the better. Theoretically, I fully understand this point. As for the Secretary's justifications concerning flexibility, the possible

far-reaching effects or the possible impact on workers employed on outsourced contracts, I also understand the rationale, though I can only use the logic of a third party as I do not know much about it. Certainly, when it comes to logic, we have to admit our inadequacy because, compared with Dr LAM Tai-fai's remarks, my speech is not as he is not in the Chamber now, but when he was here, he talked about logic in such a humorous way. Certainly, I am also not as good at mathematics as Mr LEUNG Yiu-chung.

Sorry, Deputy Chairman, you did not major in mathematics, and the President, who majored in mathematics, is not in the Chamber now. Perhaps even he is not as good at mathematics as Mr LEUNG Yiu-chung. Looking at the issue only as a third party, I think the focus of the dispute has gradually changed from conducting a review once in every two years to conducting a review once a year. However, I think this should not be the case. Now, the issue under discussion is whether a review should be conducted at least once in every two years as opposed to at least once a year, which is a matter of frequency. The issue is all about frequency rather than whether or not a review should be conducted.

I subscribe to Dr LAM Tai-fai's point just now, which I only came to know through the two Members, that no review was provided for originally, or it can be said that no regular review was provided for. This means employers may conduct reviews at whatever time they wish, whether you call this an executive-led approach or the rule of man. I consider this absolutely unacceptable. Since a minimum wage has been established, Members representing the labour sector will definitely hold the view that the more frequent the review the better, and there is this proposal of conducting a review at least once a year. However, the Government subsequently proposed conducting a review at least once in every two years. I think if we are talking about conducting a review once a year as opposed to once in every two years, insofar as I am concerned, I will definitely support conducting a review once a year. However, if we are talking about conducting a review at least once in every two years as opposed to at least once a year, I think they are basically not contradictory to each other because in the entire game, so to speak, we have not ruled out the possibility of conducting a review once a year or even once in every three months. As Dr LEUNG Ka-lau said just now, sometimes although it is not stipulated in law that a review should be conducted once a year, a review is conducted every year in practice. Under this circumstance, I think the simplest

way is for Secretary Matthew CHEUNG to tell us in his remarks later that the Government has justifications — whether it be for the sake of flexibility, prevention of impact on grass-roots workers, easy collection of statistics, or prevention of lagged statistics — to propose conducting a review at least once in every two years. However, it has to conduct a review one year after the implementation of the law and the setting of the minimum wage rate. This way, everyone will have peace of mind. If a convention referred to by Dr LEUNG Ka-lau is established after the implementation of the measure, then a review can be conducted at that particular time every year. This is feasible and actually no argument is necessary.

However, it seems that the argument now is over the frequency. Logically speaking, insofar as allowing flexibility under the legislation is concerned, it is indeed more flexible to provide that a review should be conducted at least once in every two years. I have just compiled a chart, and I am not sure whether I have got it right, but I still want to respond to the issue of pay adjustments for nurses mentioned by Mr IP Wai-ming just now. Actually, pay adjustments for nurses has nothing to do with the point at issue because what we are discussing now is the overall pay adjustment, which is not directly related to this basic wage level, and they should not be compared.

The reason is simple. Assuming that the rate of \$33 favoured by you was adopted — the MWC may set the rate at \$33 in future, which is the minimum level — does it mean that all grass-roots workers in Hong Kong would get \$33? No, it means they would get at least \$33. Some people may be earning \$34, \$36 or \$38 now. Even if wage reviews were conducted frequently, and the rate would become \$34, it does not mean that those workers earning \$36 would receive a pay rise of \$2 or \$1. No, they will still get \$36. However, those workers earning \$33 will receive a wage increase of \$2 as a result of this review. For me, this is the significance.

Back to our previous discussion. Let us assume that a review would only be conducted once in every two years instead of at least once in every two years. If something known as inflation occurs in the first year, and the prescribed hourly wage has increased by \$1; and as a result of inflation in the second year, the prescribed hourly wage is increased further by \$1. Certainly, if workers do not get a pay rise in the first year and only get \$33, they will feel discontented and incessantly complain about their financial hardship arising from not being given a

wage increase of \$1. However, employers will indeed be unable to offer a pay rise because, supposedly, it is stipulated in the law that a review will only be conducted once in every two years. There is nothing they can do about it. In the second year, assuming that inflation occurs again, and the prescribed wage rate is increased by \$1. When a review is conducted in the second year, and assuming that this chart is correct, workers will get a wage increase of \$2. However, you do not agree to it, saying that you have been starving and experiencing great hardship because the employer owed you a wage increase of \$1 in the previous year. I do not know whether such a situation will happen.

Besides, if there is what we call inflation during that particular year, I do not think that all workers or grass-roots workers will earn nothing more than the basic wage rate of \$33 mentioned just now. Those who earn \$36 may be able to get \$0.5 more and earn \$36.5. However, the minimum wage rate will not increase. Certainly, the necessary assumption behind this is that employers are unscrupulous, and as high-ranking officials have not conducted any review yet, they will definitely not offer any wage increase. As one of the wage earners, I will certainly think this way. I do not know whether all employers are unscrupulous, and I regard myself lucky not having worked for some very unscrupulous employers so far. However, there are bound to be employers who are not unscrupulous. Under this circumstance, I certainly cannot rule out the possibility that workers may get a pay rise from their employers.

What is the case when a pay cut should be imposed? According to the approach proposed by Mr IP Wai-ming, a pay rise has already been offered in the first year. Under this approach, however, no pay rise should be offered because a review should be conducted once in every two years. When a pay cut should be imposed in the second year, no pay rise will be offered in the end. After the review, there will neither be a pay rise nor a pay cut because statistically, the wage rate should be increased in the first year and reduced in the second. If the rate of increase and the rate of decrease are the same, no adjustment will be made and no change will take place. On the contrary, if the wage rate should be reduced in the first year and increased in the second, no change will take place in the second year either. And the fourth scenario is that if a pay cut should be imposed in the first year as well as in the second year, there will certainly be great repercussion. How can workers maintain their living when their hourly wage is reduced by as much as \$2? They may complain that they are even unable to afford having rice with barbecue pork.

However, this is only a statistical postulation, and I think this scenario will not occur in reality. It is only advanced for the sake of argument, and it may not actually happen. Deputy Chairman, this is what I think. However, insofar as frequency is concerned, can we pre-empt this situation if a review is conducted at least once a year? Actually, it will not make any difference. In the end, such increases and decreases — if we discuss the issue in a rational manner — whether the option adopted is conducting a review at least once a year, at least twice a year, once a year, once in every three months or even once in every nine months, there will not be much impact on the rate of wage adjustment for grass-roots workers.

However, I fully understand the controversy behind this issue. While the Government has its position, representatives of the grassroots certainly have to fight for the best interests of the grassroots. Therefore, I fully understand them. However, why do I tend to vote in support of conducting a review at least once in every two years in the end? Because it will give flexibility to the law. Enacting this provision does not mean that the Government will act in a deceitful manner and conduct a review only once in every two years. Therefore, I hope the Secretary will make an undertaking in his remarks later, so that Members will understand that although this amendment seeks to provide that a review be conducted at least once in every two years, the Government will undertake to conduct a review one year after the implementation of the minimum wage rate set by the MWC after the legislation has come into effect. This way, everyone will have peace of mind, and the Secretary may be able to address the issue of the frequency of review and also allay workers' concern by building flexibility into the law. Is this practicable? Certainly, the Secretary will have to examine different issues and raise various technical questions such as what should be done about workers employed on a two-year contract, to what extent the data will be lagging behind and whether this approach is impracticable. I think we can achieve a win-win situation. The other day when I was dining with Dr Philip WONG, I heard an interpretation of a win-win situation, which is a situation in which one party will benefit twice instead of both parties benefiting at the same time. I hope that if this approach is adopted, instead of having you benefiting twice, both parties will benefit from it. We do not wish to spend much time arguing over the frequency because, theoretically, they are not contradictory to each other.

The major reason is, let me repeat, I hope, and I think it is the legislative intent, that more flexibility be added to the law in the legislative process. I am inclined to supporting conducting a review at least once in every two years. Certainly, once having pressed the button later, I will bear the notoriety of a FC Member suppressing grass-roots workers. It does not matter, and I am prepared for it. However, I would like to adopt Members' usual practice. That is, I wish to put on record my views expressed during these 12 minutes this evening, to give an account of my justifications for supporting conducting a review at least once in every two years. Thank you, Deputy Chairman.

DR MARGARET NG (in Cantonese): Deputy Chairman, the more I listened, the more worried I became. Initially, some Honourable colleagues told me that there was some controversy over this point, which is whether a review should be conducted once a year or once in every two years, that is, whether a review should be conducted annually or biannually. I understand why it is necessary to conduct a review once a year, but in case this proposal is not passed, will serious problems arise? However, when I continued listening to the debate, I found that I had gotten it wrong. The point is not whether a review should be conducted biannually or annually, but whether a review should be conducted at least once in every two years. In other words, the question is whether regular reviews or irregular reviews should be conducted. Dr LEUNG Ka-lau has made this point very clear in his remarks just now.

Actually, Deputy Chairman, it can be said that the subject of contention behind this minimum wage regime involves the issue of class, employers and employees, fundamental interests, human rights and the dignity of workers, as well as the fact that workers are now facing a situation in which their dignity is being trampled. We can imagine that people's emotions have been very much stirred up. Therefore, when such situations happen in society, what should the Government seek to achieve in enacting legislation? At this point, it should seek to resolve the relevant disputes and make a decision by way of legislation. Therefore, Deputy Chairman, my concern and perspective, which may be a bit different from that of other Honourable colleagues, is the attitude of governance. Legislation enacted under such a circumstance should be explicit and able to resolve the relevant disputes. The parties concerned may have their own justifications and respective interests, yet we should now make a decision instead of creating additional controversies in connection with this legislation which is

supposed to be a means to resolve and address the disputes, thereby creating further disputes in enforcement.

Deputy Chairman, I have discussed earlier the criteria under clause 11, that is, the criteria that the MWC should take into consideration. Actually, the clearer the criteria and the definitions, the better we will be able to understand what statutory requirements the MWC has to meet in prescribing the minimum wage rate. When all of us know what the criteria are, we will more or less be able to know the outcome even before a review is conducted. Most importantly, no matter what expectations the various parties have, they will be able to adjust their expectations. However, this legislation is not only unable to resolve and address why am I concerned about the issue of governance? A responsible Government must address disputes and resolve the major causes of controversies. When the major causes of controversies are resolved, laws and legislation can be put in place for people to follow, and people will be able to deal with the relevant issues by adopting a normal and established practice, and disputes will then be minimized. As the MWC will make decisions according to the criteria set out under the law, the Legislative Council can either accept them or reject them, instead of discussing them all over again.

However, this is not the case now. Therefore, we have to look at this issue from two perspectives, the first being the certainty and clarity of the legislation, and whether it is easy to enforce. Regarding the conduct of a review at least once in every two years, the Secretary said it would allow for flexibility. Actually, however, it will give rise to uncertainties and become one of the causes of uncertainties in enforcement. When will a review be conducted? Why is a review not conducted this year? Why is a review not conducted in the 18th month? Why has a review not been conducted earlier? Why is a review not conducted once in every five months? Disputes will arise as a result. This is the first point.

Secondly, what I found most disappointing about the so-called proposal of conducting a review at least once in every two years is that, though claiming that it will allow for flexibility, the authorities are actually saying different things to different people. To representatives of the labour sector, the authorities said, "A review may not necessarily be conducted at such a large interval as once in every two years, and thus there is actually not much difference between this proposal

and the one put forward by you. A review may be conducted once a year, or even once in less than a year, which is better than what you have asked for." To those employers who have reservation about this proposal, the authorities said, "No, a review will not be conducted once a year. We are given the flexibility, and a review will not be conducted once a year. When circumstances warrant, we may". In other words, the authorities would try their utmost to present it as very flexible, so that people what is that saying?

(A Member said to Dr Margaret NG, "Speaking the human language to human beings, the ghost language to ghosts".)

DR MARGARET NG (in Cantonese): No, I mean the vulgar expression meaning cajoling the others into supporting them. They cajoled people into supporting the proposal of conducting a review at least once in every two years, but they actually have no idea what the proposal is all about. Deputy Chairman, what kind of a mentality is that? The mentality involved is that as the Chief Executive has undertaken to legislate for a minimum wage, the most important thing is to make this law. Actually, this piece of legislation is unable to resolve any problem. However, in order to enable the passage of this legislation, so that he is seen to be accountable to the public, they just did the best they could to create uncertainties and remain silent in areas of controversy and build in flexibility, so that Members will, though reluctantly, support its passage. This approach will not only be unable to resolve problems in a responsible manner and prevent causing even more problems to people thereafter, but it will also give rise to disputes between employers and employees over when a review should be conducted. Do we want such a law?

Therefore, Deputy Chairman, I consider the original proposal of conducting a review once a year absolutely reasonable. Conducting annual reviews does not necessarily mean offering a pay rise after each review. It should be borne in mind that under the existing mechanism, the Legislative Council can either accept or reject the decision made by the MWC. It may always reject the decision if it is dissatisfied that the rate of wage increase is too small or a wage increase is not offered. However, after rejecting it, there is nothing else it can do because it cannot compel the MWC to recommend a wage increase. This is the present situation.

Therefore, Deputy Chairman, the legislation as a whole has created additional problems to us, and I think we are facing a Government which can be said to be either irresponsible or totally lacking in legislative principles. Therefore, Deputy Chairman, I think conducting annual reviews is not only justified but also seen to be fair. Come to think about it. Members of the labour sector, as well as other Members, have tried so hard to fight for this cause — certainly, we have our own principles — but those who will be most affected are members of the labour sector. They have done so much to make the minimum wage legislation happen, but the Government still insists on keeping them from feeling gratified. Although they have succeeded in fighting for the enactment of the legislation, the Government still insists on keeping them from feeling happy that the problems are resolved and the Government has at least acted in accordance with its conscience. Though the minimum wage legislation has been introduced, the Government insists on putting them in fury. Instead of feeling reconciled in the process, they are only left with grievances.

Deputy Chairman, I really think the Government simply has no idea how to govern Hong Kong, and it is not qualified to do so. Therefore, even from the perspective of governance, I still think that it should not turn down the proposal of conducting a review once a year and go for conducting a review at least once in every two years.

Thank you, Deputy Chairman.

DEPUTY CHAIRMAN (in Cantonese): Dr LEUNG Ka-lau, speaking for the second time.

DR LEUNG KA-LAU (in Cantonese): Deputy Chairman, why has Dr Joseph LEE left the Chamber again? As he has left the Chamber right after finishing with his speech, he will again be unable to listen to my remarks. The point is if it is a matter of conducting a review once in every two years as opposed to once a year, he will support conducting a review once a year; but if it is a case of conducting a review at least once in every two years as opposed to at least once a year, he will support conducting a review at least once in every two years for the sake of flexibility. This is one consideration, but there is yet another issue. Just now, I said that when government officials lobbied me, you are also

leaving the Chamber (*Dr LEUNG addressed a certain Member*) Sit down, I will say that again just now I said if a rigid requirement of two

DEPUTY CHAIRMAN (in Cantonese): Dr LEUNG, according to the Rules of Procedure, Members shall address the Chair.

DR LEUNG KA-LAU (in Cantonese): Certainly. I did not make it clear just now, and I would now address the Deputy Chairman again. Dr Joseph LEE said just now that if the controversy was over whether an annual review or a biannual review should be strictly required, and if I did not hear him wrong, he said he would support conducting a review once a year. However, the dispute now involves the additional expression "at least" and it has become a dispute over whether a review should be conducted at least once in every two years or at least once a year. Dr Joseph LEE supports conducting a review at least once in every two years precisely because of the additional expression "at least". Actually, I have also pondered over the issue, but why did I decide to support conducting a review once a year in the end? Because in lobbying, the Government advanced rather lopsided arguments, all of which were against the arrangement of conducting a review once a year. It presented its arguments in a lopsided manner, in that all the arguments were about the disadvantages of conducting a review once a year. Therefore, I believe that if the Government would conduct a review once in every two years, it would not have placed so much emphasis on the expression "at least" in proposing conducting a review at least once in every two years. A more impartial approach would be to list the pros and cons of the two options of conducting a review once a year and once in every two years for comparison, or put forward some criteria to elaborate the circumstances under which a review will be conducted once in every two years and those under which a review will be conducted once a year. In that case, I will also give it consideration. However, all the justifications advanced by the Government in lobbying were about the demerits of conducting a review once a year. To my understanding, put this way, the Government's intent is to provide for conducting a review once in every two years.

Earlier I have said that the United Kingdom has not put in place any such requirements, but in practice, a review is conducted every year. This is a matter of the government's integrity, or you may say it is a matter of convention. In the

United Kingdom, not all government initiatives are stipulated in the law, and there is even no written constitution. Everything operates on the basis of an honour system. When the political party of the Prime Minister fails to secure the majority of seats in the Parliament, he will resign from office; and when he fails to secure the position as leader of his political party, he will also resign from office. Therefore, everything operates on the basis of trust and honour. Sometimes, instead of only referring to the law, one also has to consider the government's credibility. A past example, which probably resulted from the absence of statutory requirement, was public housing rental reviews, if my memory is correct. During a certain period of time, the economy was in the doldrums and people's incomes were dropping. There was probably a requirement that public housing rentals shall not exceed residents' median income by about 10% or 11%. In the end, the Government declined to conduct a rental review for some three to four years in a row. Sometimes, it is a matter of whether we trust the Government.

Dr Joseph LEE, just now you mentioned one point. You requested the Secretary to make an undertaking

DEPUTY CHAIRMAN (in Cantonese): Dr LEUNG, I would like to remind you again that you should address the Chair.

DR LEUNG KA-LAU (in Cantonese): Yes. Dr Joseph LEE made a request to the Secretary just now. He requested that the Secretary undertake to conduct a review within one year after the initial minimum wage rate was prescribed in the middle of next year. I will pay attention to whether the Secretary will make this undertaking later on. I will not take up Members' time further.

DEPUTY CHAIRMAN (in Cantonese): Does any other Member wish to speak? Mr LEE Cheuk-yan, sorry, Mr Paul TSE.

MR PAUL TSE (in Cantonese): Deputy Chairman, I agree to some of the points made by Honourable colleagues. First, Dr LEUNG Ka-lau has mentioned

"trust". It seems that what the Government did in the past really makes us very doubtful insofar as trust is concerned. We are unwilling to believe in what should have been rather simple and what could have been presented a bit vaguely.

Why is it unnecessary for the United Kingdom government to enact the relevant legislation? People in the United Kingdom basically do not need to consider that because the Government will take the initiative to make efforts, and they believe that the Government should not be bound in all respects. Why has the relevant legislation not been made in the United States? There are certainly reasons behind it as the degree of trust in various governments differs. However, their situations are basically very different from that in Hong Kong where people frequently associate every policy with conspiracy theories and class struggles, and tend to frame others up. In that case, not only is the Government unable to move forward in implementing constitutional reform, it also encounter difficulties in the administration of all policies.

I feel greatly dissatisfied. Whether a review is to be conducted every one year or two is actually a trifling matter. Why should supporting the Government's two-year proposal be regarded as bullying the disadvantaged? Why should everything be related to class struggles and contradictions? Marxist theories are no longer popular. Should we talk about class struggles any more? I think that such attitude and atmosphere have made those Members who really want to do some practical work feel very disappointed and distressed.

Deputy Chairman, I have not been lobbied by the Bureau, but I think that we should maintain flexibility as far as possible for eight reasons: first, I do not think the extent of freedom should be narrowed down, including the freedom of business operation and personal freedom. I reiterate that it does not mean that I show no sympathy for the disadvantaged or I am not concerned about the disparity between the rich and the poor. Nevertheless, this is not efficacious medicine and there should be other solutions. I urge the Government to make more efforts in other areas such as poverty alleviation or enhancing infrastructural development. Why should the Government relocate its headquarters to the Tamar site rather than a remote place? We even hold that all government departments should be relocated to remote places. Actually, insofar as employment or transport is concerned, there are many other ways to narrow the disparity between the rich and the poor.

I reaffirm that the introduction of a minimum wage is not a solution and we will do a disservice out of good intentions. That is the view that I hold firmly to, though most Honourable colleagues do not agree with me. It does not matter because I hold firmly to my view after all.

Second, how effective is the new medicine? Will it bring about serious residual defects? According to some Honourable colleagues, all academics in universities have received the Government's favour, thus, their remarks are always biased towards the Government. I do not believe it. Most economists in the world, not only in Hong Kong, have great reservations about this issue.

Sometimes, the opinions of certain professionals, even doctors and lawyers, may not necessarily be correct, and their views may not be identical. However, if most economists share the same view, we should be careful and act cautiously.

I have recently come across a survey conducted in 2000 by a committee which was composed of 308 economists in the United States. 73.5% of the respondents agreed that a minimum wage would undermine the employment opportunities of those employees who were young or less competent or less skilled, and might even lead to unemployment of these employees. The views of three fourths of the respondents were comparatively more authoritative and representative. All the more, these views were not raised by Hong Kong academics. Is minimum wage a kind of efficacious medicine?

DEPUTY CHAIRMAN (in Cantonese): Mr TSE, I ask you once again to focus on this amendment.

MR PAUL TSE (in Cantonese): As I have pointed out in my introduction, if we do not understand this medicine sufficiently well, we should absolutely give doctors or pharmacists some flexibility in respect of the degree of adjustment, such as the timing and amount of increased dosage. We do not want to force doctors to use this type of strong medicine or use this kind of medicine on a regular basis. Deputy Chairman, this is my argument which is connected with the subject.

Third, according to some reports, the United Kingdom, the United States, Canada, Ireland, Japan and Taiwan do not have statutory periodic review systems. Of course, they are doing so on different grounds, and different countries have different culture and background. I have a question: why is Hong Kong so special? Has trust completely fallen apart as I said when I raised the first point? Honourable colleagues should think deeply about that.

Fourth, some Honourable colleagues have compared the minimum wage review with the civil service pay review, and some have even compared it with the FDH wage review. The situation of these two kinds of employees is a bit special. Civil servants basically have one employer only, and there is one employer against 180 000 employees. In connection with pay adjustment, it is certainly much easier for one employer to handle the relevant matters.

As far as FDHs are concerned, there are many FDHs in Hong Kong but it seems that there is one employer against one employee in most families. It is seldom for a family to employ several FDHs at the same time. That is the case in most families and one employer is in control of the situation; a one-to-one arrangement makes it easier for problems to be solved.

Precisely because the Minimum Wage Bill has adopted a broad-brush approach and will affect all sectors and classes in Hong Kong, it is different from and more complicated than the framework for conducting civil service pay review and FDH wage review.

Fifth, Deputy Chairman, data show that small and medium enterprises (SMEs) account for 98% of all enterprises in Hong Kong. Actually, employees, the disadvantaged groups, victims and owners of small businesses are synonyms with only slight differences. Many SME operators belong to the socially disadvantaged group and they are just employees. In particular, there are many SMEs within the tourism sector that are operated by a couple, two brothers or partners. Basically, they can just earn their own wages. They sometimes employ one or two helpers but they are basically highly disadvantaged. If unnecessary administrative and operational troubles are created for them very often, it will make them

(Mr LEE Cheuk-yan stood up as he wanted to raise a point of order)

DEPUTY CHAIRMAN (in Cantonese): What is your point of order?

MR LEE CHEUK-YAN (in Cantonese): Mr Paul TSE is again repeating what he had already said during the Second Reading debate.

MR PAUL TSE (in Cantonese): I am sorry but what I have just said is definitely related to the periodic review. I hope that Mr LEE Cheuk-yan, sometimes I wanted to respond just now but I did not want to waste time. So, I have not refuted his arguments. He said that I was a disgrace to the tourism sector, signifying that I was a burden for the tourism sector. I think

DEPUTY CHAIRMAN (in Cantonese): Mr TSE, please focus on the amendment.

MR PAUL TSE (in Cantonese): I will certainly do so if I have a chance. But, if you would even disallow me to give such remarks, I may talk about other things when I become annoyed.

Deputy Chairman, the sixth point is about the minimum wage platform. Reviewing this platform is different from conducting an annual pay review. There are a lot of arguments supporting that a review of the minimum wage should be conducted every year, given that pay reviews are generally conducted once every year. In fact, in France, the minimum wage is linked with the inflation rate and the Consumer Price Index (CPI), which has caused a significant problem, that is, the minimum wage always increases but never decreases, resulting in a large number of unemployed young people. As we have noticed, within a year or two, many young people in France became unemployed after graduation, and there were even riots. Various problems have thus been caused indirectly.

Deputy Chairman, Dr Joseph LEE has just said that the minimum wage may or should only be a yardstick or a standard, in order to give protection to employees who really cannot enjoy any protection. We really hope that most people in Hong Kong would not rely on this rate for pay increases because this is

just the lowest standard. The wages of most employees should be far above this rate. Just like the case of FDHs, even if there is a minimum wage, I believe most families will give them wages much higher than the minimum wage rate in the light of the employment situation or the number of years that the helpers have worked for them. Theoretically, this is just a balance value for reference. We should absolutely not regard this as a yardstick for wage increase. Hence, I think it is desirable to provide as much room as possible.

Deputy Chairman, another point is about why companies must submit tax returns every year. Of course, they do not have any choice because companies are expressly required by law to do so. This is actually not a very good yardstick. Let me cite an example though it may be a bit exaggerating. Please allow me to say so. Some data must be frequently and regularly reviewed, for example, CPI or inflation rate; however, some other data do not need to be revised frequently, for example, fines or fees. We will not review these data every year but we will conduct reviews when necessary. The minimum wage that we are now discussing is right between the two. While we do not need to review it every year or even every month, reviews are also not conducted in the light of the extent and need of effecting an increase, which is unlike the level of fines or fees.

On the basis of the reasons just given, I think this is a new attempt and the result is rather controversial. Since Hong Kong people have not got used to the practice, can we have more trust at the very beginning to allow ample room for the job to be done better? It will be advisable if reviews can be conducted more frequently, but there are many chances for revisions to be made if we cannot do so. If the authorities concerned are not given flexibility, I believe we would have too many precautions to take. There is actually ample room for manoeuvre in a lot of legislation, and I believe Dr LEUNG Ka-lau has said so before.

Deputy Chairman, I actually do not want to say so but I wonder if the Government as well as Honourable Members supporting and opposing the Government can be a bit more courageous sometimes. Even though they consider these issues controversial, if they believe in their own principles and they believe that they are working for the interests of certain classes or Hong Kong as a whole, they have to speak out bravely and specify the bottom line. I agree that we, in a modern political structure, are not "democratic tyranny" as mentioned by Mrs Regina IP. We should try our best to strive for mutual trust

and we should have reached agreements after negotiations. The fact that we have a large number of Committee stage amendments reflects the mistrust among us. In western societies, voting is actually part of the process and agreements have basically been reached after negotiations. Nonetheless, we have apparently failed to do the things that we should have done, and we are always talking about things that others do not do or have given up or things that have proved ineffective. I really do not know how things will develop in Hong Kong in the future, yet, I have tried my best. Since I, in principle, think that minimum wage should not be implemented in Hong Kong or around the world, I have stated a short while ago that this is not just for sake of the tourism sector. If any Honourable colleague questions that I am just doing so for the tourism sector, I am afraid he misunderstands me very seriously. Furthermore, I trust that I will not become a burden for the tourism sector just because of my current standpoint; I am sure about that. I stay true to my conscience and I am doing so for the interests of Hong Kong as a whole because I need to do so. It may not be a good thing for Hong Kong as a capitalist society to unanimously pass a minimum wage law because this will reflect that Hong Kong "has one voice only", or that some Honourable Members dare not speak what they believe because they are afraid of the evil force as well as those who are fierce. They talk about what will happen next year or what will happen outside if Honourable Members would vote in such and such a way. Such a phenomenon should not be found in a democratic society.*(The buzzer sounded)*

DEPUTY CHAIRMAN (in Cantonese): Mr TSE, your speaking time is up. Does any other Member wish to speak?

MR LEE CHEUK-YAN (in Cantonese): Deputy Chairman, I would like to add that I am actually going to propose another amendment to revise clause 13. Since it is identical to the Government's amendment, Honourable colleagues may neglect it. The amendment is about the publication of reports as soon as practicable. As it is the same as the Government's amendment, Honourable colleagues may neglect it. However, I would like to respond to the remarks made by Mr Paul TSE who is really terrific. His vote is intended to show that Hong Kong will continue to uphold capitalism, and his opposing vote is terrific indeed. I have heard for the first time that casting a vote is so very important.

Deputy Chairman, Mr Paul TSE has asked us to put aside class struggles. I would like to tell him that we are not engaging in class struggles and it is the Government which is engaging in class struggles. I think the Government is engaging in class struggles in proposing that a review should be conducted once every two years, which does not allow a balance to be struck between workers and employers. On the contrary, the Government is inclined towards the employers, consortia and the business sector, and it even does not allow us to determine a review mechanism. Who is the one that wants contention?

We have just proposed conducting a review once every year; how can such a humble and lowly request be deemed as engaging in class struggles and making trust fall apart? To be frank, I do not trust the Government a lot, which is really miserable and also distressing. Why have foreign governments gained the people's trust? There is democracy in foreign societies that are used to social partnership. Social partnership means that communication between business associations and trade unions has always been maintained, and they enjoy the right to collective bargaining. Unlike the case in Hong Kong where collective bargaining is carried out between the boss of an enterprise and his employees' association, in foreign countries, collective bargaining is applicable to the entire industry and even the whole country. How can they do so? They have strong trade unions, business associations and traditions. I precisely wish that our society would be full of trust, but, Hong Kong still has a long way to go. As we all know, our political system is undemocratic and there are functional constituencies; I do not wish to talk any more about this.

What Mr Paul TSE has said involves a very interesting logic. He has just explained why civil service pay can be reviewed once every year, and he has said that this is because in the civil service, there is one employer against more than a hundred thousand employees. He has also explained why FDH wages can be reviewed once every year. He has said that it is because there is one employer against one domestic helper. Does it mean that a review can be conducted once every year when there is one employer against 160 000 employees and also one employer against one employee. Can a review not be conducted once every year when there is only one employer against two, 10, 100 or 1 000 employees? How can that be the case? Everybody's wage should basically be reviewed once every year. How unreasonable this logic is!

The last point just made by Mr Paul TSE is consistent with Dr Joseph LEE's view. He is right in saying that we do not want to see that many workers have to rely on such a yardstick for wage increases. I would like to thank him for saying that. Nevertheless, it is a pity that it is actually not the case because employees at the lowest level basically do not have bargaining power and they cannot fight for wage increases. This exactly explains why we should implement a minimum wage. We need not fix a minimum wage if workers have bargaining power. As a matter of fact, a minimum wage is not the best solution because collective bargaining would be the best. Yet, there is no collective bargaining in Hong Kong and we do not have this tradition or strength. For this reason, we are now going to fix a minimum wage to assist those without bargaining power, hoping that they can ask for higher wages on the basis of the yardstick, and rely on it for wage increases. Dr Joseph LEE has just asked whether the grass-roots workers need to rely on that yardstick, and about the relationship between these workers and the fixing of the minimum wage at \$34 or \$35. Buddy, many people are earning \$33 rather than \$34 or \$35. If the minimum wage is fixed at \$33, they will always receive \$33; if the minimum wage is fixed at \$28, they will always receive \$28 only; that is going to happen.

Dr LEUNG Ka-lau and Dr Joseph LEE just asked the Government — Dr Joseph LEE raised a question first and Dr LEUNG Ka-lau asked a follow-up question — whether it would undertake to conduct a review immediately after the first year. I think there is something wrong with their questions. Even if the Government promises to conduct a review immediately after the first year, its undertaking will only apply to the first year and the Government will not do that again later on. This is just a very short-term undertaking that only applies to the first year. I think that is unacceptable, but, I really want to convince Dr Joseph LEE because his remarks — Dr LEUNG Ka-lau has just made this point, I would like to briefly repeat what he has just said — Dr Joseph LEE's position is that it is better for a review to be conducted once every year than once every two years; and, it is better for a review to be conducted at least once every two years than at least once a year. Do you understand me? You may not understand me but I think Dr LEUNG Ka-lau may. Actually, there is something wrong with the logic; in saying that a review should be conducted at least once every two years, his suggestion that a review should be conducted once every year will become untenable, which will create troubles. After listening to the remarks just given by the Secretary, I am really worried that the Government may eventually rule out the possibility of conducting a review once every year.

Furthermore, I hope Dr Joseph LEE would consider this further because the Government reviews the salaries of nurses, doctors and civil servants once every year. If Dr Joseph LEE's position is applied to nurses, will it be acceptable to them? I would like to ask the nurses watching television whether they would accept that a pay review should be conducted at least once every two years? I will not pursue this issue further if they consider that acceptable. I believe it is basically impossible for all nurses to consider that acceptable. If the Secretary for the Civil Service dares tell all civil servants, nurses, doctors, social workers and teachers that their salaries would be reviewed at least once every two years in the future, not necessarily once every year, can Honourable colleagues guess how they would respond? Would they create a disturbance? If Honourable colleagues think that they would create a disturbance, would it be more justified for the grass-roots workers, the most miserable group, to create a disturbance?

Lastly, I would like to talk about the Secretary's remarks again. Actually, I am really worried after the Secretary has just answered my question because I find that there is greater trouble now. The scenario is somewhat consistent with what Dr LEUNG Ka-lau has said. The Secretary has said that he actually wants a review to be conducted once every two years. Besides flexibility, he has referred to the scenario that under outsourcing contracts, a review is conducted once every two years. What does that mean? Has he proposed conducting a review once every two years just because he is yielding to these service providers? If that is the case, there will be greater trouble because under most outsourcing contracts, reviews are conducted once every two years, and some are even conducted once every three years. As we all know, for cleaning and security contracts, reviews are conducted once every two years. It would be terrible if the Secretary is doing so because he is yielding to these service providers. Some may ask why we should not yield to these service providers as reviews are just conducted once every two years under those contracts.

As we all know, we can establish a mechanism for contract tendering; even if a review is conducted once every two years under a contract, it may be specified in the contract that a mechanism for adjusting the tender price should be established within the contract term. We can actually include these terms and conditions in the contracts if our society is geared towards the direction of conducting pay reviews once every year. Nonetheless, we have now run into greater trouble. Dr LEUNG Ka-lau has rightly said so a while ago. What is the greater trouble? If a review is conducted once every year, the providers under outsourcing contracts would think of a way out, that is, an adjustment

mechanism must be specified in the two-year contract. However, things have now become ambiguous as there may be a review once every year or once every two years. So, what can be put into the contract? I am not sure, something may have been specified in the contract but if the minimum wage is adjusted upward, the wage level should increase correspondingly within the two-year contract term. If that is specified in the contract, even an annual review would become acceptable. Nevertheless, the Government has jumbled pay reviews together with outsourcing contracts, giving people the impression that the Government basically wants to conduct a review once every two years. How can there be flexibility? There is no flexibility at all, and the Government is just yielding to these providers.

Deputy Chairman, I originally intend to dwell on this issue until Dr LAM Tai-fai holds up a placard telling me that he supports a review once every year. However, Dr LAM Tai-fai is not inside the Chamber now and I am not sure if he will finally support or oppose it. He has just said that he would consider it further but he has not yet come back. It is now 8.54 pm and I have just spoken for nine minutes; I will speak for another six minutes until he returns to the Chamber. If he comes back right now, I can immediately conclude my speech, right? Deputy Chairman, I am really waiting for Dr LAM Tai-fai to tell me whether he supports or opposes it. Up to this moment, it is only a difference of several votes. As we all know, the crux of the matter lies in the separate voting system. Regarding the separate voting system, I do not want the voting result to prove once again that small-circle functional constituencies have suppressed the interests of grass-roots workers. I do not wish to say so indeed. I hope Honourable colleagues would make it unnecessary for me to say so.

If I continue to speak, I am going to present Honourable colleagues with some figures. Directly-elected Members in support of a review once every year have the mandate of around 1.2 million voters, accounting for 77% of the electorate. Functional constituency Members who are going to cast opposing votes or abstain from voting only have the mandate of some 20 000 voters, accounting for only 17% of the electorate. As a result, Members with the mandate of only 21 000 voters have voted down a proposal supported by Members with the mandate of 1.2 million voters, and 17% of the voters from the small circles have made this coterie even more notorious. I do not want to say so. Can Honourable colleagues do something fair for us?

We have actually made a very simple request. We hope that there would be wage reviews once every year, just like all Hong Kong people. Our request is as simple as that. If even a request like that is not acceded to, I really wonder — let me cite Mr Paul TSE's remarks — how we can trust the Government. Let me cite Dr Margaret NG's remarks — the Secretary intended to do a good deed, why has he not done the best? I would like to tell the Secretary that there is a noodle shop in Yuen Long called "Ho To Tai Noodle Shop" ("Ho To Tai" is a transliteration of a Cantonese saying which means "one will do his very best"), and I really want to invite the Secretary to try the noodle there. Can we do the best? The Secretary has intended to do a good deed but he obstinately added a bone to make another person choke. Why has he not completed the job? He will say later that he wants a review to be conducted once every two years but he does not rule out the possibility of conducting a review once every year. Frankly speaking, fixing the minimum wage has certain objectives regardless of whether a review is conducted once every two years or once every year. If the Secretary chooses to conduct a review once every two years, he will go against the most important objective of fixing the minimum wage, which is to maintain social harmony.

Come to think of it, the Secretary has created another problem out of blue; frankly speaking, he has a pretty good idea of how things stand. When the Secretary submits statistics and data once a year, the whole society will follow suit and conduct reviews. We should really not support the Government; otherwise, we will only become its burden. To achieve social harmony, the Government must present all data. To be frank, if the Government presents all data to show people that the economic situation is promising, inflation is strong and employers have considerable profits, what would be the response of the whole society even if a review is not conducted? There will certainly be public outcry and arguments. It is nothing special for me to take to the streets, but, I do not want to take to the streets year after year to strive for a review of the minimum wage. I really hope that I would take to the streets to strive for collective bargaining and standard working hours because I just want a new page to be turned. If you would kindly allow me to have a fresh start, why do I have to bring up again the issue of conducting annual reviews? Even if a review is not conducted and if the Minimum Wage Commission is not asked to conduct a review, the whole society will still be conducting reviews on its own. The Secretary will then be rebuked by the whole society for not conducting a review.

My only conclusion is that the Government is asking for troubles and we can do nothing about that. I say it is asking for troubles because it has not done a good deed and it has not tried its best, compelling others to complain. Deputy Chairman, we can only get well prepared and I am going to lose the battle today. I would like to tell Honourable colleagues that I will surely conduct reviews once every year. If the Government refuses to conduct annual reviews, it is only asking for troubles.

In addition, the Secretary has just mentioned a number of examples in the United Kingdom and other countries. According to him, the United Kingdom and other countries do not have the relevant provisions. However, as Dr LEUNG Ka-lau has just said and Honourable colleagues are well aware, it is the conventional practice adopted in the United Kingdom. Also, the Labour Party and the Conservative Party in the United Kingdom support the practice. Thus, no one is to worry and a review will certainly be conducted. The situation in France is even better. If Honourable colleagues can speak French, please say "Égalité" together with me. The three pillars for the founding of France as a state are Fraternité, Égalité and Liberté, and one of them means equality. A review of the minimum wage is of course conducted once every year in France. There is such a tradition in foreign countries which at least enables the working class to sustain basic living even though their societies may not be completely harmonious.

Thank you, Deputy Chairman.

(Mr Paul TSE indicated a wish to speak)

DEPUTY CHAIRMAN (in Cantonese): Mr Paul TSE, you are speaking for the second time.

MR PAUL TSE (in Cantonese): I do not agree with the Government's attitude of acting like a miser and not making sufficient efforts to alleviate poverty or deal with the disparity between the rich and the poor though it has a reserve of hundreds of billions of dollars. However, I believe most Hong Kong people do not want Hong Kong to be like the United Kingdom at present, worrying about how to repay the national debts next year and having to reduce government expenditures.

Sometimes, I wonder why government officials should sit here, to be rebuked by us. The Government is just managing our money after all. As Dr Margaret NG has said, to do a good deed to the best, the Government may as well not skimp on this. Actually, I believe that if Honourable colleagues present can put themselves in the shoes of the officials and take up the responsibility of managing money that may not be theirs, they may think differently when they have the whole government behind them. I am not sure if I have been simple and naive because I often hope that I could put myself in the shoes of others and think of their situation and what they do. If I were LEE Cheuk-yan, what I say may have been perhaps I am not as competent because he is really

DEPUTY CHAIRMAN (in Cantonese): Mr TSE, please face the Chairman when you speak.

MR PAUL TSE (in Cantonese): Deputy Chairman, I just want to relay to LEE Cheuk-yan that everyone knows that he is fighting for the workers' interests. Also, it is most important for all of us to discuss issues in a more logical and rational manner. If we can have discussions this way, I think we will be able to solve all problems.

I would like to clarify a question that Mr LEE Cheuk-yan has just asked me. He has said that he fails to understand the logic or the relationship between the mechanisms for civil servant pay reviews and FDH pay reviews. This may be my mistake because I have not made this point clear enough, Deputy Chairman. As I have just mentioned, the former is a "one to many" mechanism in which the factors for consideration by an employer may be simpler. The latter is a "one to one" mechanism and the relationship between an employer and an employee is also relatively simple. Yet, what we have now is a broad-brush mechanism characterized by "many to many" in which things are much more complicated because we need to take into consideration a large number of sectors and various matters; the case is as simple as that.

Mr LEE Cheuk-yan has quoted Dr Margaret NG in asking why the Government has not done its best. Why has it not tried its best in doing a good deed? Is this a good deed? This is exactly a highly controversial point about the issue under discussion. The Government should do its best if we are talking

about increasing the fruit money, tax reduction or giving out welfare benefits. For example, the Government has not done very well in respect of the suspension of levy for employing FDHs. Everyone was happy originally but the good deed seemed to have turned bad after the suspension of the levy.

However, we are now discussing the minimum wage and all of us agree that a group of people will fall victim and they may be the most disadvantaged members of our society. This morning, Mrs Regina IP indicated that mentally handicapped people should be protected, and many Honourable Members present agreed with her, that is, the most disadvantaged group would fall victim. Whenever the minimum wage is adjusted upward, one more group of people may be victimized, thus, this is not necessarily a good deed. We must be careful precisely for this reason because it is a double-edged sword. You are helping a group of people to ensure that they have jobs. Those who are more competent can keep their jobs and they will be given pay increases. That is good and well! Yet, there will be fewer jobs for the disadvantaged. Do Honourable colleagues understand that we will make a group of people fall victim? Hence, we should be careful, and we should be particularly careful when it is not necessarily a good deed.

Thank you, Deputy Chairman.

(Dr Joseph LEE indicated a wish to speak)

DEPUTY CHAIRMAN (in Cantonese): Dr Joseph LEE, you are speaking for the second time.

DR JOSEPH LEE (in Cantonese): Deputy Chairman, I have just heard Mr LEE Cheuk-yan ask nurses (if any) watching television what they would do if their wages would not be reviewed once every year but once every two years in the future. The simple answer is that they will take to the streets.

I am a trade unionist and I have worked with trade unions for more than 10 years. I fully understand the operation of trade unions and the mindset of trade union representatives. Mr LEE Cheuk-yan and I are trade union members and we belong to registered trade unions in Hong Kong. However, I must say clearly that some of my colleagues on night shift are working at hospitals now

and they cannot watch television when they are on duty. Those at home may be watching news reports but I am not sure if they would watch the live broadcast of Legislative Council meetings. Nevertheless, if any of them have heard what I just said, I, as their representative, hope that they would understand. Our current discussions are about the review of minimum wage, and it should not be associated with the pay review of nurses because we are discussing the frequency of minimum wage reviews under the legislation. Some Honourable colleagues have just talked about regularity, and they have queried that conducting a review at least once every two years may totally lack regularity. Nonetheless, there will be butterfly effect even with a lack of regularity, thus, a review will at least be conducted once every two years; this may still not be considered as satisfactory but that is another thing. Yet, we are discussing and arguing about the frequency; I will not repeat my comments and I am not allowed to do so.

In any case, I would like to take this opportunity to clarify a very important matter. According to my understanding, our discussion today is not about reviewing the actual wages of grass-roots employees once every two years. We are talking about reviews of the minimum wage rate. Please let me repeat my point, Deputy Chairman. As I have just said, even if we can strive for a rate of \$33, I do not believe all grass-roots workers in the territory will be employed at the minimum wage rate of \$33 as this would not possibly happen and I know that wage levels differ between different work types. Of course, there are unscrupulous employers, that is, those Members who are returned by functional constituencies with only several ten thousand votes and vote against this motion. They will of course pay the workers at a rate of \$33 but I am not sure if that will really be the case. However, I would like to stress that there is no connection between this and the wages of ordinary nurses, and the two should not be lumped together.

If nurses or employees in my sector have heard that Joseph LEE has said that nurses should Deputy Chairman, I may have deviated from the subject matter; if so, please remind me. If I have ever proposed reviewing wages once every two years, I believe I will disappear very soon. But, let me reiterate that our discussion today intends to give grass-roots employees protection under the legislation and seeks to have the wage rate reviewed at least once every two years. I am very clear that we are not discussing reviews conducted with a view to increasing wages. Precisely because I have such a clear idea, I think that we should be flexible in legislating. I repeat that I hope that a review will be conducted at least once every two years. I hope the Secretary would make an

undertaking when he speaks later and let us know — some may not trust the Government, and I am also wondering if I trust the Government. We can be sure about one thing, that is, the Government is not returned by the people. Since the Government is duty-bound to serve the public, no matter whether the legislation today is passed with the help of functional constituencies or the failure of those Members elected by several hundred thousand or over 1 million voters through direct elections, I hope the Secretary would state clearly that the Government is duty-bound to protect grass-roots workers. After fixing a certain wage rate — I know I am repeating the points I have made, excuse me, Deputy Chairman — the Government is duty-bound to tell us whether a review can be conducted one year after the initial implementation of the statutory minimum wage. I hope this would become an established practice, and I trust that this is the win-win situation that I have just mentioned. Thank you, Deputy Chairman.

MR JAMES TO (in Cantonese): Deputy Chairman, I have not spoken on this Bill before but I must say something about certain issues.

Deputy Chairman, some people do not need a minimum wage. I believe all or 99.9% of nurses do not need it. But, some workers do have the need. Regarding whether reviews should be conducted at least once every two years or at least once every year, some workers who need minimum wage protection may have their wages reviewed only once every two years. Precisely because I was personally acquainted with the Hong Kong Public Nurses Association in the past, I believe I must step forward and make some points very clear.

What Dr Joseph LEE has said really made me feel uneasy and unhappy. Although my sector does not need a minimum wage, but as a trade union leader, I see that the workers in other trade unions need minimum wage protection. The wages of nurses are reviewed every year and most other wage earners should also have their wages reviewed every year. However, while the most disadvantaged people are in dire need of minimum wage protection, their hourly wage will only be increased by a dollar or two after a review. In that case, should we support these wage earners at the lowest level who need protection the most to fight for a treatment that is on a par with most wage earners in Hong Kong?

Deputy Chairman, I really find it unacceptable and I wonder why wage earners at the lowest level who rely upon minimum wage protection cannot be treated like most workers who do not need the protection at all. Why should

their treatment be worse than that accorded to other workers? How can this be justifiable?

According to Dr Margaret NG, enacting legislation on minimum wage is proposed simply for the sake of social harmony. If Honourable colleagues or the community agree with Mr Paul TSE that we will make some people fall victim, and more will fall victim whenever a review is conducted, then, we definitely do not need to conduct reviews frequently. Nevertheless, most Members of this Council, including Dr Joseph LEE, agree that minimum wage can facilitate social harmony and give the most fundamental protection. Why do we still agree to conduct a review every two years when this routine of conducting a review every two years turns out to be different from the treatment for most workers who do not need minimum wage protection? I really cannot figure that out.

Deputy Chairman, on the second point, considering this issue on the basis of legal principles, as the Secretary has said a while ago, it is carefully specified in legal wordings in some outsourcing contracts by lawyers that they will be reviewed or renewed once every two years. When many outsourcing contracts will be reviewed once every two years, the Secretary may say that conducting a review once every year will easily affect most — we should bear in mind that we are talking about the contracts involving workers that need minimum wage protection, and sectors such as nurses, lawyers and doctors basically do not need the protection. Yet, for those workers whose minimum wage will only be increased or decreased by a dollar or two, if it is specified that a review will be conducted once every year, the Secretary may say that this will affect those contracts which will be reviewed or renewed every two years. What should be done by then?

Of course, Members may say that legal provisions should always prevail; so long as there is a legally specified rate, any contract specifying a rate below this level is against the law. This is the effect that can be accomplished. Nonetheless, the Secretary and members of the business sector, who are the contractors of the outsourcing contracts, will then have the grounds. Also, they expect outsourcing contracts to have a term of at least two years. Do they have to bear all the risks if the contracts granted by the main contractors or government departments specify something different?

In this connection, I think the Government will then have an excuse. It can say that it will be more harmonious and more suitable for our society to conduct a review once every two years; otherwise, some contractors may be affected. If that is the case, there will be a norm and the two-year system will be consolidated. After specifying that a review will be conducted once every two years, it will be very troublesome if a review is going to be conducted once every year. Certainly, we can issue a notice to review the legislation and ask for the legal wordings to be changed from two years to one year, and give sufficient time for the drafters of the contracts to amend the cycle or relevant wordings in the contracts. That could be an alternative, right?

In response to Dr Joseph LEE's remarks that those workers may take to the streets, I think that we are not talking about having or not having the legislation. Instead, now that there is the legislation — the wages of most wage earners are reviewed once every year — we should allow an annual review of the wages of the lowest-paid workers who are in dire need of protection. If we say that we should first specify an interval of two years and allow workers to take to the streets together when the situation becomes unfavourable, the situation is rather weird, right? We are using the system to consolidate the norm. If we adopt an interval of two years on a trial basis in the first place, are "two years" the golden figures? An annual review cycle applies to most workers, even those who do not need minimum wage protection. We think that the norm, which applies to most workers, is one year. Therefore, we propose to specify an interval of one year. Why should we adopt an interval of two years on a trial basis so that all nurses may take to the streets with those poor wage earners? What is the logic?

If the above is really the views of Dr Joseph LEE, I really hope that he would nurses listening to our debate may really wonder is their wage reviewed once every two years? No, this is certainly not what they ask for. They insist that reviews should be conducted once every year, and they may take to the streets when the interval is changed to two years. They have seen that workers much poorer than they — wage earners admitted to public hospitals and receiving Comprehensive Social Security Assistance — now that these people are so miserable, should their wages be reviewed once every two years? There are really some logic problems. Indeed, I appeal to all Honourable colleagues for their careful consideration of whether the interval should be changed to two years when the norm is one year for most wage earners. This would be inhumane and

this would even deliberately create social disharmony. If we really intend to consolidate this system, we must shoulder the responsibilities.

(Dr Joseph LEE indicated a wish to speak)

DEPUTY CHAIRMAN (in Cantonese): Dr Joseph LEE, you are speaking for the third time.

DR JOSEPH LEE (in Cantonese): I hope that Mr James TO would listen again to the remarks I made at the very beginning, and the remarks just made by Mr LEE Cheuk-yan and Dr LEUNG Ka-lau, as well as the remarks I made when Dr LAM Tai-fai was not in the Chamber before making the above comments in relation to the response I have just given.

His comments made me feel uneasy because that was not my original intention. If he considers what I have said as unclear, he might not have listened very clearly while he was not present. I would like to say for the record that I have never indicated that this issue has nothing to do with nurses because the minimum wage does not apply to them. I just want to express my views and I am not speaking on behalf of nurses. I have not, on behalf of nurses, said that I would take to the streets with them if an interval of two years is specified. I absolutely have not said so and I would like to clarify that.

If nurses or friends from the health services sector have listened to what I have said from around 9 pm to 10 pm till now, they should know clearly that I have just touched upon one thing. I am sorry, Deputy Chairman, but please allow me to repeat the points I have made. After all, I want to clarify my speech which may cause disturbance in the sector. Why do I support conducting a review at least once every two years? This would enhance flexibility in legislating, which is the most crucial point I made. That is what I would like to say and I am not saying that nurses from our sector do not support it because nurses enjoy annual salary increase and others' business has nothing to do with them. I am also not saying that I will take to the streets if the Government really wants to increase the wages of nurses once every two years. That is not what I have just said at all and I would like to take this opportunity to clarify this point.

I am just responding to Mr LEE Cheuk-yan's question about what would happen if wages are reviewed once every two years. I have said that we will take to the streets if that happens all of a sudden. Nevertheless, I have just given an example or expressed an opinion. According to my understanding this evening, it is completely inapplicable under these circumstances because we are not discussing such things and we are just discussing the frequency of reviewing the level of minimum wage.

I would like to add this point so that the public would no longer be misled. The points I made in the past 10 to 20 minutes may not be explicit enough, thus, I have just spent a few minutes clarifying matters. I also know that we cannot leave until twelve o'clock tomorrow, so, I hope Honourable colleagues would not mind if I speak a few minutes more. I would like to have the opportunity to explain things clearly. I have talked about two different concepts. If they are mixed up, we are at the risk of misleading people. I thank Deputy Chairman for giving me an opportunity to clarify matters.

MR RONNY TONG (in Cantonese): Deputy Chairman, I have not intended to speak again but it is now past 11 pm and we have already had discussions for more than 30 hours as I have counted; we have spent more than two hours discussing this topic alone. Actually, I think this is a very simple topic; perhaps I am a simple-minded person. However, it seems that many Honourable colleagues are more interested in criticizing or accusing one another.

Deputy Chairman, this topic is actually very simple. The difference between the Government's amendment and that of Mr LEE Cheuk-yan merely lies in the intention to minimize flexibility. Honourable colleagues who support conducting reviews once every two years hold that flexibility should be introduced, along the logic of the Secretary. Those who want reviews to be conducted once every year precisely want to minimize flexibility. Why? It is because there is a lack of mutual trust; in particular, Honourable colleagues from the pan-democratic camp do not trust the Government.

Why is there a lack of trust? This legislation itself reveals the reasons behind such a lack of trust, Deputy Chairman. The Chief Executive, who treats people differently according to affinity, has the power to completely control the Minimum Wage Commission (MWC) and appoint members thereto. He will appoint three government officials to the MWC and ensure that they have the rights to vote. For this reason, we have lost in relation to all such amendments.

Also, he has the right not to follow the recommendations of the MWC, and the Legislative Council is not allowed to amend the figure. The Government has also indicated that essentially this legislation is not aimed at allowing workers to have a reasonable standard of living, but at "minimizing the loss of low-paid jobs" and "sustaining Hong Kong's economic growth", which are incomprehensibly abstract concepts.

How can there be mutual trust between employers and employees or between officials and the people? Without mutual trust, it is all the more astonishing for the Secretary to suggest enhancing flexibility. Why? Deputy Chairman, this is a very simple principle. Having sat here for more than two hours, I have been wondering why he does not understand this principle.

The Secretary has mentioned at the very beginning of his speech that Hong Kong has a shorter economic cycle than those in other places, and we are talking about the minimum wage. That is a wage floor that cannot be adjusted further downward. These people are most sensitive to economic changes. Taking Dr LAM Tai-fai as an example — Honourable colleagues also like to take him as an example — he is the boss, frankly speaking, a \$100 reduction in his wage is basically insignificant. Yet, the monthly salary of a person receiving the minimum wage may fail to catch up with inflation. If his wage is reduced by \$100, he may have to skip one meal or he may have to walk to work because he cannot afford the travelling expenses; that is the difference.

Deputy Chairman, I hope there would be an opportunity for a review each year — it is just a review, not necessarily a wage increase, as mentioned by a lot of Honourable colleagues. Nonetheless, if there is no review, he may have to put up with the hardship for two years. How can such an arrangement be acceptable? Deputy Chairman, it is simply because we do not want a so-called less stringent or more flexible approach. The demand of those people cannot be met by a more flexible approach. I hope the amendment can be put to vote as soon as possible.*(Laughter)*

(Mr James TO indicated a wish to speak)

DEPUTY CHAIRMAN (in Cantonese): Mr James TO, you are speaking for the second time.

MR JAMES TO (in Cantonese): Deputy Chairman, I have been listening to Members' speeches in the Ante Chamber since around 9 pm, so, I have not missed their speeches and I do not have any misunderstanding.

Deputy Chairman, I have not said that Dr Joseph LEE is representing nurses who do not bother about the fate of others because they do not need minimum wage protection. That is not what I meant to say at all. I meant to say that most people who do not need minimum wage protection, that is, those people, including nurses, whose wages are much higher than those who need minimum wage protection, also have their wages reviewed once every year. Since that is the case of most wage earners in Hong Kong, why are we saying that workers at the lowest level, that is, those who may need minimum wage protection and whose wages are around that level, need the flexibility of having their wages reviewed once every two years? Let us consider those other workers who do not need minimum wage protection at all, and they are basically not living from hand to mouth — the minimum wage issue involves the group of people who are at the lowest level. Since the wages of these workers are at higher levels, even if reviews are conducted once every two years and they suffer losses from such a two-year cycle by deferring their pay rise, life will not be too hard for them.

Yet, we are now talking about workers at the lowest level who are in need of minimum wage protection. If their wages are not increased in the second year because of the cycle, though this is about the most basic increase of a dollar or two, we cannot say that their wages will be increased by \$2 two years later. We cannot recover the rate of wage increase that the workers should be given in the past for we do not have such a mechanism. Have we treated them fairly? Is that fair? The logic is very simple. Where is the flexibility as suggested by the Government? If such flexibility is applied to people of higher income, they are more capable of tolerating, adapting and bearing the burdens. Their situation will be less miserable. Yet, if flexibility is applied to the group of people at the lowest level who need the protection so that the a-dollar-or-so pay rise may not be effected in a certain year, is it a humane approach?

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

MR ALBERT CHAN (in Cantonese): Deputy Chairman, when I spoke for the first time, I already called upon Honourable colleagues not to give rise to class conflicts and contradictions because the voting result will only cause further social division. The Secretary has the responsibility to forestall the problem.

I once again call upon Dr Joseph LEE to consider carefully what his position is. As a participant in trade unions and labour movements, and as one who defends the basic principle of the unity of all proletarian workers — he has already left the Chamber — he may have been lobbied by the Secretary to a point that he does not want to listen to other opinions. Half-an-hour lobbying by the Secretary seems to have created stronger effects than the concerted lobbying efforts made by me, Mr LEE Cheuk-yan, Mr James TO and Dr Margaret NG.

If he adopts the position of trade unions but accepts the Government's proposal, it is extremely absurd and goes against the basic tone and position that trade unions should have. I hope that all nurses in Hong Kong would listen to and look very carefully at the attitude of the representative of the health services functional constituency in this legislature, and his decision concerning a review interval of one year or two years. Dr Joseph LEE's argument is very simple and similar to that of the Government, and he has said that flexibility would be enhanced. Your interpretation of flexibility is synonymous with giving the Government and the MWC the right of control. From the position of the working class, why should there be minimum wage protection under the law, and why workers have to endlessly fight for collective bargaining rights? They are fighting for the establishment of a certain wage level because workers solely rely on their wages to cover basic living expenses.

The nursing field is a high-paid occupation, so, they may not regard the minimum wage level as important. However, the annual adjustment of wages of nurses and the slight adjustment of a few percentage points are extremely important to many nurses insofar as livelihood is concerned. For nurses earning several ten thousand dollars a month, the increase of a few percentage points already means a lot to them. The a-dollar-or-so pay rise actually means a lot to the manual workers in Hong Kong who are at the lowest level and remunerated at an hourly wage of \$20 to \$30. In terms of impact on livelihood, a slight pay rise means much more to these manual workers than to nurses earning several ten thousand dollars a month.

While flexibility is emphasized, who will benefit most? We should consider this issue from the perspective of trade unions. Flexibility is certainly important from the perspective of employers, the Government and the capitalists. But, it is most important to ensure wage growth from the perspective of employees. That is the difference between the positions of various classes. When an Honourable colleague's decision will infringe upon the interests of the class he represents, he is going against, violating and betraying the interests of that class.

The Government frequently gave out money in its budgets; what it did was so very annoying and had made social groups antagonistic to one another. As I have just made this point, I am not going to repeat myself and I do not want to waste Honourable colleagues' time. I call upon the Secretary once again and I remind him that, if he does not withdraw his amendment and does not support an annual review, he is the one who escalates social confrontation year after year and intensifies the deep-rooted conflicts mentioned by Premier WEN Jiabao. He is the one who gives us the opportunity to take to the streets each year against a topic created by him. Regardless of how many percentage points by which civil service pay will increase, and how many more millions the board members of large consortia will receive as remuneration, if the minimum wage for hundreds of thousands of employees in Hong Kong is not reviewed with a view to adjusting it upward, you are causing class conflicts and social contradictions.

If the Secretary still obstinately sticks to a wrong course, he will just enhance the splitting up of social groups in Hong Kong. The League of Social Democrats will certainly keep him company until the end; we will continue to organize actions and enhance resistance so that there will be stronger resistance both inside and outside the legislature. I hope other Honourable colleagues would sober up and take a look; whether social contradictions will be intensified or not depends on their voting decisions. Or, would they heed the appeal of Premier WEN? To achieve social harmony, I hope Honourable colleagues would support this very basic and humble proposal of conducting a review once every year.

MR KAM NAI-WAI (in Cantonese): Deputy Chairman, I have not yet spoken throughout our debate on this Bill. However, I am prompted to say something after listening to the remarks just made by Mr James TO in response to Dr Joseph

LEE's arguments. Certainly, I would not approach the issue from the perspective of class conflicts as Mr Albert CHAN has done. However, Dr Joseph LEE is a member of the pan-democratic camp and he is sitting near me, and he has made certain points that gave me a strange feeling. I would like to convince him. As a functional constituency Member, his vote is very important on this occasion — I have not clearly asked Mr LEE Cheuk-yan yet. Some functional constituency Members who said that they would support it may have gone elsewhere later, so, his vote is really important. Actually, I have been listening to Dr Joseph LEE's speeches in the Ante-Chamber. He has just repeated a few times that he hoped to introduce flexibility to this legislation; that is his major argument. But, I have also heard him say that, apart from flexibility, he also hoped that the Secretary would make an undertaking to conduct reviews once every year. That is the undertaking that he would like the Secretary to make. In fact, Dr Joseph LEE also wants reviews to be conducted once every year, and it is his idea that reviews should be conducted once every year under this legislation. Yet, he also wants the legislation to have flexibility.

I would like to share some points with Dr Joseph LEE. First, both of us belong to the pan-democratic camp; as we all know, the Government does not have the people's mandate and it is just selected by a small circle election. Will the Government be kind enough to do so every year as Dr Joseph LEE has expected? Second, we should look at the Government's track record and examine how the Government acted in the past — let us just focus on its records in respect of labour and welfare matters. For instance, the issue of inter-district travelling allowance has been discussed over a long time but it has not yet been provided. I remember very well that Mr LEUNG Yiu-chung has proposed concessions for people with disabilities, and we have discussed that for a very long time. Yet, the Government has just done something recently, thus, its track records are rather poor. Third, I am not sure if Dr Joseph LEE still remembers that, when the Chief Executive talked about the 2012 election two days ago, he said that he would only deal with the matter up to 2012, and those relating to the elections held after 2012 should be handled by the next-term Government; otherwise, the next-term Government would have nothing to do. The Chief Executive said so the other day. In other words, even if the Secretary promises now that reviews would be conducted once every year, what would the next-term Government do? Actually, he can promise nothing because the relevant matters should be handled by the next-term Government. The next-term Government may only conduct reviews once every two years even if it is specified in the

legislation that reviews will be conducted at least once every two years. At the most, it is just the Honourable colleague's subjective wish that reviews will be conducted once every year. If the legislation is implemented this year, a review will be conducted in 2012, and we are not sure what the next-term Government would do two years later. If it is set out very clearly that reviews should be conducted once every year, the next-term Government has to submit a legislative amendment to the Legislative Council for scrutiny if it wants to make an amendment. There is going to be immense pressure. Why should an amendment be made? This is a very important point.

I do not think I should challenge Dr Joseph LEE, irrespective of whether he is a trade union leader and whether it is an issue about class struggles. I just want to convince Dr Joseph LEE by giving some reasons so that he would accept that it should be specified in the legislation that reviews should be conducted once every year rather than at least once every two years.

Thank you, Deputy Chairman.

MR WONG YUK-MAN (in Cantonese): Deputy Chairman, we have discussed for a long time whether the minimum wage rate should be reviewed once every year or once every two years, right? I have to join the discussion; or else, am I going to lose face? Some Honourable colleagues have already spoken a few times. Are these not matters of principle? As proposed under the Minimum Wage Bill (the Bill), the Chief Executive has decision-making power as to whether the minimum wage rate should be reviewed, right? In other words, whether the minimum wage rate should be reviewed is solely determined by the Chief Executive. This clause alone is an awful provision. The Government has also proposed conducting reviews once every two years; it really wants full victory. While we are asking for reviews to be conducted once every year, it has proposed conducting reviews once every two years. It should at least give a little bit of room to wage earners; as Albert CHAN has just said, this is a very humble request.

Frankly speaking, concerning this clause, we have decided long ago that we will surely support the amendments proposed by LEE Cheuk-yan and WONG Kwok-hing, and we will certainly oppose the Government's amendment. That will certainly be the case and I do not want to talk nonsense. I hope their

amendments would be passed. As I have now noticed, the situation is a bit dangerous now. Dr Joseph LEE may make a U-turn later if we make further comments.*(Laughter)* This is just my subjective wish, and I am not sure if he will make a U-turn. Dr David LI has also returned to this Chamber. I have asked Mr LAU Wong-fat to go home for a nap but he did not do so.*(Laughter)* Evidently, Honourable colleagues out there have been kept on a tight rein before voting. I heard that Dr LAM Tai-fai has been locked in a room and not allowed to leave.*(Laughter)* Why is there so much controversy at this stage? Why is the Secretary not ready to slacken the reins? I really cannot understand that.

Is it not a humble request for reviews of the minimum wage rate to be conducted once every year with a view to comforting those workers? We know very well that we should at least show some sincerity when we talk about the needs of workers and their dependants. We will legislate for the minimum wage after all; at the moment, all or most Honourable colleagues support it while only one Honourable colleague will vote against it. Honourable colleagues supporting it, including those from the business sector, hope that legislating will not cause them any trouble, so, they want to fight for the most favourable arrangements as far as technical details are concerned. We understand that, but, I wonder why the Secretary has to be so insistent and refrains from making any concessions in connection with this clause. Can any concessions be made? The Government wants full victory in all aspects. Since we are going to legislate in this regard, I do not want to compare this Bill with the minimum wage laws in other countries. I tell you that we will look ugly once the comparison is drawn; our legislation will look even uglier if a comparison is made with those in Nordic countries. Have Honourable colleagues read the newspapers recently? The four happiest countries are all Nordic countries. Denmark ranks first, followed by Norway, Sweden and Finland. They not only have minimum wage protection, Buddy, they also have minimum wage for the youth. They are really flexible and they also protect the youth and their remuneration. They are really flexible in terms of minimum wage protection. We can hardly compare with these countries.

To be frank, in respect of legislating for a minimum wage, we are just discussing a legal framework and we have not yet have the major discussion about fixing the rate at \$33 or \$24. The most controversial point is about how the Government can take the middle road, right? The arguments at present are trifling. It is just a legal framework. Buddy, is it justifiable for no concessions

to be made in respect of the legal framework? Why is the Government not ready to conduct reviews once every year? Does the Government find it too troublesome? Is it worried that the business sector may get enraged? Does the Secretary fear losing his job? That should not have happened.

I hope the Secretary would do us a favour. Now that we are in final sprint, perhaps he can ask those Members to go home and have a nap so that the voting result later on will give us a surprise. All of us would be happy if wage reviews would be conducted once every year, right? As we are going to work overnight tonight, we might as well ask some Honourable colleagues to go home and have a rest. Some older people should go home and have a few hours' sleep, right?

(Dr Joseph LEE indicated a wish to speak)

DEPUTY CHAIRMAN (in Cantonese): Dr Joseph LEE, you are speaking for the fourth time.

DR JOSEPH LEE (in Cantonese): Deputy Chairman, I am not sure if the voting result later on will give us a surprise but this has at least given me a surprise after I have been a Member for six years. I have never spoken for so many times and it is not my intention to stall for time or prolong our debate. However, I would like to clarify some of my points raised throughout our discussion or debate just now. First, it is not true that nurses do not respect grass-roots workers, or they do not want to safeguard the interests of grass-roots workers. It has nothing to do with a dollar or two. That is actually not the case. So, I will not repeat my argument about why I support the proposal on conducting reviews once every two years. I just want to give the relevant reasons.

Nevertheless, an Honourable colleague has repeatedly referred to Members from the pan-democratic camp this evening. I have joined this Council for six years and I also belong to the pan-democratic camp. Looking back, Members from the pan-democratic camp held unanimous views on striving for universal suffrage; they had the same objectives though they might do so by different means. Yet, we respect one another insofar as livelihood issues are concerned; this has been our practice all along, and these are also the reasons behind my

voting preference this time. I do not want to make any more new argument, but, through speaking for the last time on this occasion, I would like Members from the pan-democratic camp to understand why I have such a voting preference.

Furthermore, I would like to make it clear that this discussion has nothing to do with those from the nursing sector. I hope that Honourable colleagues would refrain from establishing a relationship between nurses and the minimum wage issue. Thank you, Deputy Chairman.

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

MR LEE CHEUK-YAN (in Cantonese): I am sorry but I have to say that, Dr Joseph LEE has often emphasized that this issue has nothing to do with the nursing sector; but, he should render support precisely because this has nothing to do with the sector. Why? Deputy Chairman, this is not a dialogue between pan-democrats and pan-democrats, nor is it a dialogue about universal suffrage. It is a dialogue between trade unions.

Trade unionists have a very important principle: "do not impose on others what you yourself do not desire". As he has just said, he will take the lead to take to the streets if the wages of nursing staff are reviewed once every two years. He has said that he will take the lead to take to the streets, but, why dose he want the wages of workers to be reviewed once every two years when he does not want the wages of nursing staff to be reviewed once every two years?

There is actually a reciprocal relationship between trade unions. Honourable colleagues should bear in mind that, as I have frequently told civil servants, they should not think that the operational problems of the private sector have nothing to do with them. Civil servants will also be affected when the organizations in the private sector close down. Why? The pay adjustment of civil servants is linked up with the pay adjustment in the private sector. There is a survey assessing the trend of pay adjustment of civil servants each year, and it also takes into consideration the pay adjustment in the private sector. Pay adjustment not only involves the grass-roots workers and it actually involves all kinds of workers. If the wages of the grass-roots workers or other workers are adjusted downward slightly, the wages of all workers will eventually be adjusted

downward. You have said that we should not link up the two issues; I really do not want to link them up, but, I really hope that I would finally succeed in lobbying for your support. Why? Why do I care so much about your vote? As you may know, the present situation is really

DEPUTY CHAIRMAN (in Cantonese): Mr LEE, I also ask you to face the Chairman when you speak. It seems as though you are having a dialogue with Dr Joseph LEE, but, you should not do so.

MR LEE CHEUK-YAN (in Cantonese): Thank you that is right Deputy Chairman, why is Dr Joseph LEE's vote so important? As we all know, it is late at night and some functional constituency Members may want to take a rest earlier. All of us are tired and would like to go home. I know that the work has been toilsome for Dr Raymond HO.*(Laughter)* Handling the Lehman Brothers hearings is already a toilsome job for him; so, he should not make any more toilsome efforts. The problem is whether Honourable colleagues would treat workers a bit more fairly. In fact, Dr David LI may have stayed here to support us; we are not sure, and I am not sure if Dr David LI thus, I particularly appreciate Dr David LI's presence today to support workers. Let us wait and see. If Dr David LI does not support us, he may as well take a rest earlier.*(Laughter)* I only need a few more votes.

We all know that Mr WONG Ting-kwong should originally follow the voting preference of the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB), but, he has said that he would apply for an exemption. I do not understand why he has to apply for an exemption and why the DAB allows him to be exempted. Mr IP Kwok-him has travelled to Taiwan to handle official business relating to the Urban Renewal Authority, and Miss Tanya CHAN is out of town. It does not matter if Tanya CHAN and "Long Hair" are out of town, but, it would be more crucial if Mr IP Kwok-him is out of town. Nevertheless, I am not particularly blaming him because all Honourable colleagues should be treated fairly. Yet, as we all know, his vote is relatively more important. I do not know where Dr LAM Tai-fai has gone, but, I do not think he has been kept in custody. WONG Yuk-man should not treat the Government unjustly and say that someone on the Government's side has locked him in a room.*(Laughter)* I believe the Government dares not keep Dr LAM Tai-fai in custody. However, I

have not seen him and I am also worried about his safety.*(Laughter)* Hence, I call upon Dr LAM Tai-fai to come back soon, otherwise, I would wonder if he has got caught in an accident. I really hope that he would come back and support us. Lastly, according to my rough estimation, we still need two to three votes at the moment. If one or two Honourable colleagues can change your mind and vote in support of my amendment, I may have just about enough votes. Therefore, I hope Honourable colleagues would really have the conscience when casting their sacred votes. Thank you, Deputy Chairman.

(Dr LEUNG Ka-lau indicated a wish to speak)

DEPUTY CHAIRMAN (in Cantonese): Dr LEUNG Ka-lau, you are speaking for the fourth time.

DR LEUNG KA-LAU (in Cantonese): Am I already speaking for the fourth time? My remarks are rather brief, please allow me to repeat some remarks that I have just given

DEPUTY CHAIRMAN (in Cantonese): Excuse me but I would like to correct myself. I have just made a mistake; you are speaking for the third time now.

DR LEUNG KA-LAU (in Cantonese): I am sorry that I have also forgotten about that. As I have noticed, Dr Raymond HO was not present earlier on and he might not have listened to a point I just made. Perhaps I can ask him for some professional advice. We just argued about whether reviews should be conducted once every two years or once every year, and I have said at the outset that, when we are dealing with a system Dr Raymond HO is from the engineering sector and he should understand that it would be best for adjustments to be made more frequently when we are controlling a system as it will become more stable. And, when we are making adjustments, it would be best for adjustments to be made by a smaller extent as it would be easier for the system to become stable, especially when we do not know much about the system. As Mr Paul TSE has said a while ago, this is something new and we do not know if fixing the minimum wage rate at \$24 would be too low, and whether fixing it at

\$33 would be too high. When we are not sure about the merits of the system, it would be best for adjustments to be made more frequently. However, it would be best for adjustments to be made by a smaller extent; otherwise, the system will become very unstable.

According to my understanding, the engineering sector should be very familiar about this aspect as they are professionals and they know how to make the system more stable. In that case, in connection with the adjustment of the minimum wage rate, if the Government can really undertake to conduct reviews once every year — regardless of whether this amendment would later be passed, or whether the Government would take the initiative to undertake to conduct reviews once every year — this is actually a safety valve. If the Government undertakes that reviews would be conducted once every year, even if we initially fix the minimum wage rate at a lower level of, say, \$24 — this is not my opinion as there may be a strong response — we may be willing to wait for a year to see to it that no problem has occurred, no company has closed down and the unemployment rate has not been affected. In other words, even if a lower rate is fixed initially, if the Government undertakes that reviews would be conducted once every year, all of us will be willing to wait. There will not be any problem.

If Honourable colleagues think that, in the long run, the Government is inclined towards conducting reviews once every two years, there will be fierce fights for every inch of land whenever a review is conducted. If the Government's economic data show that the inflation rate is 10% and the rate of economic growth is 10%, that is, a total of 10% in two years, workers will certainly make the greatest efforts to fight for a 10% wage increase. Otherwise, another review will only be conducted two years later. That is not a desirable system because when workers have fought for a 10% wage increase with their best efforts, there may not be any economic growth or inflation in the third year. Yet, it is going to be a major issue if the Government will only conduct a review in the third year. It will be too bad when a review is not conducted in the wake of economic growth, but reviews are conducted once every year when our economy slackens.

Why have I constantly said that I hope reviews would be conducted once every year? It is because I would like Honourable colleagues to have confidence and I think that this will make the system stable. If the Government conducts reviews once every year, for example, there is a 5% economic growth next year

but the Government is just willing to increase wages by 4%, though lagging behind a bit, it can explain to the labour sector that this may not be the case next year. As they only need to wait for one more year, they may not respond too strongly. The workers may have much stronger response if they most probably have to wait for two years. Dr Raymond HO has not yet stated his position but Mr Abraham SHEK has already done so. After Dr HO has listened to my remarks, I hope he would give us some professional advice, telling us what we can do to make the system stable and operate smoothly. Thank you, Deputy Chairman.

DEPUTY CHAIRMAN (in Cantonese): Does any other Member wish to speak? Dr Margaret NG, you are speaking for the second time.

DR MARGARET NG (in Cantonese): Deputy Chairman, excuse me, I thought that you would call upon Dr Raymond HO to speak first.

DEPUTY CHAIRMAN (in Cantonese): I have just noticed that you raised your hand to indicate your intention to speak before Dr Raymond HO did so, thus, I allow you to speak first. You are speaking for the second time.

DR MARGARET NG (in Cantonese): Deputy Chairman, if you would call upon Dr Raymond HO to speak first, I can definitely

DEPUTY CHAIRMAN (in Cantonese): I made the decision on the basis of the order in which you raised your hands. Please speak now.

DR MARGARET NG (in Cantonese): Deputy Chairman, I do not want to put more pressure on Dr Joseph LEE today and I am not considering the issue from the perspective of trade unions. Dr Raymond HO, Dr Joseph LEE and other Honourable colleagues have years of experience in the Legislative Council in enacting legislation and handling policy matters, and I trust that the same applies to Dr David LI. After the Government has formulated a policy, we would like it

to have desirable effects on society. Some issues were sometimes highly controversial, and we enacted a large number of highly controversial bills in the past, for example, the Securities and Futures Bill in 2000 and the one concerning whether banks should fall within the span of control of the Securities and Futures Commission. Regardless of how unhappy we are, after the passage of these bills, so long as there is an explicit system, we should act according to the system and the controversies will temporarily come to an end. Therefore, I hope Dr Joseph LEE would consider from the perspective of good legislation and effective governance. We seek to reduce controversies and relieve pressure through the establishment of a system.

Dr LEUNG Ka-lau has rightly said a while ago that, if reviews are conducted once every year on the minimum wage rate, there will be less pressure. However, if reviews are conducted once every two years or even at least once every two years (that is, not on a regular basis), we will hardly know if reviews will be conducted. I may ask for a review to be expeditiously conducted at a time when conducting reviews will bring most benefits to me. There will be greater pressure in that case. Thus, the most important point is not about the greater pressure that the review will put on employers or the expectations that employees will have but about whether we can do something in advance and whether we know what we should do. All of us do not want to pay tax but we will get prepared when we know that we have to make tax payments each year. We do not want our landlords to increase rents but we will get prepared when we know that landlords will increase rents when the leases expire. The pressure will then be relieved somehow.

As a lot of Honourable colleagues have said, they support the Government's proposal of conducting reviews at least once every two years because of flexibility, just as what the Secretary has emphasized. I cannot understand it and I wonder if Honourable colleagues have said that they want flexibility because they cannot divulge the real reasons. Flexibility may not be a good thing. For example, when I borrow money from Dr David LI's bank, I certainly hope that I can make repayments in a flexible manner. Nevertheless, an employee will become really worried when his employer wants to give him wages in a flexible manner. For this reason, flexibility only indicates that a person is not ready to face the reality. If reviews are conducted regularly, stably and systematically, all of us will have something to look forward to and we will know what we should do. If we are prepared for a review this year but the result

of the review is that the minimum wage rate will not be increased or will be maintained, we can do nothing about it because the rate has been endorsed and we can only fight for an adjustment next time. Working according to the system is actually more desirable.

So, Deputy Chairman, I would like to ask the Honourable colleagues who support a flexible review mechanism to explain the merits of having flexibility. As in the example I have just given, flexibility may not be a good thing. But, the merits of conducting reviews once every two years should be specified. Is it a good thing for the workers who have to put up with the minimum wage? Is it a good thing for the small and medium enterprises which have to put aside sufficient funds for hiring workers? Or is it a good thing for the Government? Flexibility is very often the best thing for the Government as I have observed. After a bill has been passed, the Government does not want to be excessively restrained by the law, and it chooses to act in the most beneficial way.

Deputy Chairman, we lack confidence in the Government for this reason. The Government's attitude is "lose-hit, win-take"; provided that we allow it to act in the most flexible manner, it will act according to its needs but not for the sake of fairness or the public. Deputy Chairman, the Government had so many bad records in the past. We place no trust in the Government for some reasons; it is just because its track records were really awful. I hope the Honourable colleagues concerned can explain to Honourable colleagues who support conducting annual reviews the merits of having flexibility. Is it something good for workers, employers, the Government, or those Honourable colleagues who have not made up their mind and are not sure if reviews should be conducted once every year or once every two years?

Deputy Chairman, in enacting legislation on minimum wage, we want to convey a message about social justice, and we are particularly fighting for workers who cannot make ends meet no matter how hard they work and whose labour is not respected. If we take into consideration the objectives of this Bill, should we consider what is good for them and for stabilizing our society and terminating controversies? Viewing from this angle, should we really not have so much flexibility? We may want more flexibility in respect of loan repayments but we may not want so much flexibility in respect of wage payments. Is that right? Thank you.

DR RAYMOND HO (in Cantonese): Deputy Chairman, I would like to make a response as Mr LEE Cheuk-yan and Dr LEUNG Ka-lau have just mentioned my name. First of all, there have been four overnight meetings since the reunification. I proposed a few years ago that we should have meetings overnight if there was unfinished business on the Agenda but there were not enough votes for my proposal. I am accustomed to working overnight; so, Honourable colleagues need not worry about me because I love working overnight.*(Laughter)*

Besides, I have not spoken after giving my remarks during the Second Reading debate. I have not spoken because I think my voting preference is already clear enough. As a habit, I only speak when I want to and I will not speak when I do not want to, and I give rather concise remarks.

Dr LEUNG should understand that a lot of work in hospitals has to be undertaken by engineers, especially about the operation of apparatus and equipment, and he understands very well that hospitals will have to close down if there are no engineers. I am currently a member of nine engineering professions and I will soon become a member of the tenth profession specializing in automation and instrumentation. It may not be necessary to make frequent adjustments to a lot of equipment; we should have confidence in the instrument, equipment and design, and it may not be necessary to frequently monitor or pay attention to its performance to determine whether it is effective. Frequent adjustments may not really be necessary.

Regarding this Bill, I believe the Government's judgment is correct, why? The civil service pay is reviewed once a year; I will certainly raise opposition if the Government is going to reduce wages. I have all along opposed the Government's initiative of legislating for wage reduction, but, the whole process is only completed after a few wage adjustments. There was an adjustment at the rate of 5.38% or so, followed by another adjustment a few months later, hence, I considered that too frequent. A review is conducted once every year. Many civil servants have indicated that an adjustment was followed by another adjustment a few months later. Is that a right thing to do?

Actually, since the Government has indicated that it will prepare a report as soon as practicable, and that it will conduct reviews at least once every two years, if the Government works with all its might, I consider it adequate. An interval

of two years is actually quite short mainly because our economic cycle has become shorter and shorter. Many indicators usually lag behind the times. Upon the commencement of an economic cycle, the effects will not be translated into immediate changes in standards of living. The actual effects usually lag behind the times. Should changes be made in response to market changes? Changes should not be immediately made in response to market changes, and even if surveys are immediately conducted, the changes may not be fully in line with our economic performance.

I am going to support the Government's proposal. Thank you, Deputy Chairman.

(Mr James TO indicated a wish to speak)

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

MR JAMES TO (in Cantonese): Deputy Chairman, I would make sure that I am speaking on this subject matter for the last time.

Deputy Chairman, I have been the legal adviser to the Association of Hong Kong Nursing Staff (AHKNS) for many years. Even though Dr Joseph LEE has made penetrating arguments and thorough considerations on this occasion, he is going to cast his vote on behalf of his functional constituency. He is a Member representing the AHKNS which is comprised of a majority of voters in the functional constituency. But, we inevitably may not understand the actual views of nursing staff. The AHKNS is the largest trade union of nursing staff, and Dr Joseph LEE is its Chairman and key member. He stood for election as a nursing staff representative and has become a Legislative Council Member representing nursing staff, so, his influence is significant. I really hope that Dr Joseph LEE would consider this issue very carefully. This is a very serious matter that is not just related to his independent views and whether he has made very careful considerations, but whether all nursing staff will be under immense pressure. In other words, when nursing staff or the representative they have elected Even though he has not said that nursing staff do not need minimum wage protection, the vote he is now going to cast will help determine whether many other workers

in need of minimum wage protection will get humble wage increases within a year or two (given a two-year cycle period). This is the symbolic meaning of his vote.

(THE CHAIRMAN resumed the Chair)

This issue is not that simple. It is not simply about whether we, pan-democratic Members, respect one another or whether we are good friends, as this will really affect the image of the nursing staff. I hope Dr Joseph LEE would think twice and see if he needs to have detailed discussions with his Executive Committee members again before deciding whether his voting inclination would be best for the AHKNS and the image of nursing staff. These are words from the bottom of my heart. Basing on my relationship with the AHKNS in the past decade or so, I cordially hope that he would consider this point carefully.

DR JOSEPH LEE (in Cantonese): Excuse me, Chairman, I have just said that it is not a problem for Honourable colleagues to criticize me, but, I have reservations if they criticize my profession and the AHKNS. I would like to clarify one point: I hope it would be seriously and solemnly put on record that, I, Joseph LEE, stood for election as an independent candidate, and I had not stood for election as the representative of the AHKNS as Mr James TO has just said. I admitted that the AHKNS supported me but the AHKNS had not sent me, Joseph LEE, to stand for the Legislative Council election. Since 1988 when we had a seat in this Council, — I am sorry that I am now speaking to clarify matters and I may have deviated from the present topic — I have all along assisted in electioneering; however, I know that it has never sent any representative to stand for a Legislative Council election. This is the first point that I would like to clarify. I am thankful to Mr James TO for serving as our legal adviser for more than a decade. But, it is rather strange that Mr James TO does not know that the AHKNS has never sent any representative to stand for a Legislative Council election. I hope it would be put on record today that I stood for election as an independent candidate.

I thank Mr James TO very much for reminding me the importance of my vote as a representative of nursing staff and as a nurse myself, and it will be undesirable if the image of nursing staff is affected. I made a similar remark when we discussed the constitutional reform package, that is, my sector gave me the mandate to cast this vote here. If the sector had the impression that I would adversely affect the image of nursing staff, and that I have done a disservice to grass-roots workers, they could vote me out. Thank you, Chairman.

MR LEE CHEUK-YAN (in Cantonese): Chairman, as Dr Raymond HO said he was used to staying up all night, I might as well respond to what he said just now. I think his views have tarnished the image of engineers. Let me divert a bit but I think you are better off supporting a review once every year. You are an engineer and I really do not understand the rationale behind your view. When you say some civil servants consider a review once every year too frequent, I have no idea with whom you have talked. I have really not heard about this before. If you say there are many civil servants in the engineering sector you represent, does it mean that you have thrown caution to the wind — as I told Dr Joseph LEE — and are now telling these engineers that it is alright to review their salary once every two years from now on? Are you telling this to the Government? Are you telling members of the engineering sector this very moment that it is alright to review their salary once every two years in future? No, you are not. I think if the salary of those in the engineering sector should no longer be reviewed once every year, you will also represent your sector and speak out against it. I think ultimately, the functional constituencies including the sector you represent should value justice. You have to consider whether the vote you cast is fair from the point of view of the whole society. If it is not fair, you are doing injustice to your sector and your profession.

Dr LEUNG Ka-lau just asked you how you consider this matter from your professional point of view. I think it is actually quite simple. Professionally speaking, if engineers consider that their salary should be reviewed once every year, then there is no reason why workers should not have a salary increase once every year, especially when many engineers working on construction projects have a close relationship with the workers. As they, so to speak, "eat from the same table", is it fair that the salary of engineers is to be reviewed once every year, while the workers they work with cannot have the same treatment? Are you doing injustice to your profession? Of course, you may not care about it

because you have already been elected to represent your sector, and you can easily say, "don't elect me next time". But things should not be like that because it is ultimately about what is fair. It is not about whether you can get re-elected. You may be re-elected but is it really fair? I only want to ask you this. If you say this is fair from your professional point of view, then please explain why it is so?

Thank you, Chairman.

DR RAYMOND HO (in Cantonese): Chairman, first of all, I would like to respond to the question put to me by Dr LEUNG Ka-lau just now about whether I have heard his speech. I have not left this meeting at all during these three days. Even when I was not in this Chamber, I have been listening to the speeches of Members in other rooms or the Ante-chamber. I paid attention to what everybody said even when I was having meals.

Regarding the position of government engineers, their pay follows that of the MPS. For civil servants, their annual pay adjustment would be made according to established procedures. However, if a review is to be conducted, the result would invariably be to their disadvantage. Moreover, there are many long-standing and complicated issues between the engineers and the Government, such as what sort of private sector companies should be used as the subject of pay trend surveys. These matters are too complicated and I really do not want to go into details here.

The engineers have not said definitely whether the review should be conducted once every year or every two years. And this is not what I just said. Nonetheless, this is not the first time LEE Cheuk-yan does something like this. Sometimes, the things he quoted would be completely different from what the speaker said originally. What I said was "some" engineers considered that if the review was conducted annually, there would be another round of review soon after the first one was completed. I only said "some" engineers told me that. I did not say all government engineers were of the same view. There is a difference between the two. After all, government engineers only make up a portion of all engineers. And I can say it does not matter if I get re-elected or not. As far as the functional constituencies are concerned, I had to stand for each election since the reunification and I was never elected uncontested. As I

am still here, it means that my electors from the engineering profession endorse my view as I am conversant with their stands and views. I am only saying that some engineers have stated their view as to whether it is necessary to review once every year because whenever there is a review, the results are invariably to their disadvantage. Moreover, the engineering sector has many electors which are small and medium enterprises. As I understand, we do not have a consensus view on this matter. What I want to say is that I have already expressed my personal view on the matter, and I do not want to repeat here. Thank you, Chairman.

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

(No Member indicated a wish to speak)

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Chairman, our discussion has already lasted 35 hours. So, I want to very briefly and concisely respond to two points and clarify two points. I hope Members will, after hearing my speech, no longer worry that we have muddled up the issue. I want to clarify two points because Member have not seriously listened to my speech earlier.

The first point I want to clarify is that under our present proposal, the rate of minimum wage is to be reviewed "at least once in every two years". This is very clear. It means that when necessary, the conduct of rate reviews is not limited to once every two years. This is very clear and we are not trying to create confusion. I must bring out this point because we have not precluded the possibility of conducting reviews once a year when necessary. Then why we did not write this into the Bill in the first place? Because we need to allow for some flexibility. But Members now want to formalize the whole thing and that is exactly how this fits into the three elements I just mentioned, that is, firstly to formalize the system, secondly to safeguard the interest of employees and thirdly, to allow for flexibility. To allow for flexibility means that wage level can either be increased or reduced, or in other words, it can go up or down. Some Honourable Members just asked what sort of flexibility is offered by a two-year interval. Perhaps Honourable Members have not listened carefully to my speech just now. When the economy is worsening due to undue impact, that means

economic conditions are bad, then there will be pressure for downward adjustment of wage levels. In that case, should we not give the Minimum Wage Commission some more time to gather additional statistical data so that it can have a better understanding of the situation before making a recommendation? This absolutely works to the advantage of the employees. How can that be something bad? Please do not always hold this wrong perception that we only favour the employers. Honestly, we really want to achieve a "win-win-win" situation.

There is another point which I want to clarify. Dr LEUNG Ka-lau always asks us what sort of statistical data we will look at. This is in fact a mammoth task. If Members have paid attention to the past 30 meetings, they can see that an evidence-based approach will be used in the setting of minimum wage. The Census and Statistics Department will conduct surveys every year. We have done it once and the same thing will be done every year and on the same scale. Of course, the whole thing will be done more smoothly. Survey findings will be published every year. This is a sunshine policy of the Government and it is done with transparency. The results will be made known to Honourable Members and we will also brief the Panel on Manpower accordingly. All these statistical data are completely open. If the data point to a need for review, we will do so immediately. So, what is there to worry about? We should look at this matter in a calm and placid manner. We always stress that the Government is dedicated towards establishing a minimum wage. If the Government has other intentions, why do we have to establish a minimum wage? We honestly hope that it can help our people as well as the grass-roots workers. But we must also minimize the negative impacts and ensure that our economy is not adversely affected and that there will be no major loss of low-paid jobs.

Therefore, I can answer Dr Joseph LEE's question clearly. We will collect and publish the statistical data every year and it will be open for all to see. If the data indicate a need for review, we will initiate the review process immediately. However, we have written into the laws our commitment to conduct rate reviews at least once in every two years. Let me say a bit more. In the Mainland, the minimum wage legislation also specifies that adjustment should be made not less than once in every two years. We have in fact made reference to the labour legislation in the Mainland in this respect. Regarding overseas practices, Honourable Members have provided us with a lot of information but such is not entirely correct. After careful study, we know that

the cycle of review is not specified in many places including the United Kingdom, the United States, Canada, Ireland, Japan and Taiwan. There is no regulation at all, but it does not mean that they will not do it. Our case is the same. We have not put that down in the legislation in the first place, but it does not mean that we will not do it. However, Honourable Members do not take our word for it and maintain that if it is not written in the law, we will not do it. This is a big misunderstanding. I hope what I said will convince Members of the Government's intention.

Another point which I want to mention is that in the United Kingdom, the Low Pay Commission has deferred its report due to the impact of the recent financial tsunami so that it can have a better assessment on the situation and the statistical data. If a review is required to be conducted annually, is it possible that certain flexibility will be undermined? Therefore, I call on Members to consider the matter in a calm and placid manner.

Chairman, I have nothing more to add. Thank you.

MR LEE CHEUK-YAN (in Cantonese): Chairman, I seek clarification from the Secretary because the Secretary's proposal sounds not a bad idea but the fact could be the reverse. Why? He mentioned a point which I think is very important. He said that there will be no review in an economic downturn. Afterwards, the decision of whether a review will be conducted is to be made based on statistical data. Is he giving me an undertaking that there will be no review during an economic downturn and there will be a review only when the economy is bouncing back? Is that so? Why do I have to ask the question? Because that is what he said just now and everyone heard him clearly. But there is one point he did not mention. He said a decision of whether a review will be conducted is to be made after considering the statistical data. But what kind of data he is using to determine whether the economy has bounced back? If the review decision is purely based on an increasing GDP, that is OK. I just want him to make this point clear. He said it is based on statistical data. But have you seen the statistical data of the Census and Statistics Department? There are so many different statistical data

CHAIRMAN (in Cantonese): Mr LEE, please be concise.

MR LEE CHEUK-YAN (in Cantonese): I have been very concise. Have you seen the data? There are so many different data. Chairman, my question now is, given the many kinds of different data including hourly wage of workers, median hourly wage of workers in various sectors and industries, economic growth rate, inflation rate, how do I know what sort of data the Secretary will make reference to when deciding whether or not to conduct a review? Nonetheless, if the Secretary is clearly stating again his meaning that a review will not be conducted during an economic downturn and it will only be conducted when the economy turns around, I have to hear it clearly from him.

CHAIRMAN (in Cantonese): Secretary for Labour and Welfare, do you want to clarify?

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Chairman, I want to thank Mr LEE Cheuk-yan for seeking clarification. The example I just cited is very clear.

First, I will clarify again what I just said. Honourable Members must listen carefully and stop being emotional about the whole thing. Please consider the matter sensibly. I have said very clearly that we will definitely publish the reports of major surveys conducted by the Census and Statistics Department every year. And we will also brief Honourable Members through the Panel on Manpower. We will definitely make these reports and there will be complete statistical data to illustrate salary trend, whether the hourly wages of workers have increased, the operating conditions of small and medium enterprises in various industries, and so on. In other words, the reports for this year will be updated annually. It is something that will be done each year as this will become a statutory requirement. If the employers fail to respond, they will contravene the law. This will in fact become an annual exercise and provide very important basic information. That kind of basic information will not lie.

When Members, in the light of that kind of basic information on hand together with other statistical data, see a need for review, we will initiate the

review mechanism if it is supported by data. Nonetheless, we have basically stipulated in law that a review should be conducted at least once every two years. This is very clear. In that case, can the Secretary give us an undertaking that no review will be conducted during an economic downturn? I have not said so. I think the relevant Members are thinking too fast. My example is about flexibility. The duration of two years has the same benefit as the United Kingdom's current arrangement of asking the relevant commission not to submit its report so soon and wait for things to settle down. Is that not a good thing for the workers? When the economy is going down, we have to keep calm and analyse the data more carefully. This is exactly where the flexibility lies.

Thank you, Chairman.

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

MR WONG KWOK-HING (in Cantonese): After our debate for the whole night, I have lost count of how many hours have passed. Far from addressing the queries of Members who are fighting for an annual review, the several points made by the Secretary in response have created more questions on our part.

Chairman, as far as the fight for an annual review is concerned, I think no Members from any side have let their emotions rule. And neither is this fight about class interest. Instead, it is solely based on the consideration from the perspective of various sides as well as the overall society. I think we are really working from our hearts as we try to convince the Government. But what we said may not be something the Government likes to hear. However, we hope the Government can do well and the establishment of a minimum wage can stop the arguments and the conflicts from worsening. This is our intention. But to date, I think the Government has not listened and it just maintains its original stance.

When mentioning flexibility, the Secretary says the Census and Statistics Department (C&SD) will publish statistical data every year and when necessary — I have asked more than once what is the triggering point of this condition of "when necessary"? What is the starting point for initiating a review? As criticized by many Members, there is neither a time nor a standard. It is very

arbitrary. These uncertainties and unclear conditions are detrimental to the whole society especially the business environment.

Let me start from the business perspective. Many Honourable Members here come from the business sector and they are businessmen. When tendering for outsourcing projects, the companies can better budget for the tender price if they already know that according to usual practice, the Minimum Wage Commission (MWC) will publish a review report in a certain month every year. Budgeting is a must for business operation, is that right? There are many seasoned businessmen here and they have plenty of experience. Is that how one should do business? One must have certain expectation before they can make calculations.

However, they have to face this uncertain framework proposed by the Government and do not know what to do. Even with the reports published by the C&SD each year, nobody knows when the review findings will be available. While it is said that there will be a review once every two years, which month will it be? Therefore, there is absolutely no certainty. I want Honourable Members supporting the Government, especially those from the business sector, to ponder on this: Is their support for the Government's proposal really helping or ruining the Government? Is this beneficial or detrimental to business operation? Please ask and answer these questions. Just put the living of grass-roots workers aside and answer these questions first.

Furthermore, when we strongly put forward the proposal for an annual review, we have pointed out clearly at the outset that it is not just for the sake of the rights of grass-roots workers, but also for the benefit of society. It is hoped that by achieving a harmonious relationship between the employers and the employees, society can have more co-operation. As a step forward has been taken in terms of constitutional development, there should not be any untidy end when resolving the most deep-rooted conflicts of livelihood issues. I want very much to see this achieved.

Unfortunately, if, as indicated in the Secretary's response just now, the Government thinks it should adopt this unnatural and unjust principle, and introduce a review cycle that violates time-honoured practices — because the general cycle is to conduct reviews annually — and goes against human nature, it is in fact overturning all generally-recognized truths, am I right? The

Government has said repeatedly that it is a conventional practice for the C&SD to publish statistical data every year. I invite Members from the business sector to ponder on this: As the C&SD publishes the survey reports every year and the MWC is hesitant in taking action, what will be the response of society? There must be a lot of doubts and discontent. Are the authorities trying to alleviate the discontent, create conflicts or promote harmony?

As Secretary CHEUNG said, statistical reports will be submitted to the Panel on Manpower for discussion. If in future, this is going to be a regular agenda item for the Panel on Manpower every year — well, he has said so himself, then why create any dispute?

If the reports are to be published at a certain time every year, all parties including the businessmen and the workers can make their own planning according to the outcome of the statistical surveys. Why establish a doubtful, uncertain and controversial system that will create adversarial relationship between the employers and the employees? I think this is the biggest failure.

Chairman, in the past few years, that is, in the last term of the Legislative Council, because of the serious exploitation suffered by government outsourced workers — in fact, we have petitioned for this many times — we have fought for improvement by reflecting the situation to the former Chief Executive, TUNG Chee-hwa. The Government then drew up a standard employment contract for use by government service contractors in employing non-skilled workers. If I remember correctly, that was 1 May 2005. If I am wrong, Secretary CHEUNG can correct me.

Ladies and gentlemen, do you know that in this standard employment contract for use by government service contractors in employing non-skilled workers, what was said about wages? It said wages should be determined by making reference to the reports of the C&SD. The Government was also doing it once every year. How were the contract and the wage level drawn up? It was done once every year and it had been working well. My question is: Had it, as claimed by the Government now, created cyclical fluctuations, unrest or problems in business operation? That is completely not the case.

Chairman, from what I see, contractors of security, cleaning and maintenance services as well as management companies do not reject or resist the

idea of having a review once every year. In fact, they very much want to see the early legislation of minimum wage so that they know how to put up tenders. If they know the conclusion this year, they can use it as the basis to budget for the costs and have a total picture. With the Government's proposal of conducting biennial reviews, they cannot have a total picture and do not know what tender price to adopt. This also contravenes the long-established practice of the Government to follow the statistical data published by the C&SD every year. Why does the Government contravene its own practice? There is really no excuse for that.

Chairman, I want to raise a serious question in these last few minutes. If we support the Government's proposal of having a review once every two years, apart from creating the unfairness, the injustice, the conflicts and worsening conflicts I mentioned, we will also create a group of second class citizens, second class employees. My Honourable colleagues, if you cast such a vote, it will result in such a divisive outcome. I think this is something that we do not want to see.

In future, within the same organization, the salary of low-paid workers is to be reviewed once every two years while that of other employees is once every year. When other people get a pay rise, there is nothing for the low-paid workers and they can only hope for the same in the following year. Under the circumstances, can all the employees in this organization co-operate with one another? Can we have harmony in a society like this? The workers in society are divided into two groups. There are those whose salary is to be reviewed once a year and there are those second class employees, second class citizens whose salary is to be reviewed once every two years. This will "rip apart" our society and I am using this term very cautiously. In establishing this system, our society will be ripped apart. Then how can it create harmony in society?

As many Members have pointed out in their speeches just now and as I have said in the beginning, the Government's proposal will only lead to more street protests and demonstrations. There are now five types of government employees. If this system is to be implemented, those government outsourced workers, who can originally have an annual salary review by making reference to the statistics of the C&SD according to their contracts, will then be worse off in terms of employment condition. Has the Secretary thought about this problem? Under the new system, this group of employees having an existing contract will only have a salary review once every two years. Is the Secretary aware of the

potential crisis? That means on top of the five types of people providing services in the Government, another type will be added. In that case, who is going to catch the rats or even deal with the fallen trees?

Moreover, Chairman, I think from a political point of view, if the current-term SAR Government does not resolve the problem, this untidy end of controversy will be left to the next term. Once the next-term Government assumes office, it will have to deal with this problem. I honestly want to urge Members who love and support this Government and who are prepared to cast their votes to support the Government's proposal of conducting biennial reviews to seriously consider whether their votes are going to help or harm the Government? Please consider the consequences of the proposal.

In Hong Kong, we all live under the same roof, under the Victoria Peak and the Lion Rock. We all want what is best for Hong Kong. Today, many Members have time and again spoken vehemently about this issue and I can understand their love for Hong Kong and their wish for the Government to do a good job. I hope the Government can really take heed of these good but unpleasant advices.

Let me again appeal to those Members who are prepared to support the Government's proposal of conducting biennial reviews. Please think clearly what sort of consequences your vote will bring. I hope we can all think clearly what is best for Hong Kong.

Thank you, Chairman.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by Mr WONG Kwok-hing 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 Albert CHAN rose to claim a division.

CHAIRMAN (in Cantonese): Mr Albert CHAN 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:

Dr Margaret NG, Mr CHEUNG Man-kwong, Mr WONG Yung-kan, Ms LI Fung-ying, Mr Paul CHAN, Dr LEUNG Ka-lau, Mr CHEUNG Kwok-che, Mr IP Wai-ming and Dr PAN Pey-chyou voted for the amendment.

Dr Raymond HO, Dr David LI, Mrs Sophie LEUNG, Dr Philip WONG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Timothy FOK, Mr Tommy CHEUNG, Mr Vincent FANG, Dr Joseph LEE, Mr Jeffrey LAM, Mr Andrew LEUNG, Prof Patrick LAU and Mr Paul TSE voted against the amendment.

Mr WONG Ting-kwong abstained.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr Fred LI, Mr James TO, Mr CHAN Kam-lam, Mr LEUNG Yiu-chung, Ms Emily LAU, Mr Andrew CHENG, Mr TAM Yiu-chung, Mr Frederick FUNG, Ms Audrey EU, Mr WONG Kwok-hing, Mr LEE Wing-tat, Mr CHEUNG Hok-ming, Mr Ronny TONG, Mr KAM Nai-wai, Ms Cyd HO, Ms Starry LEE, Mr CHAN Hak-kan, Mr WONG Sing-chi,

Mr WONG Kwok-kin, Mr Alan LEONG, Mr Albert CHAN and Mr WONG Yuk-man voted for the amendment.

Mr LAU Kong-wah voted against the amendment.

THE CHAIRMAN, Mr Jasper TSANG, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 24 were present, nine were in favour of the amendment, 14 against it and one abstained; while among the Members returned by geographical constituencies through direct elections, 26 were present, 24 were in favour of the amendment and one against it. Since the question was not agreed by a majority of each of the two groups of Members present, he therefore declared that the amendment was negatived.

CLERK (in Cantonese): Clause 11 as amended.

CHAIRMAN (in Cantonese): As amendments to clause 11 have been passed earlier by the Committee of the whole Council, I now put the question to you and that is: That clause 11 as amended stands part of the Bill.

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

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): Secretary for Labour and Welfare, you may move your amendments.

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Chairman, I move the amendment to clause 13.

Proposed amendment

Clause 13 (see Annex I)

CHAIRMAN (in Cantonese): Before I put to you the question on the Secretary for Labour and Welfare's amendment, I wish to remind Members that if the Secretary for Labour and Welfare's amendment to clause 13 is passed, Mr LEE Cheuk-yan may not move his amendment.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by the Secretary for Labour and Welfare 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 WONG Kwok-kin rose to claim a division.

CHAIRMAN (in Cantonese): Mr WONG Kwok-kin 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.

Dr Raymond HO, Dr David LI, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Mr Timothy FOK, Mr TAM Yiu-chung, Mr Tommy CHEUNG, Mr Vincent FANG, Dr Joseph LEE, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong, Prof Patrick LAU, Ms Starry LEE, Mr CHAN Hak-kan, Mr Paul CHAN and Mr Paul TSE voted for the amendment.

Ms LI Fung-ying and Dr LEUNG Ka-lau voted against the amendment.

Mr WONG Kwok-hing, Mr WONG Kwok-kin, Mr IP Wai-ming and Dr PAN Pey-chyou abstained.

THE CHAIRMAN, Mr Jasper TSANG, did not cast any vote.

THE CHAIRMAN announced that there were 30 Members present, 23 were in favour of the amendment, two against it and four abstained. Since the question was agreed by a majority of the Members present, he therefore declared that the amendment was passed.

CLERK (in Cantonese): Clause 13 as amended.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clause 13 as amended stands 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.

MS CYD HO (in Cantonese): Chairman, I move the amendment to clause 15(4). Chairman, looking at the voting results just now, I think that even with the passage of the District Councils package, it may not have any diluting effect because we can all see how many votes we are short of in the defeat of Members' amendments.

Going back to clause 15(4), it is a provision under Part 4 — Miscellaneous of the Minimum Wage Bill (the Bill). This clause provides that the Chief Executive in Council may amend Schedule 3, and Schedule 3 is very simple with only 10 characters in the Chinese text and only five words in the English text. However, this is the most critical part of the whole Bill because this Schedule specifies that the Chief Executive in Council may, by notice published in the Gazette, stipulate the hourly wage rate and the effective date. The Legislative Council has debated for 35 hours and it is about two things really, that is, what the wage level is and when it is going to take effect. Although this Schedule is a very short one and put together with other miscellaneous provisions, this alone can wipe out the previous 14 clauses in the Bill which we have debated for 35 hours so far, as well as the ensuing eight clauses because the Chief Executive in Council will have supreme power. He alone can suggest to the Executive Council the wage level and the effective date. Therefore, if we confer this power to the Chief Executive without ascertaining the effect of this provision, we might render the whole Bill useless.

Talking about clause 15 of the Bill, I really have to go over the provisions one by one. Under clause 15(1), the Chief Executive is empowered to make Schedule 3 by notice published in the Gazette. Even though this power is conferred to him solely, it is alright. But the most terrifying thing is that as pointed out in clause 15(2), the Chief Executive does not have to follow the recommendation of the Minimum Wage Commission (MWC). In other words, the Chief Executive is not bound by MWC's recommendation as regards the content of the notice he publishes in the Gazette both in terms of the hourly wage rate and the effective date. Therefore, our debate in the past four hours and 40 minutes about whether a review should be conducted once every year or every two years can be futile really because after all that has been done, the final decision rests with the Chief Executive in Council no matter what recommendations the MWC has made.

In the MWC to be established by the Chief Executive, not more than three members will be appointed from independent academics and there will also be three representatives from the labour sector. Just now, we have spent four hours to debate on whether representatives from the labour sector should be appointed through "one trade union, one vote" election or nomination from the three major labour organizations of one representative each. Moreover, the MWC will have three official members. Therefore, the MWC has a lot of work to do. But notwithstanding, apart from the selection of members of the MWC by the Chief Executive, its recommendations are also subject to the final control by the Chief Executive because he can even use clause 15(4) to remove the power of the Legislative Council to amend subsidiary legislation. Ultimately, the truth is no matter how many provisions there are, the most powerful one is clause 15 with all its provisions added together.

Under clause 15(4), a new twist is added to the requirement if the Legislative Council wants to amend the hourly wage rate or the effective date specified in the notice published in the Gazette. Originally, the power of the Legislative Council to amend subsidiary legislation is specified in section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1). Under that section, the Legislative Council shall have 28 days to scrutinize subsidiary legislation subject to the negative vetting procedure. If considered inadequate, the vetting period may be extended by a further 21 days. The Legislative Council may also, by resolution, amend a piece of subsidiary legislation in any manner whatsoever consistent with the power to make such subsidiary legislation.

However, a new twist is added to the current clause 15(4) by specifying that any act of the Legislative Council to amend the notice is equivalent to wholly revoking the level of minimum wage specified in the notice. The same also applies if we want to amend the effective date, that is, it will be equivalent to wholly revoking the effective date. What is the objective result? It means that the Legislative Council can only revoke the notice to prevent the Chief Executive in Council from reducing wages. And if it is considered that the level of wage increase is insufficient, there is no way to make amendments. Or if Members whose aim is to maintain operating costs want to reduce the proposed rate of wage increase which they consider to be too high, there is also no way to do so. In other words, there is no room for discussion. The enactment of clause 15(4) is like "crash and burn".

Before our debate, the Government has already released information about why the Legislative Council should not be allowed to amend the notice. In the past few days, the reason was also cited by the Secretary repeatedly. It is because the Government considers that the level of minimum wage should be determined by an evidence-based approach. Of course, the ulterior meaning is that the Legislative Council is not adopting the evidence-based approach. It is that same old tune again. In other words, the Legislative Council is always politicizing the issues. That is indeed very unfair. If it is evidence-based, clause 15 of the Bill should clearly state that the Chief Executive shall have the responsibility to follow the recommendations of the MWC when specifying the level of minimum wage and the effective date by notice in the Gazette. It is because in theory, the MWC should have all the information and statistical data on hand. We also know that there will be new legislation to empower the C&SD to collect data from some operators. Our understanding is that these data and reports should be made public, or should at least be submitted to the MWC. If the Chief Executive can refuse to follow the evidence-based recommendations made by the MWC in respect of the level of minimum wage and the effective date, we must then ask: Does the Chief Executive have another set of data in his drawer? Otherwise, if we honestly believe that he is basing on evidence, how come we should accept that he can choose not to follow the MWC's recommendations and separately determine another minimum wage level and effective date?

Therefore, it is very clear that no matter how many reasons and how much data there are, it is ultimately the power and authority of the Chief Executive that

count. And where do his power and authority come from? They come from the coterie of 800 Election Committee members, and the number will be increased to 1 200 in future. What is the biggest function of this coterie? It is the use of political powers to enhance economic exploitation. That is what it is all about. Unlike what Dr LAM Tai-fai said, the Chief Executive's decision is not based on the so-called horizontal, vertical or crisscross estimations because theoretically, the data he gets should be identical to the MWC's data. The other data he gets are not based on computation of statistics and numbers but political calculations. Then we must ask: Why the stipulation of minimum wage and effective date would ultimately be based on the political calculations of one person instead of reasons and statistical data? How come the political calculations of one person can forestall the discussions of the community and the legislature? In fact, the Legislative Council can also get hold of the data. First, it is of course the reports of the C&SD, which should be open for inspection by the public and the legislature. If the Legislative Council has the power of amendment, it can, through the discussion process of the amendment, put pressure on the executive authorities to hand over all unreleased data so as to enable discussion by the whole community. In that case, the Chief Executive in Council can no longer make arbitrary decisions. In fact, in a civil society, a lot of useful surveys have been conducted by various organizations including trade organizations, think tanks and concern groups (for example, Oxfam) on a variety of subjects such as the respective percentages of operating costs spent by small businesses on rental and wages. These data can also be published so that the whole community can engage in an open and fair discussion before the level of minimum wage which affects a great number of workers is to be determined.

Chairman, I will then talk about the expansion of powers by the executive authorities. Regarding clause 15(4), it is actually intended to enable the executive authorities to expand its powers. This is not the first instance of such since 1997. There are at least two examples. The first one relates to a draconian provision under the legislation to implement civil service pay reduction which specifies that no legal proceedings shall be brought against the Government in this connection. Another example is the United Nations Sanctions Ordinance passed by the Provisional Legislative Council on 16 July 1997 which empowers the Chief Executive to make legislation to fulfil certain international obligations and implement bilateral agreements. The Legislative Council shall have no authority to amend such legislation. The separation of powers is a very important element of democracy. Although presently the Chief

Executive is not selected through universal suffrage and not all Members of the Legislative Council are returned by universal suffrage, the separation of powers is still very important to Hong Kong. It is the duty of the Legislative Council to scrutinize legislation and the executive authorities should not monopolize legislative powers. Initially, the Legislative Council's powers to scrutinize and amend legislation relating to export regulation on strategic commodities including anthrax, nuclear weapons, rockets, sarin and chemical warfare defoliants to foreign countries are all taken away and given to the Chief Executive. But now the executive authorities are going further by centralizing the legislative powers on livelihood issues into their own hands. This is a step towards a very dangerous direction because by slowly drilling a hole here and opening a crack there, the power of the Legislative Council of monitoring the executive authorities will be seriously undermined.

In fact, many definitions and procedures in the laws of Hong Kong are stipulated under the Interpretation and General Clauses Ordinance (Cap. 1). The general clauses should be applicable under any circumstances. But if we drill one hole after another, these general clauses will gradually lose their universality, or at least as we are seeing now, the whole thing is heading towards a very dangerous direction with the inclusion of an exceptional requirement in the Bill. Hence, Chairman, I move to delete clause 15(4) and seek Members' support therefor.

Proposed amendment

Clause 15 (see Annex I)

MR ANDREW CHENG (in Cantonese): Chairman, it is now 12.50 am and I think we have to spend some more time on the Bill before we approach its Third Reading. I think those mainstay Members who have spoken a lot in the previous discussions about the amendments are now either eating mid-night snacks or resting upstairs. It is just as good that I can stand in for a while and I think the Secretary may also need some rest.

Insofar as this Minimum Wage Bill (the Bill) is concerned, just as what I mentioned when speaking on the resumption of the Second Reading debate, I was not a member of the relevant Bills Committee. Therefore, I do not intend to

repeat any of the delicate deliberations of the Bill. All along, my intention is to make a 15-minute concluding speech on Ms Cyd HO's amendment in relation to the power of the Legislative Council to amend the hourly wage rate and the effective date. Hence, Chairman, I hope you will allow me to talk about such issues as the frequency of review (that is, once every year or every two years), the composition of the Minimum Wage Commission (MWC), and so on. I hope you will allow me to slightly touch on those aspects because they are related after all.

I support this amendment proposed by Cyd HO because some of the amendments just now have been negated one after another. We can see that the amendment most likely to be passed is the one about whether a review of the minimum wage rate should be conducted once every year or every two years. But notwithstanding the far greater number of aye votes than nay votes, the amendment was struck down due to the separate voting system. Chairman, this is most defeating. During our previous discussion on the constitutional reform package, I think we have already explained the reasons many times. Therefore, I have no intention to repeat those again and again. However, this is about the face and dignity of the executive authorities.

Regarding the issue about the review frequency of once every year or every two years, Chairman, I have mentioned to you just now when we had mid-night snacks together that I have never in my dream thought that the debate would last some six hours. I honestly do not know why the Government is so stubborn, self-opinionated and persistent on that issue. Moreover, during the many times the Secretary was lobbying me, he did say that it was not a big deal for them as the review might still be conducted once every year. It is just a matter of how the provision is presently drafted. If that is the case, how come the relationship between the legislature and the executive has worsened to this point? Why amendments proposed by Members in the Legislative Council are unlikely to get passed after separate voting? Whenever the Government considers our proposals worth supporting, it would adopt the same as its amendments in the first place. And such amendments will invariably be passed because the ruling coalition will usually support the Government's amendments and these amendments do not require separate voting. That is exactly what the deep-rooted conflicts in the functions of the Legislative Council are about.

While I support the amendment proposed by Cyd HO, I also understand the Government's viewpoint when it was lobbying for my support, that is, not many

countries in the world would present the legislation specifying the minimum wage rate to their legislature or parliament. I understand and concur with this viewpoint. But why is this Council losing faith about the composition of the MWC? Regarding the composition of the MWC, some of its members may be very conservative and they are not limited to business leaders. Even other members or the academics selected by the Government may be very conservative, such as conservative economists. Coupled with the fact that the official members also have voting rights, all these have made us lose faith in the Government and the MWC. That is why we hope the Legislative Council can act as the gatekeeper. Although not all Members of the Legislative Council are directly-elected by "one man, one vote", we still hope that with at least 30 directly-elected Members returned through the geographical constituencies in the Legislative Council — Chairman, the number of such Members will be increased to 35 in the next term and there will also be five Members returned from the super District Council functional constituency — they can truly represent the public interests of the people. The Government always considers that if everything is presented to the Legislative Council, they will become politicized. That is why when the Secretary was lobbying us, he would say the final decision on the minimum wage level should be left to the MWC because the matter would become politicized if left to this Council.

Chairman, I want to raise one point. Whenever we discussed issues about fare increases in the past, the Government always said that the Legislative Council would oppose all fare increases and the matter would be politicized. That is why a fare adjustment mechanism whereby fares can be adjusted upward or downward (the fare adjustment mechanism) is devised. Many a times, both this Council and the Government will try to think of something to avoid giving the impression of politicization. For livelihood issues, there is the fare adjustment mechanism. We can at least reach an agreement with the Government and work in concord so that the fare adjustment mechanism can materialize. While nobody knows how much longer the fare adjustment mechanism would be implemented and whether it will become an effective mechanism allowing for both downward and upward fare adjustments, this Council is at least willing to study these livelihood issues together with the Government in order to identify solutions that work best for the interests of the public.

It is the same with minimum wage. Of course, I hope this amendment can be passed today. But we are all too aware of the cold hard truth about how slim

that chance is. My speech now is for record purpose. Through the issue of minimum wage, I want to convey my steadfast stand on these problems and voice out our worries. As a government, its actions are stubborn. As a government, its actions are without any mandate from the people. As a government, its stance on the MWC and how the same is conveyed through its expressions and actions are conservative. Chairman, as I said on the resumption of Second Reading debate of the Bill, I have utterly no confidence about the appointment of members of the MWC by the Chief Executive, Donald TSANG. If the members he appoints from the business sector are extremely conservative and they are themselves paying very low hourly wages to their employees, what will the hourly rate of minimum wage be with these members sitting on the MWC? This is the question we worry about most.

Of course, many Honourable colleagues would say that we have too many conspiracy theories. Our society has already become very polarized and we have failed to reach any consensus, let alone muster our strengths to address the economic problems by working together. But who actually creates the polarization and lack of cohesiveness in our society as well as the conspiracy theories? If the Government only minds about keeping its face and dignity and insists on controlling all powers, the Legislative Council will become a vase. The issue of separate voting has made this Council, particularly Members returned by geographical constituencies through direct elections, seem to be feeble and utterly powerless. This is not beneficial to the people of Hong Kong.

Therefore, I want to stress again that while both the Government and our Honourable colleagues feel that we should stop having so many arguments and put down our differences, particularly when the Government has repeatedly said that it will concentrate on improving the economy after the passage of the constitutional reform package, it does not mean that the Government can really improve the economy merely by saying that it will concentrate its efforts on doing so. If the Government wants to concentrate on improving the economy, there must be solidarity and mutual respect in the community. However, it seems that the reality is whenever we reach the stage of separate voting, we are forced to come to terms with a government having no mandate because we simply cannot change the powerful yet draconian plans and policies of the Government. In the long run, conflicts will occur among trade unions. Just now, we can all see how violent the arguments were during discussion about the

representatives of labour organizations in the Commission. I simply do not understand why the labour organizations have also become polarized and are wrestling with each other. Afterwards, the question about whether the MWC shall conduct a review once every year or every two years attracts another round of arguments. As a result, our society is being ripped apart, as mentioned by many Honourable colleagues repeatedly. "Society being ripped apart" — how painful it sounds — and I thought we would only be ripped apart on political issues involving cardinal principles. But nowadays, there is growing mistrust in politics and livelihood issues, among labour organizations, between labour organizations and business sector, between labour organizations and the academia, or even among political parties. Who is responsible for that?

I want the Government to seriously think about this. Although the Secretary is now taking a rest, I hope the Permanent Secretary staying in this Chamber is listening to and making notes about what I have said. Having been Members of the Legislative Council for a long time, we have witnessed the unhealthy trend of parliamentary development and government policies since the reunification. Therefore, I am not convinced by the Government's saying that the level of minimum wage should not be amended by this Council. If our Government has mandate from the people or if the Commission can really balance the interests of all concerned parties, I am then convinced that it might not be necessary for the Legislative Council to fight for a role in making amendments. But unfortunately, things do not go as one wishes.

Chairman, I am really very sleepy now and I think all those in the Chamber are also very tired. Honestly, it is not easy for someone of my age to stick around until 1 am to speak. Of course, many would say, "Andrew, you are not the oldest around here." But Chairman, many doctors — we also have some doctors here — have reminded us that we should go to sleep before 1 am because detoxification in the liver takes place before 1 am. If we sleep after 1 am, it is particularly harmful to the liver. If at the same time, we are feeling unhappy or arguing vigorously, it is even more harmful to the liver. That is why I have tried my best to exercise self-control and avoid making speeches during the previous motions. I have saved all the points I want to make until this 15-minute speech after the resumption of Second Reading debate on the Bill. And I want them be put on record. Although I know very well that the amendment will be negated, I still hope that we are losing a glorious battle as illustrated by the

previous results of separate voting. Why do the executive authorities have to make Members of the Legislative Council feel so feeble and powerless? Some Members who support the Government may think otherwise in their hearts. But as they belong to the ruling coalition, they have no choice but support the Government on certain issues. That is why the Government should seriously review these issues.

Chairman, let me conclude by saying this: On the issue of minimum wage, I am of course delighted with the resolution and commitment shown by the Government in presenting the Bill to this Council. However, it has created a lot of problems (including whether the Commission should conduct a review once every year or every two years) resulting in further polarization in this Council and the community. Thank you.

MR RONNY TONG (in Cantonese): Chairman, the time now is well beyond 1 am in the morning. I think many Honourable colleagues are asleep and the Secretary is not in this Chamber. As I am sitting here, I hear my Honourable colleague who can easily be the youngest amongst his peers talking about his advanced age. This really makes me filled with emotions.

I totally agree with Ms Cyd HO's point that this amendment could be the most important amendment in the entire Bill and it highlights the most unacceptable major flaw in the Bill. Chairman, Mr Andrew CHENG may be too tired and his stance towards the Government is very gentle in his speech just now. He thinks that seemingly, all these are done because the Government has to uphold its dignity. Chairman, I beg to differ on that.

I have pointed out in my speech just now as well as my speeches in the first day of debate that the most disappointing point about the Bill is the Government's failure to address the problem of mistrust between the employers and the employees as well as between the Government and the people. Moreover, the Government has acted in an uncivilized, unacceptable and totalitarian manner which only serves to deepen the mistrust and makes the co-operation between the legislature and the executive authorities more difficult.

Why do I say that the mistrust will be deepened? Just now, I mention that the entire Bill is only designed to facilitate the SAR Government to centralize in

its own hands all decisive powers including the appointment of members of the MWC, participation in the MWC's work, influence on the voting decision of the MWC, non-disclosure of the reports of the MWC and the Chief Executive's privilege to reject the recommendations of the MWC submitted to the Chief Executive in Council. Finally, it comes to clause 15(4) — the provision under our scrutiny now — which destroys the last line of defence, that is, the functions of the Legislative Council.

Apart from being a totalitarian act which deepens our mutual distrust, it also completely violates the spirit of the law-making system in the SAR, or it may even contravene the Basic Law. Chairman, why do I say so? I want to remind the Secretary — he is back now — what Mr Ji Pengfei, the former Chairman of the Drafting Committee for the Basic Law, said in the National People's Congress in 1990. He described the relationship between the executive branch and the legislature of HKSAR as follows: "The executive authorities and the legislature should regulate each other as well as co-ordinate their activities. To maintain Hong Kong's stability and administrative efficiency, the Chief Executive must have real power which, at the same time, should be subject to some restrictions". Through this legislation, the SAR Government is taking away the power of amendment of the Legislative Council. What restriction is there?

Chairman, it is stipulated in Article 73(1) of the Basic Law that the primary function of the Legislative Council is "to enact, amend or repeal laws in accordance with the provisions of this Law and legal procedures". Why does the SAR Government act in such a draconian manner, so much so that the power of the Legislative Council to amend laws is taken away?

Moreover, Chairman, clause 15(4) has completely overturned the stance always maintained and emphasized by the Government that the Commission will adopt an evidence-based approach and that it is an independent and trust-worthy commission impartial to either the employer or the employee. If that is the case, why does the Chief Executive need to reserve the right not to accept the Commission's decisions?

Chairman, as I have said before, the Secretary has cited the same arrangement in the legislation of many other countries to illustrate that it is nothing strange. But if we consider the political system of these countries, we will soon realize that their governments are all elected by the people having

adequate mandate. But the same cannot be said for our Chief Executive. Our Chief Executive was elected by the business sector and he always gives the impression of tilting towards the business sector. He has more than once publicly proclaimed, and is practicing daily, the so-called affinity distinction policy. In that case, how can one be convinced that this piece of minimum wage legislation can establish a system that will win the trust of everybody, particularly the wage earners?

I absolutely do not understand why clause 15(4) is included in the Bill. When the Secretary asked the Civic Party not to support Cyd HO's amendment, I have politely answered him on Tuesday. Today, I want to reiterate my answer as follows for record purpose. If the Chief Executive has undertaken not to interfere with the MWC's decisions, then the request for the Legislative Council not to use its political powers to interfere with the MWC's decisions is still understandable. But if the Chief Executive can willfully change the MWC's decisions, and if he can ignore the functions of the Legislative Council when submitting the decisions thereto and treat the Legislative Council like a rubber stamp by giving us only the choice of take it or leave it, then there is no way we can accept this provision.

Chairman, the Secretary may well say that the Legislative Council could veto the decisions. Chairman, this is exactly what the SAR Government has always enjoyed doing, that is, pushing the Legislative Council to a point of no return. Strictly speaking, it is hijacking the Legislative Council. It is really quite simple. If at a certain stage, the minimum wage level has completely fallen behind the economic situation of Hong Kong and the wage earners who are facing great difficulties expect an increase in the minimum wage level, but the Chief Executive then decides to cut the minimum wage rate recommended by the MWC by half and submits his decision to the Legislative Council, what should we do? Should we reject the decision? If we reject it, the wage earners will fail to get the protection offered by this legislation. If we do not reject it, the decision is so unfair. This is extremely unfair for the Legislative Council.

Chairman, this is a matter of cardinal importance and a matter of principle. As I said just now, it is also a constitutional issue. I think no Legislative Council Member should oppose Ms Cyd HO's amendment because we are just upholding the fundamental constitutional functions and basic dignity of the Legislative Council. This is also the only defence we have to restrict the Chief

Executive's authoritarian powers. Therefore, I am sorry to say to the Secretary that we have no choice but support Ms Cyd HO's amendment, unless you can give an unswerving promise that the Chief Executive will not use his powers to veto the decisions of the MWC.

MR WONG YUK-MAN (in Cantonese): Chairman, the consecutive four-day debate on minimum wage has enabled Hong Kong people to better see how deplorable Hong Kong's political system is. In this Legislative Council, how come Members having majority public mandate should become the minority? As we can see from the voting result just now, even though the Government has won, it is an embarrassing victory. If the Government knows what is shame, about this voting result This voting result will be put in the record of history and Hong Kong people watching live broadcast of this Council meeting are all witnesses. Secretary CHEUNG, the result is 33 votes against 15 votes, but the 33 votes that represent the views of the people have lost.

These crimes perpetuate in this Council and it is also a classic voting result. In the newspapers two days after, any journalists, editors or commentators having some conscience should pinpoint this voting result as an illustration of how deplorable this political system is. This Council subsequently voted on the Government's amendment to conduct a review once every two years. There were only 30 Members present in the voting. If one Member had left, the meeting would have been adjourned due to the absence of a quorum. The Government should feel embarrassed though its amendment had been passed.

Insofar as the debate on legislating for minimum wage is concerned, we always expect to hear some quality debate speeches. But many people get entangled by the details or are simply arguing for the sake of argument. Say Dr Joseph LEE who is against the demand for having a review once every year no matter what, why then did he say so much? He is wasting our time by talking again and again. In the end, that is how he vote which is also a classic scene. He said it had nothing to do with the pan-democratic camp, but it must have something to do with the trade unions, right? He said it also had nothing to do with the trade unions because he was not elected by the trade unions. If our politics is at such a stage, how deplorable it is.

The legislature is returned by elections and the executive authorities must be accountable to the legislature. Chairman, you said two days ago that the relationship between the legislature and the executive branch was "not that good, nor that bad (*in Putonghua*)". I do not quite agree with this saying. This kind of voting results is polarizing and ripping apart our society. In that case, how can a good relationship exist between the executive branch and the legislature? An administratively totalitarian and draconian government demands total victory. Sometimes when it wins, it will "reap the benefits and yet pretend to be decent". I use this expression not only to reprimand the Democratic Party, but also the Government. The classic case is when Secretary Stephen LAM last said, "good fowls choose the trees on which they will perch".

CHAIRMAN (in Cantonese): Mr WONG, are you speaking on this amendment?

MR WONG YUK-MAN (in Cantonese): Insofar as the relationship between the executive branch and the legislature is concerned, our present discussion is about the legislature having no powers to amend the level of minimum wage. Why does the legislature have no power? But is it not clearly written in the Interpretation and General Clauses Ordinance? It clearly mentions subsidiary legislation laid at the table of the Legislative Council. But the Government still acts foul and cites the same practice in the United Kingdom. As Mr Ronny TONG just mentioned, the United Kingdom government is elected and ours is not. It is laughable that the Government should use this as an explanation.

Chairman, how can a good relationship exist between the executive branch and the legislature? Therefore, I have to respond to the viewpoint you mentioned two days ago because it is like you have said nothing and both sides share the blame. How can they have a good relationship? Even if it is good, it is only good for some people and that is the pro-establishment camp, right? It is not good for those with public mandate who win more votes and represent more than three million people. How can it be good for them?

Just as Mr Andrew CHENG said, they would feel feeble and powerless. As Members of the Legislative Council, what can they say to others? How can they represent the people? The Legislative Council has several important

functions. First, to enact laws. Second, to monitor the Government. Third, to raise questions on the work of the Government. It also has the power to approve the budget and the power of endorsement. However, all these powers we have are incomplete and we cannot even have one single power to make amendments. How can something like that be justified? The Government is acting foul, right?

Therefore, we certainly support the amendment proposed by Ms Cyd HO to clause 15(4). The amendment must be supported in principle. How can I, as a representative of public mandate and a directly-elected member of the legislature, accept the Government's proposal that we cannot amend the level of minimum wage? This matter is already decided by the Chief Executive out of his own will but the Government says it is not because there is the Minimum Wage Commission (MWC). As we pointed out a couple of days ago, how representative this MWC is? Out of its 12 members, only three are from the labour sector, three from the business sector, three from the academia and another three from the Government.

Secretary CHEUNG, I think you have been very patient and you always give explanations patiently. You say Members should trust you and that the determination of minimum wage will be evidence-based. You keep repeating those points. But we just don't trust you. I am very sorry but you have mentioned the crux of the problem. You say we should trust you and that the decision will be evidence-based. Also, members of this MWC are very objective. But we just don't trust you because we have neither trust for the underlying system nor the Chief Executive nor the executive-led system. Many things done by the Government are completely against public sentiment. What actually is the purpose of making this legislation? Why is the Government making this legislation in a sneaky and shady manner? If it has the guts, then stop legislating and go back to promoting the Wage Protection Movement for all I care.

If the Government wants to do good with this legislation, should it not go all the way? Now, the Government will still be criticized after doing its work. I can tell you this: In this Sunday's City Forum, the people will no doubt reprimand the functional constituencies (FCs). I am telling you that I expect this topic be discussed at the programme and the people will no doubt reprimand you. I advise the Government not to send any officials to attend the programme. I will also call my young friends tomorrow and encourage them to attend the City

Forum programme in Victoria Park on Sunday with more friends. If they see any officials, they will treat the officials with some "hospitality".

The Government is helping to do evil by lining up with Members returned by FCs Members returned by FCs are laughing happily, do you know that? We can do nothing about them. They will say, "As long as we, Members returned by FCs, exist, we will not allow you, the so-called directly-elected Members, to promote populism. We are calling the shots because the 10-odd votes we hold can finish you off." Talking about this really makes me very angry. What is meant by increasing five FC seats with democratic elements that are to be elected democratically by one-man-one-vote, then "diluting" it just try "diluting" and show me the results — CHEUNG Man-kwong is not here — how to "dilute" when there is only one term left? They will still be allowed to do evil here. How can they be "diluted"? What we can expect is that when there are 35 FC seats, they can finish us off with just 18 votes. Just like what happens now, they can finish us off with 14 or 15 votes and that is easy. How can those zero-vote FC Members be "diluted"? That is why I feel very angry whenever we discuss these matters and I would be side-tracked, Chairman. In fact, I am still on track because my discussion is about how inept this legislature is. This legislature has 30 directly-elected Members. How come 33 votes would lose to 15 votes?

Chairman, you will go on a trip tomorrow and I of course bid you *Bon voyage*! On this occasion, you will meet with the parliamentarians in Jordan and Israel. Please remember to share this voting result with them and ask them what they think. Please accede to my request, Chairman. You have to mention this and I think you will consider my request. Please tell them we have this system of separate voting and FCs in order to safeguard the interests and balanced participation of all sectors. That is why we have this result. The Government is enacting a legislation. It turns out that during the scrutiny of the Bill, something like that should happen resulting in this voting result. Chairman, I put this request to you sincerely. You are the supreme leader of the Legislative Council and you should make this known to the parliamentarians in Jordan and Israel. Or you can see if they have similar separate voting system which is even more fantastic so that we can learn from it. If they have such a system, they may feel very good when comparing with us. But as far as I know, they have no such system.

Is it not funny? If we tell others, it will become a laughing stock in the world. This system of separate voting is unique in Hong Kong and it can be found in nowhere else. It will go on forever. FCs will go on forever and so will the system of separate voting. There is no doubt about it.

In the interpretation of the Basic Law made by the Standing Committee of National People's Congress (NPCSC) in 2004, separate voting was still there with no changes. In the 2007 NPCSC Decision, separate voting still remained unchanged. Even when the Chief Executive is elected by universal suffrage in 2017 and the Legislative Council in 2020, separate voting will still remain unchanged. How can that be changed? It would be most important to safeguard the interests of the capitalists because business interests must never be undermined in this legislature. That is the situation of Hong Kong. Therefore, Chairman, please remember this humble request of mine when you communicate and exchange views with the parliamentarians in Jordan and Israel during your visit. Please bring out this message and tell them we have some Members like this and ask them what they think about it.

Regarding Ms Cyd HO's amendment, the League of Social Democrats will of course give its support. But one of our buddies has gone to Thailand to attend a meeting and there are only two of us here. Nonetheless, this amendment will undoubtedly be negated. I cannot fight off my sleepiness now because I have a show tomorrow. But no matter what, I must speak on this subject because this is about the dignity of the legislature. As a legislature elected by the people, where does its dignity lie? As a legislature with seats returned by elections and tasked with monitoring the Government and enacting laws, the function of enacting laws is very important, "buddy". But whenever Members propose any private bills, they will be "finished off" by separate voting. Such bills are also subject to many restrictions under the Basic Law. In other words, two-thirds of our legislative powers have been taken away. In this legislature, the legislative powers of Members have become incomplete, and likewise is their powers of questioning the work of the Government. When they criticize the Government, the Government will only claim that it is doing a good job without paying any attention to what we said. That means Members only have half of the power to raise questions which is not effective at all. Insofar as the power of endorsement is concerned, we have no say in the appointment and removal of government officials. Our power of endorsement is only limited to the appointment of the

Chief Justice. As for the power to approve the budget, the pro-establishment camp holds the majority votes with 36 seats excluding the President. Therefore, the power of Members to approve the budget is also ineffectual.

This system will only go on attracting more and more anger and spite from the people. While legislating for minimum wage is a good thing in itself, the whole thing has become tarnished because the Government is adopting a "lose-hit, win-take" approach and must win to the fullest extent. As a result, this legislative exercise will create more uncertainties in society. I have pointed out time and again that true peace is not merely the absence of tension, it is the manifestation of justice. It is a quote from Martin Luther KING. He was not saying that the removal of disputes would bring harmony to families and society, Chairman. Instead, the prerequisite of building a harmonious society is the manifestation of justice. In a vote of 33 against 15 and the former loses, Chairman, how can justice be served?

DR MARGARET NG (in Cantonese): Chairman, I heard that Mr LEE Cheuk-yan has cried happy tears when the Minimum Wage Bill passed its Second Reading. I know he is in the Dining Hall he has returned now. I am afraid that Mr LEE will have to cry again but instead of crying happy tears, this time is bitter tears.

Chairman, I seldom consider myself smarter than Mr Ronny TONG but I think I am this time. First of all, Mr WONG Yuk-man, this Council has enacted laws that prohibit the amendment of certain subsidiary legislation such as those related to the laws about mutual legal assistance in criminal matters or reciprocal arrangements for the surrender of fugitive offenders, that is, the laws that Mr James TO is very familiar with. When the Government enters into bilateral agreements with some foreign countries, it can make certain orders. While these orders are subject to scrutiny by this Council, we can either revoke or accept them *per se* because this type of legislation is related to foreign affairs. The second point which is also the most important one is: We already have a model text. The model text refers to legislation already passed and vetted by this Council. If the provisions made by the Government (that is, regulations made pursuant to agreements entered into with other places) are similar to the model text, or if the differences are just minor or technical and not concerned with principles, it is

acceptable from this Council's point of view. Otherwise, they will have to be repealed.

Therefore, under the circumstances, we cannot make any amendments. We can only accept or revoke them. This is a reasonable arrangement. There is also other legislation which works in a similar fashion as the rules under subsidiary legislation. As the subject matter has been decided by a mechanism similar to arbitration, this Council will not interfere and make amendments after the decision is made. If considered inappropriate, the legislation will be vetoed. This is what we can do.

However, what has happened to the Minimum Wage Bill (the Bill) under scrutiny today? Chairman, I am afraid that Mr LEE Cheuk-yan has been fooled. If according to the Bill we examine today, a truly independent Minimum Wage Commission (MWC) will be established; if according to the law, the MWC will make its consideration against clear benchmarks and specific factors under an assessment mechanism so that even though the work of the MWC is not mechanical, it will follow certain objective standards and principles; if the recommendations made by this independent MWC will most certainly be accepted by the Chief Executive and implemented if all goes well; if according to the law, this independent MWC will conduct a review once every year; if we have a complete framework and system as such, I would say it is just natural that the legislature can only either accept or reject, but not amend, the minimum wage level determined under this mechanism. I would also withdraw my support for Ms Cyd HO's amendment without any hesitation because I think it is unnecessary. Moreover, if we have such a good system, we should let it run. However, that is not the truth. Chairman, I have been listening to the whole debate and most of the times, I am in this Chamber. I now understand that none of these fundamental and critical factors is real. The MWC is not independent. What are the criteria they use to determine the level of minimum wage? Those criteria are completely meaningless. Things can be done willfully and hence, the outcome is arbitrary. Also, let us not forget that while the minimum requirement is for a review to be conducted once every two years, we have to wait for the time when the executive authorities consider it appropriate to do so. If it is not for the immense pressure exerted by members in the Bills Committee, even the arrangement for biennial reviews is not available.

What is the meaning of such a minimum wage system? Chairman, we have to see clearly what it is about. The Bill looks as if it is scientific but what is it about? The Chief Executive will appoint a so-called MWC and this Commission will work in a black box so that the wage level will not be too high although it says that wage level will not be excessively low. When the executive authorities ask them to conduct a review, they will do so. If the Chief Executive does not like it, he can refuse to accept their recommendations. If the Chief Executive likes the recommendations, he can accept them. If the Legislative Council agrees, it can accept the Chief Executive's decisions. If the Legislative Council disagrees, it can reject the Chief Executive's decisions. But if you disagree with the setting of the first wage level, say \$30, \$24, \$27, \$29 or \$33, then there is nothing. If you agree, then that is it.

If the recommendation after review is to reduce the minimum wage level by \$2 or increase by \$1 and if you consider such recommendation inappropriate, you can decide for yourself whether to take it or leave it. If Ms Cyd HO's amendment is negatived, this will be the situation after the Bill is enacted. This is the outcome of our 30-odd-hour discussion.

Chairman, a sense of *déjà vu* has prompted me to go over the relevant information. While we previously discussed a repeal provision under clause 18, as if controlled by some unknown forces, Cap. 63 was not repealed. What is Cap. 63 about? Chairman, due to other reasons, this Council has reviewed Cap. 63. My friends in the labour sector are a bunch of dedicated and kind-hearted souls. They think that as there is a provision about minimum wage under the Trade Boards Ordinance which permits the fixing of minimum rates of wages, the workers can get a minimum wage. But Members can just turn to section 1 of the Ordinance section 1 is the short title let us turn to section 2 which explains in no uncertain terms the substance of this system. I will quickly read out what is stated in subsection (1), "The Chief Executive in Council may, at any time he thinks fit, by Government notification published in the Gazette, fix minimum rates of wages for any trade in Hong Kong either generally or in any specified area or district in any case in which he is satisfied that the minimum rates of wages being paid to any persons employed in any such trade are unreasonably low. Every notification fixing minimum rates of wages may be varied from time to time or revoked".

In other words, the Chief Executive can decide when to establish the minimum wage, when to amend the established minimum wage level, whether there is a need to fix minimum wage and whether there is a need to vary or revoke the same.

Then subsection (2) goes on to provide that for the purpose of instituting an inquiry, certain Trade Boards may be established. However, members of these Trade Boards are to be appointed by the Chief Executive. If anyone is interested, you can revisit who have sat on these Trade Boards. The most important point is that the Chief Executive can choose to accept the recommendations of the Trade Boards or not. This is black-box operation as the Chief Executive is also not bound by the recommendations of the Trade Boards.

Chairman, let me put this question to my friends, Mr LEE Cheuk-yan, Mr LEUNG Yiu-chung, Mr WONG Kwok-hing and Mr IP Wai-ming: What is the difference between the Bill which we enact so elaborately today and the provision which I just read (that is, the arbitrary law enacted several dozen years ago)? Is there any improvement? What is the safeguard? What is so scientific about it? Insofar as the text is concerned, the Bill under our scrutiny today seems more objective. However, if Members consider its legal effect, they will find that these seeming improvements are all but illusory.

I read on the newspapers that the Bill is just a framework. Therefore, we enact a piece of minimum wage legislation today and Mr LEE Cheuk-yan is crying happy tears for it. He is so happy but it is only a token. Chairman, some tokens are genuine, such as the gold medal that is made of real gold, but this token is a fake one. Honestly, I cannot tell if there is any actual difference. Maybe it can give Members of this Council who are fighting for labour rights some sort of backing to promote more actions in society.

As someone who has scrutinized a lot of bills and ordinances, no matter in the capacity of a Member of the Legislative Council or a practitioner of my legal profession, I cannot see any actual difference between the two. I am not speaking as a legal representative in court, but as a person who is used to reading these provisions. I honestly cannot see any difference at all.

On account of the above, I consider that the Bill has not implemented what needs to be done. Therefore, we have no choice but support Ms Cyd HO.

What actually is the conclusion Ms Cyd HO driving at? It is that the problem on hand cannot be resolved by the Government's proposal. The proposal cannot establish a *bona fide* minimum wage level that is fair. The Chief Executive and the MWC would not do what they are supposed to do, and the Legislative Council must step forward. When a certain figure is proposed to us, we do not care how this figure is arrived at. We should just consider this figure from political, economic and social perspectives and determine whether we should accept or reject it, or amend the same until we think it is correct.

Therefore, Chairman, I originally have not made up my mind about whether I should support Ms Cyd HO's amendment or not. But after our deliberations, I find that Ms Cyd HO's amendment is critical. If this amendment is not passed, I am afraid that this Bill will become completely useless. I cannot see the difference between this Bill and the conditions set under Cap. 63 which I read out just now. I very much hope that, in giving his response later on, the Secretary can explain to me the difference between the two. What I mean is not the difference in terms of drafting or anything superficial, but in terms of their legal effect.

Thank you, Chairman.

MR ALBERT HO (in Cantonese): Chairman, I have not spoken much in the past two days or so. But when we reach this part, I think it is one of the most central areas of the whole legislation and I must state clearly our reasons for supporting Ms Cyd HO's amendment. Actually, when I was speaking on the resumption of Second Reading debate on the Bill, I have mentioned that the central theme of the whole legislation can be summarized in two sentences. The first one is to empower the Chief Executive to present a figure of minimum wage to the legislature. The second one is to empower the legislature to accept or reject the figure. It is just that simple and all other bits are non-essential. For the so-called Minimum Wage Commission (MWC), if we take a closer look into its mode of operation, composition and so on, it is in fact irrelevant. The basket of factors is just for consideration and members of the MWC are all appointed by the Chief Executive. Having gone through the operation of the Commission and the factors to be considered, we know that there is no statutory provision to clearly guide the MWC about how to arrive at the minimum wage level. In other words, these so-called data are for reference only. With these data on hand

..... The Secretary always says collecting these data is a painstaking and mammoth task. With these data on hand, what will the MWC do to arrive at a conclusion? Is there any statutory methodology or formulae that can be used to arrive at a relatively objective and scientific conclusion? I think even the Secretary has no answer to that. That is why I have said before that if the same set of data is given to Tommy CHEUNG, Albert HO and LEE Cheuk-yan, each of us may have a different conclusion. Therefore, the conclusion is neither scientific nor objective.

Nonetheless, the Chief Executive still does not trust the MWC completely as he can choose not to accept any recommendations made by the MWC. In the end, I can tell you this in these simple terms: The decision of the Chief Executive is a political one. No matter how much work is done by the MWC and what methods it may claim to have used, the Chief Executive will ultimately make his decision according to the wish of those who elected him, that is, whether his decision is accepted by the 800-people small circle. This is pathetic, Chairman. Therefore, let me put it in another way, if, after all, the Chief Executive's decision is a political one, why can the Legislative Council not make a political decision to amend his decision? The Chief Executive cannot tell us that he has greater knowledge, more expert advice or better rationale than the Legislative Council because in the final analysis it is, I must stress again, but a political decision. If the Chief Executive's decision is a political one and he is elected by a small circle of 800 people, why can the Legislative Council, at least half of which is constituted by directly-elected Members, not make a political decision to amend his decision?

In fact, Secretary CHEUNG, you have no need to worry as it is very difficult to amend the Chief Executive's decision because of the separate voting system. As you can see from the voting record just now, it is virtually impossible to do so. But it is just as well because it can at least create some pressure. Members of the functional constituencies would also need to think about it and face society. Although the effect may be limited, this can give us more room to put pressure on the Chief Executive to hold more discussions or even bargain with different parties and groupings in the Legislative Council. I can say political decisions made this way are relatively safe. So why not take the advantage to do so? Therefore, we consider it necessary to make this amendment because it can give the legislature some bargaining power in respect of the political decisions made by the Chief Executive about recommendations on minimum wage in future. It is even more so because, as some Members have

pointed out just now, institutionally speaking, that is, according to our institutional traditions, the legislature should have the power to amend the motions or bills proposed by the Government. This is the normal practice and any deviation therefrom should be well justified. Margaret NG just cited an example concerning the scrutiny of legislation based on certain agreements as model text, that is, those legislation enacted according to signed agreements which are based on model text. Of course, we should not amend the legislation willfully or we are not even allowed to make amendments. That is understandable. However, in the matter under discussion which is a major livelihood issue involving the Government's political decisions, there is no reason why the legislature should be deprived of its long-standing powers of amendment. Therefore, I call on the Honourable colleagues to support Ms Cyd HO's amendment.

MR LEUNG YIU-CHUNG (in Cantonese): Chairman, in the last discussion session, although the outcome went as I predicted, I was indeed saddened when I heard some speeches from Honourable colleagues, which made me feel bad and desolate. Why would they say something like this? Many colleagues pointed out that those with higher pay can have more entitlements, that is, a review once every year to determine the range of salary adjustment. However, for workers whom we want to protect through legislation, they can only have a review once every two years. Let us not bestow more on those already earning high income. What about the low-income earners? The spirit of our legislation is to protect these people and let them have dignity. But instead, the above arrangement is discriminating against these people as they are put in a separate class with different treatment. This makes me feel very bad.

Chairman, you may ask me why I did not make this speech earlier and leave it until now. First, I do not want to prolong our previous discussion but this is directly related to the issue we discuss next. Why? The Secretary tells us not to feel so sad because while it is expressly provided under the law that a review be conducted once every two years, the authorities monitor the relevant statistical data every year. If the data point to a need for review, the review mechanism will be activated.

However, when Honourable Members keep asking the Secretary what criteria the Government will adopt to decide whether the review mechanism should be activated according to the data, the Secretary cannot give an answer.

According to the authorities, a review would be conducted once every two years and the review cycle would be shortened when necessary. However, I agree with Dr Margaret NG's view that the so-called flexibility is just rhetoric. They may be telling the labour sector not to worry so much because the review mechanism will be activated when necessary. They may also be telling the employers not to worry so much because a review will only be conducted once every two years. So why worry about it!

CHAIRMAN (in Cantonese): Mr LEUNG, you have already mentioned this viewpoint.

MR LEUNG YIU-CHUNG (in Cantonese): I am aware of that but this is related to my speech. I consider the mechanism for determining the minimum wage very important. However, it will be up to the Minimum Wage Commission (MWC), and not the Secretary himself, to decide whether the review mechanism should be activated. That is why this MWC is so important.

However, as we have mentioned in the previous discussion session, all members of the MWC will be appointed by the Chief Executive. He will also decide whether to accept the wage level determined by the MWC before presenting the same to the Legislative Council for scrutiny. What kind of scrutiny that is when we are given only two choices: take it or leave it? No other choices is available.

Chairman, why do I repeat what I have just said? Because this is really very important. The Secretary repeatedly asks us not to worry, saying that the Administration would monitor the statistical data. He even says the Administration will do so frequently. It will do it every year. If necessary, the mechanism will be activated resulting in the conduct of a review. But who will decide whether to activate the mechanism? Can it be our decision? I want the Secretary to answer me whether it can be our decision. The truth is it cannot be our decision and the Secretary will tell us later that the decision should of course be made by the MWC. But we honestly do not know what will the decision of the MWC be. No third party can take any actions and we can only wait.

If the MWC refuses to activate the mechanism, we can only wait. Upon the enactment of the legislation, a review will be conducted once every two years and problems will arise. As I said just now, Chairman, two years is quite a long period of time and many problems may have already surfaced. To date, we are more used to the occurrence of inflation every year instead of deflation. At times of inflation, a review once every two years will result in a significant increase in the minimum wage rate on aggregate. It is of course a good thing if the rate of increase is on the high side. However, members of the Commission are appointed by the Chief Executive and we honestly do not know what their considerations are. If they are worried that publishing a figure on the high side may scare off SMEs who are the employers, will they adjust the figure downward? It is possible for something like that to happen.

If the figure, after being adjusted downward, is approved by the Chief Executive, a proposal will be presented to this Council for scrutiny. If, during our scrutiny, this Council considers that the figure cannot keep up with the prevailing living standards and that it is lower than the aggregate inflation rate over two years, can we make any amendment? Of course not. What will happen finally? We can either reject or accept the figure. However, we know for sure the relevant figure cannot keep up with the prevailing living standards. What can we do? There is nothing we can say. At best, we can only reject the proposal. If we dare to reject the proposal, the Administration will stick to the previous figure which, frankly speaking, cannot keep up with the prevailing living standards at all. That is where the problem lies. Chairman, even though you say I am repeating myself, I consider it meaningful to say once again what I just said. It is relevant and brings out the biggest question, that is, this Council does not have the power to make amendments. We have no chance to adjust this figure. We only have the power to say yes or no. For example, if the level of minimum wage should be increased by 8%, but the proposed figure is just 4%, what can we do? Should we not reject the proposal? If we do so, we may even be deprived of the 4% increase because the Administration will just stick to the old figure. It is like our hands are tied and we are given a Hobson's choice. What is the difference between us and a rubber stamp? This Council will eventually become a rubber stamp if we must pass all the proposals presented to this Council. I have no choice at all. Even if I have, that is not a *bona fide* choice. It is but a Hobson's choice. It is even more tragic that we have to shoulder the blame as a result of this outcome. While in principle, we seem to have the power to safeguard the living standards of grass-roots workers, we cannot do so in reality.

I believe the present Bill will receive its Third Reading and be passed. We were very happy when the Bill resumed Second Reading debate because we finally have a framework and the Bill is likely to be passed. However, Chairman, I am still concerned that what we have done may turn out to be a disservice. Many a times, the workers say that what we have done are in fact hindering rather than helping them. This is our biggest worry. Of course, we do not want to be criticized or blamed by the workers as such. Neither do we want the Government to make laws that are hindering rather than helping us.

Mr WONG Kwok-hing has said time and again tonight that we want to have a harmonious society with consensus. We also want to enhance the living standards of the grassroots. This is our aspiration. Apart from enhancing the living standards of the grassroots, we also hope that they can live with dignity and enjoy the respect of the community. This is our expectation. What is the point of passing the present Bill today if it fails to achieve all these?

Therefore, I am filled with feelings today. After fighting all these years, we do not just want to help the grassroots improve their living standards. Most importantly, we want them to be respected and valued by others so that they no longer suffer from discrimination. However, the proposal of conducting biennial reviews just passed by this Council will create two distinct classes in an objective sense: a class of high-income earners and another class of low-income earners, and they have different treatment. How pathetic that is! Some workers may think that they are better off if no minimum wage is set because when they are employed by their employers, they can at least hope for a salary adjustment annually. But there is no hope at all now. Chairman, this is the truth. The private sector will usually have a salary review annually with suitable wage adjustments. However, with the stipulation of a review once every two years in the Bill, no one knows how many chances they will have for salary adjustment or whether their salary will be increased at all. That is what will happen. Dr Margaret NG said just now that I have turned from crying happy tears to crying bitter tears, but we really do not want to see this outcome.

Therefore, I earnestly hope that the voting result just now will not happen again. I also call on Members to come around and support Ms Cyd HO's amendment so that the grass-roots workers will genuinely have protection, dignity and respect.

Chairman, with these remarks, I so submit.

MR LEE CHEUK-YAN (in Cantonese): Chairman, I want to thank Dr Margaret NG for reminding me not to feel happy so early. She is so right. In fact, I have said all along that the whole legislation is completely manipulated by the Chief Executive including the final wage level. That is in fact also controlled by the Chief Executive because we must understand that even if the Minimum Wage Commission (MWC) has made a decision and submitted the same to the Chief Executive, he does not necessarily have to follow the MWC's decision even though members of the MWC are appointed by himself. Therefore, he sets up numerous barriers which finally — let me put it simply — means that everything is to be decided by the Chief Executive. Even during the stage when a proposal is presented to the Legislative Council, this Council cannot make any amendment. Insofar as this matter is concerned, I think the Government has really acted with foresight. Why do I say the Government has acted with foresight? Because the Government has already considered the scenario under which there is no separate voting in Hong Kong. Frankly speaking, even if the Legislative Council can make amendments, it would be to no avail because the motion would be defeated under the system of separate voting. If the Functional Constituencies (FCs) want to make amendments, our side of the Geographical Constituencies (GCs) may oppose. When the situation is reversed, say if the GCs want to make amendments, the FCs will likewise oppose. Therefore, the Government has acted with foresight in this matter. It may be looking beyond the time when universal suffrage is implemented. I honestly have not seen any government acting with such foresight. That is amazing.

Come to think about it, what will happen to the recommendation presented to the Legislative Council? What has happened to the previous amendment to conduct a review once every year? Obviously, the amendment to conduct a review once every year was defeated under separate voting. As such, we are forced to vote in support of the Government's amendment to conduct a review once every two years. Otherwise, there will be no review at all. Finally, we have no choice but to leave in protest. We protest against two things. The first one is the Government's underhand move to reverse the order of voting. Originally, the amendment proposed by the Government should be voted on first. But it turned out that the amendment proposed by Members was put to vote first. As the amendment proposed by Members was put to vote first, it was defeated because of separate voting. If the amendment proposed by the Government was put to vote first, we would vote down this amendment and the situation would be reversed. We would be, like Dr Joseph LEE, forced to choose between conducting a review once every year or no future reviews. He must then choose

to have a review once every year. Therefore, Dr Joseph LEE, the Government's underhand move is tailor-made for you. Now I really have a high regard for the one vote you hold. Therefore, we will surely have no choice. Given the underhand move of the Government, we have to leave in protest just now.

Nonetheless, Chairman, the objective of Ms Cyd HO's present amendment is merely to let the Legislative Council have the power of amendment. This is a fair request because the Legislative Council is constituted by elections. If the Chief Executive shall have the power to amend the MWC's decision, why can this Council not have the same power? If the Chief Executive tells me he does not have this power, then it is alright for the Legislative Council not to have this power because the positions of the legislature and the executive are relative. We are responsible for monitoring the Chief Executive and the Government on all matters. If the Government has certain powers, we should also have the powers. However, the Government has tried to mix things up and play with games, saying that the legislatures in many places of the world also do not have the power to make amendments. However, Chairman, I want to remind the Government that there is a saying, "customs varied in different villages". Basically, each place has its own constitutional arrangement. If no amendment shall be made according to its constitution, then no amendment can be made and minimum wage is no exception.

Let us look at the example of the United Kingdom. According to the Government, the United Kingdom Parliament cannot make amendments. But this saying has missed the point completely because the minimum wage rate in the United Kingdom is adjusted by way of subsidiary legislation. Under the United Kingdom's Statutory Instruments Act 1946, the Parliament can only approve or reject subsidiary legislation presented by the Government unless otherwise provided in the parent Act. According to the information of the United Kingdom Parliament, except in very rare cases, most of the subsidiary legislation falls under the category where no amendment can be made by the Parliament. Therefore, the United Kingdom Parliament apparently cannot amend the minimum wage rate because that is the case under the local legislative process and it is not a special arrangement made for minimum wage.

Therefore, in the case of Hong Kong, if the established arrangement in Hong Kong is to be followed, Chairman, we should be able to make amendments. It is as simple as that. Our request under this amendment is that the same arrangement applicable under other legislation shall also apply to the legislation

on minimum wage. Of course, the Government can say that other legislation is not dealt with in the same way. Just now, Dr Margaret NG also mentioned that it is specifically provided under some legislation that no amendment is to be made. Why is that so? Because the legislation may involve international agreements such as undertakings made by the Government on behalf of Hong Kong internationally and matters required to be implemented in Hong Kong. Of course, these cannot be amended. These laws should not be amended because they involve international agreements. But there are also some exceptions. However, I want to ask what is so exceptional about minimum wage that such a special arrangement has to be made? There is nothing. Then why can the Government not respect the representatives of public opinion? In the final analysis, allow me to say this, we are after all not that powerful because there is the arrangement of separate voting. In fact, it is pointless for us to propose any amendment. But notwithstanding my personal view that it is pointless, why do we have to fight for this power? This is purely a matter of principle. We do not want the Government to make an additional requirement for the minimum wage legislation so that it is different from other legislation — the requirement that no amendment is to be made and everything is manipulated by the Chief Executive. That is why we propose that amendments can be made to the relevant notices. This is also an act of protest so that the whole legislation is not completely manipulated by the Chief Executive. This is an anti-manipulation amendment even though manipulation will persist because as I just said, there is no way we can change the final decision of the Chief Executive under the separate voting system.

However, I think the Secretary has to admit the point I just mentioned (and he can clarify later), that is, the Chief Executive in Council has not indicated that it will certainly accept the level decided by the MWC. I am very interested to hear what he will say to my question: whether he must accept the level decided by the MWC. If his answer today is in the positive, then this will be put on record. But I am quite sure that he will not say so because if he does, it will bind the Executive Council and strip the Chief Executive of this power of control. Neither will the Secretary talk about the underlying spirit of the whole legislation. The spirit that he will talk about is the so-called balance, flexibility and safeguard for labour. However, Chairman, there is another underlying spirit, that is, total control by the Chief Executive. Thank you, Chairman.

MR FREDERICK FUNG (in Cantonese): Of the several proposed amendments to the Minimum Wage Bill (the Bill), I think two are most critical. We have just debated the first one, that is, the level of minimum wage should take into consideration livelihood needs. In other words, the substance of minimum wage should at least include the factors of consideration. The second one is the present amendment under debate.

This amendment is about power, that is, the power of decision, the procedures and the system. I think under the present arrangement proposed by the Government, all powers are completely handed over to the Chief Executive. We can see that three steps are involved. In the first step, all 12 members of the Minimum Wage Commission (MWC) are appointed by the Chief Executive. In the second step, three out of the 12 appointed members are government officials. Obviously, government officials are members of the Chief Executive's team and they represent the whole SAR Government. In other words, the Chief Executive appoints them to act according to his decision. For the remaining nine members, three each come from the labour sector, business sector and the academia respectively.

If we analyse these 12 members simply from the point of view of the interests they represent, we can see that the labour sector and the business sector share common as well as conflicting interests. They share common interests in the sense that the businessmen hire the workers and when profits are made, they can pay the workers as well as benefit themselves. They also have conflicting interests. Can the workers get reasonable pay and a fair share from the employers?

The third category, the academics, can be said to be neutral. As the academics are to be appointed by the Chief Executive, it will very much depend on the perspectives and values held by the Chief Executive and what he considers to be most helpful in addressing the problems relating to minimum wage he has in mind. Depending on the background, beliefs or economic theories practised by the appointed academics, different effects will be achieved. However, the academics seem to give the impression of being objective because they have no interests involved. Therefore, they will be partial neither to the industrial and business sectors nor the labour sector, and will consider the issue simply from the point of view of an academic. But let us not forget that the academics are in fact selected according to the preferences of the Chief Executive. The Chief

Executive selects a particular academic exactly because the academic researches he routinely conducts, his theories and conclusions, are endorsed by the Chief Executive. But in the process, it seems that the Chief Executive has nothing to do with it.

In the third step, which is of course the final hold, the Chief Executive will make the final decision. From start-up, process to decision, the whole thing is under the control of the Chief Executive. Of course, even if the Chief Executive has made his decision, it will have to be presented to the Legislative Council. Why does it have to be presented to the Legislative Council? First, the Legislative Council does not have the power to approve appointments. Actually, the list of appointment should be subject to amendment or veto by the Legislative Council. If any appointee is rejected by the Legislative Council, the Chief Executive should make another appointment until the Legislative Council is satisfied therewith. We know that this appointment system is adopted for certain ministerial posts in some western countries. However, we do not have this power in Hong Kong.

Second, we have no participation throughout the entire process. A proposal is presented to the Legislative Council only after the Government has submitted its report and a conclusion reached. We can neither participate in any discussions nor offer any advice throughout the entire process. After a proposal is presented to the Legislative Council, we cannot give any views. We can only decide whether to approve or reject it. We have no choice other than take it or leave it. However, it is not what a "choice" means. Let us take having a meal as an example. The choice can be having rice, noodle or porridge; or it can mean having beef, roasted pork, chicken, fish or vegetables. We in fact have no choice. We either eat it or not.

It is quite obvious from this process that the final decision on the level of minimum wage rests with the Chief Executive. Even though the MWC has come to a conclusion after discussion, the Chief Executive has the right to reject this conclusion and comes to his own conclusion. Therefore, insofar as this work process is concerned — from appointment, the MWC's discussion to the Chief Executive's decision — I think the system currently proposed by the Government is intended to give the Chief Executive the green light while helping him in gate-keeping and conferring him with powers. Insofar as the Legislative Council is concerned, we are the "three Nos" (三無) — not the writer "San Mao"

(三毛) — no power of appointment, no power of participation and no power of amendment.

Under the circumstances, how should we deal with this problem? Obviously, I think we all know that — in fact, it is not something known to a lot of people — Members of the Legislative Council do not have constitutional powers and law-making powers. We cannot propose certain legal systems. Even if we have to do so, we must obtain the consent of the Chief Executive. This basically means that we cannot amend the laws. Our role is quite passive. We can only make amendments to the legislation laid on the table of the Legislative Council by the Government within the bounds of such legislation. The proposed amendments are also subject to the gate-keeping of separate voting so much so that amendments proposed by Members can hardly get passed. The Legislative Council and its Members are surrounded by these systems so much so that Members can neither walk nor move. They can only stand still.

Of course, we are not satisfied with this arrangement. When compared with other legislatures or parliaments, our Legislative Council has very feeble powers. But does it mean that we have to give up under these circumstances? Chairman, let me tell you this. The labour sector and the people in the community have never given up on minimum wage. Some 30 years ago, we have no representative in the councils. In the past 20 years or so, we have elected representatives not only in the District Councils but also the Legislative Council. These representatives come from the labour sector and the district communities. Though the attainment of dual universal suffrage in the electoral system is becoming more and more difficult, we have always fought in a steadfast manner because it is our ultimate belief that as people's intelligence grows, there is still a chance that our fight will be successful some day.

Today, we hope this door can be opened. Although this is a narrow door which can only allow one hand to go through and the people have yet to see a complete system, the establishment of a minimum wage is in line with the aspiration of the people. Who can represent the aspiration of the people? Who else but the present Legislative Council? At least, the 60 Members of the Legislative Council are returned by different election methods. Half of us are returned by direct elections and the other half by elections of the functional constituencies. I await the changes in the coming one or two years so that all

Members of the Legislative Council are returned by direct elections representing all seven million people of Hong Kong.

Under the present circumstances, Chairman, I still think that this is a breakthrough. But I have to remind the Government and caution the Chief Executive that while this system has conferred unlimited powers to the Chief Executive, people with unlimited powers should be very careful. I do not mean to threaten. The word "careful" is used in relation to the responsibility one must shoulder when things go wrong. When the Chief Executive has unlimited powers, he would also have unlimited pressures. It would mean different levels of pressure if his decision is accepted by a minority, majority or absolute majority of the people. But obviously, this system has put the Chief Executive on the altar. Under this system, if the Chief Executive makes a wrong decision, he will not only be discredited and lose all reputation but he must also step down. This system has given him unlimited powers while making him face unlimited pressures.

In a democratic society, different opinions and conflicting views can be brought to the parliament so that these conflicts can be turned around under a civilized system. Through discussions and putting the matters to vote, a decision, system or outcome having most support from the people can be identified. However, the present system has adopted a mode of operation which goes against the spirit of democracy in the handling of a social conflict. This is what I mean by my reminder to the Government and caution to the Chief Executive just now.

Hong Kong is heading towards an opened door of powers. More and more people have the right to elect their Legislative Council Members. I hope the Chief Executive can be elected by universal suffrage in 2017. If a system that affects every citizen and all wage earners fail to develop under the same democratic spirit and towards the same democratic system so as to allow the intervention, participation or even decision-making by the people's representatives, this is surely not a democratic system. Ultimately, the decision-maker and the autocrat must shoulder the responsibility for their decisions.

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

Deputy Chairman, I do not agree with this system. Although we cannot change this system, I still agree that we must establish the minimum wage. I think in future, the Chief Executive will take the ultimate responsibility for this system. He must bear the final responsibility for his own decisions and this arrangement is totally against the working of a democratic society. Thank you, Deputy Chairman.

DR JOSEPH LEE (in Cantonese): Deputy Chairman, insofar as the Legislative Council is concerned, I consider the amendment proposed by Ms Cyd HO in relation to clause 15(4) a highly significant one because as a Member of the Legislative Council, I understand that we have two major functions, that is, to monitor the Government and to enact laws.

I think in this legislation on minimum wage, the Government has, to a certain extent, deprived the Legislative Council of its rightful powers. Apart from having a very significant symbolic meaning, this also has real significance. If this provision is enacted, it would mean that our powers as Members of the Legislative Council to monitor the implementation and legislation of minimum wage have been taken away. This is a very serious problem in relation to the whole legislation.

I have to thank Ms Cyd HO for proposing this amendment so that we, Members of the Legislative Council, can exercise the power conferred under Cap. 1 of the laws of Hong Kong (that is, Members of the Legislative Council shall have the power to amend subsidiary legislation) and discharge our functions properly. Apart from monitoring the Government, we must also express our utmost dissatisfaction to the Government's handling of the matter in the legislative process. Considering the above, I will support Ms Cyd HO's amendment.

Thank you, Deputy Chairman.

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

MR ALBERT CHAN (in Cantonese): Deputy Chairman, when Members of the League of Social Democrats denounced and criticized some political parties and

the Government for making U-turns, or going against their words and obligations for having the Government's constitutional reform package passed earlier, many Members and government officials kept emphasizing the need for inclusiveness, understanding and harmony.

When some disadvantaged groups or powerless organizations criticize or launch severe verbal attacks against the powerful and the influential, particularly the Government, the Government emphasizes the need for inclusiveness. However, when the Government is in full control, and when functional constituencies (FCs) collude with the Government to suppress the disadvantaged, the powers-that-be, including their lackeys, completely forget the need for inclusiveness and harmony, as they proposed earlier. When the Government is in full control, the disadvantaged are subject to its exploitation and suppression. Will it bear in mind the need for inclusiveness and understanding? Will it occur to the Government that the wages of these disadvantaged groups, or the vulnerable working class, should be handled with an inclusive attitude?

The Government has not acted in this manner. With power in its hands, it openly violates law and order. It acts as if it is a dog with the powerful and influential at its back, barking fiercely and even biting the disadvantaged. Many years ago, a book called *"The Ugly Chinaman and the Crisis of Chinese Culture"* was written by author Bo Yang. We can see from the process of enacting the legislation on minimum wage the ugliness of this Council, with the ugly faces of certain Members fully exposed. Even if the Government has now proposed enacting legislation on minimum wage, it is already way behind such places as the United Kingdom, the United States, European countries and Australia for at least five or six decades. In the 1930s, or seven decades ago, legislation was already enacted in the Republic of China for a protected minimum wage. Given that, under the appeal of Premier WEN, the Government thinks that harmony should be pursued and the deep-rooted conflicts and problems should be tackled, can it do better and demonstrate more tolerance? As it has often called for inclusiveness in society, can it do better? No. It will not allow any small gaps or less stringent control, for fear that the slaves will rise to rebellion. Such an attitude is even worse than that adopted by South Africa four or five decades ago.

The mentality adopted by the Government and these lackeys towards the disadvantaged and members of the working class in Hong Kong is the same as

that adopted by slave owners towards their slaves — obstacles are to be imposed one after another. While the law is already drafted by the Government, the 12 members of the MWC, most of whom are the Government's allies, are also appointed by the Chief Executive. The entire organ is manipulated by the Government. Then, the functions of the MWC are 100% tilted towards employers. Even its terms of reference benefit employers more than workers.

When it comes to salaries review, can the Government treat the disadvantaged more fairly by treating them like everyone else? The disadvantaged are not seeking privileges. The toiling members of the public have no power or influence. They merely ask the Government to treat them more fairly, instead of discriminating against them, deliberately imposing obstacles on them and stepping up manipulation. The answer from the Government is "no". What is more, the Government has even stepped up its constraints.

While civil service pay and the allowances received by Members of the Legislative Council are subject to an annual review and the salaries of senior government officials are increased annually in tandem with inflation, the wages of the lowest-paid in Hong Kong are to be reviewed biennially. They are subject to special discrimination, treatment as well as exploitation. Are government officials also humans? Do they have normal human feelings?

The lobbying campaign launched by the Government is indeed unprecedentedly vigorous. I really admire the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) for performing the entire act. Should the DAB enforce its party discipline so that its FC members must take sides, the Government might not be able to secure enough votes, right? What is more ridiculous is that, during the earlier voting, some Members — I do not bother to name them — belonging to trade unions and having no justifications to support the Government in conducting the review biennially gave countless excuses to support the Government's decision to conduct biennial reviews, obviously because the Government was afraid of failing to secure enough votes. They have even voted against the proposed annual review supported by almost every union representative and pan-democratic Member.

Subsequently, when it is pretty obvious that the Government has secured enough votes to veto Ms Cyd HO's amendment, these Members shed crocodile tears by supporting Ms HO's amendment. I cannot help but feel extremely annoyed when I see these ugly faces. As some FC Members had expressed their support for conducting annual reviews, the Government was very nervous when counting votes for its amendment. As a result, it employed every possible means to lobby people in all sides for support, including the insincere support rendered by the DAB. Then, some people were granted exemption. Some people were even found shedding crocodile tears. Do you agree that this Council has acted in the ugliest manner?

Therefore, Hong Kong people, especially members of the working class, must seek to be self-reliant and look clearly. Workers in Hong Kong are kindhearted, adorable and easily cheated. I have often found that Hong Kong people can be cheated easily. Moreover, they seem like they are fine even if they have been cheated again and again. Some people who find life miserable end up committing suicide. I know that there are quite a number of such cases. I have pointed out repeatedly in this Chamber that some people found life so miserable that they were forced to commit suicide. However, they should not choose to die alone. They should be accompanied by government officials, or someone they hated most, as what people on the Mainland do. If you hate "Big Guy", you should have him die with you. You should not go to die alone. You must stand forth and fight. If you have one or two persons to die with you, other government officials will panic, as will other political parties and tycoons. So, do not ever go to die alone. There are simply innumerable cases of people jumping to death from high-rises and killing themselves by burning charcoal.

The hard-toiling masses and the grassroots in Hong Kong must wake up to the fact that they are the victims of this system and government policies, that they must come out to fight as they have been driven into a corner by the lackeys. Even if they hide in a corner and kill themselves by burning charcoal or jump to death from high-rises, the Government will only shed crocodile tears in the end. When an incident occurs, the Social Welfare Department will provide psychological counselling and then give them some attention, or set aside \$10,000 or so from Comprehensive Social Security Assistance payments for their funeral expenses. However, the system will remain unchanged, and so will government policies. As the system remains as cruel as ever, the lackeys will continue to behave as if they have no human feelings, and government officials

remain as heartless as ever. As a result, the situation of Hong Kong people will remain unchanged.

Over the past decade or so, there have been repeated debates like this one. Whenever the Government waves its baton, the lackeys will take sides. In the end, the interests of the underprivileged class and the general public will be undermined. Collusion between the business sector and the Government continues; transfer of interest between interested parties continues; top government officials reaping money by joining big consortia after retirement continues; expansion of political parties by linking with certain powers-that-be continues; widening disparity between the rich and the poor continues; and worsening poverty problem also continues. Even though enacting legislation on minimum wage is a humble request, and minimum wage has become an established policy prevailing in various advanced societies and developed regions all over the world, we have been fighting so hard. When legislation can now be enacted, the Government is stepping up constraints and there are obstacles one after another.

Ms Cyd HO's proposed amendment is very humble. This is also what the legislature is duty-bound to do. Yet, like other proposals, it is also subject to exploitation. Earlier, when we discussed the establishment of the Minimum Wage Commission (MWC), limitations are imposed on its terms of reference, and reviews will be conducted biennially, and so on. All these can already be considered as constraints, right? Right before us is another restriction. In that case, why does the Government not stop short of legislating for minimum wage? Am I right? Why should we work so hard to enact legislation? After all, this system is devoid of democracy. The Chief Executive has to enact legislation on minimum wage because he is forced to do so by the senior echelon of the Communist Party. In order to comply with such orders from the senior echelon, he has to make a little effort to entertain the people because he was elected by coterie interest groups or groups with vested interest. Although the minimum wage system will only give workers at the lowest stratum a little bit more wages, it seems like killing those groups with vested interest. Then, there comes proposals of imposing obstacles one after another to prevent the labour sector from getting too much. Although they are so fat that they cannot even put on a pair of socks, they will not let the labour sector steal two grains of rice from them. An oppressive government will definitely drive the people to rebellion.

For the sake of entertaining Premier WEN, the Chief Executive has formulated some policies and said that the issue of deep-rooted conflicts can be ameliorated. However, owing to the erection of "obstacles" one after another, it will only give people an impression that there are many unreasonable and harsh requirements in this piece of legislation, and this will make the disadvantaged and people earning the minimum wage feel dissatisfied. Moreover, such dissatisfaction will accumulate, and when dissatisfaction reaches a certain degree, it will explode.

Hence, I predict that, with the erection of so many obstacles in the legislation on minimum wage, the anger of the toiling masses and the general public in Hong Kong will definitely aggravate. They will definitely step up their fight, too. You, the lackeys, must not bully the general public of Hong Kong so many times. There must be a limit. One day, blood will have to be paid by blood. The greater is the oppression, the stronger will be the rebellion.

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

MR PAUL TSE (in Cantonese): Deputy Chairman, it is indeed not easy for me to say something rational at this moment, but I will try to do my best.

Deputy Chairman, my position is known to Members and I do not want to repeat the reasons why I hold this view having regard to the conceptual aspect, Hong Kong's overall situation and the interest of various trades. To a certain extent, I believe I can apply my logic thoroughly in a more rational manner and put forth the following points. First of all, I do not support the existing legislation. However, I wonder if all other people are right and sensible while only I myself am not, or *vice versa*. It seems that not too many Members supporting this Bill want to express their views. On the contrary, Members supporting Ms Cyd HO's amendment are keen to speak. For record purpose, I think there is a need for me to express a balanced view for the sake of fairness.

Deputy Chairman, I agree that the Government seems to have concealed some facts and revealed only half the picture in dealing with this issue. On the one hand, it hopes to do something, but on the other hand, it has to be very cautious, seeking to achieve prudence while worrying about making mistakes. Or for the sake of fairness, it strives to act slowly to properly balance the interests

of various parties with a view to minimizing disputes. As a result, it has opted not to put the most crucial figure concerning the level of minimum wage in the legislation so that it can be debated in this Council, or even amended constantly in the future. For the sake of fairness, insofar as the amendment method is concerned, there were indeed past instances of other legislation introducing amendments by way of subsidiary legislation to facilitate amendments to figures, so as to dispense with the need of enacting legislation on every occasion. This is no exception. Of course, Members may criticize the Government for being too evasive. However, it is relatively fair to say that this can facilitate amendments made at any time, particularly as colleagues are in great favour of an annual revision, which is quite frequent. So, should legislation be enacted on every occasion, or should the usual practice of introducing amendments by way of subsidiary legislation be adopted? The problem is whether Members believe the Government is doing this for the sake of convenience or the Government is being evasive and filled with fear. There are no absolute answers to these questions. This is the first point.

Deputy Chairman, regarding the aforesaid usual practice, section 34(2) of the existing Interpretation and General Clauses Ordinance (Cap. 1) is precisely about subsidiary legislation. I do not understand entirely why Mr LEE Cheuk-yan queried the Government for doing without subsidiary legislation and pointed out many improper areas. I am not sure whether there is any misunderstanding between us. But, according to my understanding, it seems that amendments can be introduced by way of subsidiary legislation (or schedules) to be deliberated by the Legislative Council by way of negative vetting. If this is the case, I cannot see any major problems. However, as pointed out by me earlier, it all depends on whether there are other better options. However, it is normal to introduce amendments by way of subsidiary legislation.

Third, in Britain, similar cases are also dealt with in this manner, that is, by way of subsidiary legislation under the 1998 National Minimum Wage Act. The usual way of dealing with subsidiary legislation in Britain is, unless it is specified that the Parliament has the right to deal with or veto subsidiary legislation, the Parliament will, in theory, have no opportunities or power to deal with subsidiary legislation. As it is not specified in this piece of minimum wage legislation that the Parliament has the power to review, examine and even veto, the matter should be dealt with by way of subsidiary legislation. Hence, the Parliament does not have the power to deal with issues concerning the figures.

In fact, not only Britain has the practice of bypassing the Parliament. I note from some information that certain provinces in New Zealand and Canada, such as British Columbia and Ontario, which are more familiar to us, also adopt this practice. I also know that Australia, South Korea, Taiwan and France also adopt this practice. This practice is used probably for the sake of convenience or minimizing disputes over figures on every occasion. Therefore, unless Members have absolutely no trust in the Government, this practice is not unusual at all.

Deputy Chairman, Dr Margaret NG pointed out earlier that there was not much difference between this piece of legislation and the Trade Boards Ordinance enacted seven decades ago. I am quite fond of inquiring into the root of the matter. She also knows that I have read the relevant legislation. I find that, as I pointed out earlier, there are some very old practices in the legislation. For instance, it is specified that women shall be eligible as members of Trade Boards. This is obviously politically incorrect. This must be a thing of the past. In addition, there are provisions stating that on any prosecution of a person for failing to pay wages at not less than the minimum rate, it shall lie on that person to prove that he has not paid wages at less than the minimum rate. As a result of this, the onus of proof will undoubtedly be put on the defendant. We can see that the legislation is not only outdated, but also in breach of the Basic Law. Meanwhile, we can also see that there is a special way of calculating the minimum wage on a piece-work basis. We can tell immediately that this was how wages were calculated during the factory era of Hong Kong. Deputy Chairman, I do not know whether things were better or worse at that time, but I am convinced that it was more peaceful. Deputy Chairman, I do not agree entirely with Dr Margaret NG, though she has her justifications. After all, it is executive-led. Only the Chief Executive has or the Governor at that time had absolute power to determine the minimum wage level. Back in those years, it could be described as absolute power.

Of course, the membership of the boards was very much different. For the sake of fairness, some members were appointed by the Governor. Though the number of appointed members was not specified, a certain proportion of members were indeed appointed by the Governor. The remaining members were recommended by employers and employees for appointment by the Governor. Generally speaking, these members had representativeness. As there were no official members sitting on the boards, the final decision was, of

course, made by the Governor, without any need to notify the Legislative Council. The current practice of "negative vetting" was simply not existent at that time. Whether one considers this a black-box operation, executive-led or executive-domineering, it was, after all, more executive-led than it is now.

In fact, it is not a big deal even if Members agree that amendments should be introduced by way of subsidiary legislation. Whether Members agree or not, we just do not want to have too many disputes. Therefore, we will not get involved directly and have a say in the figures. As I have already mentioned this earlier, I do not want to repeat.

Deputy Chairman, it is not that I disagree with or oppose colleagues' earlier comments that we feel helpless about the Legislative Council, as it seems that many powers have been undermined or they cannot do what they ought to do, and even the powers conferred upon us by the Basic Law are apparently flawed. I agree with all this. I also feel helpless in doing a lot of things. Very often, we even find it incapable of doing anything about our proposals. However, the days when we could raise objection by "pounding on tables and chairs" — probably the days when I was a student — are long gone. During the drafting of the Basic Law, we managed to, despite our dissatisfaction in many areas, turn a colony established under a colonial system into a Hong Kong Special Administrative Region after reunification. To a certain extent, we manage to have more participation, though I am afraid that some colonial legacy still remains. In particular, as mentioned by me earlier, the most difficult problem encountered in drafting a new constitution is how to distribute powers between the executive organ and the legislature. But strangely, this part was passed swiftly during the formulation of the Basic Law. Apparently, the colonial political system was adopted completely by the SAR Government without too many disputes. As a result, almost everything is to be decided by the Chief Executive. Of course, structurally, this has something to do with history. In fact, we all know that the Governors in the past were basically not required to take the initiative to get close to the public in such manner. Although Mr Chris PATTEN went to eat egg tarts at that time, he did it selectively. On the contrary, the incumbent Chief Executive has often found himself being a target of criticism. Structurally, although everything is generally to be decided by the Chief Executive, the people's sentiment, culture and even the request of the media are different from what they were at that time.

I am afraid I have to stop now, although I still have a lot of reservations about the Bill. Since the Bill has to be passed whatsoever, I would like to repeat that, as this is a new drug, I hope it can be administered with greater flexibility to minimize disputes and prevent Members from "pounding on tables and chairs" in this Council during every debate on the relevant figures. Although Members might still feel dissatisfied, our powers are actually greater than the power conferred on Members under the legislation enacted seven decades ago. Although that piece of legislation has never been invoked, we can at least veto by way of negative vetting. Given the existing public sentiments and system, although the Chief Executive still has many controlling powers according to the law, I believe he will exercise great caution when exercising the relevant powers. This is the minimum degree of trust we should give him.

Overall speaking, I do not support Ms Cyd HO's amendment. Thank you, Deputy Chairman.

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

(No Member indicated a wish to speak)

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Deputy Chairman, I believe Members know clearly the position of the Government. We disagree with and oppose Ms Cyd HO's amendment. As I pointed out repeatedly earlier, since the community has divergent views on the statutory minimum wage (SMW) rate, and that the SMW rate will have far-reaching effects on the economy and employment condition in Hong Kong, we must strictly adhere to the evidence-based principle. I keep repeating this principle for it is really important. Exactly for this reason, in the course of formulating the mechanism and review, we hold fast to this doctrine. Really, we must base on figures and be objective and impartial by all means.

Members may have a misconception that we do not respect the Legislative Council. But definitely, we respect the Legislative Council. Many opinions expressed earlier pointed out that it would be a personal decision made by the Chief Executive. In this regard, Members may have some misunderstandings. If Members look at the Bill carefully, they will see that it is stated therein that the

decision will be made by the Chief Executive in Council. Hence, the decision is not made by an individual but under a mechanism. This is not a personal decision but have to be endorsed by the Executive Council before submitting to the Legislative Council. Besides, all subsidiary legislation is made by the Chief Executive in Council, and this is not decided solely by the Chief Executive. Hence, the Chief Executive in Council has the power to set the SMW rate. In principle, the Chief Executive in Council has the power to amend the recommendations of the Minimum Wage Commission (MWC). Members have to understand this.

However, I have to stress that the Legislative Council absolutely has the power to accept or veto the proposed SMW rate. Actually, you all have absolute power to veto that. You all have the power to do so. In other words, if Members are dissatisfied and consider the proposed SMW rate unreasonable, Members may veto it. Surely, if the proposal is voted down, the Government has to put in extra effort to examine the reasons why the Legislative Council considers the proposal undesirable. As a Director of Bureau, will I just leave it when the proposal is voted down by the Legislative Council? I cannot do so. I have to follow up the issue and identify Members' dissatisfaction, worries and concerns. The MWC will have to work on it again and submit another proposal. I wish Members understand that we absolutely respect Members. There is no question of being domineering or tyrannical. I hope Members will not think too far. We only want to be pragmatic.

Also, I would like to stress that the Provisional Minimum Wage Commission (PMWC) will consider a basket of economic indicators. I have already mentioned this earlier and would not repeat here. In addition to consulting the stakeholders, we will listen to the views of many other people in every consultation and review exercise. This time around, the PMWC has received views from several hundred organizations. Hence, this is not simply a review. Members said that this was just a review and queried why it could not be carried out. Members have to understand that a review cycle takes several months, which has to be carried out in an intensive and serious manner. Unless we conduct the review in a hasty manner, we have to carefully listen to views and try hard to understand those views; we have to collect views from various trades such as security, cleaning and catering through interviews. This is a stringent process which follows established procedures. Hence, when the proposal is

submitted to the Legislative Council, the Legislative Council will handle it in accordance with the established procedure, that is the negative vetting procedures.

I would like to respond to a Member who queries whether the arrangement violates the Basic Law and causes a lot of constitutional problems. There is no question of such problems, for unequivocal legal opinions about this have been sought in advance. Earlier on, several Members, who are experts in the legal field, pointed out that there were precedents. In addition to the ordinances mentioned by Dr Margaret NG earlier, orders made under Section 6B of the Import and Export Ordinance (Cap. 60) are also subject to the agreement of the Legislative Council. I would like to get across this message: We definitely will not do something illegal or against the law.

Moreover, we have drawn reference from the practices of other places. Mr Paul TSE has presented the many studies he has conducted, and he is one step faster than me in introducing those studies. However, please allow me to talk about this again in brief. In many places, the minimum wage is decided by an executive organ, which is usually a committee, and the Parliament has no role to play. These places include the Mainland and others like New Zealand, British Columbia (which Mr TSE has mentioned earlier) and Ontario of Canada, South Korea, Taiwan, France and Australia. As for the United Kingdom, though some Members consider that this is an established practice in the United Kingdom, the actual case is not as simple as that. According to the practice in the United Kingdom, for certain subsidiary legislation which is considered necessary to be scrutinized, vetoed or amended by the Parliament, corresponding arrangements about such legislative amendments will be stipulated in the principal ordinances. But insofar as minimum wage is concerned, the United Kingdom has not adopted this practice. Hence, Mr LEE Cheuk-yan should not assume that the United Kingdom will definitely do that. There are exceptions. Though it can do so, it has not. It is evident that it is of utmost importance for the entire mechanism to be evidence-based, objective and impartial. Actually, the many opinions expressed today can be summarized into one point: This mechanism is something new to Members. Surely, we will take Members' views into account and keep in close contact with Members, for in the implementation of this new mechanism, many problems will arise in future. I hope we will make concerted effort in the Legislative Council to accomplish this task. Thank you, Deputy Chairman.

DEPUTY CHAIRMAN (in Cantonese): Ms Cyd HO, do you wish to speak again?

MS CYD HO (in Cantonese): Yes, Deputy Chairman, I have to respond to a few points.

First, I have to respond to the comments made by Mr Paul TSE that Mr LEE Cheuk-yan opposed dealing with the matter by way of subsidiary legislation. In fact, we have no objection to dealing with this matter by way of subsidiary legislation because, very often, we have to keep abreast of the times. We have all along agreed that certain additions or deletions can be made at any time by way of subsidiary legislation. If everything has to be written in the principal legislation, the principal legislation will have to be amended on every occasion. Therefore, this is not the point of our argument.

Deputy Chairman, the point of our argument lies in the amendment made under clause 15(4) of the Bill to the scope covered by section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1). Under section 34(2) of the Interpretation and General Clauses Ordinance, the Legislative Council is allowed to amend the Schedule prescribing the minimum hourly wage "in any manner whatsoever consistent with the power to make such subsidiary legislation". This shows that the Legislative Council originally had such power to introduce amendments. However, an addition is now made to clause 15(4) of the Bill to the effect that "such subsidiary legislation shall be wholly revoked". Therefore, the two are different.

As regards the practice adopted in the United Kingdom as pointed out by the Secretary, I must repeat the information provided by Mr LEE Cheuk-yan earlier and explain it in greater detail. It is true that the subsidiary legislation of some overseas countries does not need to be passed by the legislature. However, this might just be a usual practice adopted by those countries in enacting legislation. Let me cite the United Kingdom as an example. Just now, Mr LEE Cheuk-yan mentioned the name of the relevant legislation — the Statutory Instruments Act 1946. According to information of the United Kingdom Parliament, except in very rare cases, most of the subsidiary legislation falls under the category where no amendment can be made by the Parliament. However, Hong Kong's Legislative Council is empowered to amend most of the subsidiary legislation except for legislation involving bilateral agreements,

international obligations, the Import and Export Ordinance and the Mutual Legal Assistance in Criminal Matters Ordinance as mentioned by us earlier, and matters pertaining to the United Nations sanctions, and so on. This piece of subsidiary legislation before us concerns issues pertaining to people's livelihood but not diplomatic or military matters. Neither are the authorities concerned required to discuss afresh with other countries after something has been vetoed or amended. It has nothing to do with all this. Therefore, I would like to request the Secretary not to cite the United Kingdom as an example again because it is unusual for amendments to be made by the United Kingdom Parliament, whereas only under very rare circumstances will we be disallowed from making amendments.

Next, Deputy Chairman, I would like to explain in greater detail the situations relevant to the Import and Export Ordinance and the Mutual Legal Assistance in Criminal Matters Ordinance. What does the Import and Export Ordinance deal with? Section 6B of the Ordinance deals with restrictions on import and export of strategic commodities, including anti-tank weapons, rockets, missiles, sarin, anthrax and nuclear reactors. The present approach adopted by the authorities is to equate minimum wage with these weapons of massive destruction. I understand that, for people who put the business environment above everything and dare not raise objection to rent increases proposed by landlords, the effective date and the level of a minimum wage are indeed weapons of massive destruction. However, are Members aware that, if the Legislative Council loses its power to introduce amendments, these weapons of massive destruction, which have been in existence for a long time, will continue to be used on grass-roots workers?

Furthermore, the Mutual Legal Assistance in Criminal Matters Ordinance has also invoked section 35(b) of the Interpretation and General Clauses Ordinance. However, as pointed out by Dr Margaret NG earlier, this concerns bilateral negotiations. If amendments are allowed to be introduced by the Legislative Council, the Government will be required to discuss afresh with the relevant countries and then table the amendments to the Legislative Council again. Therefore, we agree that this practice should apply to the fulfillment of international obligations and bilateral agreements. What we disagree most is that, under the United Nations Sanctions Ordinance, such power was conferred on the Administration by the Provisional Legislative Council. Once this hole is opened up, the Executive Authorities will continue to act in this manner.

In fact, Deputy Chairman, the whole piece of legislation is just a "big show". If clause 15 is retained, the previous "shows" are just "window-dressing". Even if my amendment is passed, it will merely become part of the "big show". Why? It is because it is specified in clause 15(2) that the Chief Executive in Council is not bound by the recommendations made by the Commission when the notice on the rate of minimum wage is published. In fact, this clause should be amended as well.

Furthermore, even if the Minimum Wage Commission (MWC) submits a report to the Chief Executive at an interval of one year, two years or five months, and no matter the economy is going up or down, clause 15(1) does not make it mandatory for the Chief Executive to publish an hourly wage rate in the Gazette. It is only specified in the provision that the Chief Executive may, by notice published in the Gazette, amend Schedule 3. After receiving a report from the MWC, the Chief Executive can choose not to do anything, just as he has not done anything and has not made any announcements 10 months after receiving a report submitted by the Commissioner on Interception of Communications and Surveillance. He absolutely enjoys such power. Therefore, government officials should not blame us for not believing in the Executive Authorities. It is not that we do not wish to believe in the Executive Authorities. We are forced to believe in the Chief Executive and believe that he will not behave in a too disgraceful manner. We cannot but believe that he will publish an hourly wage rate in the Gazette after receiving a report. In fact, even if clause 15(4) is deleted, the Chief Executive may still choose not to publish an hourly wage rate in the Gazette. He does not have to publish the latest wage level.

The Secretary has often emphasized that the approach is evidence-based. However, he did not answer the question I raised when delivering my first speech. If it is evidence-based, then all the data provided by the Census and Statistics Department should be submitted to the MWC. The Secretary has also said that the reports will be submitted to the Panel on Manpower. Am I right? This means that the same set of data will be used everywhere. So, what data has the Chief Executive hidden at the bottom of his drawer, so that he can choose not to follow the MWC recommendations? As I mentioned earlier, the only possibility is that the Chief Executive has got some data which cannot be publicized, and the data are manipulated by political calculations. However, if he has some other decent data, including the analysis made by the Government Economists, he should make it open to the public. There is no need for him to

engage in black-box operation. So, why should the Bill confer such powers on the Executive Authorities to make it possible for the Executive Authorities not to follow the Commission's recommendations and come up with another minimum wage level and effective date instead?

The Secretary has also mentioned that the decision was made by the Chief Executive in Council, not by the Chief Executive alone. However, I would like to ask the Secretary this question: Honestly, who will propose this agenda item to the Executive Council? Could Mr LEUNG Chun-ying alone propose an agenda item on minimum wage level? He has been most supportive of setting a minimum wage, and over the past couple of years, he has been advocating the setting of a minimum wage. So, could he propose an agenda item for this purpose? Could Mr LAU Kong-wah propose such an agenda item? As both the Hong Kong Federation of Trade Unions and the Democratic Alliance for the Betterment and Progress of Hong Kong are supportive of this piece of legislation, could their representatives propose such an agenda item in the Executive Council? Even if the Executive Council is implementing a collective responsibility system, this is not possible. The Secretary should not joke with us. Does he really think that the Executive Council is a collective organ? The first one to propose an agenda item has the greatest power. Of course, the Executive Council can veto, but in that case, it will have to publicize its agenda and retain all files, so that we will have a chance to see how many times the Executive Council has vetoed the agenda and the proposals. We have only seen Executive Council members come forward to speak without following the rule of collective confidentiality. However, after they claimed that they had raised objection, what was eventually launched by the Executive Council was different from Members' comments after the leakage of confidential information.

Hence, Deputy Chairman, we have proposed this amendment because regarding the minimum wage level, we believe that the powers of the Chief Executive should not be further enhanced, neither should he be allowed to hold fast to such powers. The amendment is also proposed because there is a problem with the system, that is, the separation of powers. In my opinion, all Members of this Council should support this amendment — sorry, I might need to use insulting expressions — it was very unfortunate for the Provisional Legislative Council to resort to self-castration because many of the Members at that time were not aware of the fact that the Provisional Legislative Council came

into being after all elected Members had alighted. But today, half of the Members here are returned by elections recognized by members of the public, whereas the remaining Members are returned by 200 000-odd electors. The duty of the Legislative Council is to scrutinize and enact legislation. I cannot see why some Members here have to oppose this amendment. Even if some Members oppose enacting legislation on minimum wage, they cannot give up performing the basic functions of the Legislative Council.

Thank you, Deputy Chairman.

DR MARGARET NG (in Cantonese): Deputy Chairman, I do not want to make a long speech. I would like to say a few words about the issue pointed out by Ms Cyd HO earlier, that is, how should this Council handle subsidiary legislation in accordance with Chapter 1 of the Laws of Hong Kong.

Many Members in this Chamber are more experienced than I, but I remember the following experience. The first level involves the most important decision, particularly if this is a policy decision that affects the interest of various strata of society. All along, we consider that the most desirable approach is to pass those decisions in the principal ordinances, for if any change or amendment has to be made, it has to be made by amending the principal ordinance, and nothing will be overlooked in the process.

At that time, the Executive Authorities disliked including the provisions in the principal ordinances, for they did not want to go through the complicated procedures in order to introduce amendments. Moreover, the efficiency of the authorities was also in question, for they could not lay down the legislative timetable. As a result, many legal provisions that should not be included in the subsidiary legislation were enacted by way of subsidiary legislation. This is the first level.

As for the second level, at that time, they often pointed out that these provisions should not be included in subsidiary legislation. They considered that the scope of the ordinance under discussion was the essence and foundation of an ordinance, so it should not be turned into subsidiary legislation. This has always been a point of dispute between us. Should the provision be included in the principal ordinance or the subsidiary legislation? Second, at a certain period

of time, the Government liked to indicate that the Chief Executive would soon make a certain decision, and the decision was not subsidiary legislation. The most renowned or notorious example is the amendment of the Immigration Ordinance, which had caused the serious problem of right of abode. This was precisely because the Chief Executive said that those notifications were not subsidiary legislation.

In view of this, this Council, including the Legal Service Division, had entered into a prolonged discussion with the department. We eventually came up with the legal advice that: Whether certain issue should be regarded as subsidiary legislation was not decided by the way it was called but whether its content was legislative in nature. If it included legislative content, it could be classified as subsidiary legislation. After in-depth discussion, the Government eventually dared not adopt a stealthy or ambiguous approach. A lot of subsidiary legislation is classified as subsidiary legislation. More often than not, to avoid misunderstanding, we will call that subsidiary legislation.

Subsidiary legislation is divided into two types, one of which is the negative vetting type. According to the practice of the Executive Authorities in making subsidiary legislation, despite the passage of the subsidiary legislation, an effective date will be laid down, and the date will allow sufficient time for scrutiny by the Legislative Council. Hence, if the Legislative Council finds any problem in the subsidiary legislation, there will still be enough time for introducing amendments.

Deputy Chairman, as you have noticed many times, many Members will, in the capacity of the chairmen of subcommittees on subsidiary legislation, request the extension of the deadline for scrutiny to allow the Legislative Council more time to scrutinize the legislation. In doing so, we are exercising our power in monitoring the Government and enacting legislation. Certainly, for certain important ordinances, the "positive vetting" approach will be adopted. So, insofar as subsidiary legislation is concerned, it is extremely rare that this Council has no power to make amendments, but only the power to say either "yes" or "no". Besides, if such rare cases arise, there must be sufficient justification for doing so. Why did I discuss the United Nations Sanctions Ordinance at the previous meeting of the Legislative Council? For this is not only uncommon but also unconstitutional. Experts tell us that this is unconstitutional.

Hence, the approach adopted today is not unprecedented, nor is it disallowed under the law, and we have not completely surrender our power of enacting legislation. If we completely surrender the power of enacting legislation, it may be unconstitutional. Under such circumstance, is it appropriate for us to do so? Secretary, why does the standard of the Executive Authorities keep falling? A responsible and dignified executive will not simply consider whether it is allowed to do certain things under the law. On the contrary, it will consider whether certain action is proper, and whether a responsible and dignified government should do so.

Sorry to say that the present clause 15(4) is extremely improper, particularly from the overall perspective of the legislation. I will describe the provision as extremely improper. We surely can pass such a provision, and if it is passed, it will have legal effect. However, laws cannot turn black into white or *vice versa*. This will tarnish your reputation. I hope the Executive Authorities will review themselves with a stringent yardstick. They should not adopt excessively low standard and just muddle through things. We do not wish to see such an executive. Thank you, Deputy Chairman.

DEPUTY CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by Ms Cyd HO be passed. Will those

(Secretary for Labour and Welfare raised his hand to indicate a wish to speak)

DEPUTY CHAIRMAN (in Cantonese): Secretary for Labour and Welfare, do you wish to speak again?

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Deputy Chairman, I would like to clarify two points and it will be simple. Ms Cyd HO just mentioned about the wage rate contained in the report submitted by the Minimum Wage Commission. Now there is an amendment which exactly addresses the concern raised by members at the Bills Committee. Yesterday, I have clearly added the following under clause 13(2): "The Chief Executive must, as soon as practicable after receiving a report made under section 11, cause a

copy of it to be published". This is a completely transparent provision and it is a "sunshine policy".

Second, insofar as the subsidiary legislation is concerned, sufficient time will surely be allowed for its scrutiny by the Legislative Council because even though the Bill is enacted, it will not take immediate effect. We must allow some time for the business sector and the employers to make preparations. Thank you, Deputy Chairman.

DR MARGARET NG (in Cantonese): You should stop beating about the bush. Our concern is not about whether subsidiary legislation can provide sufficient time for scrutiny by this Council. In the case of the subsidiary legislation in question, we can only take it or leave it, which is an extremely rare arrangement. The Secretary has not responded to these questions at all.

MS CYD HO (in Cantonese): Deputy Chairman, though the provision says that the report should be submitted as soon as practicable, it is indeed a very vague expression. If the economy experiences significant ups and downs at the time, will it affect the so-called "practicability" and the Chief Executive is allowed to delay the publication of the relevant report for a while? If we can amend the provision to the effect that the Chief Executive must publish the report within three months upon the receipt of the report, the situation will be quite different. Am I right? However, the Executive Authorities always want to enjoy the greatest power. In actuality, the Chief Executive should change his name. He should add the radical "土" to his surname "曾" to form the Chinese character "增", which means "increase", and then seize all the power. But this is extremely unfortunate, for when the Chief Executive increases its power and holds tight to more and more power, the separation of powers will no longer exist. If the SAR allows any one person to have such great leading power on a lot of issues, and even on livelihood issues, it will be rather dangerous indeed.

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

MR PAUL TSE (in Cantonese): Deputy Chairman, I would like to make a brief clarification. Ms Cyd HO said earlier that even if Members did not support the legislation on minimum wage, they might still support her amendment. But I believe that, as appeared on the record of meetings, I am the only one opposing the legislation, so I should respond to it briefly.

I think if Members really find this a "big show", if they feel reluctant and that there is something wrong, they may still change their mind and vote down the Bill at the Third Reading.

Thank you, Deputy Chairman.

DEPUTY CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by Ms Cyd HO be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mr WONG Yung-kan rose to claim a division.

DEPUTY CHAIRMAN (in Cantonese): Mr WONG Yung-kan has claimed a division. The division bell will ring for three minutes.

(When the division bell was ringing, THE CHAIRMAN resumed the Chair)

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:

Dr Margaret NG, Mr CHEUNG Man-kwong, Dr Joseph LEE, Dr LEUNG Ka-lau and Mr CHEUNG Kwok-che voted for the amendment.

Dr Raymond HO, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Wong-fat, Ms Miriam LAU, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Dr LAM Tai-fai, Mr Paul CHAN, Mr CHAN Kin-por, Mr Paul TSE and Dr Samson TAM voted against the amendment.

Ms LI Fung-ying, Mr IP Wai-ming and Dr PAN Pey-chyou abstained.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Ms Emily LAU, Mr Frederick FUNG, Ms Audrey EU, Mr LEE Wing-tat, Mr Ronny TONG, Mr KAM Nai-wai, Ms Cyd HO, Mr WONG Sing-chi, Mr Alan LEONG and Mr Albert CHAN voted for the amendment.

Mr CHAN Kam-lam, Mr LAU Kong-wah, Mr TAM Yiu-chung, Mr CHEUNG Hok-ming, Ms Starry LEE and Mr CHAN Hak-kan voted against the amendment.

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

THE CHAIRMAN, Mr Jasper TSANG, did not cast any vote.

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

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clause 15 stands 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.

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Chairman, may I seek your consent to move under Rule 91 of the Rules of Procedure that Rule 58(5) of the Rules of Procedure be suspended in order that this Committee may consider new clause 21A together with clause 20.

CHAIRMAN (in Cantonese): As only the President may give consent for a motion to be moved to suspend the Rules of Procedure, I order that Council do now resume.

Council then resumed.

PRESIDENT (in Cantonese): Secretary for Labour and Welfare, you have my consent.

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): President, I move that Rule 58(5) of the Rules of Procedure be suspended to enable the Committee of the whole Council to consider new clause 21A together with clause 20.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That Rule 58(5) of the Rules of Procedure be suspended to enable the Committee of the whole Council to consider new clause 21A together with clause 20.

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.

Council went into Committee.

Committee Stage

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

CLERK (in Cantonese): New clause 21A

Ninth Schedule added.

CHAIRMAN (in Cantonese): The Secretary for Labour and Welfare has given notice to move amendments to clause 20 and the addition of new clause 21A.

CHAIRMAN (in Cantonese): If the amendment to clause 20 proposed by the Secretary for Labour and Welfare is passed, he may later move the addition of new clause 21A.

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Chairman, I move the amendment to clause 20. The detailed content of the amendment has been set out in the papers circularized to Members.

We propose amending clause 20(1) of the Bill to delete the original proposed amendment to section 49A(3)(ea) of the Employment Ordinance, and be substituted by the new section 49A(3)(ea), and to make consequential amendment to clause 20(2). According to the new section 49A(3)(ea), if the employee is an employee within the meaning of the Minimum Wage Ordinance and the wages payable to the employee in respect of any wage period are less than the amount specified in the new Ninth Schedule to the Employment Ordinance, the employer has to maintain a record of the total number of hours worked by the employee in that wage period. Hence, if the wage of the employee reaches the amount specified in the Ninth Schedule, the employer can be exempted from maintaining a record of the total number of hours worked by the employee. The new clause 21A in this amendment aims to add the Ninth Schedule to the Employment Ordinance. When the first SMW rate is finalized, we will arrive at the amount to be specified in the Ninth Schedule on the basis of the SMW rate, and the relevant subsidiary legislation will be submitted to the Legislative Council for scrutiny.

According to the original proposed amendment to section 49A(3)(ea) of the Employment Ordinance, an employer is required to maintain a record of the total number of hours worked by all employees within the meaning of the Minimum Wage Ordinance. In response to the grave concern expressed by the Bills

Committee and some stakeholders on the administrative costs brought about by the requirement, we, after careful consideration, decide to put forth this amendment to improve the provision. This amendment can address the concerns of the Bills Committee and stakeholders, while not going against the objective of the Minimum Wage Ordinance of preventing excessively low wages.

Subsequent to the amendment to clause 20(1), I will later move the consequential addition of clause 21A to the Bill to add the Ninth Schedule to the Employment Ordinance. An amount will be specified in the Schedule to let employers know clearly the employees in respect of whom records of the total numbers of hours worked by them should be maintained.

We also propose amending clause 20(2) to add section 49A(3A) to the Employment Ordinance, stating unequivocally that employers must keep the documents of proof of "student interns" and "work experience students", to tie in with the extended definition of "student interns" under the Bill and the inclusion of "work experience students" under the exemption arrangement.

Chairman, with these remarks, I hope Members will support the amendment. Thank you.

Proposed Amendment

Clause 20 (see Annex I)

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

MR LEE CHEUK-YAN (in Cantonese): I hope Members will oppose the Government's amendment.

According to the Government's amendment, employers are exempted from maintaining the record of hours worked by high-paid employees, that is, they do not have to count their number of hours worked. I surely understand this point. As I said before, the Minimum Wage Ordinance is an arrangement of "recording the number of hours worked". In that case, what is the point of recording the number of hours worked by high-paid employees? Really, there is no need to

record the number of hours worked by them. But is it really so difficult to record the number of hours worked by employees? Will the administrative cost incurred really be so high? If recording the number of hours worked by employees is really so difficult and incurs exorbitant administrative cost, what should we do when we legislate for standard working hours in future?

Hence, I have to oppose this amendment. Since I consider recording the number of hours worked by employees a fundamental measure for good management, I have to oppose the amendment. If I do not oppose it now Members please bear in mind that if you do not state your objection now, when it comes to legislating for standard working hours, how can the requirements on recording the number of hours worked by employees be passed in the future, not to mention the requirements on standard working hours. I would like to draw Members' attention to this point, particularly those who support the workers. They really should support my stance on opposing the amendment. Otherwise, the road ahead will be even more difficult. Hence, I implore Members to oppose this amendment proposed by the Government. Thank you.

MR PAUL TSE (in Cantonese): I have been struggling about what position I should take on minimum wages. As I said, the tourism sector has reservations about the proposal on recording the number of hours worked by employees as put forth by Mr LEE Cheuk-yan, but the Secretary has made improvement in response. I have repeatedly requested that employers be granted exemption for maintaining records on the number of hours worked by employees earning more than a certain amount of wages to minimize the so-called "nuisance" caused. This will save extra work and expenses. However, I am disappointed with the attitude of Mr LEE Cheuk-yan, for he is not focusing on this point, and his act is comparable to taking a few steps forward in a chess game. I understand his position, but this will only deepen the reservation of employers who are already hesitant about minimum wage, for employers are now forced to discharge duties that are obviously unnecessary, and they fear that other obligations may follow in future.

I think Mr LEE Cheuk-yan has never experienced the torture of recording the number of hours worked by employees throughout his life. Being a lawyer, I understand the agony of recording the number of hours worked, and I believe many Members in the Chamber from other professions have the same experience. Though it has not gone so far that the benefit brought is smaller than the cost

paid, additional workload will be generated in the process of recording the number of hours worked, during which the recording work alone will take one to two extra hours. This is an extremely unwise measure from the administrative point of view. Exactly for this reason, I propose adopting the fixed-charge approach in recent years. Under the arrangement, unnecessary work carried out solely for the purpose of recording the number of hours worked, which is a lose-lose situation, may be avoided. Luckily though, the Secretary is willing to make a small compromise by proposing this amendment, so that certain employers may save the administrative cost and troubles. I would say that this is a consolation prize. I support this amendment. Thank you, Chairman.

MR RONNY TONG (in Cantonese): Members have been tortured for nearly 40 hours, so I will try my best to avoid prolonging this torture. I will just speak briefly. Chairman, I can hardly agree with Mr LEE Cheuk-yan. I have explained it to him and he understood that.

Chairman, we wish to find an appropriate point of balance. Surely, if there is an opportunity to legislate for standard working hours, we may reconsider by then whether it is necessary to stipulate in law how to record the number of hours worked. It is not a problem at all.

Insofar as the setting of standard working hours is concerned, this Council has passed a motion supporting this idea recently. However, before legislation is enacted in this respect, many employers, particularly those of small and medium enterprises, are extremely worried that they have to spend additional resource to maintain these records during this period, while they are not sure whether those records will really be useful in future.

Chairman, actually, this proposal is put forth by Members during the scrutiny of the Bill, and I am glad that the authorities have accepted it. Chairman, we support this amendment.

MS MIRIAM LAU (in Cantonese): Chairman, though we have been debating for more than 40 hours, I hope Members will remain rational and differentiate right from wrong. Members should not mix up minimum wage and standard working hours in the course of debate. I believe Members will differentiate the two.

First, I have to thank the Secretary for accepting this proposal, which is put forth by other colleagues and the Liberal Party, so that employers are spared the burden of bearing additional and unnecessary operating costs, including the cost for recording the number of hours worked. Certainly, the work of recording the number of hours worked we talk about here is different from that adopted in the legal sector. But after all, if the arrival and departure time of employees have to be recorded, particularly for employees who do not only work in the office but have to It is difficult to maintain a record of hours worked for employees who have to work outside offices, for it involves many procedures. If the arrangement is made to ensure that low-paid workers will not be cheated on the number of hours worked, I think it is reasonable to adopt such an arrangement. However, if employers are required to record the number of hours worked by employees whose salaries have far exceeded the minimum wage, it will be unnecessary. The only reason for so doing is that Mr LEE Cheuk-yan is doing everything to punish employers because he is hostile to employers. We should never go after such a cause.

During the Second Reading debate on the Bill two days ago, Mr Vincent FANG had been advocating harmony between employers and employees. But I think if the above attitude is adopted, employers and employees can hardly be in harmony. I hope Mr LEE Cheuk-yan is not adopting such an attitude. Employers may be required to comply with a requirement that is really essential. However, no one is going to benefit from an unnecessary requirement which will only increase the operating costs of the employers. Why? If employers are required to comply with an unnecessary requirement, which results in an increase in operating costs, their overall profits will decrease and they can hardly offer higher salaries or better benefits to their employees. Perhaps it is because Mr LEE Cheuk-yan has never run a business. Since we have more contacts with small and medium enterprises, we understand their plights. In short, in the case of the present legislation on minimum wage, we consider that employers should be required to carry out necessary tasks. If they are required to do unnecessary things, it will be a mere punishment to them. Thank you, Chairman

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

MR LEE CHEUK-YAN (in Cantonese): It is true that I have never recorded the number of hours worked by employees, with the exception of tonight. Tonight, I have recorded the number of hours worked. By now, it has been 38.5 hours.

Actually, I do not do so purely for the implementation of standard working hours in future. I always have a question in mind: Do employers want to know the number of hours worked by their employees? Do employers think that it is unnecessary to know the number of hours worked by their employees? If employees have to work very long hours, employers should on the one hand care about them, and on the other hand, consider whether their efficiency is acceptable. Employers will consider these issues, will they not? Hence, I am only asking employers to do one thing, that is, being good managers, employers should, to the very least, know the number of hours worked by their employees. That is it. Definitely, I do not like punishing employers, nor am I being hostile to employers. Members should stop besmearing me. I just regard Members as sleepy now and will not blame them. But really, I am only talking about a simple principle, that is, good managers should know the number of hours worked by their employees. This is only a reasonable request.

Moreover, do Members know what we are going to pass now? Do Members know the wage level above which exemption is granted with regard to recording the number of hours worked? No, we do not. This is blank in this respect. No requirement has been laid down yet and the issue has to be discussed again in future. However, I do hope that Members will oppose this amendment As good managers, employers should maintain a record of the number of hours worked by their employees. Besides, I have also been an employer. I would like to remind Members that the Hong Kong Confederation of Trade Unions is also an employer and we have 100 employees. We know the number of hours worked by each employee. Why will we not know about that? Thank you, Chairman.

(Dr Samson TAM raised his hand to indicate a wish to speak)

CHAIRMAN (in Cantonese): Dr TAM, please press the "Request-to-speak" button.

MR WONG SING-CHI (in Cantonese): The Democratic Party opposes the Government's proposal that employers do not have to keep the work record of high-paid employees. We consider that the original intention of setting a minimum wage is to protect employees who are earning meagre income or relatively low wages, so that they can enjoy the reasonable rights and interests that they rightly deserve. Some people think that since a minimum wage has nothing to do with the high-paid employees who are not affected after all, it is unnecessary for employers to maintain the work record of the high-paid employees. This will save some costs on the part of employers. Members have expressed this opinion earlier.

Some may think that it is not necessary to consider this point. They will just support the Government blindly, for they think no one knows what will happen in future. But such an attitude seems to be too short-sighted. We consider that for the protection of the rights and interests of the working class, we cannot only focus on present issues. It was just in the past year or two that our fight for the minimum wage legislation has borne fruit. We did not achieve the target by simply examining the issue briefly. We had been fighting for it for a long time. Hence, the primary objective for setting minimum wage and standard working hours is to protect the working class. All along, many different Members and organizations have been looking forward to the successful achievement of this objective. Today, it is very likely that the problem of minimum wage will soon be solved, although I do not know what will happen later. I believe the Bill as a whole will be passed.

Moreover, according to the answer given by the Chief Executive to a Member's question at the Question and Answer Session in October 2009, the Government will first solve the problem of minimum wage, and then re-examine the issue on standard working hours. The Chief Executive is far-sighted. He has not said that nothing will be done after the problem of minimum wage has been solved, but that the authorities will get ready to examine the issue of standard working hours. It has been the stance of the Democratic Party that setting standard working hours can bring positive effects to work-life balance. Hence, the Government definitely should speed up the studies on standard working hours to enable employees in general to benefit. With the enactment of the legislation on minimum wage, certain technical problems relating to the computation of hours worked will subsequently be solved.

Hence, the Democratic Party thinks that the authorities concerned absolutely should start focusing on the major policy of standard working hours. Though we are discussing minimum wage today, we think if certain information and assistance can be included in the present legislation to allow us to prepare for the future regulation of working hours, it will bring more good than harm. Hence, we should not, for the sake of saving costs for employers, stop short of taking forward the fight for standard working hours smoothly. Surely, certain employers and certain Members from the functional constituencies may consider the regulation of standard working hours undesirable and they may oppose it. But no matter how, we think that a record should after all be kept. Actually, a number of Members have long since started fighting for the policy on regulating working hours. So, the Democratic Party opposes the amendment proposed by the Government on exempting employers from maintaining the work record of high-paid employees. We will support Mr LEE Cheuk-yan's amendment which requires employers to inform their employees of the hours or days worked by them and the particulars of wages for the wage period concerned.

MR ALBERT CHAN (in Cantonese): Chairman, I think many employers are quite familiar with the arrangement of recording the number of hours worked. But I really cannot understand one point and would like them to explain it. As they are so familiar with the arrangement for recording the number of hours spent in entertainment establishments, why will they consider the recording of hours worked by employees so difficult?

DR SAMSON TAM (in Cantonese): I would like to respond to the views of Mr LEE Cheuk-yan on recording the number of hours worked. At first, I ran a small size enterprise. By now, it has developed into a medium-sized enterprise. I think insofar as maintaining good governance is concerned, it is desirable for the management to record the number of hours worked by employees. But I disagree with the proposal of legislating for such purposes. Why? In order to achieve good governance, there should be discussions between staff members and supervisors of the company to establish a good system. Let me share some of the experience of my company on recording the number of hours worked by colleagues. Since we are in the creative industry, more often than not, colleagues working in the office located in the science park go swimming at noon and work till late at night. But since they want to protect their privacy and do not want others know what they are doing at a certain period of time, or what they

are not doing during that time, it will be difficult for our industry to force employees to record the number of hours worked. However, if maximum working hours are set in future, by then, it may become necessary to introduce certain slight changes that are acceptable to them. Hence, I support the Government's amendment.

MR LEUNG YIU-CHUNG (in Cantonese): Chairman, while the salary of the high-paid is reviewed every year, that of the low-paid is only reviewed once every two years. This is a deplorable situation and is kind of insult to the low-paid because people are divided into classes, and wages are also divided into classes. I do not want to intensify the discrimination in society. In a company, two systems will have to be adopted simultaneously. The employers have to record the number of hours worked by some employees, but not the hours worked by some other employees. What is the reason for doing so? The primary difference between the two groups of employees lies in the amount of salary they earn. It is lamentable.

Why should there be such a difference? I think it is really unacceptable. Moreover, yesterday, the ordinance which has been enacted for 70 years was not repealed, and the regulation of hours worked is mentioned therein, which implies that an issue has been left unsettled. Sorry, Secretary, since that ordinance had not been repealed, many colleagues mentioned in the resumption of Second Reading debate yesterday that even after the present Bill on minimum wage was passed, the authorities should not think that everything had been settled, for it still had to deal with the problem of working hours. Members should not consider that this is an issue to be handled in future. In principle, this is the next step of work Members have to deal with very soon. For this reason, we must support Mr LEE Cheuk-yan's amendment.

CHAIRMAN (in Cantonese): Mr Paul TSE, you are speaking for the second time.

MR PAUL TSE (in Cantonese): I am sure Mr LEUNG Yiu-chung gives those remarks out of good intention, for he has all along been very much concerned about equality. However, we have to face the reality of the world after all. Why do some people have to wear uniform at work, while some have to put on

ties and suits? Reality is reality. There are some work types which are not affected by minimum wage, or that their salary level far exceeds the minimum wage rate, and it is utterly unnecessary to add troubles and administrative costs to employers.

Moreover, I agree with the point put forth by colleagues earlier that under the present discussion on minimum wage, a criminal liability on maintaining record is imposed on employers. Both employers and employees have to face the risk of criminal liability in the recording of hours worked. Take the case cited by Dr Samson TAM as an example. If an employee records the period he goes swimming as hours worked and includes this as part of his working hours, theoretically speaking, it will constitute an offence of theft. The reason is simple, for he is involved in the deception of time and wages. This shackle of criminal liability has made the entire issue more complicated, which is not simply a matter of good management. In this connection, I think Mr LEE Cheuk-yan's point of view may have been too simplistic.

I also agree with Mr Ronny TONG that when the time comes for setting maximum working hours, relevant provisions will naturally be drawn up to specify the arrangement for recording the number of hours worked. When such legislation is passed later, corresponding amendments to the legislation on minimum wage will then be made. Things will be easily settled by then. Hence, I do not quite agree that we should make arrangement for the future in this respect, because no one knows when the time will come. Also, before such arrangement can actually take effect, many unnecessary troubles and costs will have already been caused.

Chairman, there are many different types of work, but a broad-brush approach is adopted in the present Bill. For certain types of work, employees may have to record the time they arrive at the office in the morning and then their departure time when they go off duty. They may have to record their in and out time during the lunch break. It means they have to make these in and out records a maximum of four times a day. However, for other types of work Take the tourism sector as an example. When a tour guide takes a tour overseas, he may have to accompany customers during a certain period of time, but at another time, he may be relatively free, say he may do some reading. On the other hand, he may have to wake up in the middle of the night if he receives calls to handle some emergency matters. It means he has to record his hours of work several times in a day. This will cause much nuisance. Many types of work are covered by the Bill. Not every type of work adopts a simple mode of office

operation involving only the arrival and departure time and the lunch break. I think if it is not completely necessary, we should refrain from causing additional administrative difficulties. Hence, I have to stress again that I support granting exemption in this respect. However, Mr LEE Cheuk-yan has reminded me of one point. I therefore urge the Secretary to keep the threshold as low as possible in deciding the exemption level, and I hope he will do so, though we do not know the actual figure at this point.

MR WONG TING-KWONG (in Cantonese): Actually, for those engaging in the work of trade unions, I suggest they may simply return to their trade unions and consult their members, and they will know that recording hours worked is a double-edged sword. According to my experience in managing a company, the first step in recording hours worked is not for employers to monitor how their employees maintain such a record. The record should be reported to employers by employees, and even if the timecard machine for recording work attendance is not used, employees will have to sign on an attendance register. The time of arrival at and departure from the workplace should be recorded in the attendance register, which should be marked by employees. How about slacking at work? Will this constitute an act of forgery? May I ask Members from the legal sector whether such an act will constitute forgery?

Since the legislation has not yet been enacted at present, discretion may be exercised. But with the enactment of the legislation in future, this will be regarded as an act of deception. Hence, I do not mean to stage opposition. Surely, in terms of management, administrative costs will be incurred. Actually, the proposal put forth by certain Members on exempting senior employees from the regulation has taken into account various factors. In this connection, I would like to urge friends from trade unions to consult the views of members of their trade unions and see whether they prefer recording hours worked indiscriminately.

DR LAM TAI-FAI (in Cantonese): Chairman, Hong Kong is an international cosmopolitan city, a pluralistic society and a meeting point of Chinese and Western cultures. What kinds of companies are established in Hong Kong? There are foreign-invested, Chinese-invested and locally-invested companies. There are also companies from the Mainland, including red chip companies, state-owned companies, and many other companies of various scales.

There are quite a number of trades in Hong Kong. It is commonly said that 72 types of occupations are available here, but the actual number should be more than that, which spread across various trades and industries. Each trade has its own characteristics, and different management systems, approaches and concepts are adopted in companies set up by different investors, such as Chinese-invested, Mainland-invested and locally-invested companies. Some management styles are more humanized whereby conscientious employers care about their employees and treat them as family members like brothers and sisters. Some management styles are characterized by their military approach whereby employers always wear stony expressions, and employees are scolded if they are a bit slow in their work, but not awarded for their efficiency. There are many different kinds of management styles. Not only companies adopting the humanized approach will make profits, those adopting the military approach may also make profits. Different approaches have different merits and different companies adopt different approaches. I am lucky that my company can survive, but I am not reaping handsome profits.

There are many different management tactics. Some prefer tight control while others prefer a non-intervention approach. Some employers do not care when their employees arrive at work provided that they can finish their job. They are target-oriented and they do not mind their employees sleeping everyday so long as they can achieve a certain amount of sales every month and meet the required targets by the end of the year. Some employers adopt a different approach. They will keep a close watch on whether their employees arrive at work at 9 am and leave the office at 6 pm. They may query why their employees leave the office earlier than they do. In other words, companies can be managed by many different approaches.

How to check the work attendance of an employee? Some employees are required to record the number of hours worked on a timecard machine. Some are required to sign on an attendance register, and some are left to themselves. Sometimes, employers may call their employees through pagers. No one can say which method is the best. In short, since I have been an employee and an employer, I find that there is no best method for management or for checking work attendance. It all depends on the preference of a company and the mindset of the bosses. Sometimes, you just cannot push through it. I prefer the non-intervention approach, so "Buddy", I really do not want to record the number of hours worked by my employees under a statutory requirement written in our

law book. Some employees want to have freedom, so do not presume that workers surely prefer recording the number of hours worked. Some may find the arrangement really annoying, for they do not want to mark the record all the time, but there are others who prefer that. There are really many different types of people around us.

In short, "Brother Yan" said earlier that recording the number of hours worked was a good management practice and that people might want to know the actual number of hours worked. Recording hours worked is one of the tactics in management, but it does not mean that it is a good management practice. There is no specific equation illustrating that recording the number of hours worked is equivalent to good management. I agree that this is one type of management approach, but it does not necessarily mean good management. It may be good management but this is not always the case. I used to work in the management field, so I would like to share with Members some of my experience. It may highly likely be wrong, but it may be right too. It is just kind of sharing. Sometimes you share your experience and sometimes I share mine. There is no question of being in opposition. This is of a communicative nature. We accommodate each other's views, encourage each other and learn from each other.

If so, how should we handle the issue of recording the number of hours worked? I think we can do so through encouragement. We may encourage employers to record the number of hours worked. However, we should not legislate for such an arrangement, for some people really consider this undesirable. Once legislation is enacted on the arrangement, it will become mandatory, and sometimes, this may backfire.

Mr WONG Sing-chi told me earlier that I should by all means avoid using up the 15-minute speaking time, for once I speak for 15 minutes, many people will attack me. Actually, I encourage employers to record the number of hours worked, but legislation should not be enacted on this. If the arrangement is stipulated in legislation, it will lack flexibility. There may be many restrictions in implementation and may not necessarily be feasible. In that case, it may not necessarily be a good management practice. Chairman, I so submit.

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

MR LEE CHEUK-YAN (in Cantonese): Let me keep the exchange of views and communication of ideas going, and it does not have to be confrontational in doing so. However, I must speak in response to Mr WONG Ting-kwong, who seemed to suggest that employees would also be held criminally liable. If employees would be held criminally liable, it is already such a case now. If employees are found to be deceptive, so long as there is evidence to prove that such serious offences as deception or use of false documents are involved, even without this Bill, prosecutions may be initiated. However, the Bill *per se* is about requiring employers to keep records of hours worked by their employees. Therefore, the Bill has nothing to do with the deceptive acts of employees in connection with records of working hours. If employees are found to have committed acts of deception, prosecutions can be initiated against them even now. This has absolutely nothing to do with the Bill. This is the first point I must clarify.

Secondly, insofar as my personal feeling is concerned, why do Members think that it is unnecessary for working hours to be recorded in present-day Hong Kong? Perhaps employees also think that there is nothing wrong for working hours not to be recorded, why? This is because, even if it is stated clearly in employment contracts that the working hours should be from 9 am to 6 pm, an employee may work till 9 pm today, 10 pm tomorrow, 11 pm the day after tomorrow, and then 8 pm two days later. They will not get paid nor given time-off no matter how many extra hours they have worked. Frankly speaking, what is the point of keeping a record? From the angle of employees, there is nothing wrong. I would describe the situation as restaurant patrons left without paying the bill. I believe Mr Tommy CHEUNG finds these patrons most disgusting. Frankly speaking, I do not want to say something like this. Although it has been explicitly written down that workers should work from 9 am to 6 pm, workers do not receive any wages for working overtime. What is the difference between the employers exploiting workers without paying overtime allowance and the restaurant patrons leaving without paying the bill? I would like to exchange views with Members. Please tell me the difference between the two, so that it is unnecessary for records to be kept. Actually, employees may want to have records of working hours. They do not find it useful because there are simply no time-off compensation and no protection.

Lastly, let me come back to this amendment. I think that we should do justice to workers and at least let every worker know how many hours they have

worked. Employers should also know the number of hours worked by their employees. In fact, everyone should look at these records. If it is found that workers have to do a lot of overtime work, then reviews should be conducted to see if additional manpower is required. We all have to consider these problems. Of course, employers might say, "Ah Yan, you have never been an employer. It must be difficult for you to understand how hard it is to do business." Then, they will repeat their words again and again. However, legislation is enacted all around the world on standard working hours. Why is such legislation absent in Hong Kong? Why are employers in other places capable of doing so, while employers in Hong Kong are incapable of doing so? You should figure out the reasons and then answer me.

I know that Miriam will say that we are not debating on standard working hours today, and so I will stop here. If Members have any views, we may continue to exchange our views.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): If not, I now call upon the Secretary to speak again.

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Chairman, I have nothing to add.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by the Secretary for Labour and Welfare 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 LEE Cheuk-yan rose to claim a division.

CHAIRMAN (in Cantonese): Mr LEE Cheuk-yan 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.

Dr Raymond HO, Dr Margaret NG, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Mr TAM Yiu-chung, Mr Abraham SHEK, Ms LI Fung-ying, Mr Tommy CHEUNG, Ms Audrey EU, Mr WONG Kwok-hing, Dr Joseph LEE, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong, Mr Ronny TONG, Ms Starry LEE, Dr LAM Tai-fai, Mr CHAN Hak-kan, Mr Paul CHAN, Mr CHAN Kin-por, Mr WONG Kwok-kin, Mr IP Wai-ming, Mrs Regina IP, Dr PAN Pey-chyou, Mr Paul TSE, Dr Samson TAM and Alan LEONG voted for the amendment.

Mr Albert HO, Mr LEE Cheuk-yan, Mr Fred LI, Mr James TO, Mr CHEUNG Man-kwong, Mr LEUNG Yiu-chung, Ms Emily LAU, Mr Frederick FUNG, Mr LEE Wing-tat, Mr KAM Nai-wai, Ms Cyd HO, Mr CHEUNG Kwok-che, Mr WONG Sing-Chi and Mr Albert CHAN voted against the amendment.

Dr LEUNG Ka-lau abstained.

THE CHAIRMAN, Mr Jasper TSANG, did not cast any vote.

THE CHAIRMAN announced that there were 49 Members present, 33 were in favour of the amendment, 14 against it and one abstained. Since the question was agreed by a majority of the Members present, he therefore declared that the amendment was passed.

CLERK (in Cantonese): Clause 20 as amended.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clause 20 as amended stands 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.

CHAIRMAN (in Cantonese): Secretary for Labour and Welfare, you may move your motion.

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Chairman, I move the Second Reading of new clause 21A.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clause 21A be read the Second time.

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

(Members raised their hands)

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

(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 21A.

CHAIRMAN (in Cantonese): Secretary for Labour and Welfare, you may now move your motion.

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Chairman, I move that new clause 21A be added to the Bill.

Proposed addition

New clause 21A (see Annex I)

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clause 21A be added to the Bill.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clause 23.

CHAIRMAN (in Cantonese): Mr CHEUNG Kwok-che and the Secretary for Labour and Welfare have separately given notice to move amendments to clause 23.

If Mr CHEUNG Kwok-che's amendment is passed, the Secretary for Labour and Welfare may not move his amendments which are inconsistent with the decision already made by this Committee.

CHAIRMAN (in Cantonese): Members may now debate the original provisions as well as Mr CHEUNG Kwok-che's and the Secretary for Labour and Welfare's amendments jointly. I will call upon Mr CHEUNG Kwok-che to speak and move his amendment first.

MR CHEUNG KWOK-CHE (in Cantonese): Chairman, I move the amendment to clause 23.

It is now 4 am. I believe Members are all tired. Nevertheless, I hope Members can hold on, as we are approaching the end of the debate.*(Laughter)*

Chairman, in a caring and just society,

(Mr Paul TSE rose to his feet)

CHAIRMAN (in Cantonese): Mr CHEUNG, please pause for a moment. Mr TSE, what is the matter?

MR PAUL TSE (in Cantonese): Chairman, please excuse me for interrupting Mr CHEUNG's speech. I wonder if we have discussed new clause 19A.

CHAIRMAN (in Cantonese): The part concerning new clause 19A is a few pages away. We are now dealing with page 80 of the Script.

MR PAUL TSE (in Cantonese): I am sorry.

MR CHEUNG KWOK-CHE (in Cantonese): in a caring and just society, it is equally important for the Government to ensure that Persons with Disabilities (PWDs) can integrate into society, apart from providing them with support services. Therefore, the legislation on minimum wage to be enacted today should also ensure that PWDs can join the labour market in a fair manner and become self-reliant. Moreover, there should be no discrimination whatsoever.

In theory, legislation on minimum wage should bring benefits to all people, with everyone being treated fairly. However, the provisions in the Bill drafted by the Government stipulate that, if PWDs undergoing an assessment of degree of productivity are dismissed because their employers find the outcome of the assessment unacceptable, the employers can be exempted from the Disability Discrimination Ordinance (DDO). I hold that this provision is a "lose-hit, win-take" approach of employers and this is against justice. This is absolutely unacceptable.

Earlier, the Equal Opportunities Commission (EOC) has, in response to the Bills Committee, specifically pointed out that if employers can dismiss their PWD employees on account of the assessment outcome, and these employers can be exempted from the DDO, it would mean that dismissed PWDs cannot pursue the matter with their employers under the DDO. I really cannot figure out why the legislation on minimum wage can override the DDO. The basic rights of PWDs will also be exploited as a result of this.

Furthermore, the EOC has earlier indicated that if a PWD employee is dismissed because he is found, after assessment, to be no longer able to meet the inherent requirements of the particular employment, even with reasonable accommodation, the act of dismissal in itself may not be inconsistent with the DDO. In other words, depending on the circumstances of each case, the employer may be found in breach of the law or not in breach of the law. Given that the Government is also aware that such acts of dismissal may breach the law, why should it enact such unfair, unreasonable and insensible provisions? In my opinion, they must be deleted.

Undeniably, a minimum wage can be a double-edged sword for PWDs. The provision of a minimum wage might give their wages greater protection, thus enabling them to lead more dignified lives. But at the same time, some employers might decide not to employ PWD employees or fabricate excuses to dismiss the PWD employees currently employed by them, for fear of troubles or because they are unwilling to pay a minimum wage. Nevertheless, the assessment mechanism, which is already not too bad, allows PWDs to be treated reasonably.

Some PWD groups (including the visually impaired and hearing impaired) have proposed that they should be entitled to minimum wage protection and that they are unwilling to be assessed because they think that they are no different from ordinary people in terms of working ability and they hope to be treated equally like others in enjoying minimum wage protection. However, we should be aware that, should this be the case, the bargaining power of other PWDs will become even weaker. Therefore, in order to choose the lesser of the two evils, I prefer treating everyone equally by bringing all PWDs under the protection ambit of the assessment mechanism, rather than undermining their dignity.

In fact, my amendment is not supported by some rehabilitation organizations because of their concern that PWDs might lose their employment opportunities if there is a likelihood of employers being caught by the DDO should they refuse to accept the outcome of an assessment. Actually, I believe if most employers are willing to employ PWDs, they will not mind paying a minimum wage, in full or in part, to PWDs. If some employers do not trust or do not respect the assessment mechanism or simply wish to "take advantage of" PWDs through the mechanism, and exemptions are granted under the DDO at this stage, the Administration will only remind or encourage these employers to

harbour these evil thoughts and indirectly deal a blow to the solemnity of the DDO.

For this reason, I believe employers who are willing to employ PWDs will not bother about the outcome of an assessment. Even if no exemptions are granted under the DDO, the recruitment process adopted by the kind-hearted employers will not be affected. Moreover, PWDs can thus be given fair and reasonable treatment. I sincerely hope that Honourable Members can support this amendment, so that PWDs will be able to integrate into and contribute to society under a fair and impartial environment.

With these remarks, Chairman, I move the amendment.

Proposed amendment

Clause 23(see Annex I)

CHAIRMAN (in Cantonese): I now call upon the Secretary for Labour and Welfare to speak, but no amendments are to be moved at this stage.

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Chairman, the Government opposes Mr CHEUNG Kwok-che's proposed amendment, which seeks to delete an exemption granted in respect of the Disability Discrimination Ordinance (DDO).

The Bill is applicable to able-bodied employees and their PWD counterparts. As a statutory minimum wage (SMW), if implemented, might affect the employment opportunities of some PWDs, a special arrangement is concurrently made by the Bill to give a PWD employee the right to choose to have an assessment to be made of his productivity.

I would like to emphasize that this assessment concerns the degree of possible impact of the disabilities of a PWD employee on his productivity in performing the relevant work, for the purpose of determining whether he should be remunerated at not lower than the SMW level or at a rate commensurate with his productivity. It is also very important that only a PWD employee has the right to request for an assessment to be conducted, whereas an employer is not

allowed to initiate the assessment mechanism. At the same time, the PWD employee, not his employer, will choose an assessor. So, these two powers are vested in a PWD employee but not his employer.

The Bill makes a consequential amendment to the DDO to give PWD employees and their employers a clear idea that the act of making a special arrangement for PWDs will not constitute an infringement of the DDO, including terminating employment contracts on account of the outcome of an assessment made under Schedule 2 to the Bill, so as not to discourage employers from employing PWDs as a result of the implementation of an SMW. Members must understand this.

The exemption granted in relation to dismissal is only applicable to circumstances where the outcome of an assessment is cited as the reason for dismissal. I must emphasize that the outcome of an assessment is cited as the reason for dismissal. If an employee is dismissed due to his disabilities, rather than his failure to carry out the inherent requirements of his employment, the Bill does not operate to affect his claim under the DDO. Members must be clear that the exemption is applicable to the outcome of his assessment only. This point is very important indeed. If an employee doubts the outcome of an assessment and the genuine reasons for his dismissal, he may lodge a complaint to the Equal Opportunities Commission (EOC). If necessary, the case may be referred to the court for determination of whether a particular dismissal constitutes an infringement of the DDO on the basis of the evidence to be presented by the litigating parties.

The aforesaid exemption is made on the basis of our contact with a number of rehabilitation organizations for quite some time in the past. They hold the view that, even if a special arrangement has already been made under the Bill for PWDs, the absence of the exemption will very easily lead to disputes or litigations arising from the termination of employment contracts by employers due to the outcome of an assessment. This will definitely discourage employers from employing PWDs, particularly those with severe disabilities. Consequently, this will run contrary to the objective of making a special arrangement to safeguard the employment opportunities of PWDs. In other words, many employers will be discouraged from giving PWDs a trial period of employment.

Concerning the arrangement made for PWDs under an SMW system, the Labour Department (LD) has met with more than 50 rehabilitation organizations, including non-government organizations providing vocational rehabilitation services with subvention from the Social Welfare Department (SWD), self-help groups and parent groups, with the participation of the EOC. The LD has also met with over 30 employer representatives who have ample experience in employing PWDs.

Chairman, the Government's proposed amendment to clause 23 is a technical amendment. The content of the amendment has been set out in the papers circularized to Honourable Members. After the gazettal of the Bill in June last year, the Legislative Council had, in November last year, passed a motion to amend Schedule 5 to the DDO to include as further exceptions to the DDO the provision of fare concessions by MTR Corporation Limited to a specific group of PWDs. Therefore, this technical amendment merely seeks to renumber the items in Schedule 5 to the DDO.

With these remarks, Chairman, I implore Members to oppose Mr CHEUNG Kwok-che's amendment and support the Government's amendment. Thank you.

MR WONG KWOK-HING (in Cantonese): Chairman, I speak in support of Mr CHEUNG Kwok-che's amendment.

I think that the amendment is able to pinpoint the enormous psychological stress suffered by PWDs after the implementation of SMW when they face the assessment of their productivity. After discussion, the four of us in this Council agree that PWDs must consider very carefully whether they should undergo the assessment should employers be granted exemptions regarding discrimination against PWDs. PWDs agreeing to be assessed would not know whether the outcome of the assessment will lead to dismissal by their employers. They are virtually unprotected. Therefore, we consider Mr CHEUNG Kwok-che's amendment very sensible and reasonable, and we will support it.

DR PAN PEY-CHYOU (in Cantonese): Chairman, PWDs are perpetually faced with various forms of discrimination in society. People with physical

disabilities are often considered to be deficient or even ugly and thought by many employers that they will affect their corporate images. As for ex-mental patients, the discrimination facing them is even greater, for they are often seen as dangerous, emotionally unstable and even drug abusers. Many people share the view that PWDs in workplaces will ward off customers. I would like to clarify one point in response to the comments made by Mrs Regina IP yesterday morning concerning the differences between ex-mental patients and the mentally handicapped. In fact, ex-mental patients can be divided into many categories, as there are many kinds of mental illnesses. One of the commonest serious mental illnesses, commonly known as schizophrenia, has severe residual defects, which affect chiefly the memory and execution abilities

CHAIRMAN (in Cantonese): Dr PAN, would you please focus on this amendment?

DR PAN PEY-CHYOU (in Cantonese): Fine, I only wish to take this opportunity to clarify one point. Actually, it is very difficult for PWDs to fully recover.

In my opinion, the purpose of the DDO is to eliminate discrimination against PWDs in society, protect PWDs by assessing their work performance solely with the yardstick of productivity, and protect their rights to equal employment opportunities. However, according to clause 23 as proposed by the Government, an employer is allowed to dismiss a PWD employee on account of the outcome of productivity assessment. If such a clause is passed, I think this is tantamount to opening a major loophole in the DDO.

Why am I saying so? If an employer thinks that a PWD employee's productivity cannot meet the required standard (for instance, the standard can only be met by a perfectly normal person or a person whose productivity is absolutely the same as that of an ordinary person) and, for this reason, dismisses the PWD employee, I believe the employer can actually justify himself in dismissing the PWD employee even without exemptions. In the future, an employer might dismiss the PWD employee should the outcome of the assessment turn out to be unsatisfactory. In fact, regardless of the causes of dismissal, the dismissal should not be taken as an act of discrimination against the

PWD employee. Such being the case, why is there a need for exemptions to be granted regarding such circumstances? I think that this is extremely unfair to PWDs, for PWDs are being deprived of the opportunities of being protected under the DDO. Therefore, we four Members from the Hong Kong Federation of Trade Unions will support Mr CHEUNG Kwok-che's amendment.

I so submit.

MR WONG SING-CHI (in Cantonese): The Democratic Party supports Mr CHEUNG Kwok-che's amendment.

Just as our position expressed earlier, the Democratic Party considers that, in principle, both PWD and able-bodied employees should be protected by SMW. In the long run, the Democratic Party will propose that both the public and private sectors should set up a quota system for PWDs in order to encourage and help PWDs to join the workforce, though, for the time being, I believe the quota system cannot be put in place shortly. For the sake of preventing the SMW legislation from causing unforeseeable impacts on the employment opportunities of PWDs, in principle, the Democratic Party does not object to most of the special arrangements made for PWDs. However, the Democratic Party objects to the Government's proposed amendment to the DDO, whereby employers can terminate employment relations with PWDs even if the former refuses to sign the certificate of assessment, and such act does not constitute a breach of the DDO.

We think that PWDs should be effectively protected by the DDO to ensure that their efforts and rights will not be abused indiscriminately or exploited deliberately. In our opinion, the approach of the Administration will set a very bad precedent of allowing some good legislation, which can protect everyone, to be repealed or revised arbitrarily as a result of the enactment of other legislation or for the sake of facilitating the operation of other legislation, thereby leading to some unforeseeable consequences. One of the possible consequences is: PWDs, after undergoing assessment, will instantly be deprived of some protection under the law; their employment opportunities will be entirely controlled by employers, even if their productivity may have reached certain standards.

In fact, the Bills Committee has written a letter to consult the EOC on this matter and the EOC has given us a reply. In one of the paragraphs of its letter, the EOC said, "..... if the assessment mechanism is meant to reduce 'the possible adverse impact of SMW on the employment opportunities of some PWDs whose productivity is impaired by their disabilities' by enabling a lower than SMW to be paid, it is difficult to see how exempting a dismissal on account of assessment outcome from the DDO could help to achieve this objective, and the necessity and reasonableness of this exemption may be called into question." In fact, the EOC has some reservations about this amendment proposed by the Government. Therefore, it seems that the amendment proposed by the Government has gone against the EOC's view. Under such circumstances, the Democratic Party cannot support the Government's amendment and will adamantly support Mr CHEUNG Kwok-che's amendment.

I so submit.

MR LEUNG YIU-CHUNG (in Cantonese): Chairman, I can hardly understand why the Government would oppose Mr CHEUNG Kwok-che's amendment. If the Government is adamant in opposing Mr CHEUNG's amendment, I would really wonder if the Secretary had the tendency of suffering from personality split. Why would I say so? This is because he keeps encouraging PWD employees not to be worried, saying that they may apply to be assessed if they think that their productivity is high and that they can receive reasonable rewards according to their productivity under the assessment mechanism.

The Secretary has continued to give PWDs encouragement, or "assurances". Come to think of the following case: A PWD employee, after listening to the Secretary's advice, really applies to be assessed and the outcome of the assessment indicates that he should earn a wage higher than his present wages, but he ends up being dismissed by his employer who does not accept the outcome of the assessment. In that case, has the PWD employee actually "dug his own grave"? Have the PWDs been deceived by the Secretary? On the one hand, the Secretary keeps giving PWDs "assurances", saying that they can fight for SMW through this mechanism, but on the other hand, this mechanism turns out to lead them to a dead end. How can the Secretary do this? I really cannot understand this. This is the first point.

Secondly, if we look at this matter from another perspective, the Secretary is in fact indirectly encouraging employers to adopt a "bad loser" attitude. Just now, the Secretary emphasized again and again that it was the PWD employees who would take the initiative to apply to be assessed, and that PWDs would also be allowed to choose their own assessors — both choices are to be made by employees themselves. Moreover, this mechanism should be accepted by employers. However, an employer might eventually say that he is unwilling to accept the outcome of the assessment. To put it rudely, he can adopt a "so what" attitude, for he can dismiss a PWD employee as he wishes. What does this imply? What protection can PWD employees enjoy?

Over the past two days, I have kept saying that we hope that the legislation will not be "unhelpful". However, we often find the existing legislation "unhelpful". Besides deceiving workers, it is even "unhelpful", turning people who were originally employed into jobless. How can this mechanism do something like this? I do not quite understand why the Secretary can do something like this. We also know that the DDO aims to protect the basic rights of PWDs. To our great surprise, PWDs are being deprived of all their protection as a result of the Secretary's amendment. I do not understand why things would develop to such a state, no matter how hard I have tried. Therefore, I cannot accept the Secretary's proposal. I will definitely support Mr CHEUNG Kwok-che's amendment.

Chairman, I so submit.

MR RONNY TONG (in Cantonese): Chairman, I think that Mr CHEUNG Kwok-che's amendment is absolutely redundant. This is because the third item in clause 23 of the Bill should not have existed at all. Chairman, I think that this subject is exactly the same as the principle discussed by us about the repeal of the Trade Boards Ordinance which was debated either yesterday or the day before. The Government cannot treat legislation as a dress or a tool, which is put to use or put aside as it wishes. Chairman, the law cannot be handled in this manner. The situation before us is that when an employer expresses disagreement or unwillingness to continue to employ a PWD employee after he has been assessed, the employer will not be sanctioned under the DDO.

Chairman, the employer's decision at that stage is definitely based on the fact that the productivity of the PWD is affected by his disability and, as a result, the employer is not satisfied and decides to dismiss the employee. Obviously, the employer's decision is based on the disability of this PWD employee. In other words, this is definitely an act of discrimination, and it should be sanctioned under the DDO. But why can the Government disregard the previous legislation? I think that this is absolutely against common sense and unacceptable. Therefore, I think that the Government should delete the third item out of its own initiative, so that Members do not need to propose amendments.

Chairman, we fully support Mr CHEUNG Kwok-che's amendment.

MR FREDERICK FUNG (in Cantonese): Chairman, besides being a Member of the Legislative Council, I am also a member of the EOC. In fact, discussion has been held by the EOC on this issue. Of course, the final outcome depends on the EOC's announcement. As far as I understand, the vast majority of EOC members agreed during the discussion that no concessions whatsoever could be made to SMW. Everything involving employment relationship must be protected by SMW. Concessions cannot be made unless no employment relationship is involved. In other words, if an employer chooses to employ a PWD employee, the employee will not be given wages lower than SMW on account of his intellectual disabilities or other disabilities.

According to the proposal made by the authorities concerned, if an assessment — of course, this is my own interpretation of the EOC's view — is initiated by a PWD employee, and the outcome of the assessment indicates that his productivity is up to the relevant standard, he should receive SMW; if his productivity is below a certain percentage, he should earn wages according to that percentage. However, according to the Government's present proposal, if an employer refuses to sign a certificate of assessment, the employer can choose not to pay SMW and be exempted from the anti-discrimination legislation. While the employer has obviously contravened the legislation against discrimination, the Government has enacted another piece of legislation to turn a discriminatory act into a non-discriminatory act. This is unacceptable to me. Chairman, now we have four pieces of anti-discrimination legislation in Hong Kong which go hand in hand with other laws in Hong Kong. Unlike the Bill of Rights Ordinance,

these four pieces of legislation do not prevail over other legislation. Should the Government add exemption provisions to any of the existing legislation, so as to turn a discriminatory act into a non-discriminatory act, then all anti-discrimination legislation will become redundant. But why should legislation against discrimination be enacted in the first place? Chairman, I think that this exemption is absolutely contradictory to anti-discrimination legislation and is unacceptable to me. According to my understanding, the EOC is also of the view that the granting of the exemption is not consistent with the non-discriminatory circumstances set out in the anti-discrimination legislation. I hope the Government can pay attention to this point.

Despite the passage of anti-discrimination legislation, we are now giving permission for the Government to grant exemptions to certain forms of discrimination. As a Member of the Legislative Council, I must remind my colleagues that we should not adopt double standards. Moreover, we should not let the Government, during the enactment process, take away some of the values we cherish for the disadvantaged. The opening of this loophole will lead to the opening of all other loopholes. Anti-discrimination legislation will become useless. Why should the anti-discrimination legislation be nullified? I hope colleagues can many Members are not present at the moment. Perhaps they are taking a break, or they are not listening to my speech. I hope to remind colleagues that should we support this clause proposed by the Government, we are actually defeating the purpose of enacting the anti-discrimination legislation in the past.

Thank you, Chairman.

MR LEE CHEUK-YAN (in Cantonese): Chairman, I actually find the exemption provision absolutely unacceptable. This is also the view held by PWD organizations. Of course, I know that some organizations have expressed support. I have been requested by some PWD organizations to strongly indicate their opposition to this exemption. Why? The reason is very simple. After years of campaign against discrimination, we have finally succeeded in enacting the Disability Discrimination Ordinance (DDO), which deals with, among others, employment. The part concerning employment is very simple. It is specified therein that when it comes to employment, an employer should not treat an employee differently because of his disabilities. According to the Government's

logic today, the exemption is granted in order not to discourage employers from employing PWDs, or to enable them to employ PWDs with peace of mind. But how, Chairman? What I mean is when a PWD attends for a job interview, they have no choice but undergo an assessment. During a four-week trial period of employment, the PWD may choose a professional to make an assessment — he may also receive 50% of the normal wages during the assessment period. The PWD should originally be pleased with the outcome of the assessment, when it is available four weeks later, which says that, for instance, he has 80% of productivity. However, on learning that the PWD has 80% of productivity, the employer indicates that he does not wish to employ the PWD, probably because he thinks that the PWD has only 60% or 70% of productivity. Therefore, he decides not to employ that PWD. His act does not constitute discrimination because employers are exempted from the anti-discrimination legislation. In fact, it does not mean that there is no discrimination on the part of employers. It is only that employers are exempted from the anti-discrimination legislation as a result of this Bill. Then, according to the Government's logic, this must be done in order not to discourage employers and not to make them worried as a result of employing PWDs.

According to the Government's logic, the DDO should be repealed entirely because it discourages employers from employing PWDs and there is a likelihood for employers to be sued for discrimination if they, for instance, provide less favourable treatment for PWDs when employing PWDs. Therefore, according to the Government's logic, the DDO should be repealed entirely.

Furthermore, a number of colleagues accused me earlier of badmouthing employers. In fact, this was not the case. I was actually praising them. Why? I do not believe employers will behave as badly as what the Secretary has imagined. How bad will they be? I have already explained this earlier. Although it is pretty obvious from the outcome of an assessment that an employee has 80% of productivity, his employer does not like the outcome as he thinks that the assessee should have only 60% or 70% of productivity. As a result, the employee is dismissed. To be honest, Chairman, I believe in the employer. If an employer chooses to employ a PWD, he should know that the outcome of the assessment conducted on his PWD employee would not be 100%, as the assessee is given only 50% of the normal wages. If the employer is willing to employ the PWD even when the latter is undergoing an assessment, will the employer choose to dismiss the PWD employee at the last minute on the ground that he is dissatisfied with the outcome of the assessment? The relevant

provision is meant to protect employers so that they can dismiss the PWD employees being assessed. However, I do not think that employers will act in this manner. Therefore, if Members think that I am hostile to employers, I would say that, judging from this provision proposed by the Secretary, it is the Secretary who suspects and distrusts employers for thinking that they will adopt the "bad loser" attitude after learning of the outcome of the assessments.

In fact, we do not want any exemption provision. We do not believe employers will dismiss their staff casually. Therefore, there is no need to make an effort in this regard. Should an employer really adopt the "bad loser" attitude on account of the outcome of an assessment, we should use the anti-discrimination legislation to educate him. Are we not allowed to do so? This is what we are talking about. Hence, I hope Members can support Mr CHEUNG Kwok-che's amendment.

The most miserable thing is to lose in separate voting. Chairman, you might ask me whether I will oppose the question of incorporating the clause into the Bill. While it is not too appropriate to oppose the incorporation of the clause, as this will make us if the clause can be separated into Chairman, I have once asked this question at a meeting of the Bills Committee: When a clause contains three unrelated items, can the three items be separated? For instance, if there are three items, namely a, b and c, is it possible for "c" to be singled out? It is most unacceptable that this cannot be done. Therefore, Chairman, I would like to, through you, request Mr TAM Yiu-chung, who is the Chairman of the Committee on Rules of Procedure and is well versed in procedural matters, to look into this issue. In my opinion, it simply makes no sense for some clauses to be put together. They should be separated for voting. If these items can be separated, the voting result might be different because separate voting will not be required. This time, I am again victimized by functional constituencies and separate voting. We are also tied up by the way the clauses are drafted, which makes it impossible for the items in the concerned clause to be separated. In the end, our amendment will not be passed.

Nevertheless, Chairman, I think that the Government should not cast a vote of no confidence in employers. Neither should it make the anti-discrimination legislation inapplicable to this situation, thereby rendering the relevant legislation completely useless. Should this be the case, the anti-discrimination legislation will no longer be meaningful.

DR LEUNG KA-LAU (in Cantonese): I support Mr CHEUNG Kwok-che's amendment for three reasons. The first reason is that I received many emails from some PWD groups over the past couple of days indicating that they did not wish to give employers any room not to accept the outcome of the assessment. I do respect their views. I am also aware that some PWD groups had earlier expressed dissatisfaction with the assessment mechanism. However, they were dissatisfied that some parents of severely mentally handicapped persons did not want their children to undergo any assessment at all. Nonetheless, I believe they object to such a mechanism not because they are worried that employers will not accept the outcome of the assessment after their children have completed the assessment. This is not the reason why they object to the assessment. Therefore, according to my understanding, these PWD groups and the relevant parent groups consider Mr CHEUNG Kwok-che's proposal acceptable.

The second reason is, even if we acknowledge that Mr CHEUNG Kwok-che's proposal will discourage employers from employing PWDs, harm will be done to PWDs only. As PWDs have already accepted the possible harm in this respect and they are not afraid that employers will be discouraged from employing PWDs, I will respect their views. If an employer and a PWD reach an agreement for the PWD to undergo an assessment, then the employer is doing this voluntarily, not involuntarily. In other words, the employer is willing to employ the PWD and accept the assessment mechanism. As he accepts the assessment mechanism, he has to trust it. Therefore, there is no reason for the employer to reject the outcome of the assessment because he is not satisfied with it. This is because once an employer agrees to subscribe to the mechanism, it means that he is doing this voluntarily. Such being the case, he should not adopt the "lose-hit, win-take" attitude. This is my second reason.

My third reason is quite complicated. Although it is now late into the night, I hope Members can still understand what I am talking about. Perhaps Members find it very simple and easy to identify PWDs. As a medical practitioner, I can tell Members that it is actually very easy for someone to ask me to sign a certificate to prove that he is a PWD. If Members in this Chamber ask me to sign a PWD certificate for them, I can easily do so because I can always find a justification. Let me cite a concrete example. For instance, a 70-year-old elderly man naturally finds himself losing competitiveness because of old age, and there is nothing he can do about it. But then, he comes up with the

idea of turning himself into a PWD because he cannot find a job, and in doing so, he will be exempted from minimum wage protection. Of course, it is sad for someone to choose to do so. However, it is very easy for someone to obtain exemption from being protected under the minimum wage legislation. In order to become a chronically ill patient, he only needs to consult a doctor and tell him casually where he does not feel well. Are there any persons aged over 70 who are not suffering from hypertension? If you do not believe in me, you may even measure your own blood pressure. People suffering from pain in the back or the kneecap might also limp as they walk and so they can also treat themselves as chronically ill patients.

I have once asked the Government at Bills Committee meetings the estimated number of PWDs in Hong Kong and found out that the number can be quite large. I was really shocked by the point raised by the government official at that time that, after the implementation of the Minimum Wage Ordinance, one of his priorities will be to appeal to PWDs who have not obtained a Registration Card for People with Disabilities to apply for one as soon as possible. This is because even if a PWD cannot secure a job, he can make this sad decision provided he has obtained the Registration Card — As the Card indicates that he is a PWD, he can undergo an assessment and then receive a wage lower than SMW. Simply put, there are loopholes in this arrangement for PWDs. The legislative intent of the Minimum Wage Bill is to prevent people with poor competitiveness, whose wages do not commensurate with the labour they have exerted, from fighting against each other because of the imbalance in supply and demand. This piece of legislation is sought to protect these people. However, this arrangement for PWDs will lead to a major loophole. I try to explain in great detail why I support Mr CHEUNG Kwok-che's proposal for fear that some people might sadly exploit this loophole. Some people might cite poor competitiveness as a reason so that they can undergo an assessment to prove that he is 100% normal and is still capable of working, even though they are already 70 years old. In order to compete for the relevant jobs, they will apply for the Registration Cards in order to undergo the assessment. However, if the assessment is binding and the outcome of the assessment indicates that they are perfectly normal, their employers will have to pay them minimum wages.

Mr CHEUNG Kwok-che's proposal will be able to plug this loophole. Members might not fully understand this because they are not medical

practitioners. However, when the Bills Committee discussed the assessment mechanism for PWDs, I had really raised this question. This is indeed an enormous loophole. Some people have hinted to me that this is the reason why many people wish to apply for the Registration Cards as soon as possible. Hence, for the third reason cited by me earlier, I support Mr CHEUNG Kwok-che's proposal because it can plug the relevant loophole.

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

(No Member indicated a wish to speak)

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Chairman, I would like to say a few more words concerning the views expressed by Members just now. Members may notice that during the deliberation of the Bills Committee, we had received many letters from a number of organizations, including Tung Wah Group of Hospitals, Hong Chi Association, The Mental Health Association of Hong Kong and New Life Psychiatric Rehabilitation Association. All these organizations made an earnest request for us to handle this matter more flexibly. This is precisely what we mean by balancing. In my opinion, a minimum wage is, after all, about the philosophy of balancing, which is very difficult to achieve. Members have to understand our difficulties. I also hope that union leaders can understand that this is not an easy task for the Government, and it is very difficult for us to reject the request raised by these organizations. This is why we have come up with a special arrangement. However, we must have quality assurance at the same time. Firstly, as pointed out by me earlier, the choice of an assessor, as well as whether to undergo an assessment at all, rests with the PWD employees themselves, not the employers. Second, the entire mechanism will be reviewed two years after the implementation of minimum wage. I do understand Members' concerns. However, Members should also know that it is impossible to achieve perfection in handling these matters. I hope Members can understand this. I have always said that the implementation of minimum wage requires mutual understanding and accommodation. Thank you, Chairman.

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

(Mr CHEUNG Kwok-che shook his head to indicate that he did not wish to speak. Mr Frederick FUNG raised his hand to indicate that he wished to speak)

CHAIRMAN (in Cantonese): Mr Frederick FUNG, do you wish to speak again?

MR FREDERICK FUNG (in Cantonese): Chairman, I would like to respond briefly after listening to the Secretary's feedback.

I would like to reiterate that I had participated in the discussion held by the Equal Opportunities Commission (EOC) on minimum wage. The EOC's stance is very clear, and that is, many organizations and parent groups for PWDs hope to see a more flexible arrangement which can enable their children to find a job. Actually, an in-depth discussion was conducted yesterday morning on this matter. From my perspective and understanding, the EOC does not approve of this approach. In other words, a minimum wage should be offered so long as an employment relationship exists. Concerning exemptions granted for whatever reasons, the argument that employees should receive lower wages in accordance with the percentage of productivity assessed provided that they voluntarily undergo the assessment is quite farfetched. The EOC has also indicated that it will study in detail whether this constitutes an infringement of the DDO. Even if the Secretary has received any letter, a discriminatory act cannot be turned into a non-discriminatory act. I do not understand why these letters can make the Secretary feel that it is justified to grant exemptions. Even if an exemption is now granted, the EOC has indicated clearly that it will follow up the issue by setting up a task force to monitor this piece of legislation. In particular, as it is proposed that a biennial review will be conducted, the EOC will monitor, within these two years, the areas in the legislation where discrimination might arise. The Government and relevant employers will definitely be condemned if it is found that there is discrimination.

As this piece of legislation runs in parallel with the DDO, the EOC might not be able to institute prosecutions under the DDO. However, this does not mean that there is no discrimination or what is done is correct. What is more, it

does not mean that the acts of discrimination against the four disadvantaged groups as stipulated under the DDO can be tolerated and accepted by way of exemptions.

MR LEE CHEUK-YAN (in Cantonese): Chairman, just now, both the Secretary and Dr LEUNG Ka-lau indicated that they have received many letters. Perhaps Dr LEUNG should forward the letters sent by PWDs to the Secretary to facilitate him to strike a balance. I think that he has failed to do so.

Concerning the letters mentioned by him earlier, I have actually met with those organizations. Sometimes, I find it very disappointing because these rehabilitation organizations have two roles to play. One of their roles is employers in social enterprises. As for its second role, it can "meet its target" should it succeed in assisting PWDs to find jobs. This is why it will take job referrals very seriously. Sometimes, I am worried that they might forget a very fundamental issue during the job-search process, and that is, whether their clients will be treated fairly and impartially should exemptions be granted. We have made so much effort to fight for the anti-discrimination legislation, and yet exemptions are to be granted at the last moment.

Social enterprises have employed many PWDs, and they are employers, too. Frankly speaking, I have given them a lot of allowance as I know that many PWD employees are currently being employed by rehabilitation organizations. I have also indicated that these PWDs need not to be assessed, and only those looking for new jobs need to be assessed. In fact, I have made many concessions. However, I cannot make concession this time around because this is a matter of principle and a matter of safeguarding the DDO.

On the contrary, I am very disappointed that organizations serving PWDs think that the DDO should be almost scrapped. Are they looking at this issue from the perspective of employers, people who are required to "meet its target" or PWDs? Thank you, Chairman.

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

MR PAUL TSE (in Cantonese): Chairman, I have to declare that I am a member of the EOC, too. I find it really difficult to contemplate this provision. Perhaps owing to this reason Excuse me, I have forgotten to put on my microphone. As it is nearly 5 am, I am not in perfect control of myself.

Chairman, whether logically or conceptually, I have some reservations about the Minimum Wage Bill (the Bill), hence I have some personal views about the Bill. One of the reasons is that many exemptions and exceptions must be added when the legislation is enacted in this manner. Apart from this provision, another exemption is about foreign domestic helpers. I have always believed that it is a bit problematic for exemptions to be granted in this respect from the angle of policy or other angles.

Insofar as PWDs are concerned, according to my understanding, the scope of exemption granted under the Bill can be divided into three parts. The first part concerns the arrangement for assessments because it is stipulated in the DDO that special treatment, in itself, constitutes an act of discrimination. This explains why an exemption is granted under the Bill to this effect. Insofar as the second part is concerned, reduced wage payment by an employer to a PWD employee after the outcome of an assessment is available will definitely constitute discrimination, if exemptions are not provided for in the Bill. Insofar as the third part is concerned, the dismissal of an employee by his employer on account of the outcome of an assessment will constitute discrimination if exemptions are not granted. This is precisely the greatest concern of the DDO.

According to my understanding, the justification for granting exemptions is not solely for protecting employers from prosecutions or legal sanctions for their discriminatory acts against PWD employees. The real purpose is to protect employees to enable some people who originally might not have employment opportunities to apply for jobs. Therefore, the Bill seeks to strike a proper balance through the exemption arrangement.

However, I find it most tricky that, in accordance with the provisions in the Bill, there is no problem for an employer to dismiss an employee after the assessment outcome is available, for the employer can be exempted. However, problems will arise if the dismissal is also attributed to the conditions of disabilities of the employee, in addition to the assessment outcome. So, under what circumstances will an employer be considered crossing the line? Does it mean that there will be no problem if a dismissal decision is made within a

certain deadline after the assessment outcome is available? However, will there be any problem if a dismissal decision is made after the deadline has expired, even for one second?

For this reason, I find it really too subtle to draw the line between the two. Of course, I understand that implementing the principle of equal opportunities policy-wise is another matter. However, there will be no problem in law. This is because the Bill is enacted after the DDO, and so the former can amend the latter and grant certain exemptions. In particular, the DDO is designed in such a way that it is envisaged that exemptions can be granted under certain circumstances. In other words, Schedule 5 to the DDO has already provided a framework for the granting of exemptions. For instance, certain circumstances whereby employers might get caught by the law under sections 60, 63 and 87 will be exempted because of the provision of a special arrangement in Schedule 5 — there is no problem in doing so in law. However, I have some reservations at the policy level. Therefore, I can only say that it is a difficult decision to make. However, I do not wish to make any decision now in order to avoid doing a disservice out of good intentions. Our original intention is to help PWDs seek employment opportunities.

Thank you, Chairman.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Secretary for Labour and Welfare, do you wish to speak again?

(The Secretary for Labour and Welfare shook his head to indicate that he did not wish to speak again)

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

MR CHEUNG KWOK-CHE (in Cantonese): Chairman, I agreed with the remark made the Secretary earlier that the entire Bill is well balanced. However, as pointed out by Mr Paul TSE just now, the inclusion of an assessment process in the Bill has actually resulted in exemptions from some of the provisions in the DDO.

I cannot accept the arrangement whereby employers will be exempted even if he refuses to sign a certificate of assessment. For instance, an employer intends to employ a PWD, and so the PWD requests for an assessment. As a result, he is offered a job by the employer and paid 50% of the statutory minimum wage (SMW) within a four-week trial period of employment. The employer will employ him should the outcome of the assessment report indicates that he should receive less than 50% or even 50% of the SMW. However, he will face dismissal should the outcome of the report indicates that he should receive 60% or even 80% of the SMW. As a result, the employer refuses to sign the certificate of assessment. So, is the employer discriminating against the employee or disrespecting the outcome of the assessment? Should it turn out to be the latter, assessment should not have been conducted in the first place. Therefore, I think that should exemptions be granted under the DDO, employers will enjoy enormous flexibility, so that they can do whatever they want. There will be no problem at all even if an employee is dismissed after a four-week trial period. Am I right? In fact, an employer might still be prosecuted for violating the DDO should he dismiss an employee after signing a certificate of assessment. Hence, why should employers who refuse to sign certificates of assessment be exempted?

This is why I find this arrangement totally unacceptable. Dr PAN and Mr WONG Kwok-hing have also mentioned earlier that this arrangement will indirectly deal a blow to the desire of PWDs to subscribe to the assessment mechanism and make it even harder for them to integrate into society and work. Do we want to help PWDs or not? I hope Members can support my proposed amendment to clause 23. I know that Members are very sensitive about "Article 23", and no one would like to pass "Article 23". However, I believe Members will support an amended clause 23.

Thank you, Chairman.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by Mr CHEUNG Kwok-che 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 TAM Yiu-chung rose to claim a division.

CHAIRMAN (in Cantonese): Mr TAM Yiu-chung has claimed a division. The division bell will ring for three minutes.

CHAIRMAN (in Cantonese): The question now put is: That the amendment moved by Mr CHEUNG Kwok-che to clause 23 be passed.

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:

Dr Margaret NG, Mr CHEUNG Man-kwong, Ms LI Fung-ying, Dr LEUNG Ka-lau, Mr CHEUNG Kwok-che, Mr IP Wai-ming and Dr PAN Pey-chyou voted for the amendment.

Dr Raymond HO, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Wong-fat, Ms Miriam LAU, Mr Abraham SHEK, Mr Tommy CHEUNG, Dr Joseph LEE, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Dr LAM Tai-fai, Mr Paul CHAN, Mr CHAN Kin-por and Dr Samson TAM voted against the amendment.

Mr Paul TSE abstained.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Ms Emily LAU, Mr Frederick FUNG, Ms Audrey EU, Mr WONG Kwok-hing, Mr LEE Wing-tat, Mr Ronny TONG, Mr KAM Nai-wai, Ms Cyd HO, Mr WONG Sing-Chi, Mr WONG Kwok-kin, Mr Alan LEONG and Mr Albert CHAN voted for the amendment.

Mr CHAN Kam-lam, Mr LAU Kong-wah, Mr TAM Yiu-chung, Ms Starry LEE, Mr CHAN Hak-kan and Mrs Regina IP voted against the amendment.

THE CHAIRMAN, Mr Jasper TSANG, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 24 were present, seven were in favour of the amendment, 16 against it and one abstained; while among the Members returned by geographical constituencies through direct elections, 24 were present, 17 were in favour of the amendment and six against it. Since the question was not agreed by a majority of each of the two groups of Members present, he therefore declared that the amendment was negatived.

CHAIRMAN (in Cantonese): Secretary for Labour and Welfare, you may now move your amendments.

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Chairman, I move the amendments to clause 23.

Proposed amendments

Clause 23 (see Annex I)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendments moved by the Secretary for Labour and Welfare 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)

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

CLERK (in Cantonese): Clause 23 as amended.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clause 23 as amended stands 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.

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Chairman, I move the amendments to clause 2 to revise the definitions of "employee" and "employee with a disability", as well as to add the definitions of "option form" and "assessment-opting PWD" and amend a punctuation mark. Details of the amendment have been set out in the papers circularized to Members.

These amendments are either relevant to the drafting of the relevant legislation or technical amendments to improve the clarity of the provisions or consequential amendments made to other relevant parts in the Bill in the light of the new amendments.

With these remarks, I hope Members will support the aforesaid amendments.

Proposed amendments

Clause 2(see Annex I)

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

MR LEE CHEUK-YAN (in Cantonese): I request to put this on record. I originally intended to move an amendment to add "false self-employment" to the Bill, but after consideration, I finally consider that the issue of "false self-employment" is not only a minimum wage issue, it also concerns the entire Employment Ordinance. Therefore, I hope that Members can pay attention to this point. I am also worried that the number of "false self-employment" cases will rise after the minimum wage legislation comes into operation. However, since these cases involve "false" self-employment, vindication can be achieved in the end. Am I right? However, a lot of litigation cases might arise, and this is the last thing I wish to see. This is why I think it might be desirable to give "false self-employment" a statutory definition. Everyone will have a clearer idea if guidelines can be found in the legislation.

Lastly, I wish to appeal to the Labour Department and the Home Affairs Department to pay attention to "single-block" buildings. I am most worried that, after the enactment of the legislation, we do not know who the employers are because there are many flat owners in these buildings. The problem will become very complicated should an employee be employed jointly by these owners. I hope the authorities concerned can pay attention to this. On the one hand, we have to protect employees, but on the other hand, we do not wish to see the occurrence of a lot of disputes. We hope the Government can take preventive measures or make early intervention to avoid the occurrence of these disputes. Thank you, Chairman.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Secretary for Labour and Welfare, do you wish to speak again?

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Chairman, I do not need to speak again.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clause 2 as amended.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clause 2 as amended stands 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 19A Information to employees.

CHAIRMAN (in Cantonese): As Mr LEE Cheuk-yan's preceding amendment to clause 6 has been negatived, I have given leave for Mr LEE Cheuk-yan to revise his new clause 19A.

MR LEE CHEUK-YAN (in Cantonese): I move the Second Reading of new clause 19A as revised.

Chairman, Members might as well settle the matter by giving their support as we have already reached the final stage. *(Laughter)* The major issue is very simple. Why must Members give their support? This is because the

amendment is very simple — an employer is required to provide an employee with a record of the number of hours worked by that employee should the employee make such a written request. This is nothing new as it is already provided in the Employment Ordinance that, when a contract is amended by an employer, an employee may request the employer in writing to provide him with details of the new contract. In other words, the relevant mechanism can be activated when a contract is revised. I am only suggesting that the mechanism can be activated should an employee make a written request for this to be done.

Why should this be done? Members should have heard me say a number of times that workers are simply entitled to know the number of hours they have worked if their work is calculated by the hours. Therefore, if an employee makes a written request in the hope of knowing his own record of working hours we certainly do not hope to see the occurrence of disputes, but at least, employees should have the right to know. I also believe they will not abuse this right because it is not simple at all for them to take the initiative to make a written request. Do we have to be so calculating when it comes to labour relations? Of course, an employee will have to do so only when something happens. Therefore, this amendment is proposed to ensure that employees are entitled to obtain their records of working hours in the event that they need to obtain such information. Thank you, Chairman.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clause 19A as revised be read the Second time.

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

(No Member indicated a wish to speak)

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Chairman, on behalf of the Government, I would like to point out that Mr LEE Cheuk-yan's amendment appears to be alright, but please allow me to explain the practical problems therein. Therefore, we do not support it because we have some reservations about it.

To start with, the amendment seeks to add clause 19A to amend section 45 of the Employment Ordinance accordingly. Insofar as working hours are concerned, we think that the biggest problem is that in reality, employees should and often know better than employers about the total number of hours they have worked during the wage period, though we do appreciate, and I fully understand, the reason why Mr LEE has proposed the amendment. This is the first point. If an employee thinks that the wages received are not commensurate with his working hours, he can ask his employer directly. From the angle of good personnel management, labour relations and staff morale, employers should be willing to clarify with their employees as to how their wages are calculated, so that misunderstanding can be cleared up expeditiously. If necessary, employees can, as mentioned by Mr LEE just now, request to inspect the personal data kept by his employer according to the existing mechanism under the provisions of the Personal Data (Privacy) Ordinance.

I hope to draw Members' attention to the fact that, for the sake of minimizing the burden brought by administrative costs to employers, we have just finished our deliberation on the amendments to clause 20 of the Bill which relates to wages and employment records. However, Mr LEE's proposal precisely runs contrary to what we did just now. While we strive to reduce the burden brought by administrative costs to employers as far as possible, Mr LEE's proposed arrangement is not consistent with this objective. His proposed amendment, if passed, will inevitably increase the administrative costs borne by employers. After receiving an employee's written request, the employer must provide the employee with the total number of hours worked during the employee's wage period. As some employers do not keep so many records, it is not a simple task to separate the wages payable in respect of the total number of working hours and the wages payable not arising from the total number of working hours.

According to Mr LEE's amendment, an employee still has the right to request his employer to provide the relevant record even if his wages are higher than the SMW. In other words, the record has nothing to do with minimum wage. An employee, regardless of his wages, may request his employer to provide the information. This will definitely cause certain impacts on administration and management.

As pointed out by me earlier, it is my earnest hope to strike a balance on the issue of minimum wage in the hope that it can be implemented successfully. In particular, I hope that we can make the system simple and easy at the beginning to enable employers and employees to adapt to this system and maintain good relations, so that they both can have a good start. Notwithstanding this, we do not rule out any possibility in future development. If necessary, we can consider ways to improve the system for better results.

I hope Mr LEE can understand that we have quite substantial reservations about this, and hence we oppose his amendment. Thank you.

MR LEE CHEUK-YAN (in Cantonese): Chairman, I have only one question: Could administrative costs be incurred as a result of this? As mentioned earlier, even the Privacy Commissioner for Personal Data may also obtain the data. If administrative costs are incurred, this requirement should also be scrapped altogether.

In fact, the present discussion is merely about requests for records of working hours. Just now, the Secretary indicated that the figures had to be divided into two categories, namely the figures in respect of which the SMW is applicable and the figures in respect of which the hourly rate is not applicable. As wages have already been paid to employees, why can these two categories of figures not be separated? I do not quite understand this.

Nevertheless, Chairman, it is getting late. Thank you. *(Laughter)*

MR LEUNG YIU-CHUNG (in Cantonese): Chairman, the Secretary has forgotten something, probably because of his new status and position. Today, he is a Bureau Director, not a Commissioner. If he were the Commissioner for Labour, he would have definitely understood that, when labour disputes occur, employers are responsible for providing all data and answering all questions. Employees might not want to go to the Labour Department (LD) to institute litigation; they might merely want to obtain the data, before going to the LD, to confirm the accuracy of their own information. Why can they not do so? If employees are not allowed to do so, they will eventually be forced to make a big

fuss by taking their cases to the LD and the Labour Tribunal before they can obtain the information.

Just now, Mr LEE Cheuk-yan made it very clear that, under general circumstances, workers would not request for their data without a reason. A labour dispute must have occurred before such a request is made. This can, on the contrary, save administrative costs, for employers are dispensed of the need to send staff members to the LD or go the LD by themselves in order to settle the disputes. Furthermore, such data have already existed as these workers are usually earning low wages or wages close to the minimum wage. Moreover, employers are required by the law to record such data. Why can workers not make a request for their data?

The Secretary argued earlier that employees should know better than employers about their own working hours. However, the present problem is that employees usually request for supporting evidence when there is discrepancy between their own records of working hours and the records kept by their employers. But the Secretary has argued otherwise. Has he considered the circumstances of employees? This is why I think that the Secretary has forgotten his previous role as the Commissioner for Labour. I think this is not acceptable.

CHAIRMAN (in Cantonese): Does any other 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 new clause 19A be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mr TAM Yiu-chung rose to claim a division.

CHAIRMAN (in Cantonese): Mr TAM Yiu-chung has claimed a division. The division bell will ring for three minutes.

(Mr LEUNG Yiu-chung rose to his feet while the division bell was ringing)

MR LEUNG YIU-CHUNG (in Cantonese): Chairman, can Members who have raised their hands in support of the motion just now cast the opposite vote when pressing the button?(*Laughter*)

CHAIRMAN (in Cantonese): In all divisions, the results shown on the electronic voting system shall always prevail.(*Laughter*)

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:

Dr Margaret NG, Mr CHEUNG Man-kwong, Ms LI Fung-ying, Dr LEUNG Ka-lau, Mr CHEUNG Kwok-che, Mr IP Wai-ming, Dr PAN Pey-chyou and Dr Samson TAM voted for the motion.

Dr Raymond HO, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Wong-fat, Ms Miriam LAU, Mr Abraham SHEK, Mr Tommy CHEUNG, Dr Joseph LEE, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Dr LAM Tai-fai, Mr Paul CHAN, Mr CHAN Kin-por and Mr Paul TSE voted against the motion.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Ms Emily LAU, Mr Frederick FUNG, Ms Audrey EU, Mr WONG Kwok-hing, Mr LEE Wing-tat, Mr Ronny TONG, Mr KAM Nai-wai, Ms Cyd HO, Mr WONG Sing-chi, Mr WONG Kwok-kin, Mr Alan LEONG and Mr Albert CHAN voted for the motion.

Mr CHAN Kam-lam, Mr LAU Kong-wah, Mr TAM Yiu-chung, Ms Starry LEE, Mr CHAN Hak-kan and Mrs Regina IP voted against the motion.

THE CHAIRMAN, Mr Jasper TSANG, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 24 were present, eight were in favour of the motion and 16 against it; while among the Members returned by geographical constituencies through direct elections, 24 were present, 17 were in favour of the motion and six against it. Since the question was not agreed by a majority of each of the two groups of Members present, he therefore declared that the motion was negatived.

CLERK (in Cantonese): Schedule 3.

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 Schedule 3 stands 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): Schedules 1, 2 and 4.

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Chairman, I move the amendments to Schedules 1, 2 and 4. The detailed content of the amendments is contained in the paper which has been circularized to Members.

The amendment proposed to item 12 of Schedule 1 seeks to put all bodies established under section 6(2)(h) of the Vocational Training Council Ordinance on the list of education institutions specified in Schedule 1 to the Bill.

The amendments proposed to Schedule 2 seek to make it clear that once a certificate of assessment provided by an approved assessor after assessing the productivity of a PWD is signed by the assessor, the assessment of the degree of productivity of the PWD is completed. On and from the first day after the certificate is signed by the PWD and his employer, the SMW rate of the PWD employee shall be calculated in accordance with the assessed degree of productivity stated on the certificate. Furthermore, after the Minimum Wage Ordinance takes effect, if a PWD employee earning wages not lower than SMW chooses to be assessed on account of change in his disabilities, and if he is doing the same work, he can choose to be assessed direct without undergoing a trial period of employment. Hence, we have to amend the provision in Schedule 2 to make this clear.

The amendments proposed to section 1(2) of Schedule 4 seek to delete "任期" and substitute "任免", to make it more consistent with the textual meaning of the English provision.

With these remarks, I hope Members can support the aforesaid amendments. Thank you.

*Proposed amendments***Schedule 1**(see Annex I)**Schedule 2**(see Annex I)**Schedule 4**(see Annex I)**CHAIRMAN** (in Cantonese): Does any Member wish to speak?

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the amendments passed.**CLERK** (in Cantonese): Schedules 1, 2 and 4 as amended.**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That Schedules 1, 2 and 4 as amended stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Long title.

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Chairman, I move consequential amendments to the long title because the heading of Part 5, the cross-heading immediately before clause 18, and clause 18 concerning the repeal of the Trade Boards Ordinance have not been incorporated into the Bill. The relevant amendments are merely technical amendments that seek to achieve textual consistency. The content of the amendments are set out in the paper circularized to Members.

Chairman, I would like to take this opportunity to respond to the issue raised by Members yesterday concerning the procedure of repealing the Trade Boards Ordinance. The Department of Justice has indicated very clearly to us that the practice of repealing a relevant piece of legislation when introducing a new bill is absolutely consistent with the usual law drafting procedure. There is no breach of legal procedures.

With these remarks, I hope Members can support the Government's amendment. Thank you.

Proposed amendment

Long title (see Annex I)

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the amendment to the long title moved by the Secretary for Labour and Welfare be passed.

DR MARGARET NG (in Cantonese): Chairman, this once again shows that the Government would rather choose the minimum standard. In other words, it will act in this manner if it is formally allowed to do so.

Chairman, it is now 5.20 am. If I wish to argue with the Secretary, I absolutely have the energy to do so. However, I think that it is quite meaningless to argue with him; hence, I only wish to have my view put on record.

Chairman, when an existing piece of legislation was first passed, it was intended to confer some rights or impose some obligations on certain people. Therefore, the repeal of the legislation would bring changes to the rights and obligations of certain people. This explains why the Government is duty-bound to adopt a positive approach to deal with this matter very carefully rather than treating it as a minor issue and dealing with it jointly with other issues. All responsible governments with dignity would not act in this manner. But perhaps I have used the wrong standard. Perhaps this standard is simply inapplicable to this Government.

Thank you, Chairman.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Secretary for Labour and Welfare, do you wish to speak again?

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Chairman, I have nothing to add.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by the Secretary for Labour and Welfare 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 amendment passed.

CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bills

PRESIDENT (in Cantonese): Bill: Third Reading.

MINIMUM WAGE BILL

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): President, the

Minimum Wage Bill

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

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Minimum Wage Bill be read the third time and do pass.

Does any Member wish to speak?

MR LEE CHEUK-YAN (in Cantonese): Good morning, President, by now we have been examining the Minimum Wage Bill (the Bill) for 40 hours already.

Up till 25 minutes past five this morning, the meeting today, which started at nine yesterday morning, has been running continuously for almost 20 and a half hours. First of all, I have no idea whether 40 hours can be considered as a record. Nevertheless, be it a record or not, we can see how important this Bill is in this Council. Now that we have been debating continuously for 20 and a half hours, I believe Members should have some profound feelings this time, and so I hope they also will support prescribing maximum working hours. Let us just think about this, some workers really have to work 14 or 16 hours daily. At this moment when we have been debating for 20 hours, I hope Members will also give some thoughts to those workers who work 14 or 16 hours daily.

President, just now Dr Margaret NG said I shed a tear of joy when the Second Reading of the Bill was passed. At this moment, I think I can only say that I feel like crying but had no tears. Why? Certainly, I am really glad to see the Bill before this Council today. However, after deliberating for three days, all the amendments, with the exception of those from the Government, were negatived. The reason is simple and clear, we can all see this plainly. We fail because of the systems of functional constituency and separate voting, which serve as a pair of sharp scissors cutting off everything. In my view, this system will just render it impossible for our society to resolve any problem. Members returned by functional constituencies after spending some \$200,000 can block all the amendments proposed by Members returned by direct election. This is the woe of the Council.

Another reason that I am too deep for tears is that all my amendments are in fact seeking to put the soul back in the Bill. What am I really talking about? In fact, do all Members know what have been passed in this Council today? The answer is very simple. We have only passed the proposal that the Chief Executive is empowered to prescribe a minimum wage. Just this proposal alone, all others involve the technicalities, which we do not have to care about. All in all, everything is under the control of the Chief Executive.

Originally, we would like to include in the Bill some principles for consideration and the protection for basic living standard, but our efforts were in vain; the provision for an annual review fails; the provision to provide for the power of the Council to make amendments fails. All of our amendments were negatived. The amendments I mention just now are in fact the most important,

denoting where the soul of the Bill lies. And yet these important amendments were all negated. What then is the consequence? Well, it is true that we have enacted a piece of legislation, and I can say for certain that our workers will finally have a minimum wage. However, we are still uncertain of two things. We do not know the minimum wage rate to be prescribed, as this most important task has in fact handed over to the Provisional Minimum Wage Commission and the future Minimum Wage Commission. I wish to stress one point that I have just mentioned, that is, the two commissions are appointed and controlled by the Chief Executive. As such, we really do not know the final minimum wage rate.

Secondly, after the minimum wage rate is set, when will a review be conducted? We have no idea. Hence, we really have no choice but being forced to take to the street every year to fight for our basic demand for a minimum hourly wage of \$33, so that workers can lead a contented life in future. We certainly have to keep on fighting every year.

The current legislation offers us nothing more than a tool or an opportunity to fight for a decent life for our workers. I am not sure whether we can make the best of this tool or opportunity. To be honest, I have to admit that trade union movements in Hong Kong are not strong enough. If our trade union movements were strong, we would not need to set a minimum wage. Having said that, regardless of the strength we have, we will continue to put in every effort to fight for a reasonable minimum wage for our workers. We will certainly keep fighting for them.

Hence, President, I do not wish to speak too long, as it is already half past five in the morning. However, last but not least I wish to say thank you to all the workers who have made an effort in the past 12 years to bring about this piece of legislation. I am certainly grateful to all the government officials concerned, as I believe they have all put in efforts, even though some of their efforts may give rise to obstacles, while some other efforts might have helped to take things forward. I am not sure who are the good guys and who are the bad guys. Anyway, I give my best wishes to those staff members of the Government who have really helped to facilitate the introduction of the Bill. I all the more have to thank all the workers who have been fighting hard with us, because many workers have sacrificed a lot in striving for a minimum wage. I have heard that some workers were dismissed by their employers after they had stepped forward to

speak for themselves. Actually, it took them a lot of courage to step forward and speak for themselves. Besides, they had to lay down their dignity as well, as their relatives would ask them why they had said such "shameful" things. Indeed, one will lose face to admit that he is poor. Nevertheless, they were still willing to step forward and state their case, so that we could achieve the result today. We know that even though we have not yet won the "World Cup", we will certainly keep striving for our goal.

Thank you, President.

MR ALBERT CHAN (in Cantonese): President, we should be delighted to see the passage of the Minimum Wage Bill. The seven million people living in Hong Kong, in particular the toiling masses, should share the joy as well. However, the democratic camp has chosen to leave the Chamber in protest during the scrutiny process of the Bill. This reflects the low administrative capability of the Government. The Government led by Donald TSANG, the Central Government and many pro-government Members have, time and again, emphasized in public that we could work out a consensus and accommodate each other. However, we can hardly find such spirit when examining the Bill.

The Bill will soon be read the third time. The vast majority of the general public, the vast majority of elementary workers, and in particular the lower strata workers who are going to receive the minimum wage, are greatly dissatisfied with the Bill, they even feel indignant. So long as no improvement has been made on the poor administrative performance of the Government, the general public will definitely not change its views of the Government.

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

In my view, the approach of the Government reflects the contradictions of the entire system at present, as well as the inherent problems. Firstly, the Government lacks public recognition. Secondly, many a time the Government has tried to strike a balance among the interests of different parties, so as to meet the demands raised by different strata, groups and individuals; the result is a "Pere

David's deer" which resembles four kinds of animals but is none of the four. In the end, in order to satisfy the interests of certain people or strata, the interests of the groups in dire need are very often sacrificed. The fact that the Bill is passed while all amendments proposed by the democratic camp and trade unionists are negated exactly reflects the absurdity of this phenomenon. As such, the slogan of "Strong Governance" is nothing more than empty words. In the end, a "weirdo" was created out of the various piecemeal measures introduced by the Government.

Deputy President, the Government have employed high-handed administrative means to force the passage of its preferred approach. Even though it has won, the victory was won in an inglorious way. As a matter of fact, the Government is treading on the blood of the people and trampling on the shoulders of the people to get this halo. The people will remember this, and in the end they will ask the Government to repay this debt of blood.

Deputy President, the Secretary has said many nice things when speaking on a number of amendments. We have indeed heard too many of such sweet words. Just now the Secretary mentioned how the Government could satisfy the demands of the public, and how fair the Government was in the process. The Government had also made many promises during the discussion on the Lump Sum Grant subvention system to be introduced to the social welfare sector about ten years ago. I believe Members still remember very clearly that various Secretaries and Directors of Bureaux have made many promises in discussing the "Link REIT" incident. However, in the end, it was always the general public who had to suffer. In the case of the Lump Sum Grant subvention system, the victims were front-line workers; and in the "Link REIT" case, the victims were small business operators and public housing residents.

In this Chamber, whenever the Government seeks to pass a piece of legislation and if the legislation is controversial, the relevant policy Secretaries would make many commitments. Many of such beautiful lies may meet the needs of certain people and the legislation can muddle through, so much so that some Members would slightly take pride in supporting the Government. Nevertheless, history often proves that such lies will bring sufferings to the poor population of Hong Kong.

I have said many words of admonishment and rebuke during the heated debate earlier on, what makes me sad and distressed is that this issue of minimum wage has in fact been raised many times. As mentioned by many colleagues just now, in all advanced countries and in democratic and liberal regions of the world, the prevalence of a minimum wage is an indisputable fact, and it has already become a part of life. But back in Hong Kong, minimum wage is still something we have to fight for continuously for the toiling masses and unionists. This reflects the inhumanity, injustice and backwardness of the system, as well as the lack of kindness on the part of the Government.

I wish to appeal openly again: Hong Kong people really have to stay alert. If the public, in particular the younger generation and the toiling masses, should still remain silent and do not stand up to fight for their rights, the unscrupulous and shameless governing class will just subject the general public to continuous oppression and suppression, and cause them to live in continuous pain. If you want to relieve yourself from such pain, you have to step forward. If you want to break away from the hardships in life, you have to reform the system. We should take forward the reform in our hands, we should never suffer in silent or keep waiting endlessly. If the public do not step forward, the groups with vested interests and this ugly Council will continue to exist. As such, I hope you can have a good look at those ugly faces. In order to establish our own lives and have our own way of life, the people of Hong Kong must step forward. We have to escalate this struggle in future, so as to stop these flunkies from controlling Hong Kong people's lives.

MR WONG KWOK-HING (in Cantonese): Good morning, Deputy President. The discussion on this legislation on minimum wage has been going on for four days, and we have spent almost 42 hours on it so far. I just wonder how much longer this discussion on the Third Reading procedure will take.

The legislation on minimum wage will be enacted successfully today. In my view, despite the various room for improvement, the aspects that deserve criticism, and the areas we still need to fight for, this new piece of legislation is a breakthrough achieved by the local labour sector through their continuous efforts over the past dozen-odd years. This is also an achievement which marks the new era of labour rights movements. It is my belief that these two achievements

today will be marked in history. These results are hard-earned achievements. They are the fruits of the continuous hard efforts made by numerous older generation workers who insisted on devoting their best efforts to their work and lives despite the exploitation they were subjected to. These achievements are also made possible through the incessant, persistent and continuous hard work of many unionists. Certainly, they are also the results achieved by Members present in this Chamber. At the same time, they are also made possible through the efforts of the Government and the relevant policy bureau. Here, I would like to take this opportunity to express my heartfelt thanks to all parties concerned for their hard work.

It is true that during the debate in these past dozens of hours, Members have engaged in heated argument with the Government or even among themselves in order to point out the crux of the matter. However, we have also tried to complement and support each other's efforts. In my view, such hard work and sincerity should be recognized. During this debate which goes on for dozens of hours, I have not avoided anything but raised a lot of frank comments. Nevertheless, it is beyond doubt that among all the policy secretaries I know, Secretary Matthew CHEUNG Kin-chung is indeed the one who has a better understanding of the difficulties and hard times of the lower strata workers. And he is also the one who is willing to speak for us. Having said that, I do understand very well that due to the constraint of his authority, position and role, there are a number of things that he could not achieve. But I believe he has put in his sincere efforts. I should like to express my gratitude to him.

Deputy President, today, we have finally enacted a piece of legislation on minimum wage. I consider this as the first step in the long march to fight for labour rights and better conditions. Being engaged in union work and labour movements, I understand very well that we have to fight persistently and diligently. With changes in times, circumstances and labour relations, we can never resolve all problems, what we can do is to work hard to keep in line with such changes. Today, the Minimum Wage Ordinance is finally launched, but there are still many problems we need to deal with. Among the many amendments proposed by Members to the Minimum Wage Bill, the crux of the matter is just the same. It is just impossible for us to pass the amendments proposed by Members under the present circumstances. Nevertheless, this does not mean that the said amendments are unreasonable. Hence, if the Minimum

Wage Ordinance can be enacted, we will have to deal with a new subject in future, which is the further enhancement to the legislation. I hope that the unionists and labour leaders from various trade unions across the territory will continue with their good efforts and strive for further achievements on the basis of the results today.

Deputy President, I wish to raise two points to the Government regarding the enactment of the Minimum Wage Ordinance, and I hope very much that Secretary CHEUNG will take into account my two requests during his term of office. Firstly, given that the minimum wage level has yet to be set, I hope very much that the Minimum Wage Commission appointed by the Government will review the minimum wage level after the first year of implementation, which is in 2011-2012. This is because the minimum hourly wage that has been implemented for a year has a time lag problem. I am not going to discuss this in detail. I just hope the Government will conduct a review after the first year of implementation. Even though the Government has successfully passed the proposal to review the minimum wage level at least once every two years, I still hope it will consider my request under the people-oriented principle.

Secondly, I hope that the Administration, in particular the Labour Department, will keep a close watch on the fake self-employed cases after the commencement of the Minimum Wage Ordinance. I have always worried that some unscrupulous employers will resort to some even more unreasonable measures to offset the effect of the Minimum Wage Ordinance. I can see at this moment that the problem of fake self-employed cases will further deteriorate. As such, I hope the Government will devote more effort to examine this issue.

Deputy President, I so submit.

MR FREDERICK FUNG (in Cantonese): Deputy President, the Minimum Wage Bill will finally be passed today. To the people of Hong Kong, this is certainly a memorable day, as we have been striving for a minimum wage for some twenty to thirty years. When speaking the debate earlier, we have mentioned about the situation in the past. We did not know where the switches of the lights were, nor did we know when the lights would be switched on and off. However, with the passage of legislation on minimum wage today, even

though we are still not satisfied with the mechanism, we can at least see one switch. It is true that we do not have the authority to determine when to switch on and off the lights, but at least we know who has such authority.

To those who are engaged in politics, and particularly civilized politics and non-violent politics, and regardless of whether they are in office or otherwise — certainly, those in office enjoy an edge while those who are not in office are faced with more difficulties, as it is not possible to achieve our ultimate goal with a single strike — political changes often proceed in a gradual manner. Today, we have made a clear step forward. It is a step worthy of recognition, but by no means a satisfactory step. This is just an initial step, which should only be regarded the first step from square one. We can only say this is the first step towards the introduction of a minimum wage.

Obviously, this piece of legislation has quite a number of problems. The first and major problem is that all relevant powers are excessively centralized and vested in the Chief Executive. Hong Kong could be considered as one of the affluent societies around the world, and hence our political system should not be reduced to second grade. What we should have is a political system commensurate with a first class civilized and advanced society. We should not vest all powers in one single person any more. Instead, we should centralize the relevant powers into a system and allow different parties, different interest groups and different stakeholders to make the final decision via the system. However, we cannot see such a picture in the present system.

Nevertheless, in any case, the more the powers vested in a single person, the greater the pressure will be imposed on that person. And likewise, that person also needs to shoulder greater responsibilities. It is true that the system in Hong Kong has not reached the level of a world class civilized democratic system. But I all along consider that as the Chief Executive, with the ultimate powers in his hands and all powers vested in him from the first to the last step, there is no way for him to avoid his responsibilities. Everything he says and does will be seen under a magnifying glass by the local media as well as the people of Hong Kong. As the powers in his hands increase, so will his responsibilities, and naturally the pressure on him will further intensify. Since all powers are vested in the Chief Executive, he has to shoulder the ultimate

responsibility. In my view, once the minimum wage is implemented, this issue should be reviewed expeditiously.

Secondly, up till today, even though the relevant legislation is passed, we have not passed any proposal regarding the actual level of the minimum wage. What is more, we have never discussed this issue before. Even up till now, nobody can have any idea about it. This has to be proposed by the Minimum Wage Commission, endorsed by the Chief Executive, and eventually submitted to the Council. As such, being members of the Legislative Council, we should not wait until the voting time to voice out our views. I believe not only this Council but also members of the Panel on Manpower and Panel on Welfare Services should have a chance to discuss the issue throughout the entire process. During the process, I also hope that the Secretary will, from time to time, submit the information and topics under discussion by the Minimum Wage Commission to this Council for discussion, so that this Council can keep pace with the Commission in discussing the same topics and considering the same information. That way, when the voting moment comes, whether they vote for or against the proposed minimum, Members will at least be convinced more easily.

Deputy President, this issue leads some other issues as well, and that involves the question of whether or not the disadvantaged groups will be discriminated against. Two groups of people will be discriminated against, one is people with disabilities, and the other is foreign domestic helpers. Deputy President, I will read out the position of the Equal Opportunities Commission (EOC), which is a written submission provided by the EOC. As a member of the EOC, I am provided with statements of EOC's positions. Let me read it out to Members. "The Position of EOC: The Office of the Equal Opportunities Commission finds the exemption of foreign domestic helpers from the legislation on minimum wage in breach of the spirit of equal opportunities in principle, and does not rule out the possibility that the legislation may be challenged in a legal context in future. Nevertheless, the EOC understands that in dealing with the minimum wage issue, the Government has to take into account other social and economic factors that carry more profound implications, and for this reason the Government concludes that the exemption of foreign domestic helpers from the legislation is an arrangement that can be extensively accepted by the community. The EOC Office considers that it should be the responsibility of the Legislative Council to make the decision of whether or not to accept such a conclusion.

The position of the EOC regarding this subject remains unchanged, and has been reflected to the Government." So, this is the position of the EOC. In other words, regarding the question of whether foreign domestic helpers should be exempted, the EOC considers that such an exemption will very likely be in breach the spirit of equal opportunities.

As regards the cases of discrimination against people with disabilities, three situations are currently involved in such cases. The first situation is assessment. If the disabled person is assessed to have 100% working ability, the person may receive 100% of the minimum wage. If the working ability should be lower than 100%, the minimum wage may be reduced on a pro rata basis. The second situation takes place after the assessment. In reality, the employer concerned can refuse to sign the assessment certificate, and if the certificate is not signed, the employee will be dismissed. The third situation is *status quo*, which means that the employee continues to receive the existing wage and will not take any assessment. For example, if I am earning a wage lower than the minimum wage, I will not request to have my wage adjusted upwards to reach the minimum wage level.

Regarding these three situations, do they involve any discrimination against people with disabilities, including the mentally handicapped referred to by Mrs Regina IP? We

MR TAM YIU-CHUNG (in Cantonese): Deputy President, judging from what I have heard, the speech delivered by Mr Frederick FUNG just now seemed to be repeating some of the contents mentioned earlier on during the discussion on the proposed amendments. This is now the Third Reading debate of the Bill, but he just keeps repeating the topics discussed earlier on. What should we do now?

DEPUTY PRESIDENT (in Cantonese): Mr TAM, please take your seat. Before the Third Reading of the Bill, Members can still sum up their thoughts about the Bill as a whole. Mr Frederick FUNG, please do not speak in great detail on each of the proposed amendments. You may speak on your overall views of the Bill at this Third Reading stage.

MR FREDERICK FUNG (in Cantonese): This is a piece of new information. Let me read it out to Members. Regarding the ability assessment of people with disabilities and the mentally handicapped, in my view, such assessments are in breach of the principle of equal opportunities, or even involve a certain degree of discrimination.

Even though this piece of legislation will be passed, I still hope that the Government will conduct a critical review within these two years to find out whether the various practical issues are in breach of the Disability Discrimination Ordinance. Certainly, this piece of legislation enjoys the same status as the Disability Discrimination Ordinance, but the legality of the legislation does not guarantee the appropriateness of its provisions. We need to bear in mind that the Disability Discrimination Ordinance was enacted mainly on the background that while our society is heading towards democracy and decisions are made by the majority, the interests of the minority are duly respected as well. The Disability Discrimination Ordinance is a means to show our care for the disadvantaged groups. We let the majority make the decisions, and at the same time we also care about the rights and interests of the disadvantaged groups. Deputy President, this is not only a piece of legislation, this is also a standard value. As things develop, if such a value standard is extensively agreed by the people of Hong Kong, it can become the value standard of our society. And from this basis we can develop policies in different fields, with a view to ensuring that the disadvantaged groups can receive equal treatment in society.

I wish to reiterate that as a member of the EOC, I need to advise the Government that the EOC will soon form an ad hoc committee to follow up this legislation, and the objective is to find out whether the people with disabilities and the foreign domestic helpers are treated unequally in this context. In the event that we identify any individual case or collective case, we will make some value judgment and comments. Certainly, we may not be able to stop the Government in a legal context. Since this legislation will enjoy the same status as the Disability Discrimination Ordinance upon passage, it is not possible for us to stop the Government by legislative means. However, as I pointed out just now, it is important to note that we have spent so many years to enact an anti-discrimination legislation, which is intended to show our care for the disadvantaged groups, representing Hong Kong people's value and moral standard regarding the disadvantaged groups. As such caring attitude, value standard and

moral standard have already been established, and we have all agreed to that years ago, we should not regress or revert back.

Last but not least, Deputy President, even though we pass this legislation, we still need to have complementary facilities to take care of the people with disabilities. We have studied the situations in different countries, and our Subcommittee on Poverty Alleviation has released a number of reports in the respect. Copies of such reports have been sent to the Government as well. With these reports in hand, I hope the Government will study how the measures adopted overseas can be applied to Hong Kong, such as providing subsidies, developing social enterprises, providing training and even setting up sheltered workshops or introducing other alternatives, so that the people with disabilities will also be protected. The objective is to ensure that these people will receive a wage close to the minimum wage level upon putting in their best efforts to do their job.

Deputy President, we should be happy about the passage of this piece of legislation. As I said just now, this is also a starting point, and yet I am also afraid that many issues may come up one after another. If the Government also agrees that this is a starting point, I just hope the Government, in particular the Secretary and the Chief Executive, will list out the various problems relating to the minimum wage issue in two years' time, and then conduct reviews, make improvements and introduce amendments. Thank you, Deputy President.

MR WONG KWOK-KIN (in Cantonese): Good morning, Deputy President, after undergoing more than 42 hours' scrutiny by this Council, the Minimum Wage Bill finally enters its Third Reading voting stage. I believe the Bill will very likely be passed. At this moment, even though we consider this legislation not totally satisfactory, it is still a breakthrough achievement in the field of labour rights in Hong Kong. And hence, it should be something to feel happy about.

Speaking of the feelings about this Bill, as our colleague, Mr WONG Kwok-hing has already talked about that earlier on, I do not wish to spend time on this aspect. I just wish to take this opportunity to thank a number of people.

First of all, I wish to thank those in the labour sector who have been fighting incessantly for labour rights and interests, and for the setting of a minimum wage. Thanks to their persistent efforts, we can finally achieve this result today.

Secondly, I need to thank members of the various sectors of our society who support justice and the rights and interests of workers. It is their support that helps to bring about this legislation step by step.

I also wish to thank all the colleagues who have been working so hard in this Chamber for dozens of hours. I also wish to thank them for the votes they are going to cast in support of justice later on.

Actually, the one I wish to thank most is Secretary Matthew CHEUNG Kin-chung. Throughout the legislative process of the Minimum wage Bill, whether he was discussing with us at a very initial stage or soliciting views from trade unions, I can that Secretary Matthew CHEUNG has put in a lot of effort. I believe this legislation is made possible with the painstaking effort and good work of the Secretary. Certainly, I also wish to thank the staff members working with Secretary Matthew CHEUNG, including the staff members of the Labour and Welfare Bureau, as well as those of the Labour Department. They have been working very hard for this legislation on minimum wage. As such, the Hong Kong Federation of Trade Unions and I particularly wish to take this opportunity to express our heartfelt gratitude to Secretary Matthew CHEUNG, as well as the staff members of the Labour and Welfare Bureau and the Labour Department. We also hope that in future when we are fighting for the rights and interests of workers, Secretary CHEUNG will hold fast to the spirit today to give the labour sector his strong support. As for the next stage, in addition to striving for a minimum wage prescribed at the reasonable level of \$33, we also have to prepare ourselves to strive for standard working hours. I hope the Secretary will continue to give us his support in this respect.

Thank you, Deputy President.

MR LEUNG YIU-CHUNG (in Cantonese): Deputy President, we have been working with the Secretary in this Council for more than a dozen years, and some

of his "pet phrases" have marked deeply on my mind. I believe he will use one of such phrases this time, and that is "hard-earned".

I agree that the successful passage of the Minimum Wage Bill today is indeed a hard-earned achievement. Why is that so? The first and foremost step is that we have to secure the consent of the Government. If there is no consent from the Government, we could never have the Minimum Wage Bill submitted to this Council. Before the 1997 Reunification, we could submit private bills to the Legislative Council. And I had intended to submit such a private bill. However, once we considered the complicated matters involved, we found that it was just impossible for the general public to submit the bill on their own. Hence, I have not submitted such a bill before 1997, and I believe only the Government can have the capacity to do so.

Upon the 1997 Reunification, we are under the governance of the Government of the Special Administrative Region (SAR Government), and because of the provisions stipulated in the Basic Law, it is no longer possible for us to submit private bills. It is all the more impossible for us to submit a private bill on minimum wage. If the Government did not consent, we would never achieve the result we have today. As such, the first step is to secure the consent of the Government.

But how are we going to secure the consent of the Government? Here, I should like to express my gratitude to two parties. First of all, I wish to thank our friends in the labour sector for their painstaking efforts over the years. I started keep watch on this issue in 1978, and some forerunners had raised this issue much earlier than I did. In the past several decades, we have voiced out our request through different channels and in different ways to urge the Government to prescribe a minimum wage and provide protection for the lower strata workers.

What we have today is the accumulated result of the past efforts. Without such past efforts, it is just impossible for us to achieve today's result. Besides, I also need to thank a number of civil servants, including the Secretary. As I said just now, the job they are tasked with is a very complicated one and cannot be resolved easily.

Even though I do not agree to some of the approaches taken by the Secretary, I do agree with his philosophy of striking a balance. And I believe that in order to achieve the result we have today, the Secretary and his colleagues have really made a lot of effort to strike a balance among the various aspects. Hence, we should all thank them for their contribution in this respect.

However, what will the result be in the end? I do hope very much that the Bill passed by the Council today, as referred to by Mr LEE Cheuk-yan, is just a framework or a body. Will this body have a soul? Can it help the lower strata workers to live in dignity and live like a human being? These are important questions which have yet to be answered. We certainly do not wish to see that the problem we have always worried about still emerges even after this framework or body is established, that is, will we be "giving the wrong kind of help". This is because whenever a labour policy is introduced, we will certainly be criticized for "giving the wrong kind of help". The long service payment is one example. The criterion for the long service payment is five years of service. So, what will employers do? They will dismiss their employees after they have worked for four years and nine months, so that these employees will not be eligible for long service payment.

There are numerous similar cases, and I believe the Secretary knows it very well, as he has been the Commissioner for Labour before and has handled many such cases during his office. As such, we worry very much about the future development of this framework, which is a body without a soul. Will we be criticized by others again, so much so that we just wish this legislation had never been passed? The workers were earning \$24 to \$25 an hour in the past, but now their hourly wage is just \$22 to \$23. They are just jumping from the frying pan into the fire. We do not wish to see such things happening. We sincerely hope that they will no longer be working for a humiliating or degrading wage.

Take the elderly lavatory cleaner as an example, he only earned an hourly wage of \$7. Is this not a humiliating wage? Let us not discuss whether he can live on this hourly wage, but this income level will indeed deprive him of his dignity and put him in an inhumane situation. For him, life is indeed very hard. As such, I just hope that such a situation will no longer exist after the establishment of the framework.

I share the views of Mr Frederick FUNG. Why do we worry so much? This is because under this framework, all the relevant powers will be centralized and vested in the Chief Executive. The SAR Government keeps telling the public that we need to develop towards democracy. Now that it is advocating democratic development, why can it not return such powers to the people? One of the agencies the Government can turn to is this Council. Why does it not allow this Council to have the power to amend or prescribe a minimum wage level?

As a matter of fact, this Council is elected by members of the public. Why can we not have such powers? We consider this arrangement unsatisfactory and unfair. Many people voted for us in the hope that we could do something for them via this Council. But it is a pity that we are unable to do that. It is really impossible for us to do that, and we are terribly sorry.

Another "pet phrase" of the Secretary is "new thing". I agree that the arrangement is new to me. I have never come across such an arrangement over the past decades. This is the first time I come across the arrangement. The Secretary also said he hoped to have a trial run for some time and conduct reviews to draw on the experience gained, so that improvements could be made. He also said, "Don't worry, I will have everything in place." This is also one "pet phrase" of the Secretary.

I certainly hope that everything will be in place. Very regrettably, however, when he told me about the trial run, he did not tell me how long would the trial run last. Neither did he give me any description or timetable. How long will the trial run be in operation before a review is conducted? I really have no idea. I certainly hope that the review can be conducted expeditiously to enable the minimum wage level to really take care of the lower strata workers, so that they can live in dignity and live like a human being. This is what I want to see most.

Regardless of how things will develop, what we have today is indeed a historic fruit. We must attach great importance to this historic fruit. And I hope very much that this fruit will really bloom into flowers that can be enjoyed by all. What I do not wish to see is that the historic fruit has withered in the middle of the process.

Hence, I wish to sincerely tell the Secretary that while I am very grateful to him and his colleagues for the efforts they have made, I also expect them to mobilize the SAR Government to work even harder in this respect, so that the lower strata workers can get out of the inhuman situation and live in dignity. This is my greatest expectation.

Deputy President, I so submit.

MR WONG SING-CHI (in Cantonese): Thank you, Deputy President. During the deliberation process of the legislation on minimum wage, despite my considerable familiarity with the contents, I would sometimes get confused when looking at the pile of speaking notes in front of me. And then I began to think about the Secretary responsible for drawing up the Bill, as well as his colleagues in the Labour and Welfare Bureau and the Labour Department. I believe they have put in painstaking efforts, and indeed they have. We have all made our best efforts in striving for this Minimum Wage Bill which everybody wants. Certainly, the Government has its position and the labour sector have their own views as well. Hence, I believe this debate is a rather substantial process, as we have all expressed our respective views.

Deputy President, regarding this Minimum Wage Bill which will be read the third time and passed, I really have some feelings. However, as referred to by Mr LEE Cheuk-yan, the Bill, upon passage, is still "dud". This is because the final decision still rests with the Chief Executive. Even though many of the provisions in the Bill are not perfect, I still believe that the majority of the Members — perhaps with the only exception of Mr Paul TSE — will support the Third Reading of the Bill. In my view, the reason why we, the Democratic Party, support the legislation on minimum wage is the same as the reason why we give support to the constitutional reform proposal. We just hope to stride out a first step, even though the ultimate constitutional reform proposal is still not satisfactory and ultimate universal suffrage is still nowhere to be seen. The case of the legislation on minimum wage is just the same, we still have no idea about the wage level, which depends on the decision to be made by the Provisional Minimum Wage Commission.

However, regarding this Minimum Wage Bill to be passed shortly, nobody will query why Mr LEE Cheuk-yan still supports this "dud" Bill, nor will

anybody criticize Mr WONG Kwok-hing and query why he still supports this "dud" Bill. Nobody would query whether these Members have betrayed the people of Hong Kong, whether they have betrayed the workers. Nobody would make such criticism. Regrettably, however, when the Democratic Party strode out the first step to give support to the constitutional reform proposal, some people criticized us and said we had betrayed Hong Kong. Our objective was really to make one step forward, so that we could strive for more elements of general election and democracy in the proposal.

Deputy President, even though the Minimum Wage Bill will soon be passed, as I have mentioned very clearly at the very beginning of the debate when I stated the Democratic Party's position, it is by no means a proposal to help the disadvantaged groups or people with disabilities to get employed. On the contrary, the Bill may have an impact on their employment and their jobs to a certain extent. We have discussed this issue with the Deputy President in the Ante-Chamber earlier on. Nevertheless, we will still give our support to the Bill. In the past, I had considered it too early to legislate for minimum wage because I thought we should have in place the complementary measures first. However, if we are to wait until all the complementary measures are in place to legislate for minimum wage, I believe we can just give up the thought altogether. It is most likely that we will never enact the legislation.

We will still give our support to the Bill. And we really hope that the Bill can help lower-income workers earn a dignified wage that they deserve. As regards the aged, the weak and people with disabilities, or even young people who just step into society, the Bill may not be of much help to them. After the enactment of the legislation on minimum wage, I hope the Secretary will keep on giving his conscientious help to the aged, the weak and people with disabilities, as well as young people who just step into society, so that they can all get a job. In this connection, the problems involved cannot be resolved in terms of wages simply, and many colleagues have already expressed their views in this respect. For people with disabilities, we can help them get a job from a rehabilitation-related perspective, and social enterprises or wage subsidies are some possible options. Or the Government may adopt the measure which the Democratic Party has all long been striving for, that is, to implement a quota system to help people with disabilities to really secure an employment.

As regards the elderly, we hope that the Government will set up a community-wide retirement protection scheme, so that the retired elderly persons do not have to get a job to earn a minimum wage. It is very hard for the elderly to live on minimum wage. We hope that more job opportunities can be offered to youngsters when they first enter the working world. Social enterprises, private enterprises and even government departments should consider how more new jobs can be created to help the younger generation to secure an employment. Otherwise, if these young people cannot get a job, as they grow older, we will still have to support their living. Our society can hardly afford to do that.

Hence, Deputy President, the Democratic Party welcomes the passage of the Minimum Wage Bill today. Nevertheless, we still hope that after the passage of the legislation on minimum wage, the Secretary and the Government will put in more efforts to help the aged, the weak and people with disabilities who cannot secure an employment, as well as the youngsters fresh from schools. Let us all work hard together to help our society to become more stable and harmonious, so that everybody can lead a well-deserved decent life. Thank you, Deputy President.

MR TAM YIU-CHUNG (in Cantonese): Deputy President, legislating for a minimum wage is a very controversial task, and it is my honour that I am the chairman of the relevant Bills Committee. Even though the Bills Committee has held 30 meetings, the time spent on the meetings was not very long. From the resumption of Second Reading debate to the debate for the Third Reading of the Bill, we have already spent more than 40 hours, whereas the 30 meetings of the bills committee only add up to some 90-odd hours. Having said that, I can see in this Chamber that regardless of whether they are of business background or labour background, Members all share one objective, which is not to delay any longer. I believe this is worthy of compliment. Nobody wants to have any further delay, we all hope to promptly complete the legislative process before the end of the current session. If we cannot make it before this session ends, the legislative work will be further delayed for several months. Throughout the entire process, I believe Members have exercised self-restraint as far as possible and avoid being too repetitious. During this 40-odd hours debate, Members can further elaborate their views and express their views freely. For the issues that have not been fully elucidated during the bills committee meetings, they can take

this opportunity to further explicate their points. Certainly, during the process, I have found many parts of Members' elaboration rather repetitious. But then again, it is very difficult to avoid being repetitious.

(THE PRESIDENT resumed the Chair)

In my view, the objective of the Bill is to offer protection to the local workers. As far as this protection is concerned, however, I feel that even though the principal legislation is passed, a lot of work has yet to be done. The minimum wage level is one example. In addition to giving rise to further controversies, the task will also require a lot of promotion efforts. The Government must do a good job in these aspects. Besides, the Government also has to formulate trade guidelines and subsidiary legislation. All these tasks require good preparation work.

It is my hope that once the principal legislation is passed, the controversy involved will not be as great as that before the legislation is enacted. While we may have some disagreement, I hope that in striving for the same ultimate objective, Members will support each other, seeking to resolve disputes with the spirit of mutual understanding and mutual accommodation. Upon the passage of the Bill, I hope employers can understand that the legislation is in force, and I believe the majority of employers in Hong Kong are law-abiding people, and I just hope that when the bill is implemented in future, if we could I have heard many messages concerning that many problems will arise after the passage of the legislation. For instance, our original objective of providing protection for workers may not be so effective, or many other problems may arise. I really do not wish to see things develop this way.

In any case, I need to draw the Government's attention to some elder workers and workers who are not highly competitive. When the legislation is implemented, their employers may choose to hire other workers because they cannot afford to pay the increased wage. Under such circumstances, unemployment will be resulted, and I believe this may probably be an unavoidable situation. Nevertheless, the Government should offer assistance to these workers. It should adopt some measures and deploy manpower to deal with this issue; otherwise, the implementation of this legislation will give rise to

other negative implications. The Government must do something in this respect. And I hope that employers can understand that our society has to develop, our workers have their expectations, and our society also share some expectations. I just hope this legislation can really bring about some positive effects.

I appreciate very much the work of the Secretary and his colleagues. As a matter of fact, the staff members of the Labour and Welfare Bureau have been working hard on this Bill. It is by no means an easy task to include in the Bill the various complicated issues involving the interests of different parties. Nevertheless, while compliments are nice, it is much nicer if we can speed up the Third Reading process and let the Secretary and his colleagues go home to have a good rest.

Thank you.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): Secretary for Labour and Welfare, do you wish to speak?

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): President, I would like to say a few words. After 41 hours of heated debate, the Minimum Wage Bill will finally be read the third time and put to vote. I think that it will be a historic moment should the Bill be passed today. The passage of the Bill can also be described as the result of Members' joint efforts. Despite our heated debate during the past 41 hours, we have worked very hard to get our job done. People from the labour sector and people from the pro-democratic camp alike hope to get this job done, too. I fully accept Members' criticism. I think that tolerance is most important. Members must exercise tolerance. Even if we have inadequacies, Members must forgive us as this is a Herculean task.

Members might not believe that our colleagues have sacrificed both their meals and sleep. In fact, colleagues from the Department of Justice have worked around the clock for many nights because of the Bill. We have really

exerted all efforts to get our job done in the hope that this task can be completed ahead of the summer holiday. I agree with Members' recognition of our work. I will definitely continue to work hard and spur ourselves on in the hope that we will not let Members down. However, it is most important that Members must work together and exercise tolerance.

During the past 41 hours, I have stressed numerous times the philosophy of balancing. The setting of a minimum wage really requires balancing of the interests of various parties and paying close attention to various factors. Most importantly, workers must be protected. Otherwise, minimum wage will not be set and the Chief Executive would not state from the very start in his campaign pledge and policy addresses that a minimum wage must be set. Had the Chief Executive not supervised this matter personally, I could not have kick-started our work. Therefore, I must emphasize that the administration and governance mentality of the SAR Government are truly people-oriented. Nevertheless, we still have a lot of work to do in the process. Today only marks the first step. We still have a lot to do. Except for a minimum wage rate, we still need to deal with the supportive measures, publicity, education and ways to handle guidelines for different trades and industries. Furthermore, it was right for a Member to ask how affected employee could be assisted. In fact, the whole task is quite complicated. Nevertheless, I wish to thank all Members of the Legislative Council and people from the labour sector and the business sector once again. This is really the result of their efforts and tolerance. I would like to thank the President for giving me a 20-minute break to let me finish a quick meal. I know that this is unprecedented. I would also like to thank Mr TAM Yiu-chung, Chairman of the Bills Committee, for leading the Bills Committee to hold 30 meetings. It was not an easy task at all. Most importantly, I hope to, after 41 hours of debate, foster Members' consensus and efforts, so that we can work hand in hand to get this job done. I really must appeal to Members for their tolerance. Thank you.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Minimum Wage Bill be read the third time and do pass. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mr WONG Kwok-hing rose to claim a division.

PRESIDENT (in Cantonese): Mr WONG Kwok-hing 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.

Mr Albert HO, Dr Raymond HO, Mr LEE Cheuk-yan, Mr Fred LI, Dr Margaret NG, Mr James TO, Mr CHEUNG Man-kwong, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Mr LEUNG Yiu-chung, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Ms Emily LAU, Mr TAM Yiu-chung, Mr Abraham SHEK, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr Frederick FUNG, Ms Audrey EU, Mr WONG Kwok-hing, Mr LEE Wing-tat, Dr Joseph LEE, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Mr KAM Nai-wai, Ms Cyd HO, Ms Starry LEE, Dr LAM Tai-fai, Mr CHAN Hak-kan, Mr Paul CHAN, Mr CHAN Kin-por, Dr LEUNG Ka-lau, Mr CHEUNG Kwok-che, Mr WONG Sing-chi, Mr WONG Kwok-kin, Mr IP Wai-ming, Mrs Regina IP, Dr PAN Pey-chyou, Dr Samson TAM, Mr Alan LEONG and Mr Albert CHAN voted for the motion.

Mr Paul TSE voted against the motion.

THE PRESIDENT, Mr Jasper TSANG, did not cast any vote.

THE PRESIDENT announced that there were 47 Members present, 45 were in favour of the motion and one against it. Since the question was agreed by a majority of the Members present, he therefore declared that the motion was passed.

CLERK (in Cantonese): Minimum Wage Bill.

(Members tapped on the bench to mark the occasion)

Resumption of Second Reading Debate on Bills

PRESIDENT (in Cantonese): We now resume the Second Reading debate on the Stamp Duty (Amendment) Bill 2010.

STAMP DUTY (AMENDMENT) BILL 2010

Resumption of debate on Second Reading which was moved on 5 May 2010

PRESIDENT (in Cantonese): Mr CHAN Kam-lam, Chairman of the Bills Committee on the above Bill, will address the Council on the Committee's Report.

MR CHAN KAM-LAM (in Cantonese): President, in my capacity as the Chairman of the Bills Committee on Stamp Duty (Amendment) Bill 2010 (the Bills Committee), I now report on the Bills Committee's deliberations on the Stamp Duty (Amendment) Bill 2010 (the Bill).

The Bill seeks to increase the rate of stamp duty payable in relation to transactions of property valued more than \$20 million from 3.75% to 4.25%, and to disallow deferment of payment of stamp duty chargeable on an agreement for sale made in respect of property valued more than \$20 million.

The Bills Committee has examined the rationale for increasing the rate of stamp duty from 3.75% to 4.25% in relation to transactions of property valued

more than \$20 million. The Administration has advised that when considering the types of transactions which should be subject to higher stamp duty rate, reference has been made to the Hong Kong Monetary Authority's guidelines to banks in October 2009 to reduce the loan-to-value ratio from 70% to 60% for residential properties valued at \$20 million or more. Besides, foreign investors are more interested in properties of high value. The Administration has also made reference to the tax regime of neighbouring economies in considering the rate of increase in stamp duty. For property transactions of similar value, the tax rates in Singapore and Australia are 2.7% and 4.4% respectively. The Administration therefore considers it appropriate to increase the stamp duty rate on property transactions valued over \$20 million to 4.25% at this stage.

In view of the fact that the number of property transactions valued more than \$20 million only comprised 1.9% of the total number of property transactions in 2009, and that over 90% of these transactions did not involve resale within two years of purchase, some members have questioned the efficacy of increasing the stamp duty of these transactions in curbing property speculation. They have opined that target specific measures, such as introducing profits tax and capital gains tax for property transactions, prohibiting sub-sale through confirmor, or introducing an additional stamp duty on sellers of sub-sale through confirmor, should be implemented. These measures would be more effective than increasing the rate of stamp duty in curbing property speculation.

The Administration has explained that Inland Revenue Department (IRD) has in place clear procedures for identifying and processing suspected property speculation cases. Property speculators are generally regarded as carrying on a business, and all profits obtained by a person carrying on a business in Hong Kong will be subject to profits tax if such profits are derived from Hong Kong. Introducing capital gains tax for curbing property speculation will imply a fundamental change to the simple tax system of Hong Kong, and will require very careful consideration. As for the proposal of requiring a confirmor or a vendor selling a property to pay an additional amount of stamp duty, it is also unfair to those who have genuine need to sell their properties within the specified period.

Some members have enquired whether consideration could be given to extending the disallowance for deferment of payment of stamp duty chargeable on an agreement for sale made in respect of residential property to properties

valued more than \$10 million to further curb speculation. Other members however do not support the proposal as it may have impact on genuine middle-class home buyers.

Both the Administration and the Bills Committee will not move any Committee stage amendments (CSAs), but Mr James TO has indicated his intention of moving CSAs to amend the Stamp Duty Ordinance to impose an additional stamp duty rate on a sub-sale agreement of property valued more than \$20 million.

President, I shall present my personal opinions in the following part of my speech.

Since the second half of last year, interest rates have all the time remained at very low levels and there has been an influx of hot money from outside Hong Kong, consequently, property speculation in Hong Kong has turned increasingly rampant, gradually spreading from luxury properties to small and medium units, from the first-hand market to the secondary market, and from the urban areas to all districts in Hong Kong. I learnt from a media report yesterday that according to a survey conducted by IMG, the prices of second-tier and third-tier properties have recently soared to levels close to those in 1997. The price per square foot of a small unit in Sha Tin is now as high as \$5,200. We have long since observed that property prices are rising incessantly, and this development trend will seriously affect the livelihood of the common masses. We once met with the Financial Secretary in the middle of last year. Apart from expressing our concerns, we also urged the Government to take appropriate measures to curb the rises in property prices, with a view to preventing the formation of a property bubble. In this year's Budget, the Financial Secretary explained that the Government was aware of the potential risk of a property bubble, and he proposed to introduce a series of corresponding measures, including an increase of the rate of stamp duty on transactions of luxury properties. The Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) is in support of these measures. The stamp duty of 4.25% on transactions of properties valued more than \$20 million has been proposed with reference to comparable rates in neighbouring economies, and the actual situation in the local market has also been taken into consideration. We are of the view that this rate of adjustment is reasonable, and the threshold of \$20 million is also in line with the Hong Kong Monetary Authority's policy of tightening home purchase loans. However, we

also think that the Administration must still closely monitor market trends. In case there are any usual changes or trends, more decisive measures should be implemented.

The implementation of an increased stamp duty rate has produced a certain psychological impact on the market, resulting in a slight abatement of property speculation in recent months. However, the increase in stamp duty rate can only impose very limited regulatory control on the property market. To begin with, the present regulatory control is only targeted on luxury properties. Admittedly, price rises can be "infectious" across the property market, but the adjustments of luxury property prices and stamp duty rate can hardly be relied upon as a means of achieving any effective regulatory control. What is more, comparatively speaking, luxury property investors are not so sensitive to costs, so the measure will have very limited effect on curbing the price rises of luxury properties, nor will it have any great impact on the local property market as a whole. Prof Francis LUI of the Hong Kong University of Science and Technology has even predicted that the measure will not have any significant impact on speculators. The reason is that speculators' strategies are very flexible. When the Government tries to curb short-term property speculation, they will stop selling their flats for the time being. They will then establish registered companies and sell these companies instead. As a result, speculative activities cannot be curbed and worse still, speculators can evade the responsibility of paying stamp duty. It can thus be seen that the increase in stamp duty will have very limited effect on curbing speculation, and it will not be able to cope with the overheated property market and resolve people's difficulties in home purchase either.

President, while there is no significant effect of stamp duty on curbing the surge of property prices, we fully understand that there is no panacea for the problem of surging property prices. We also realize that we cannot possibly introduce any drastic measures in the hope of solving the problem immediately. We therefore think that the only alternative is to adopt a comparatively mild approach to manifest the Government's grave concern about market activities. Consequently, we support this present measure. The "nine measures and 12 requirements" recently introduced by the Government to regulate the sale of flats have positive significance in building an equitable sales practice for properties. They can also convey a strong message to the market that the Government will not watch market operation and development with folded arms.

However, in the final analysis, the problem with the property market is all about supply. I therefore hope that the Government can focus on the supply imbalance of residential flats in Hong Kong, and expeditiously formulate a medium-to-long-term housing development strategy to tackle the problem at source. It should increase the land reserve supply, expedite the redevelopment of old residential buildings, re-launch the Home Ownership Scheme (HOS) and strengthen the supply of public housing units and HOS flats, so as to bring forth an ultimate solution to people's housing problem.

With these remarks, President, I support the Bill.

MR WONG TING-KWONG (in Cantonese): President, good morning.

There is a common saying in Hong Kong which goes, "to have a roof over the head is the most important concern of all". Housing is a significant part of our life, and home purchase is presumably the dream of many people. However, in the face of surging property prices, newly-weds who want to set up their sweet homes, professionals who want to own their own havens and middle-class people who want to improve their living environments can hardly have their dreams come true. In view of high property prices and the potential risk of a property bubble, the Government has put forward the proposal on revising the rate of stamp duty as a means of curbing speculative activities and dampening the unreasonable heated property market. For this reason, the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) supports the Amendment Bill on stamp duty.

Early this year, when the DAB put forward its proposals on the 2010 Budget to the Government, it recommended an increase in stamp duty rate on transactions of properties valued more than \$20 million to 4.5%. The present Bill proposes an increase to 4.25%, which is slightly lower than the rate proposed by the DAB. The Government has explained that it has made reference to the tax rates in neighbouring places when deciding on the increase rate of 4.25% (It is 2.7% in Singapore and 4.47% in Australia), and the objective is to ensure that Hong Kong's competitiveness will not be affected by a high tax rate. The DAB accepts this explanation, so it agrees to the proposed rate of 4.25%.

The Administration also proposes to disallow deferment of payment of stamp duty chargeable on buyers of residential properties valued more than \$20 million. In April this year, the Audit Commission criticized the Inland Revenue Department (IRD) and the Rating and Valuation Department (RVD) for low efficiency. In the past financial year, the valuation of 8 100 stamp duty cases took more than four months to complete, and 300 cases even took more than a year. I therefore urge the Administration to closely follow up the recovery of tax proceeds. It must give no further "allowance" and should speed up the process, so that there will be no further delay that affects taxation revenue.

Mr James TO's amendment provides that with regard to any agreement for a sub-sale exceeding \$20 million, the confirmor shall be required to pay an additional stamp duty at the rate of 2% of the value of the consideration for the agreement. The aim is to increase transaction costs and deter "confirmor sale". I agree that sanction against speculative activities must be imposed, but I also have reservation about the amendment. The reason is that Hong Kong has always upheld a simple tax regime. The imposition of an additional stamp duty will affect not only property transactions but also the transfer of shares of limited companies holding the properties concerned. Besides, the imposition of this tax must depend on the times of transactions and whether the seller is actually involved in speculative activities. All this will add to the complexity of imposing this additional tax. What is more, the number of "confirmor sale" valued more than \$20 million only comprised 1.92% of the total number of property transactions last year, and we cannot ignore the possibility that in some of these cases, the buyers concerned might have been unable to complete the assignment due to sudden and unexpected problems such as financing difficulties or unexpected changes in circumstances. Another point is that "confirmor sale" is presently a lawful activity. Therefore, I think that it is a bit unfair to impose an additional stamp duty solely on this type of speculative yet lawful activity. I think this amounts to double taxation, or simply a "fine" in disguise because any person who derives profits from property speculation are already required to pay profits tax in the very first place. For this reason, I do not think that it is quite so reasonable to require anyone to pay another additional tax after asking him to pay profits tax and stamp duty at the increased rate of 4.25%. It is still necessary to monitor the trend of "confirmor sale" this year. Consequently, it is inappropriate to consider any double taxation before we can know whether this type of sale will

decrease after the introduction of the relevant measure. The IRD should instead play a proper gate-keeping role by stepping up monitoring and enhancing the recovery of payable profits tax from people who derive profits from property speculation. Mainland people engaging in property speculation in Hong Kong should be treated in the same way and no default in tax payment should be allowed. But I do understand that it is rather difficult to recover tax payment from Mainland people. The Administration should explore various ways of rectifying the problem.

Over the past few months, the Government has implemented various measures, such as increasing land supply and rolling out the "nine measures and 12 requirements", with a view to regulating the sale of uncompleted flats. I hope the Administration can continue to monitor the development of the property market and take appropriate measures whenever necessary, so that the property market can be set onto the path of healthy development.

With these remarks, President, I support the Amendment Bill and oppose Mr James TO's amendment.

MR JAMES TO (in Cantonese): President, according to the Legislative Council Brief, the Government's justifications for introducing the Stamp Duty (Amendment) Bill 2010 are the abundant liquidity and the inflow of money. This is the first justification. The second justification is the very low-interest rate environment and the keen competition in the mortgage market. As a result, there is a potential risk of a property bubble. But what the Government has failed to mention is the short supply of land. The Democratic Party has long been urging the Government to provide more land for auction. But over the past few years, the Government has still been adopting the Application List System. Therefore, as rightly pointed out by Mr CHAN Kam-lam, we must tackle the root of the problem by focusing on land supply. For instance, we have recommended the resumption of the Home Ownership Scheme (HOS), but the Government has not mentioned anything about this.

Regarding this Amendment Bill put forward by the Government, although the Democratic Party will eventually render its support, I must still comment that this is at best a mere "window-dressing" measure. Why must stamp duty be

increased? According to the Government, the purpose is to increase transaction costs. Why are properties valued more than \$20 million chosen? Let me quote the reasons given, "Considering that there is a higher potential risk of speculative activities for flats with a transacted value above \$20 million, and making reference to the Hong Kong Monetary Authority's guidelines to banks in October 2009 to reduce the loan-to-value ratio from 70% to 60% for residential properties valued at \$20 million or more." In other words, there are two reasons. The first one is a higher potential risk of speculative activities. I have repeatedly approached the Secretary for Financial Services and the Treasury and also the relevant government departments, questioning them whether there are any justifications and facts that can substantiate the claim that there is a higher potential risk of speculative activities for properties valued more than \$20 million. Are there any facts and justifications? They cannot provide any. In that case, what factors did the Hong Kong Monetary Authority consider when deciding to reduce the loan-to-value ratio from 70% to 60% for residential properties valued at \$20 million or more? Were there any basis and analyses? There were no basis and analyses. It is only an arbitrary figure. The figure was simply set arbitrarily at \$20 million.

President, the Government explains that the increase of stamp duty rate for property transactions exceeding \$20 million across the board is intended to increase transaction costs. Just now, Members all heard what Mr WONG Ting-kwong said. He dismissed the whole thing as very unfair, questioning why people who could not take out any mortgage should still pay more stamp duty for "confirmor sale". I can tell Members that the measure against "confirmor sale" is target specific. Actually, all property sales can be speculative in nature or for self-occupation. But the Administration still wants to increase stamp duty across the board. The amendment I am going to move later is a specific measure targeting on speculative activities. And, from analytical and historical perspectives, it is a measure which is more target specific. But some people still argue that it is unfair to genuine home-buyers. What kind of world are we living in? What kind of reasoning is this?

Another point is that both the buyer and the vendor are required to pay the normal stamp duty under the law. But my proposed amendment is about a stamp duty for sub-sale, it is an additional stamp duty only payable by speculators or vendors (that is, the side that buys a property and re-sells it before the

completion of assignment). It is not a stamp duty payable by both sides. Some Members have remarked that by selling company shares, one can avoid the tax mentioned in my proposal. But the point is that in case one chooses to sell company shares, one can also avoid the normal stamp duty. Some other Members have pointed out that since an additional stamp duty is to be imposed on speculative activities and "confirmor sale", why do we not also impose an additional stamp duty on property transactions valued less than \$20 million? I have two answers to this question. First, if my amendment proposes to impose an additional stamp duty on property transactions valued less than \$20 million as well, it is highly likely that the President Jasper TSANG will rule that it is out of scope. It is highly possible that this will be the case.

Second, since the Government has set the threshold at \$20 million for the time being, and since the Democratic Party will eventually support the proposal of increasing the stamp duty for property transactions valued more than \$20 million, and since we and other Members think that the original increase rate of 0.5% is of very limited use (I even think that it is a mere "window-dressing" measure), why do I not "hitch a ride" and propose to impose an additional speculation tax on "confirmor sale"? My intention is to achieve a breakthrough at least, to convey a message at least. In case this Council really passes the imposition of this additional stamp duty on "confirmor sale" (which may probably be speculative in nature), what message will be conveyed? The message is that this Council has forged a consensus on using the taxation regime as one of the major means to combat property speculation and stabilize property prices, despite the saying that the number of transactions involving luxury properties valued more than \$20 million is limited; some Members said just now that this kind of transaction only comprised more than 1% of the total number of transactions, and the number of "confirmor sale" may be even less.

This message or precedent carries great significance. Why? The reason is that in the future, speculators must take into account the factor that since the Legislative Council has passed a bill on introducing this additional stamp duty, the Government may implement various measures in this direction. Firstly, it may increase the rate of stamp duty. In this connection, I have heard Members comment that instead of introducing an increase rate of merely 0.5%, we might as well increase the normal stamp duty rate originally applicable to luxury property transactions by 5% or 10%. Some Members even suggested prohibiting

speculation, that is, "confirmor sale", altogether. I do know how Mr WONG Ting-kwong will react after hearing such remarks. Concerning the advocacy of prohibiting "confirmor sale", I have thought about the idea, but I simply wonder how we can possibly prohibit this type of transaction. By prohibition, do they mean making such transaction a crime? I am very surprised that there are Members who have put forward a proposal like this.

Anyway, I remain convinced that my proposed amendment is very moderate. Why? Although property transactions valued more than \$20 million are targeted for the time being, a desirable message can be conveyed. If the situation continues to develop like this, and the Administration, upon close monitoring, considers it necessary to specifically combat "confirmor sale" or speculative activities of properties valued less than \$20 million, it may simply adjust the threshold to a level below \$20 million, because a framework has already been established.

Some people suggested that the Inland Revenue Department (IRD) can open more profit tax files to deal with speculative activities because all profits are liable to the payment of profits tax. My opinion about this suggestion is that not all cases of "confirmor sale" can yield profits. But under my proposal, even if speculators suffer losses, they must still bear the risk. In other words, even if speculators incur losses, they must pay the additional stamp duty all the same. This measure can fill the gap in case we cannot levy profits tax to curb property speculators.

President, 39 Conduit Road is a recent example known to us all. Buyers of 39 Conduit Road paid 10% to 15% of the property prices as deposit. If they do not complete the transaction, well, the benevolent property developer will, under a certain condition of sales, only forfeit 5% of their deposit. Just imagine, if 15% of the deposit is to be forfeited and a buyer wants to re-sell the flat to cut losses, then under my proposal, he must pay an additional stamp duty at a rate of 2% of the property price, because stamp duty is levied on the basis of the property price. If the buyer gains profits from this speculative act, he will have to pay profits tax amounting to 10% or so of the profits gained. The difference of the two sums of payment is great. Members must bear in mind that all such activities are short-term speculative activities, so I think my proposal can, at the very least, achieve a marked deterrent effect. Admittedly, as I have mentioned, I

do understand that it is a very common practice to purchase luxury properties through a limited company. In order to solve this problem, I think we must conduct thorough studies to find ways to tackle the tax regime at root. For the time being, I do not insist on doing so. What is more, regarding the current revision of stamp duty, even if I put forward some appropriate measures after some studies, the President of the Legislative Council will not possibly permit me to put forward any such amendments to the Bill. However, I must remind the Government that it must closely monitor the overall situation because in the final analysis, it is most important to tackle the supply problem at root. The Government has not done enough in this respect over an extended period in the past.

President, during the Committee stage to be held later, I will listen carefully to other Member's comments on my amendment, and I will respond to them and refute their views one by one. I have prepared dozens of pages of questions and answers, but I do not want to mention them in my main speech. I do not want to state all the questions and answers so early. The point is that if Members do not raise certain points, I need not give any answers then.

With these remarks, President, I support the resumption of Second Reading debate on the Bill.

(Mr WONG Ting-kwong rose to his feet)

PRESIDENT (in Cantonese): Mr WONG Ting-kwong, what is your question?

MR WONG TING-KWONG (in Cantonese): President, I hope Mr James TO can make a clarification on his remark just now that stamp duty is payable by both the buyer and the vendor. Is it payable by the buyer only, or by both the buyer and the vendor?

PRESIDENT (in Cantonese): Is your question about the normal stamp duty or the stamp duty mentioned in Mr James TO's amendment?

MR WONG TING-KWONG (in Cantonese): It is about the stamp duty on property transactions. I have been listening very attentively to his speech. Because he said that the stamp duty on property transactions is payable by both the buyer and the vendor, I would like to hear a clarification from him.

PRESIDENT (in Cantonese): It is actually common sense. Mr TO, would you like to make a clarification?

MR JAMES TO (in Cantonese): President, I am very happy to do so. This is all common sense. By both sides, it means that the stamp duty is payable by the buyer and the vendor. This is a power reserved for the Inland Revenue Department (IRD) under our taxation legislation. Even the vendor may be required to pay stamp duty. In one extreme case, when the buyer is bankrupt, or when it is totally impossible to recover the stamp duty from the buyer, the IRD may even seek to recover the stamp duty from the vendor. This is a power reserved for the IRD under our taxation legislation.

MR WONG KWOK-HING (in Cantonese): President, before I express my views, I wish to draw your attention to two things.

First, since yesterday morning, many of the staff members in the Legislative Council Building have not slept for more than 10 hours. Is it possible to discuss with the Legislative Council Secretariat to arrange those in need to have a break as far as possible? This is the first point.

Second, I wish to appeal to Members through the President to be as concise as possible when they speak on the outstanding items on the Agenda later on. I know that Members have prepared lots of material, but we are after all constrained by time and resources, and I also believe that Members are themselves running out of energy. We all hope to finish all Agenda items, but just now I hear Mr James TO say that he had prepared dozens of pages of script, I really hope that Members can be as concise as possible.

PRESIDENT (in Cantonese): Mr WONG, first, the Legislative Council Secretariat has already made appropriate arrangements for those staff members in the Legislative Council Building. So, you need not worry. Second, speaking of the need for concise speeches, I hope you can set an example because you have spoken quite a number of times already.*(Laughter)* If you can set a good example, I believe other Members will certainly follow suit. Please continue with your speech.

MR WONG KWOK-HING (in Cantonese): Thank you, President. I am just about to say that although I have prepared lots of material, I really want to be very concise, so concise that I will only say a few words.

On behalf of the several Members belonging to the Federation of Trade Unions (FTU), I want to express support for this Amendment Bill. But we have greater support for Mr James TO's amendment because it covers all those speculators engaged in "confirmor sale". I am of the view that the direction of his amendment is correct. The Government may think that the actual implementation of the proposal may involve many additional procedures and formalities. Anyway, we think that the amendment should deserve our support. If it cannot be implemented immediately, I still hope that the Government can make efforts in this direction. Why does the FTU support the amendment? The reason is that we have always advocated the imposition of a capital gains tax, with a view to collecting more taxation from those who can afford to pay. Besides, we think that speculation in the luxury property market will lead to price rises of other types of properties. My speech is really very concise, it just contains such few words.

Second, we maintain that a tax increase of just a few percentage points does not have strong deterrent effect. Secretary, we should start by tackling the problem of supply. Speaking of supply — I shall be very concise in my explanation — the Government should increase the supply of land for constructing small and medium flats. We have been talking about the need for restoring some old measures — resuming the construction of a suitable quantity of Home Ownership Scheme (HOS) flats every year. We have also urged the Government to re-launch the HOS, construct more public housing units and reinstate the Tenants Purchase Scheme. We maintain that the Government

should consider all these policies, rather than merely conducting studies without yielding any results. Finally, about the "nine measures and 12 requirements", I hope that the Government can enact the required legislation as early as possible.

President, I believe that my speech is certainly very concise, lasting just three minutes and 44 seconds. I shall now stop speaking.

MS MIRIAM LAU (in Cantonese): President, I shall also be very concise. Since 2009, property prices in Hong Kong, especially those of residential units, have been surging incessantly. There is now the risk of forming a property bubble in Hong Kong. The culprit of this problem is of course the shortage of land supply, which creates a sense of urgency among people to purchase housing units. There are also other objective factors, such as the influx of hot money into Hong Kong, which has led to abundant liquidity, that is, the banks are flooded with cash, so to speak. Moreover, the low-interest rate environment induces people to enter the market. There is still a very important human factor, that is, rampant property speculation. Basically, property speculation is not unlawful. But excessive speculation will result in the unreasonable surging of property prices, thus creating negative impacts on society as a whole. For instance, as property prices go up, more and more people cannot afford to purchase their own homes, and the prices of other commodities in society will also soar as a result, thus leading to inflation. Once the property bubble bursts, a domino effect similar to the one in the financial turmoil of 1997 will emerge again. The property market and the stock market will collapse one after the other, dealing immeasurable catastrophic blows to our economy. Therefore, before all such problems emerge, the Government should take appropriate measures to curb property speculation and ensure the stable development of the market.

However, the Liberal Party is also of the view that the measures adopted by the Administration should aim at curbing property speculation and ensuring the stable and healthy development of the property market, rather than penalizing genuine property buyers. Consequently, the Liberal Party supports the present amendments to the Stamp Duty Ordinance, which introduce a slight increase of 0.5% to the rate of stamp duty for property transactions valued more than \$20 million and disallow deferment of payment of stamp duty chargeable on an agreement for such transactions, with a view to increasing costs for speculators.

We have certainly heard Mr James TO remark that these amendments may be much too weak and simply not strong enough to take effect. Nevertheless, we want to target on speculators first, especially those without too much capital. The measure is two-pronged. First, increase the stamp duty rate. Second, disallow deferment of payment of stamp duty. If a person does not have sufficient capital, he will have to pool funds to meet the requirement. In the past, he could defer payment of stamp duty until the time of transaction; hence he could pay stamp duty after he got the money. We therefore think that the amendment can, to a certain extent, reduce people's desire to engage in the speculation of properties valued more than \$20 million. For genuine buyers, the impact of the legislative amendments on them should be minimal. As they buy the property for self-occupation, they should have considered their affordability and thus should have sufficient fund. We believe that the 0.5% increase in stamp duty rate and the measure of disallowing the deferment of stamp duty payment will not affect genuine buyers.

The Liberal Party hopes that the passage of the Bill can have some effects on stabilizing the property market. The Liberal Party also urges the Government to closely follow any changes in the property market, so that appropriate measures can be adopted in a timely manner to reduce the risk of a property bubble.

Regarding the Committee stage amendment to be moved by Mr James TO, I also wish to say a few words now. The reason is that I do not intend to speak on that issue later on. So, now, I would like to explain the Liberal Party's views on Mr TO's amendment. The Liberal Party has some reservations about Mr TO's amendment. Mr TO proposes to impose an additional 2% stamp duty rate on confirmor on top of the present increase from 3.75% to 4.25%. There are some problems with this amendment. First, Mr James TO has refuted or responded to Mr WONG Ting-kwong's view, arguing that all confirmors are speculators, as if there are no genuine buyers. As a matter of fact, I have also handled the legal procedures of conveyancing and assignment for some 10 to 20 years. I agree that while most confirmors are speculators, some are genuine buyers in some cases. There were cases in the past where the buyer could not take out a mortgage loan after he has purchased the property. In other cases, the buyer intended to sell his existing flat after he has purchased a new one, but owing to problems with the title deeds of the existing flat, he was unable to sell the flat, and hence he did not have money to pay for the new flat. Since he had

already signed the sale and purchase agreement, he had to sell the new flat. Such cases did occur. Another scenario was that a couple broke up after signing the sale and purchase agreement, thus they had to dispose the property since they could no longer jointly own the flat. Owing to such cases, we cannot assert conclusively that all confirmors must be speculators. If the confirmors in such cases are not speculators, is it fair to penalize them? We do have some doubts here. Should we rather allow slips than being over stringent, or should we rather be over stringent than allow any slips? The answer depends entirely on what kind of yardstick is adopted.

As a matter of fact, we have also observed many speculation cases which do not involve confirmors. After purchasing a flat, especially in the case of chargeable agreements, once an agreement is signed, stamp duty must be paid. One can refuse to pay stamp duty. Therefore, it will not be necessary to conduct any sub-sale through confirmor. After purchasing a flat, a person may hold it for a certain period of time and sell it later when the price is good. Genuine speculators all adopt this practice.

Furthermore, as mentioned by some Members just now, it is of course possible to set up a company which holds only one asset (that is, the property in question) and then sell the property in the form of shares transfer. This is a common speculative tactic. However, Mr TO's amendment totally fails to curb such speculative activities. We then query how effective Mr TO's amendment is since it only directs at confirmors. The Liberal Party naturally hopes that the measure can be effective, and this leads to our second viewpoint, that is, even if this measure is really ineffective, we do not wish to see any adverse effects. We are of the view that the implementation of Mr TO's proposal may lead to another possible scenario — speculators may simply go on with their speculative activities, and the 2% additional stamp duty rate will be included as part of their costs. This may further push up property prices, and people have to pay higher prices for their flats. Property prices will thus go further up, adding fuel to speculation. This is another possible problem. In the end, genuine buyers may have to pay more.

There is another possibility. In considering that an extra 2% stamp duty rate will be levied on properties valued more than \$20 million, speculators may stop speculating on such properties and switch to low and medium-priced

properties valued less than \$20 million. Since low and medium-priced properties are generally affordable by the common masses, should speculation of such properties become rampant, many people are unable to purchase their own homes. No one knows how Hong Kong's overall property market and economy will be affected, and we are very worried. Suppose speculators turn to speculate in low and medium-priced properties Admittedly, speculators also engage in the speculation of low and medium-priced properties at present, but the point is that those speculators currently engaging in the speculation of properties valued more than \$20 million may be driven to the low and medium-priced market. Honestly speaking, regarding the effect of Mr TO's amendment on curbing speculation in general, we do think that while the intention is good, the effect will only be minimal. Besides, there may be various negative impacts, and it may be unfair to genuine buyers. The Liberal Party therefore has reservation about Mr TO's amendment. We opine that the best measure now is for the Inland Revenue Department to take vigorous and speedy actions to combat speculative activities and make active efforts to recover profits tax from speculators. Naturally, if the Government really wants to curb speculative activities, it should put in place more integrated policies and measures, rather than only imposing a tax on properties valued more than \$20 million and targeting only on confirmors. This may bring forth many negative impacts. The proposal also fails to take account of the overall situation and assess the overall impacts on the property market. We must make very prudent consideration. We of course remain convinced that frantic property speculation will make the property market unstable. We have to pay attention to this situation, and identify a suitable solution. But the solution is certainly not the method proposed by Mr James TO today.

President, I so submit.

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

MR LEE WING-TAT (in Cantonese): President, I also agree that in the case of property transaction, it is sometimes difficult to distinguish between investment and speculation. The reason is that one may purchase a property for self-occupation, for investment or even short-term speculation. I have forgotten to thank the Secretary for attending the meeting this morning because she was

previously in Beijing. I do not know how she has managed to "slip" back to Hong Kong I am sorry She specially returned to Hong Kong to respond to Mr James TO's amendment. This proves that she attaches great importance to his amendment. The Secretary needs not worry because she will surely get enough votes.

President, the following issue has been a perennial topic of debate in a capitalist society: how the government should permit normal investment activities on the one hand; and, on the other hand, prevent investment activities from turning into short-term speculative activities that have huge impacts on the economy and people's livelihood. Actually, the Democratic Party has always hoped that efforts can be made to tackle the problem at root, that is, to tackle the problem of supply. This is the "ABC" of economics. However, we have already discussed this issue many times this year.

The Secretary's "sister", Mrs Carrie LAM, is not present today. We frequently ask her questions on land supply. Land supply has been scarce. Last year, there was a supply of some 10 000 units only. This year, the supply is also some 10 000 units. This will also be the case next year. Over the past 10 years, the average supply ranged from 19 000 private residential units at the lowest to some 30 000 units at the highest. The inadequate supply of units has led to a market imbalance. Many so-called rating institutions have confirmed that there is the potential risk of a property bubble in Hong Kong. Fortunately, the Government has not disclosed anything, and initially, it simply did not think that way. But around April and May, it started to sense the risk. There is indeed the risk of forming a property bubble in Hong Kong, and this is especially the case with the high and medium-priced property market. How big is the risk? Some Members say that we need not be afraid because only luxury flats and high-priced properties are affected. But I do not think that this viewpoint is correct.

Over the past year, speculative activities have spread from luxury properties to ordinary residential units and even Home Ownership Scheme (HOS) flats. This is actually the normal operation of a capitalist market. As the speculation of luxury properties goes rampant, the profit margin will dwindle. Those who have funds My iPhone stores some information on the list of speculators because I frequently try to find out what they say on the Internet. They all say that since speculating in luxury property yields a low profit margin,

why not speculate in low and medium-priced residential units as there is still a wide margin of profit. But after some time, they may think that the profit margin is not attractive, so they will switch to the speculation of HOS flats. Therefore, Members must not be so naïve as to think that speculators, with \$20 million in hand, will only speculate in luxury properties. When the profit margin of luxury property speculation goes too low, they will use the \$20 million for purchasing five to 10 ordinary units or 10 HOS flats. By doing so, they can still make profits.

However, the Government is simply unable to do anything. What actually is the problem? As I have just mentioned, property prices in 2009 soared by roughly 28% to 30%, depending on the actual location of properties. This year, as indicated by the respective indices compiled by Centaline Property and Midland Realty (which are basically accurate), property prices have already increased by 10% in the first six months. Despite the measures introduced by the Government, the rise of the two indices was only arrested for a brief period of one month or so. Then, a new wave of price rises started again this month. Prices have already risen by 1% to 2%. In other words, based on the indices, we can see that the prices of private residential units in general are highly likely to go up by 50% in a two-year period. President, can we really curb the soaring property price by simply introducing some mild measures, as suggested by some Members? I am a bit worried about the efficacy of this.

All along, I also think that it will be best if the property market can have a soft landing, so as to save the Government the trouble to roll out stern measures at the end of the year. But the measures introduced by the Government are not target specific. Mr James TO has used the adjective "window-dressing" to describe them. On my part, I think we should use a popular term these days. All the measures are not only a bit "dud", they are utterly "dud". Even Miriam dismisses James TO's 2% increase in stamp duty rate as "dud". But if his proposal is really "dud", then the Government's proposals are utterly so "dud" that it is pointless to even discuss them.

Let me disclose a secret of the Democratic Party. James TO and I actually hold different views on this issue. Actually, I should be the spokesperson, but we are shocked. I should be the one to move an amendment, but in the end, it is he who put forth the amendment. This does not matter much. But, President, do you know the content of the amendment I intended to put

forward? I intended to propose an additional 10% stamp duty rate for all cases of "confirmor sale". Someone asked me if I intended to commit suicide to propose an additional stamp duty rate of 10%. This means that for a residential unit valued \$10 million, people engaging in "confirmor sale" will have to pay \$2 million in tax. Right, \$2 million in tax payment is really my intention. People must pay tax once they earn a profit of some \$2 million. I initially thought that my proposal was already very harsh. But it turned out that people did not think that way. A friend of mine from one of the functional constituencies (FC) sometimes I also call such Members my friends, I do not always demonize them some FC Members or, I should not say "some", many of them are conscientious, they said to me, "Ah Tat, James TO's proposal is useless, but he still criticizes you. What is use of introducing an additional stamp duty rate of 2%?". I asked him what should be done, he said that the increase rate should at least be 10%, which matched exactly with I thought. James TO's proposal is regarded as useless as it involves a mere increase of 2%, then is a 10% increase "excessive". If the selling price is \$20 million, 10% will mean exactly \$2 million. This means that during the "confirmor sale period" (from the signing of the sale and purchase agreement to the signing of the final agreement), which may last as long as half a year, one year or one and a half years, the speculator must first make sure that he can make a profit of more than 10 percentage points before he dares to re-sell the property. Is this unreasonably harsh? Not necessarily. We may look at our great Motherland. How much tax is imposed on secondary property there? Several percentage points. This is much higher than the level proposed by me and my friend from the FC. In the Mainland, speculation of second suites (that is, the second apartments owned by people in the context of Hong Kong) is virtually banned. In view of this, what is so special about my proposal?

The biggest problem with the present proposal is about its efficacy. It seems that it is indeed ineffective. I frankly do not want to render my support. I may leave the Chamber at any time and refrain from casting a vote. The reason is that the Democratic Party has requested me to oppose the proposal. Its position is very clear. Why should I support such a useless motion? However, I do not have any reasons for refusing to support this mild, completely useless and window-dressing proposal on curbing speculation either. The most I can do is to refrain from voting. I can certainly do so, President. I can simply tell him that I will refrain from voting. It will not make any difference anyway.

Then, why does the Government want to do so? In the past, the Government also tried to impose tax on "confirmor sale". But it has chosen not to do so this time. I once approached those government officials responsible for this matter, asking questions about people who spend \$20 million on buying a property. I am not hostile to the middle-class and businessmen, provided that they all earn a living in a decent way. It is all right for professionals to earn money, as long as they are engaged in decent businesses. Even though Mr Abraham SHEK is now present in the Chamber, I still say so. I will not clamour against property developers who make profits. As long as the transactions are honest and proper, not based on misleading information and deceptive tactics, there is nothing wrong with making profits. It is perfectly all right to make profits. Why do I have reservation about increasing the tax? The reason is that some buyers may really want to buy a flat for self-occupation. Why should we impose an additional tax on these people? The Secretary once also tried to sell her flat, but she did not succeed in doing so. Sorry, Secretary, I have messed up your information once again. There are people who really want to buy a \$2 million flat for himself and his family. What is wrong with that? What is most unreasonable is that for a transaction of property valued at \$1.9 million, the Government does not impose any tax even though it is obvious that this is a "confirmor sale" just one month after purchase, the confirmor can thus get away without incurring any costs. Is this fair?

Therefore, the crux of the problem is about "confirmor sale" itself. As rightly pointed out by Ms Miriam LAU, most confirmors are speculators. This is a well-known fact. Why does the Government not focus on them specifically? Ms Miriam LAU thinks that the matter is very complicated. Fortunately, she stated clearly the premise that most confirmors are speculators. If these people are no speculators, will they sell their properties just several months after the purchase? Will these people have difficulties? Only a handful of people will suffer from deteriorating financial condition after they bought the flat. They do deserve our sympathy, but they are very limited in number indeed. As I have explained many times before, buying a property is a very important decision, all people who want to buy large residential units, including all Members and me, must first consider their financial ability, make available adequate cash and enquire with their banks to check whether there can be sufficient financing before

deciding to make the purchase. No hasty decisions should ever be made, and such rash actions should not be encouraged.

Ms Miriam LAU has also referred to the possibility that a couple falling out with each other after purchasing a flat may not want to take out a mortgage. How can anyone advance such as a reason? She may as well argue that one may well decide not to take out a mortgage simply because he suddenly finds a sore on one of his toes. This is no reason at all. Families unable to take out a mortgage due to financial difficulties are very small in number.

What I want to say is that there are bound to be some inadequacies with every policy. No policy can possibly be entirely satisfactory. Are there any abuses of Comprehensive Social Security Assistance (CSSA), for example? The answer is surely yes. There are bound to be some cases of abuse — 0.5% or 1%. However, should we abolish CSSA just because of several cases of abuse? This is not how social policies should be implemented. Since it has been proven that most confirmors are speculators, why does the Government not — Secretary, I want you to give a reply — target on "confirmor sale"? Why does it not adopt a stern position, making it clear that it wants to drastically increase the costs of property speculation? I do not think that we need to sympathize with those speculators who are required to pay tax. Mr WONG Ting-kwong has remarked that some transactions may be normal business activities. He is right. There are bound to be some sort of business activities. But we must not forget that if business activities impact market transactions to the extent of boosting prices to unreasonable levels and affecting the general public's home purchase, the Government will have no alternative but to step in. I am not saying that we should disallow "confirmor sale". Rather, I only mean to say that tax must be imposed. What is wrong with the imposition of tax? Is the tax aimed at preventing those people from "misbehaving"? Yes, it is. "Misbehaving" under any circumstances is not allowed. In some cases, "misbehaving" may be a crime. But "misbehaving" in the context of "confirmor sale" is only punishable by tax payment. Actually, no one should do something like this. If "confirmor sale" has come to impact the normal property transactions involving the middle-class, the Government should step in.

I therefore think that those Members who support the Government on this matter are likewise making "window-dressing" efforts. Many people, such as WONG Ting-kwong and Miriam LAU — I do not know whether she has really

said so, but please do not ask me to clarify — have argued Miriam LAU has repeatedly dismissed James TO's amendment as useless. I also think so. Therefore, I hope Miriam LAU can amend James TO's amendment, raising the tax rate to 10%. That will be useful. But she has not done so, and she has instead put forward loads of reasons. Actually, Miriam LAU may not really want to target on any speculators. I will give her time to make clarification. Please do not say that I try to put words into her mouth. She said that actions must be taken to deal with speculators, and she also asked the Government to give comprehensive consideration to the matter. But what can we consider anyway. At the end of the day, only a few options are available. The root of the problem is land supply. And the Government is already at its wits' end in this regard because it no longer has any more land. It cannot do anything. Another option is about the loan-to-value ratio. It is now 60%, but Miriam LAU proposes to lower it to 50% or 40%, or even deny all cases of "confirmor sale" of mortgage financing. If she really moves such amendments, I will render my support. Another example is the mortgage loan of 39 Conduit Road. The requirements should be tightened to increase the difficulties of taking out a mortgage. But she has not moved any such proposals, nor does she support the imposition of additional tax. In that case, are there any other options? Frankly speaking, I really do not know the answer. "Uncle Wah" describes her as the legendary Lord YE who professes his love of dragons but actually fears them. On the one hand, she dismisses James TO's proposal as unsatisfactory, saying that he cannot come up with any better ideas. On the other hand, she does not put forward any better proposals. In that sense, she is the legendary Lord YE who professes his love of dragons but actually fears them. While she has not put forward any good proposals, she keeps criticizing the proposal of this "silly boy" as very unsatisfactory. He is really very pitiable, for his proposal has been dismissed as useless. If even the Liberal Party thinks that his proposal is useless, it must be entirely useless indeed. Honestly, his proposal is so very unsatisfactory, and as the spokesperson, I am really ashamed. I really want to give that FC Member a big hug to give him commendation for his great insight. As for James TO, his proposal is really very disappointing, I must say.

I opine that if Miriam LAU thinks that the Government's proposal is not good enough, she should put forward her own proposals. But she has not done so, and she keeps criticizing James TO's proposal as unsatisfactory. I do not think this is fair. She should put forward her own proposal. I will certainly allow Miriam LAU to make clarification. I will give her time to do so.

President, after the resumption of Second reading debate, I will not speak any more. I will not do so unless James TO and I are severely challenged, unless he is chided to the point of extreme embarrassment, or unless he is no longer able to give any reply. In that case, I will have no alternative but to spend a few minutes on supporting him. Thank you, President.

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

MS AUDREY EU (in Cantonese): President, although the Civic Party is in support of the Bill, I must make it clear that the Bill may not necessarily be able to achieve the Government's present objective. The Government hopes that the Bill can curb or reduce property speculation with its proposal of raising the rate of stamp duty for properties valued more than \$20 million from 3.75% to 4.25%.

President, we have requested the Government to provide us with the statistics relating to property transactions valued more than \$20 million. According to the statistics supplied by the Government, surprisingly, the number of property transactions valued more than \$20 million accounts only for 1.9% of the total number of property transactions. And, more than 90% of such property transactions do not involve any re-sale within the two years after the purchase. In other words, having studied these statistics, Members cannot see how the proposed increase in stamp duty rate may in any way reduce or curb property speculation.

In spite of this, we still agree that even though the effect will be very minimal, we should render our support. Naturally, we will also support the revision on stamp duty rate for "confirmor sale" to be moved by Mr James TO later on. But let me repeat our view, if we are to curb property transactions or speculation, we cannot rely solely on increasing the rate of stamp duty.

As a matter of fact, the Legislative Council has discussed this very topic many times before. We maintain that one of the measures which must be implemented is to increase land supply and resume the construction of Home Ownership Scheme (HOS) flats. What is more, President, as I have mentioned many times, the purchase of properties valued at \$6.5 million should be made an investment item under our Capital Investment Entrant Scheme.

I wish to cite some statistics which were supplied by the Administration in its reply to my question last month. I asked about the statistics of property transactions valued more than \$20 million and less than \$20 million. It was revealed that in 2008, the number of transaction agreements valued more than \$20 million was 1 602, with a total worth of \$69.684 billion. If we look at 2009, we note that the number of such property transaction agreements rose to 2 244, with a total worth of \$81.869 billion. In the first three months of this year, the number of property transaction valued more than \$20 million stood at 558, with a total worth of \$19.934 billion.

The abovementioned statistics show that transactions of luxury property valued more than \$20 million were very active. In terms of the number of transactions, the number in 2009 showed an increase of 40% when compared with the figure recorded in 2008. The total value of all transactions also showed a rise of 17.5%. Therefore, from these figures and the statistics I have just cited, Members may judge whether there were any rampant speculative activities. Actually, property prices in this market segment are not pushed up by speculative activities. Rather, they might be related to sales practices.

I have also mentioned the Capital Investment Entrant Scheme, under which the purchase of a property valued at \$6.5 million may qualify a person as a capital investment entrant. For this reason, I also asked about the details of property transactions with a value from \$10 million to \$20 million. It was revealed that there was a similar situation. When the statistics for 2008 and 2009 are compared, it is noted that the number of transactions in the latter year was likewise 46% higher than that recorded in former year. In terms of total value, that is, the monetary amount of all the transactions, there was an increase of 48%. Consequently, the proposed stamp duty increase which involves property transactions valued more than \$20 million only will lead to one question. The rate of increase for property transactions valued from \$10 million to \$20 million was roughly the same as that for property transactions valued more than \$20 million, both being some 40%.

Speaking of the purchase of residential properties under the Capital Investment Entrant Scheme, we note that in 2008, there was an investment of \$3.03 billion, and in 2009, the amount was \$5.256 billion. Therefore, in the case of luxury properties valued from \$10 million to \$20 million, the percentage was roughly 7% to 8%. In 2008, it was 7.18%, and in 2009, it was 8.43%.

Although it does not take up a very large percentage, it is certainly not a small proportion, not just 1% or so, of the total value of all property transactions as claimed by the Government. For properties of similar value, the percentage is already quite large.

Therefore, President, to put it simply, while the Civic Party supports the amendments proposed in the Bill, we do not think that they are effective measures that can achieve the Government's desired objective. For this reason, we will continue to request the Government to roll out new measures to curb property speculation, regulate the property market and land supply.

President, these are my remarks on the Bill. Thank you, President.

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

MR PAUL CHAN (in Cantonese): Honourable Members, good morning. President, I shall speak briefly to express my support for the resumption of Second Reading for the Bill. However, while I support the Bill, I still want to briefly put forward three points. First, it is in fact useless to introduce an increase rate of 0.5% as a means of curbing property speculation. The reason is that an increase rate of 0.5% will only account for a very small portion of the total costs. If there are still profits to make, people will continue with speculative activities. I have already put forward this viewpoint before, and this has also been mentioned by many Members today.

Second, in order to curb property speculation, the ultimate solution still lies in the increase in the supply of land and residential units, especially small and medium units. I have repeatedly raised the idea of "flats with limited floor area", in the hope that the Administration can identify a greater number of sites for the construction of more small and medium residential flats.

Third, in curbing speculation, I hope that the Government can step up its efforts to clamp down on the speculation of Hong Kong properties by people outside Hong Kong or off-shore companies, without paying profits tax to the Hong Kong Government. I think the Government should follow up this matter as a major focus of its work.

President, regarding Mr James TO's amendment, I must say that I do appreciate its good intention and objective. But I have some reservations about it. Why? Mr James TO, the current amendment to the taxation legislation is introduced for implementing the proposals of the Budget. And, when it comes to the implementation and amendment of such fiscal measures, I think we should consider the overall picture in a prudent manner.

My first point is about the stamp duty for property transactions. As mentioned by Mr WONG Ting-kwong just now, stamp duty is normally payable by the buyer, not the vendor. It is only under very special circumstances that actions are taken to recover stamp duty from the vendor. For example, when the buyer does not have the ability to pay or when his whereabouts are not known, the vendor will be required to make payment. Under Mr James TO's amendment, in cases of confirmor sale, the confirmor is required to pay stamp duty. This is different from the normal practice. But does this mean that anything which is different from the normal practice can be done? This is not what I mean. Rather, I mean to say that we must realize that there is a difference, and then we should consider whether we should do so.

Second, why should we set the threshold of curbing "confirmor sale" at the level of \$20 million? Yes, when he spoke just now, he did explain that if he did not set the threshold at this level, the President would probably rule that his amendment was out of scope. In that case, he would not be able to put forward his amendment. But I am of the view that curbing the speculation of properties valued less than \$20 million is actually a more direct and effective measure to help the people. And, is the introduction of a 2% additional stamp duty rate for "confirmor sale" the most effective or the best means? Not necessarily. The reason is that some speculators do not get involved in any "confirmor sale". Rather, they will sell their properties after the completion of assignment, after holding them for a certain period of time, as mentioned by some Members just now. Why should people involved in "confirmor sale" have to bear higher costs, while those speculators mentioned just now do not need to do so? Should we consider the whole thing from the perspective of profits tax? I think all these questions should merit our exploration and studies. And, I think at this stage, society may not be given sufficient time to consider and study this present amendment. What is more, he proposes an additional tax rate of 2%. But why

must it be 2%? Why is it neither 3% nor 4%? I am not saying that it is neither fish nor fowl (*Laughter*); I only wonder why it is neither 3% nor 4%.

Here comes my third point, President. Why do I say that we must be very prudent when considering such fiscal measures? The reason is that the present proposal may not necessarily be able to curb luxury property speculation effectively. Ms Miriam LAU, Mr WONG Ting-kwong and Ms Audrey EU have all cited some statistics which show that property transactions valued more than \$20 million only account for a very small proportion, just 1.95%. According to some Members, it is not impossible to avoid the payment of the proposed additional stamp duty. One example, they say, is the establishment of limited companies for the purchase and transfer of shares. But I think this may not always work. A more complicated practice is to work through off-shore companies. In the case of 39 Conduit Road, for example, some transactions are carried out through off-shore companies. What is the problem then? Well, if there are ways to avoid the payment of stamp duty, how far can an increased stamp duty rate help us achieve the stipulated objective? I am afraid it may not be quite so effective. I am not saying that it will be totally impossible to identify the target for taking actions against. Some people will surely be identified. But can this justify any changes in the fiscal measures I have mentioned?

Finally, with regard to "confirmor sale", Mr LEE Wing-tat criticized that the examples cited by Ms Miriam LAU were unimaginably queer. But I would say that there are indeed such cases in real life. Personally, I think that if the amendment may not really be so effective and may even lead to an undesirable consequence of victimizing the innocent, we must really consider it very carefully.

President, this is what I want to say. Thank you.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): If no, I now call upon the Secretary for Transport and Housing to reply. After the Secretary has given her reply, the debate will come to a close.

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, first of all, I must thank Mr CHAN Kam-lam, Chairman of the Bills Committee on Stamp Duty (Amendment) Bill 2010 (the Bills Committee), its members and the staff of the Legislative Council Secretariat for their efforts, which have made it possible to complete the scrutiny of the Stamp Duty (Amendment) Bill 2010 smoothly. I must also thank them for supporting the resumption of Second Reading debate on the Bill without moving any amendments.

Following the financial tsunami in 2008, the abundant liquidity in the global financial markets and the inflow of money have fuelled the surge in property prices, and coupled with the very low interest rate environment and the keen competition in the mortgage market, there is a potential risk of a property bubble. Many discussions in society have focused on measures that can reduce the risk of forming a property bubble.

It is the policy objective of the Government to ensure a healthy and stable development of the property market. We are convinced that clear and stable public policies are of vital importance to the market. In order to tackle the risk of forming a property bubble due to short-term stimulation, the Government has sought to curb speculative activities by putting in place a basket of measures. Market transparency is also enhanced to prevent over-lending or borrowing due to low interest rates, and enhanced measures are adopted to increase land supply.

To curb speculative activities, the Financial Secretary has announced in the 2010-2011 Budget speech two taxation measures to increase the costs of speculative transactions, so as to reduce the potential risk of a property bubble:

- (a) raising the rate of stamp duty for property transactions valued more than \$20 million to 4.25%; and
- (b) disallowing deferment of stamp duty payment by buyers of such properties.

The Bill aims to amend the Stamp Duty Ordinance for the implementation of these two taxation measures. We believe that the new measures concerned will make speculators more prudent in the course of property speculation. This will help the Hong Kong property market to continue to develop in a healthy and stable manner.

The above two stamp duty measures came into temporary effect on 1 April this year under the Public Revenue Protection Order 2010. We have been closely monitoring their efficacy. In the past, the Government adopted various measures to curb property speculation. If necessary, we will consider the introduction of new and appropriate measures to ensure the healthy and stable development of the property market.

When considering the coverage of the taxation measures proposed in the Bill, we made reference to the Hong Kong Monetary Authority's guidelines to banks in October 2009 to reduce the loan-to-value ratio from 70% to 60% for residential properties valued at \$20 million or more. Consideration was also given to the impacts of the relevant taxation measures on property buyers in general.

Besides, when considering the rate of stamp duty increase for property transactions valued more than \$20 million, the Government also made reference to the tax rates for private residential properties of similar value in neighbouring places, lest Hong Kong's competitiveness as an international city may be undermined as a result of high stamp duty rate after adjustment. For property transactions of similar value, the tax rates in Singapore and Australia are 2.7% and 4.47% respectively. The Administration has considered it appropriate to increase the stamp duty rate on property transactions valued over \$20 million to 4.25% at this stage.

I understand that some members of the Bills Committee, including Mr WONG Ting-kwong, Ms Miriam LAU and Mr Paul CHAN, hope that apart from implementing the two taxation measures proposed in the Bill, the Government can, at the same time, make active efforts to follow up the issue of tax payable for property speculation. Combating tax evasion is an important area of work in taxation management. As a matter of fact, the Inland Revenue Department (IRD) has spared no effort in assessing tax for property speculation, collecting tax and combating tax evasion. The IRD has established procedures to screen and

identify, with the assistance of computer programmes, cases that meet certain pre-set conditions for further examination, with a view to identifying and handling suspected cases of speculation, including those involving speculation under the names of individuals or limited companies. The IRD will continue to track speculative property transactions and levy profits tax on the gains of speculation under the law.

President, the Bill is supported by the Bills Committee, and the Bills Committee has not put forward any Committee stage amendments. I sincerely call upon Members to pass the Bill without any amendments.

I so submit. Thank you, President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Stamp Duty (Amendment) Bill 2010 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): Stamp Duty (Amendment) Bill 2010.

Council went into Committee.

Committee Stage

CHAIRMAN (in Cantonese): Committee Stage. Council is now in Committee.

STAMP DUTY (AMENDMENT) BILL 2010

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clause stands part of the Stamp Duty (Amendment) Bill 2010.

CLERK (in Cantonese): Clause 1.

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 Clause 1 stands 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.

MR JAMES TO (in Cantonese): Chairman, may I seek your consent to move under Rule 91 of the Rules of Procedure that Rule 58(5) of the Rules of Procedure be suspended in order that this Committee may consider clauses 2, 3 and 4 together with my proposed new clause 2A.

CHAIRMAN (in Cantonese): As only the President may give consent for a motion to be moved to suspend the Rules of Procedure, I order that Council do now resume.

Council then resumed.

PRESIDENT (in Cantonese): Mr James TO, you have my consent.

MR JAMES TO (in Cantonese): President, I move that Rule 58(5) of the Rules of Procedure be suspended to enable the Committee of the whole Council to consider clauses 2, 3 and 4 together with new clause 2A.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That Rule 58(5) of the Rules of Procedure be suspended to enable the Committee of the whole Council to consider clauses 2, 3 and 4 together with new clause 2A.

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, who are present. I declare the motion passed.

Council went into Committee.

Committee Stage

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

CLERK (in Cantonese): Clauses 2, 3 and 4

New clause 2A

Charging of, liability for,
and recovery of stamp duty

CHAIRMAN (in Cantonese): Mr James TO has given notice to move amendments to clauses 2, 3 and 4 as well as the addition of new clause 2A.

CHAIRMAN (in Cantonese): If Mr James TO's amendment on clauses 2, 3 and 4 are passed, he may later move the addition of new clause 2A.

CHAIRMAN (in Cantonese): Mr James TO, you may now move amendments to clauses 2, 3 and 4.

MR JAMES TO (in Cantonese): I move that clauses 2, 3 and 4 be amended.

Chairman, since I have already given a detailed explanation during the resumption of Second Reading debate, I will only respond to the arguments advanced by Members just now. Chairman, perhaps, I should first explain to Mr Paul CHAN why I propose to set the rate of the increased stamp duty at 2%. I am also a person who like to consider things thoroughly. If the rate is too high, a speculator will choose to complete the transaction because after doing so, he only has to pay 4.25%, and in that case, he can wait a longer period before selling the property. Therefore, if the rate is higher than 4.25%, he will first take out a

mortgage. Of course, he may fail to do so. In that case, he may be "cornered". If the rate is not 2% but 4% or 5%, he will find himself in a dilemma.

Let me say a few words on my reasoning. First, I have also considered our tax regime very carefully. Both the Democratic Party and I will not consider such issues in any haphazard fashion. We have spent a long time on considering even such a simple scheme. Some Members have advanced many reasons, arguing that since the number of "confirmor cases" is so small, an increase of 2% in stamp duty rate will not be very useful. LEE Wing-tat has already replied on my behalf. While Members keep talking about the uselessness of my proposal, they must bear in mind that they have already given their consent in the resumption of Second Reading debate. They have already endorsed the Government's objective of increasing the costs of speculative transactions. What I am doing is permitted under the Rules of Procedure — if I introduce any drastic amendments, I will not be able to comply with the Rules of Procedure — I can only do something within the scope of the Rules of Procedure, that is, increase the costs of transaction. And, my proposal is directed against speculators. I do not understand why Members think that we should not do so.

I will have nothing to say if members do not really want to curb speculators. But if we are to curb speculators, then for cases of "confirmor sale", the rate of stamp duty payable by speculators should be far higher than the general proposed increase of 0.5%. Members agree to this. Speaking of victimizing the innocent Ms Miriam LAU, for example, has talked about a hypothetical case where a man and a woman who have decided to get married fall out with each other all of a sudden, thus making it impossible for them to jointly take out a mortgage loan. Here, I fail to understand one point. Why should we also increase the normal stamp duty rate by 0.5%? Does this mean that all property buyers, including those who intend to live in the properties they purchase for the rest of their lives, must pay the increased stamp duty?

I remember I had a discussion with Mr Abraham SHEK one day. He said, "Yes, if you ask me, personally I do not want to render support, but as you know, I belong to a "royalist" party, so I have no choice." I believe he does not mind my quoting his words because he did say so to me. He even said, "Come on, they can get an additional \$400 million without any acceptable justifications." Well, if the Government does not propose to introduce the 0.5% increase rate and supports my proposal instead, Mr Abraham SHEK may not agree either. The

reason is that the properties bought by many tycoons are luxury properties. They think that my proposal will affect the sale of such properties, and any impacts on speculators will necessarily affect the sale of such properties because speculators can help tycoons boost the market.

But the point is, if we are to curb property speculation, a targeted increase in taxation will always be more effective than a general tax increase. Frankly speaking, Mr Abraham SHEK is a property expert. As for Dr David LI, he is even more qualified to speak on this issue with his rich experience in handling numerous mortgage cases. This measure against property speculation is far more targeted than the 0.5% increase of the normal stamp duty. As for how we should deal with the speculation of properties valued less than \$20 million, I have already explained my views. But Mr Paul CHAN might not be present just now. What I mean to say is that if this Council really passes my amendment, if this slight increase proposed by me is agreed by the Council, then we can convey a message to the Government and society as a whole and also establish a precedent and framework. It will obviously be easier to take any further actions in the future. The Government may simply raise the percentage point or choose a lower transaction value as the threshold. In this way, the objective can be achieved, and we can also convey a very strong message. Well, if my amendment is not passed, society will receive a very confusing message. They may think that the rate of 2% is not target specific, not high enough or not comprehensive enough. People may get such a message.

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

Another message people may get is that many Members may not really support the idea of clamping down on speculators, or that some Members may think that "confirmor sale" People may get the message that such Members may think that since there is only a small number cases that deserve our sympathy, they should not support the introduction of an additional stamp duty for "confirmor cases". If speculators get this message, they will be very delighted, right? Will there be any deterrent effect then? I hope Members can think about this.

Deputy Chairman, there is another point. Some Members say that once a buyer pays the stamp duty of 4.25%, he will not have to pay the proposed additional stamp duty. They therefore wonder how we should deal with cases in which the vendors sell their properties at speculative prices several months after the completion of assignment. I think we need to explore this issue together. Our profit tax regime is not so comprehensive. But since we are now discussing a Committee stage amendment, I am constrained and cannot I did consider the possibility of adding this issue to my amendment. But it is impossible for me to do so. First, Members may fail to follow if the whole framework is revamped beyond recognition. Second, my amendment in that case will likely to be out of scope. Hence, after thinking about this for several days, I decided to give up this very complex idea. Well, I could have tabled the amendment for Members' discussion. This would embarrass the Government, exposing its shoddy work and thinking. It is actually worth doing so. But that would give a hard time to my staff and some staff members of the Legislative Council Secretariat.

However, the present problem is that such an amendment is likely to be ruled as out of scope, if I can hardly get the consent of the President, I cannot present it to Members. Holding a press conference will not be of any use either. For this reason, after considering for a long time, my assistants and I decided to give up the whole idea. I can tell Mr Paul CHAN that, just for this issue alone, I have seriously considered for dozens of hours. I wish to tell the Government the direction it should follow, the approach of thoughts, as well as the measures it should take into full consideration. However, the Government has simply replied that it would monitor the situation and hold further discussions and make further efforts when problems arose. It always behaves like this. In the face of problems such as deceptive property prices and floor areas, as well as misleading information, the Government again said that it would monitor the situation, and it would hold further discussions to combat or enact legislation when required. It always behaves like this.

Why does our Government always behave like this? How can a Member, with limited time and resources, stipulate measures which are in compliance with the Rules of Procedure, and directed mildly against speculators? It is a pity that other Members are so indecisive and refuse to render support.

Proposed Amendments

Clause 2 (see Annex II)

Clause 3 (see Annex II)

Clause 4 (see Annex II)

DEPUTY CHAIRMAN (in Cantonese): Members may now debate the original provisions and the amendments proposed by Mr James TO as well as new clause 2A jointly.

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

MR CHAN KAM-LAM (in Cantonese): Deputy Chairman, Mr WONG Ting-kwong has explained part of the position held by the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB). Mr James TO's amendment is mainly about requiring the payment of an additional stamp duty of 2% for any chargeable conveyancing agreements. We do not think that it is necessary to impose such a requirement. As rightly pointed by Mr LEE Wing-tat, the Government's proposal of increasing the stamp duty rate is actually a very moderate measure. Mr James TO's proposed 2% increase is also a very mild measure, in terms of his avowed objective of curbing speculation and "confirmor sale". To those speculators who actually speculate in property through "confirmor sale", the 2% increase in stamp duty rate is really nothing. While Mr James TO regards the Government's proposal as a "window-dressing" measure, his proposal is no better in the strict sense.

Regarding this issue, if we are to curb speculation or "confirmor sale", it may not be sufficient for us to impose an additional punitive stamp duty rate of 2% on "confirmor sale" of properties valued over \$20 million, we may also have to do the same for transaction of properties valued less than \$20 million. As a matter of fact, Members can observe that in most cases, speculative "confirmor sale" in the market actually involve properties valued less than \$20 million. If

we really want to curb such kind of speculative activities, we should roll out a more extensive measure to target on other types of properties as well.

Another point I must make is that we cannot possibly rely on one single measure to arrest the rises of property prices and curb speculation. We must also put in place other ancillary measures. If we solely rely on stamp duty as a means of penalizing confirmors or property speculators, it will not work at all. Therefore, we think that Mr James TO's amendment is unnecessary. We will not render our support. Thank you, President.

MR WONG TING-KWONG (in Cantonese): I believe that Members all support the common objective of curbing speculative activities. As for the means to be adopted and the severity of the remedies, we do have different views. The most important thing is what should be done to deal with some undesirable phenomena. Should we rather allow slips than being over stringent, or should we rather be over stringent than allow any slips? Should any innocent persons be victimized in the course of tackling our problems? Should we still rub salt into the wounds of those people hard-pressed by circumstances and adversities? I therefore think that under the existing taxation regime, the most effective means of combating speculation should be the strict enforcement of the profits tax provisions.

As pointed out by Mr CHAN Kam-lam, we must not target only on properties valued more than \$20 million. Even in the case of those small and cheaper flats occupied by the general public and even second-hand Home Ownership Scheme (HOS) flats, profits tax must be paid whenever any profits are made. In doing so, an instant result will be achieved without affecting Hong Kong's simple tax regime. Therefore, I do not oppose the spirit of Mr James TO's amendment, but I think the most effective, the quickest and the fairest measure to be employed in tackling speculative activities in properties is to enforce the provisions on profits tax.

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

MR JAMES TO (in Cantonese): Deputy Chairman, I wish to respond to the arguments put forward by Mr CHAN Kam-lam and Mr WONG Ting-kwong.

Strangely, when Mr CHAN Kam-lam mentioned about the value of \$20 million as the threshold, he commented that speculative activities were more common with lower-priced properties, and he questioned why the threshold was not set at a lower level to reflect this phenomenon. I have explained that according to the legal advice I have obtained, if my amendment also covered properties valued less than \$20 million, it would probably be ruled out by the President. This is of course the legal advice I have obtained. But has the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) ever received the same legal advice? Has the DAB ever attempted to put forward a Committee stage amendment that lower the threshold to a level less than \$20 million? I gave my framework to all Members more than 10 days ago. If research officers and Members belonging to the DAB really share Mr CHAN Kam-lam's view that the threshold should be adjusted to a level lower than \$20 million, there are several options available to Mr CHAN Kam-lam..

First, he can draft a new amendment incorporating this idea. Second, he may make reference to my amendment and adjust the threshold to a level lower than \$20 million, say, \$8 million or \$6 million. Has he done so? If he has not done so, was it because he has also received the legal advice that such an amendment would be ruled as out of scope? If he has never received any such legal advice, why has he not added in this idea? If his inaction is not related to the "out of scope" issue, can I say that he is just like the legendary Lord YE who professes his love of dragons but actually fears them? Does he really want to curb speculation, or is he just shedding crocodile tears?

According to Mr WONG Ting-kwong, we all share the common objective of curbing speculation. I am sorry to say that I do doubt whether the Democratic Party's objective is the same as that of the DAB. Mr WONG Kwok-hing claimed that he would support my amendment. He even said that he would support it ardently. I have reasons to believe that on the issue of curbing speculation, the Democratic Party and the Federation of Trade Unions (FTU) share similar objective. But I do doubt whether the DAB and the Democratic Party really share any common objective on this issue.

Deputy Chairman, Mr CHAN Kam-lam remarked that we must not rely on one single measure to curb speculative activities. Deputy President, when they even refuse to accept a measure which is feasible, which complies with the Rules of Procedure, which is target specific and is most likely to be able to identify speculators, how can I believe that they will request the Government to make all-out efforts. Or, can I believe that they will work on their own and exhaust every possible means to identify some feasible measures?

Deputy President, Mr CHAN Kam-lam claimed that Mr James TO's proposed amendment was too moderate. Mr LEE Wing-tat also disclosed that some FC Members had proposed to increase the rate to 10%. I do not know whether these Members are really sincere, but at least, they did say something like this. I do not know whether Mr LEE Wing-tat has ever heard any Members belonging to the DAB say that they really want to target against "confirmor sale". Or, has he ever heard any of them tell the Government at the meetings of the Bills Committee that apart from profits tax, an additional stamp duty for "confirmor sale" should be considered? Have they ever said so? Deputy President, speaking of profits tax, suppose a speculator manages to earn a profit amounting to 10% of the property price, the costs can be deductible from this 10% of profit in theory. I assume that this will be very difficult because the time is so short, and the cost incurred is the commission for property agent, which is small in amount. However, how much is involved? It is more than one percent point of the property price. So, if the stamp duty rate is increased to 2%, it will mean a lot to the speculator. It is 100% more than the profits tax. And, do not forget that profits tax must still be paid. Besides, we must also look at the background of the whole case to determine whether there are any speculative elements. Of course, in the case of "confirmor sale", the confirmor is likely to be a speculator. But they still argue that my proposal of introducing a 2% increase in stamp duty rate is a "window-dressing" measure. I must tell them that the stamp duty payable will be 100% more than the profits tax. If the proposal of 2% is a "window-dressing" measure, how should we describe the Government's proposed increase rate of 0.5%? Why do Members support the latter? Why does the DAB render its support? If it is indeed true that my amendment will victimize innocent buyers, then can we say that the 0.5% increase will victimize even more innocent buyers? Every buyer will be required to pay 0.5% more in tax. What kind of logic is this? One should not refuse to take actions however insignificant it is. In the course of curbing property speculation, any measures that are in compliance with the rules and can be directed against certain targets

should be implemented as far as possible. The FTU is prepared to do so. But the DAB is not.

MR WONG TING-KWONG (in Cantonese): Deputy Chairman, I do not intend to argue with Mr James TO here. But I do not approve his manner of speaking. First, let us make some calculations. Regarding the 0.5% increase in stamp duty rate, we are not talking about just 0.5% in isolation. We are talking about adding 0.5% to 3.75%, boosting the rate to 4.25%. Has he ever made any such computations?

Besides, he talks about imposing an additional 2% of the property price as tax for "confirmor sale". Let me compare this to profits tax. What is the rate of profits tax? It is 16.5%. It is far higher than the 2% he proposes. I must therefore advise him to show all the figures to people clearly.

More importantly, I think the 2% tax increase proposed by Mr James TO will indeed victimize those people who are truly not conducting "confirmor sale", nor speculating in properties. This will rub salt into their wounds. I do agree that people must discharge their obligation if they really earn profits from speculation. However, in presenting all his arguments, Mr James TO always avoid mentioning the fact that people who do not get involved in speculation activities will be implicated. Thank you, President.

MR JAMES TO (in Cantonese): Deputy Chairman, Mr WONG Ting-kwong must receive some extra tuition from his research officers. Earlier on, he asked me whether the buyer or the vendor should pay stamp duty. Fortunately, Mr Paul CHAN was here. Needless to say, he is an expert. Someone said that he misunderstood the situation, it turned out that the vendor also has to pay stamp duty. So, he asked me that question. Now, there is another mistake. Mr WONG Ting-kwong said that the profits tax rate is 16.5%. But he must realize that it should be 16.5% of the profits earned.

Let me do some calculation. Suppose there is a 10% profit as a result of speculation, the 16.5% profits tax will mean 1.65% of the property price. Now I propose an additional 2% tax, and this means an increase of 130% in tax payment. This is really something. Suppose there is a 20% profit, and the property is sold through "confirmor sale" at the price of \$24 million, tax payment

will amount to 3.3% of the property price. There is 16.5% of the 20% profit, and I have added 2%, so the tax amount will increase by 60%. If the profit is 30%, then when this profit is multiplied by 16.5%, an additional tax amounting to 5% of the property price must be paid. With the 2% I propose, the tax amount will increase by 40%. This is the most important feature of the proposed additional stamp duty. I do not understand why he refers to 16.5%. The profits tax rate is not 16.5% of the property price. We are talking about the profits earned.

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

MR WONG TING-KWONG (in Cantonese): Deputy Chairman, Mr TO must get all his computations clear. Let me use an actual example. In the case of a "confirmor sale" valued more than \$20 million, suppose I bought the property at the price of \$20 million and then sell it at \$22 million, the Government will get 2% from me, that is, \$440,000, right? We are talking about the property price and \$440,000. If my profit is \$2 million, then 16.5% of it will be \$330,000. How can it be several times more? Please do the computations yourself.

MR JAMES TO (in Cantonese): Deputy Chairman, right, \$330,000 is the original profit tax payable. Now, I propose to add some \$400,000. The speculator will certainly feel the loss, right? His costs will be increased, right? It is over 100% more than the original amount.

DEPUTY CHAIRMAN (IN Cantonese): Does any other member wish to speak?

MR LEE WING-TAT (in Cantonese): Deputy Chairman, I do not want to argue with Mr WONG. I only want to ask the Secretary one question. I have been a Legislative Council Member for many years, but I have rarely come across a bill like this. It is not at all strange for us to disapprove of the rate of increase. But everybody is now saying that the Bill is not good enough. Secretary, none of the Members who spoke just now said that there would be any effect. This is indeed something unheard of. Mr CHAN Kam-lam and Mr WONG Ting-kwong of the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB)

remarked that the rate of increase proposed by the Government could contribute very little to the achievement of its desired effect. The additional tax rate proposed by this "little friend" of mine is very low. But the rate proposed by the Government is even lower, isn't it? Ms Miriam LAU also remarked that the rate was too low. Actually, all those Members who spoke commented that the rate proposed by the Government could not achieve any effect at all. I really want to advise the Secretary to withdraw the Bill voluntarily. I honestly think that the Bill should be withdrawn. I think that we will not lose anything. Just now, I asked James TO whether he could abstain from voting in the resumption of Second Reading debate. But he replied that he could not because he had put forward an amendment. Actually, at this very stage, it is frankly too "stupid" for us to continue to process the Bill. All Members who spoke, including those belonging to the DAB, the Liberal Party, the Democratic Party and functional constituencies, remarked that the Bill would not yield any effect. But since the Government has moved it, they cannot do anything.

The Secretary has frankly lost face this time. The Bill is not only a bit "dud". It is downright "dud". I simply do not see any cause of regret even if the Bill is not put forward. The Government's present proposal cannot deliver a strong message that following the passage of the Bill, speculators must take heed to the possibility that the Government may clamp down on them. This is not the message conveyed. The Government just wants to show its intention of making efforts. It seems that the Government has done something. But speculators do not think that the efforts will be effective, neither do the political parties and groupings in the Legislative Council. I think the whole thing is just a "window-dressing" measure. I do not think that the Government has really done anything.

Deputy Chairman, can you ask the Secretary whether she will withdraw the Bill? Why should we process this Bill? What is the use of it anyway? Thank you, Deputy Chairman.

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

(No Member indicated a wish to speak)

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Deputy Chairman, I wish to express my thanks to Members for the advice they have given.

Mr James TO proposes in his amendment to impose an additional stamp duty rate of 2% on sub-sale through confirmor (commonly known as "confirmor sale") valued more than \$20 million on top of the increased stamp duty rate of 4.25% proposed in the Stamp Duty (Amendment) Bill 2010, with a view to curbing this type of speculative activities.

We are of the view that at this stage, we should continue to actively implement the whole basket of measures which have been thoroughly considered by the Government. Our present proposal is one of the measures in the whole basket. Other measures include enhancing market transparency, preventing over-lending and borrowing resulting from the low interest rate and perfecting measures to increase land supply. As Members have mentioned, Members have a consensus about the root of the problem. In this connection, we are making efforts in regard to land supply and the proposed two taxation measures discussed by Members in the debate just now. We will continue to monitor the efficacy of the basket of measures. If necessary, we will definitely roll out appropriate measures to ensure the healthy and stable development of the property market. Therefore, at this stage, we are of the view that the proposal in Mr James TO's amendment may not be the most appropriate measure. What is more, as also mentioned by some Members just now, the Inland Revenue Department will continue to track speculative property transactions and levy profits tax according to the law on all profits earned from property speculation.

I greatly admire Members who can still think so clearly after dozens of hours of debate. Mr Paul CHAN, in particular, has offered lots of advice. I think his advice should merit our in-depth consideration.

Deputy Chairman, at this stage, I sincerely call upon Members to support the passage of the Bill without any amendment.

I so submit. Thank you, Deputy Chairman.

DEPUTY CHAIRMAN (in Cantonese): Mr James TO, do you wish to speak again?

(Mr James TO indicated that he did not need to speak again)

DEPUTY CHAIRMAN (in Cantonese): Before I put to you the question on Mr James TO's amendments, I wish to remind Members that if those amendments are negated, he may not move the addition of new clause 2A.

DEPUTY CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendments moved by Mr James TO be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mr James TO rose to claim a division.

DEPUTY CHAIRMAN (in Cantonese): Mr James TO has claimed a division. The division bell will ring for three minutes.

(As the division bell was ringing, the CHAIRMAN resumed the Chair)

CHAIRMAN (in Cantonese): Please proceed to vote.

CHAIRMAN (in Cantonese): Please check your votes now. If there are no queries, voting shall now stop and the result displayed.

Functional Constituencies:

Dr Margaret NG, Mr CHEUNG Man-kwong, Ms LI Fung-ying, Dr Joseph LEE, Mr CHEUNG Kwok-che, Mr IP Wai-ming and Dr PAN Pey-chyou voted in favour of the amendments.

Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Wong-fat, Ms Miriam LAU, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Dr LAM Tai-fai, Mr CHAN Kin-por, Mr Paul TSE and Dr Samson TAM voted against the amendments.

Dr Raymond HO, Prof Patrick LAU and Mr Paul CHAN abstained.

Geographical Constituencies:

Mr LEE Cheuk-yan, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Ms Emily LAU, Mr Frederick FUNG, Ms Audrey EU, Mr WONG Kwok-hing, Mr LEE Wing-tat, Mr KAM Nai-wai, Mr WONG Sing-chi and Mr WONG Kwok-kin voted in favour of the amendments.

Mr CHAN Kam-lam, Mr LAU Kwong-wah, Mr TAM Yiu-chung, Ms Starry LEE, Mr CHAN Hak-kan and Mrs Regina IP voted against the amendments.

THE CHAIRMAN, MR JASPER TSANG, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 24 were present, seven were in favour of the amendments, 14 against them and three abstained; while among the Members returned by geographical constituencies through direct elections, 19 were present, 12 were in favour of the amendments and six against them. Since the question was not agreed by a majority of each of the two groups of Members present, he therefore declared that the amendments were negatived.

CHAIRMAN (in Cantonese): As Mr James TO's amendments have been negatived, he may not move the second reading of new clause 2A.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clauses 2, 3 and 4 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.

CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bills

PRESIDENT (in Cantonese): Bills: Third Reading.

STAMP DUTY (AMENDMENT) BILL 2010

SECRETARY FOR TRANSPORT AND HOUSING: President,

the Stamp Duty (Amendment) Bill 2010

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 Stamp Duty (Amendment) Bill 2010 be read the third time and do pass.

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.

CLERK (in Cantonese): Stamp Duty (Amendment) Bill 2010.

MOTIONS

PRESIDENT (in Cantonese): Motions. Proposed resolution under the Pharmacy and Poisons Ordinance to approve the Pharmacy and Poisons (Amendment) (No. 3) Regulation 2010 and the Poisons List (Amendment) (No. 3) Regulation 2010.

I now call upon the Secretary for Food and Health to speak and move his motion.

PROPOSED RESOLUTION UNDER THE PHARMACY AND POISONS ORDINANCE

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, I move that the motion under my name, as printed on the Agenda, be passed.

Currently, we regulate the sale and supply of pharmaceutical products through a registration and monitoring system set up in accordance with the Pharmacy and Poisons Ordinance (the 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, dentist or veterinary surgeon.

Arising from an application for registration of six pharmaceutical products, the Pharmacy and Poisons Board (the Board) proposes to add the following six substances to Part I of the Poisons List and the First and Third Schedules to the Pharmacy and Poisons Regulations:

- (a) Agomelatine (the Secretary pronounced the character "戈" (gwo¹) in its Chinese name as "佛" (fat⁶)); its salts;
- (b) Galsulfase (the Secretary pronounced the character "戈" (gwo¹) in its Chinese name as "佛" (fat⁶));
- (c) Golimumab (the Secretary pronounced the character "戈" (gwo¹) in its Chinese name as "佛" (fat⁶));
- (d) Nebivolol; its salts;

- (e) Saxagliptin; its salts; and
- (f) Tolvaptan.

Pharmaceutical products containing the above substances must then be sold in pharmacies under the supervision of registered pharmacists and in their presence, with the support of prescriptions.

We propose that these Amendment Regulations take immediate effect upon gazettal to allow the early control and sale of pharmaceutical products containing these substances.

The two Amendment Regulations are made by the Board, which is a statutory authority established under the Ordinance to regulate 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 medicine concerned.

With these remarks, President, I propose the above motion.

The Secretary for Food and Health moved the following motion:

"RESOLVED that the following Regulations, made by the Pharmacy and Poisons Board on 21 June 2010, be approved –

- (a) the Pharmacy and Poisons (Amendment) (No. 3) Regulation 2010; and
- (b) the Poisons List (Amendment) (No. 3) Regulation 2010."

PRESIDENT (in Cantonese): Just now, in reading out several of the Chinese names of the substances concerned, the Secretary pronounced a character as "佛" (fat⁶) for quite a few times. However, except for the character "伐" (fat⁶) appearing in the Chinese name of the last substance which should be pronounced as "佛" (fat⁶), the character pronounced by the Secretary as "佛" (fat⁶) should be pronounced as "戈" (gwo¹). (*Laughter*)

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by the Secretary for Food and Health 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.

MEMBERS' MOTIONS

PRESIDENT (in Cantonese): Members' motions. Ms Miriam LAU will move a motion under Rule 49E(2) of the Rules of Procedure to take note of Report No. 17/09-10 of the House Committee laid on the Table of the Council today in relation to the Tate's Cairn Tunnel Ordinance (Amendment of Schedule) Notice 2010.

PRESIDENT (in Cantonese): According to the relevant debate procedure, I will first call upon Ms Miriam LAU to speak and move the motion. She is the Chairman of the Subcommittee that scrutinized the subsidiary legislation concerned. After Ms LAU has spoken, I will call upon other Members to speak. Each Member may only speak once and for up to 15 minutes. Finally, I will call

upon the designated public officer to speak. The debate will come to a close after the public officer has spoken. The motion will not be put to vote.

PRESIDENT (in Cantonese): Members who wish to speak will please press the "Request to speak" button.

I now call upon Ms Miriam LAU to speak and move her motion.

MOTION UNDER RULE 49E(2) OF THE RULES OF PROCEDURE

MS MIRIAM LAU (in Cantonese): President, in my capacity as Chairman of the House Committee and in accordance with Rule 49E(2) of the Rules of Procedure, I now move the motion as printed on the Agenda to enable Members to debate the Tate's Cairn Tunnel Ordinance (Amendment of Schedule) Notice 2010 (the Amendment Notice) contained in the Report No. 17/09-10 of the House Committee on Consideration of Subsidiary Legislation and Other Instruments.

In the following, in my capacity as Chairman of the Subcommittee on Tate's Cairn Tunnel Ordinance (Amendment of Schedule) Notice 2010 (the Subcommittee), I will give an account on the scrutiny work undertaken by the Subcommittee. The Subcommittee has held two meetings to discuss the issue of toll increases contained in the Amendment Notice.

Members were mainly concerned about the impact of the proposed toll increases on the fares of public buses. The Subcommittee requested the Tate's Cairn Tunnel Company Limited (TCTC) not to increase the tolls for public buses to avoid adding to the pressure for bus fare increases. However, the TCTC indicated that after considering its financial position, public buses could not be exempted from the proposed toll increases and emphasized that the present proposed toll increases had been minimized as far as possible.

The Subcommittee also expressed concern over the traffic impact of the proposed toll increases on the Lion Rock Tunnel (LRT) as the toll disparity between the LRT and the Tate's Cairn Tunnel (TCT) would be widened by the proposed toll increases. The Administration indicated that according to the TCTC's assessment, after the revised proposed toll increases took effect, about

500 vehicles would be diverted to the LRT and some 100 vehicles to each of Tai Po Road and Route 8 between Cheung Sha Wan and Sha Tin per day. According to the Administration's assessment, the proposed increases in the TCT tolls would not cause significant impacts on the traffic of the LRT.

The Subcommittee also showed concern over the impact of the proposed toll increases on the tolls of Route 8 as its tolls were determined with regard to the tolls of alternative routes (including the TCT). The Administration indicated to the Subcommittee that at present, the authorities had no plan to adjust the tolls of Route 8 or those of the LRT.

The Subcommittee noted that according to the relevant Ordinance, the Legislative Council could only make slight technical amendments to the Amendment Notice and it could not repeal it. In order to resolve the issue of toll increases in the long run, members urged the Administration to actively discuss with the TCTC such proposals as buying back the TCT or extending the tunnel franchise.

The Subcommittee has not put forth any amendment proposals in respect of the Amendment Notice.

I have given the above account in my capacity as Chairman of the Subcommittee.

President, next, I will speak on the views of the Liberal Party on this piece of subsidiary legislation.

The Liberal Party supports the rationale underlying the "Build-Operate-Transfer" (BOT) mode. Through encouraging private participation in transport infrastructure, the Government can make good use of public resources as far as possible, thereby achieving the "big market, small government" principle. As a great deal of investments are involved in transport infrastructure and investors need to bear certain risks, from the business point of view, offsetting the risks against reasonable returns should give no cause for criticism.

The BOT mode was adopted for the TCT, which was granted a 30-year franchise. It was expected that the TCTC could achieve an Internal Rate of

Return (IRR) of 13.02%. The rate of return just mentioned refers to the IRR of 13.02% reached in the discussion between the TCTC and the Government before building the TCT. As the actual volume of traffic turned out to be far less than expected and only reached 70% of the anticipated volume of traffic, according to the best estimate at present, it would ultimately be able to achieve an IRR of only 6%. Seeing that the IRR would lag behind and account for less than half of the expected IRR but the franchise of the TCT would only last eight years more, it was understandable for the TCTC to request toll increases, so as to obtain a return closer to its expectations.

In fact, the rate of toll increases requested by the TCTC has not gone beyond or violated the relevant agreement. After the toll increases have taken effect, the rate of return will only be increased by 1%. However, given that the present economic conditions have yet to become stabilized, any request for toll increases will induce great reverberations in society. Certainly, the greatest worry is that once a precedent is set, waves of toll increases will be triggered. With the snowballing effect coming into play, this will only add to the already heavy burden of the public.

Another matter of concern is that the original intent of building the TCT was to alleviate the traffic flow of the LRT, of which the volume of traffic has long since reached capacity. Over all these years, the increases in the TCT tolls have been cumulative while the LRT has all along charged a flat toll of \$8 for some 10 years. In comparison, there is a great disparity in tolls between the two tunnels. Subsequent to the toll adjustments of the TCT late this year, the disparity in tolls between the two tunnels will be further widened, thus giving rise to the doubt whether or not the TCT can perform the diversion function. Although it is anticipated that only 500 vehicles will be diverted to the LRT, this will only impose a greater pressure of congestion on the LRT, which currently sees an average traffic flow of as many as 90 000 vehicle trips daily.

Section 36(3) of the relevant Ordinance stipulates that the tolls of the TCT may be varied by agreement between the Chief Executive in Council and the TCTC. If both parties are unable to reach an agreement, they may resort to arbitration. However, according to the past experience in arbitration relating to the toll adjustments of the Eastern Harbour Crossing (EHC), arbitration is not the most satisfactory solution. Arbitration is very often to the franchisee's advantage because the IRR set in the initial agreement will be taken into account.

Subsequent to arbitration, the rate of increase that can be effected by the franchisee will be determined on the basis of the IRR agreed back then. We know from the experience relating to the EHC that the rate of increase resulted from arbitration may far exceed the rate agreed by the TCTC and the Government at present. In addition, it takes time to conduct the procedures for arbitration and government expenditure will be incurred, thus wasting manpower and money. The outcome may not necessarily be advantageous to the general public and drivers. In contrast, after negotiation, the TCTC has — you may say the Government had bargained with it or whatever and asked it to be amenable or act in response to public opinion — after considering its financial position, minimized the rate of increase as far as possible. Although the TCTC has agreed to not to raise the toll of public light buses upon request and will offer a promotional discount to empty taxis during midnight, it stopped short of accepting the request for freezing the toll of public buses. According to the TCTC's explanation, if it had done so, it would be impossible for it to fulfil its current hope of achieving a 0.1% increase in its rate of return and only an increase of a minimal percentage point would be attained. That means it would fail at all to sort this out in its computations.

As the rate of return is very often connected to the tolls and in signing the BOT agreement, the authorities had not specified the tolling criteria, the public opine that the Government has been lax in its monitoring and the TCTC may adjust its tolls at will. Ultimately, the original intent of building the TCT as a new tunnel to divert traffic cannot be achieved. Rather, a heavier burden has been brought to bear upon its users. Hence, there have been doubts about whether the BOT mode is still suitable and the proposal of buying back its franchise at a reasonable price has been put forth. Among other things, it has also been proposed that its franchise period be extended, so as to relieve the pressure of toll increases.

About a decade ago, the Liberal Party — it can actually be said that it was over a decade ago — already proposed that the Government consider extending the franchise period of BOT tunnels and using it as an incentive for tunnel companies as the franchisees to find more room for achieving the expected rate of return with a longer investment period in exchange for no significant toll increases and even for them to find room for offering more concessions to commercial vehicles and public vehicles to alleviate the burden of such commercial vehicles, thereby benefiting the public indirectly. The authorities

were inclined to accepting the proposal in question, that is, they might give consideration to extending the franchise period in the BOT agreement, and a lot of issues in this regard have been discussed. As stated by the Government, it has held discussions with various tunnel companies. Although it seems that such discussions have spanned some eight years, if not a decade, no progress whatsoever has been made. In fact, the most frustrating point is that the authorities would rather spend another sum of public money and one year in conducting a consultancy study all over again than continuing to hold discussions with the TCTC to seek a consensus proposal and resolve this issue, so as to reduce the need for frequent toll increases to achieve the rate of return originally set.

President, today, regarding this piece of subsidiary legislation, Members of this Council, given the limits on their powers, actually cannot make any material amendments. However, the Liberal Party hopes to take this opportunity to request the authorities to release as soon as possible the consultancy report on tunnel management and conduct consultation. Given that the franchise periods of many of the tunnels will soon expire — it takes a short span of eight years (the franchise of the TCT will expire in 2018) or as long as a decade or so (the franchise of the Western Harbour Crossing will expire in 2023) for this to materialize — I have no idea as to whether or not it was a mistake to make the decision of adopting the BOT mode back then. However, in today's environment, it seems that we cannot completely lose sight of the social problems arising from the BOT mode or the reactions of the general public. I hope the authorities can continue to actively examine the question of how the BOT mode can be improved, including extending the franchise period, so that tunnel companies can obviate the need for significant or frequent toll increases, thereby avoiding imposing negative impacts on people's livelihood and protecting the interests of the general public. I hope the Government can step up its efforts in resolving the problem, for over the past decade or so, we have been entangled in the issue of tolls. The BOT mode has made the tolls of relevant tunnels different from or higher than those of the government tunnels.

President, I so submit.

Ms Miriam LAU moved the following motion: (Translation)

"That this Council takes note of Report No. 17/09-10 of the House Committee laid on the Table of the Council on 14 July 2010 in

relation to the subsidiary legislation and instrument(s) as listed below:

<u>Item Number</u>	<u>Title of Subsidiary Legislation or Instrument</u>
(1)	Tate's Cairn Tunnel Ordinance (Amendment of Schedule) Notice 2010 (L.N. 67/2010)."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by Ms Miriam LAU be passed.

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

MR WONG KWOK-HING (in Cantonese): President, the Subcommittee on Tate's Cairn Tunnel Ordinance (Amendment of Schedule) Notice 2010 (the Subcommittee) was set up at my proposal put forth to the House Committee of this Council. Honourable colleagues in attendance and I had exerted all our efforts in the Subcommittee, with a view to compelling the TCTC to shelve the proposal of toll increases, reduce the rate of increase or provide more concessions. We have tried all sorts of means but to no avail. Hence, I do not wish to further waste Member's time. I need to honour my undertaking and encapsulate my speech. President, please rest assured.

Now, I only wish to raise an additional issue. During the examination of the Bills Committee, a representative from the Government informed members that a consultant had been engaged to examine the proposal of buying back tunnels, be it the five tunnels and one bridge or the six tunnels and one bridge, and indicated that the study concerned would be completed in the middle of this year. President, it is July now What date is it today? This meeting has spanned several days and I have really forgotten about it. Is it the 16th or 19th? It is the 17th. The notion of time does not matter anymore.

I wish to ask the Secretary via the President when the consultancy report can be submitted. The target time has almost passed. They said it would be

submitted in the middle of this year. It is mid-July now, will they please submit it as soon as possible? It is now towards the end of this Session and when this Council resumes, it will be some time in mid-October. By then, the target time will have completely lapsed. After the Government has received the consultancy report, it may need to spend several months examining it. Hence, I wish to ask the Secretary via the President to tell Members in her reply the timing of giving to this Council an account on the consultancy report, so that Members can follow up this issue. Only by so doing can this issue be thoroughly resolved.

President, I have only spoken for two minutes six seconds. Thank you, President.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): If not, Members have already spoken. I now call upon the Secretary for Transport and Housing to speak. This debate will come to a close after the Secretary has spoken.

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, first of all, I have to thank the Subcommittee on Tate's Cairn Tunnel Ordinance (Amendment of Schedule) Notice 2010 (the Subcommittee) chaired by Ms Miriam LAU for scrutinizing the Tate's Cairn Tunnel Ordinance (Amendment of Schedule) Notice 2010 (the Amendment Notice).

The Amendment Notice is made by the Commissioner for Transport in accordance with the Tate's Cairn Tunnel Ordinance. It reflects the decision of the Chief Executive in Council on the application of the Tate's Cairn Tunnel Company Limited (TCTC) for toll increases.

The TCTC submitted to the Government its original application for toll increases in July 2009, which proposed a \$1 increase in the tolls for each vehicle category. After receiving the application, the Government had repeatedly

reflected to the TCTC the public's concern about the proposed toll increases. Meanwhile, in the consultation with the Panel on Transport of the Legislative Council, some members proposed that the TCTC lift the toll increases for public light buses (PLBs) and taxis. In response to these proposals, the TCTC made some adjustments to its application for toll increases in January this year. It proposed not to increase the toll for PLBs and to continue to provide a \$1 promotional discount for empty taxis.

In making the decision of granting the TCTC's application for toll increases, the Chief Executive in Council already took into account a number of factors in various aspects, such as the rates of increase, the impact of the proposed toll increases on traffic, the affordability and acceptability of the public, the financial conditions of the TCTC and the question of whether or not the TCTC would be reasonably but not excessively remunerated.

The TCTC estimated that the proposed toll increases would impose light impacts on traffic. It was assessed that after the tolls had been adjusted, about 500 vehicles would be diverted to the LRT and some 100 vehicles to each of Route 8 and Tai Po Road daily. Given the opening of other routes one after another, such as Route 8, which connects Sha Tin and Kowloon and performs the diversion function, the proposed toll increases of the TCT will not have too much impact on the traffic of the related road networks. The Transport Department will keep a close watch on the relevant situation.

The TCTC expected that after the proposed toll increases had been implemented, an IRR of 6.1% over the 30-year franchise period would be achieved. In its franchise bid for investment in the building of the TCT, the TCTC expected to achieve an IRR of 13.02%.

During the scrutiny of the Amendment Notice, the Subcommittee had requested the TCTC to consider lifting the toll increases for such public modes of transport as franchised buses or providing promotional discounts. In this connection, the Government had conducted a number of discussions with the TCTC. After considering its financial conditions, the TCTC held that the tolls for public modes of transport could not be further reduced. The TCTC also pointed out that in this adjustment exercise, the rates of the proposed toll increases for public modes of transport were lower than the average overall rate of increase.

We also understood very well the concern of the public and the legislature about the frequent increase in the TCT tolls. This was also a matter of concern to the Transport Advisory Committee (TAC) and us. The last toll increases were implemented by the TCTC in November 2008, which was relatively close to this application in terms of timing, and the present economic situation of Hong Kong has yet to become stabilized. In submitting its views to the Government, the TAC indicated that although in narrow financial and investment terms, the proposed toll increases *per se* were not unreasonable and were justifiable, it was concerned about the views of the public on the TCTC's frequent toll increases. Hence, the TAC suggested that the Executive Council, in considering the application for the proposed toll increases, take into consideration the public's concern about the timing of implementing the proposed toll increases. We had also indicated to the TCTC such concern. The TCTC agreed that if its application for toll increases was granted, the new tolls would be implemented at the end of December 2010, that is, two years after the last toll increases. The Executive Council also made the decision that the new tolls would take effect on 25 December 2010.

President, the new tolls of the TCT were determined according to the statutory mechanism and factors in various aspects had been taken into consideration. After the Amendment Notice has come into force, we will still urge the TCTC from time to time to take into account the affordability and acceptability of the public in devising its tolling strategy.

Thank you, President.

PRESIDENT (in Cantonese): This debate ends here. According to Rule 49E(9) of the Rules of Procedure, no question will be put on this motion.

PRESIDENT (in Cantonese): Proposed resolution under the Legislative Council (Powers and Privileges) Ordinance.

I now call upon Mr LEE Wing-tat to speak and move his motion.

**PROPOSED RESOLUTION UNDER THE LEGISLATIVE COUNCIL
(POWERS AND PRIVILEGES) ORDINANCE**

MR LEE WING-TAT (in Cantonese): President, although Members have been meeting in this Chamber for so many hours in a row, they still look freshened up. I hope this exciting issue can lift their spirits in conducting the debate.

Today's resolution mainly seeks to achieve the objective of obtaining information. However, now that we have come to this stage, I believe this is not the only objective of today's debate on this resolution. I believe a great many Honourable colleagues and members of the Hong Kong public have become increasingly convinced that the 39 Conduit Road incident is a matter worthy of their concern all together.

About two weeks ago, I attended a forum hosted by NOW TV. NOW TV was very good in that it had conducted a survey and interviewed some 1 000 viewers. In the survey, they were asked the question of whether or not they agreed to setting up an investigation committee in respect of the 39 Conduit Road incident. The result was that 88% of them supported this proposal. President, I am certainly aware of the fact that we are not having a debate on the same question. I only try to enlist the support of Honourable colleagues with a simple approach, so that we may obtain information. However, according to the survey conducted by NOW TV, the public actually hoped very much that an investigation committee could be established by the Legislative Council. For these reasons, in deciding whether or not to support my resolution, I hope Members can also take into account the public response to this matter. I believe it is not a response targeted at the 39 Conduit Road, but rather a cumulative response. In other words, it is a response to the property developers' manipulation of the sale and purchase of residential properties over all these years and the atmosphere created in the initial stage of the sale of newly completed residential properties, which are priced at an unreasonable level through speculation and co-operation with partners whom they know, those so-called speculators, estate agents, and so on. This atmosphere makes people think that if they do not buy the units at the moment, their prices will rise in the future.

That day, when I attended the relevant programme of NOW TV, a speculator by the surname of CHAN rang the television station. I am not prepared to make his name public. In any event, his surname is CHAN. He frankly told us something to this effect, "Mr LEE, the prevalence of speculative activities in various newly completed property developments is an atmosphere created by property developers, speculators, estate agents and related parties. This is actually the case in each property development and it is common for flats in each newly completed property development to be marked up 20% or 30%." He went on to say, "However, in the 39 Conduit Road incident, what was the fault? The mark-up was too outrageous. Had its units been marked up by 20% or 30%, it would not have been too noticeable. It is said that flats in the South Horizons are now sold at a price ranging from \$7,000 to \$8,000 per sq ft and those in a property development adjacent to it are priced \$16,000 to \$17,000 per sq ft. It is very expensive and there is a 100% mark-up. However, no one will make any comments because people have grown used to this." Nevertheless, he said that the case has been too outrageous this time. Flats in the old buildings on Conduit Road were sold at some \$10,000 per sq ft whereas a mid-level unit in the 39 Conduit Road cost \$30,000 to \$40,000 per sq ft. A unit at the uppermost level was even priced at \$70,000 per sq ft. He said that even speculators could not bear with it, so the 39 Conduit Road incident came to light.

President, I think the present situation has led to the frequent exchange of letters between the Government and the Henderson Land Development Company Limited (the Henderson), with the former making enquiries about a great deal of information. Now, I also have in hand such information, from which it is evident that puzzling transactions are actually involved. Although I have not engaged in the real estate business, since I have to follow up and look into issues in this regard sometimes as part of my work, I have gained an overall understanding of how property developers conduct property transactions. In the 39 Conduit Road incident, the buyers engaging in the transactions of such high-priced residential properties were "\$1 companies" and the property developer in question appeared to be indifferent to the risks of these companies not taking out a mortgage and giving up their deposits. The buyers engaging in the transactions of the residential properties concerned through these so-called "\$1 companies" were not required to produce any banks' assurance or personal assurance. Regarding those buyers who had not taken out mortgages, the property developer only forfeited their deposits accounting for 5% of the total

purchase price. However, Members must bear in mind that at this stage, these buyers had already paid the property developer deposits of 10% to 15%. A more logical course of action would have been for the property developer making enquiries with its lawyers about the question of whether or not the entire amount of the deposits could be forfeited, for it had already received their deposits of 10% to 15%, so as to serve as a ground for not recovering the price differentials or an arrangement for settlement between both parties. On this occasion, the Henderson was very generous and no claim was initiated. It dispensed with the need for discussion among its in-house lawyers, nor did it cause its lawyers to issue letters to the other side, indicating the forfeiture of their deposits of 10% to 15%. It only forfeited 5% according to clause 11, without invoking clause 16 at all, which stipulates that it can recover the price differential. There is a simple reason for this and that is, if it had taken this course of action, it would have to keep the units in question for a certain period of time and this would be troublesome. In addition, the Henderson further remarked that as the property market was thriving then, it adopted a prudent policy in the sale of its residential properties. That means it treasured its "goods" very much. I really hope that "Fourth Uncle" can make an explanation. If this had really been the case, why would the two buyers by the surnames of TSUN and IP, as well as the other buyers, have failed to take out mortgages? Given that it treasured its "goods" very much, between 16 June and 17 July, that is, today, have any other buyers indicated to "Fourth Uncle" their wish of buying his units at \$70,000 per sq ft? Has anyone indicated interests? Nobody knows. Hence, these are actually pretexts.

After reading all the information, I have found that these transactions were actually unusual ones. Much *prima facie* evidence has even proved that misleading information might have been disseminated through these transactions or certain information in these transactions had induced other people to venture into the market. It is even open to question as to whether or not these were authentic transactions.

We all know that in Hong Kong, if the boss or a member of the senior management of a listed company tells other people that a number of people wish to buy its stocks but this does not happen after a lapse of two days, what will the Securities and Futures Commission (SFC) do? It will certainly invite them to the SFC, make enquiries with them about the reasons for disseminating such

information and point out at the same time that the information was misleading to the public, for it might arouse the public interest in the price of its stocks or its stocks, thus landing them in possible violation of the law.

At present, this practice is not adopted in the sale and purchase of residential properties. Hence, property developers can do such acts as market rigging in a reckless and unscrupulous manner. Simply put, as remarked by that speculator, this happens in each and every newly completed property development. Some other instances involve the breaking of promises. There have been comments about me picking on the Henderson. I am really sorry, for I will also chide at other property developers when they have made mistakes. I have laid blame on a property development of the Sun Hung Kai Properties Limited in Ma Wan and I have done the same to the development project of the Cheung Kong (Holdings) Limited (CKL) in the Marine Police Headquarters Compound in Tsim Sha Tsui. Today, I have pointed the finger at the Festival City developed by the CKL. Why? When the units in the Festival City were put on sale, William KWOK, a general manager of the CKL, remarked that a businessman from Mongolia on the Mainland wished to buy a whole block of its units. The Festival City has eight blocks of units only and he said that someone would buy one of them. In this connection, I wrote a letter to the Director of Lands and the Secretary but they have not taken any follow-up whatsoever. Eventually, did the businessman concerned do so? President, sorry, he eventually did not. If LI Ka-shing, Chairman of the CKL, or his son, Victor LI, comes out and says that a Mongolian businessman wishes to acquire 5% of the stocks of the CKL, but it does not materialize after a lapse of two weeks or one month, the SFC will make enquiries with them. Has any information been obtained after making enquiries? The Secretary and the Director of Department were unable to make enquiries. Now, the Government is actually conniving at the unceasing release of such false and misleading information on the sale and purchase of residential properties by property developers and the Government itself knows that follow-up cannot possibly be taken.

Up to this stage today, nearly all the Honourable colleagues of this Council — seemingly except for Mr Abraham SHEK — agree to legislating on regulating the course of the sale and purchase of uncompleted flats. On this past Tuesday, the Chief Executive also remarked that the Government would not rule out the possibility of legislating on regulation. As the original saying goes, anyone who

has "cried wolf" thrice will become untrustworthy. Let me do some counting. The Secretary, the Director of Department and the Chief Executive have made such a remark over 10 times. President, anyone who has "cried wolf" thrice will be untrustworthy. Now that our senior public officers have made such a remark a dozen of times, do you believe them? Do Members believe them? I really do not. When a major consensus has been reached in society as a whole and the entire Legislative Council that it is necessary to legislate on regulating the sale of residential properties, the Government has nevertheless advanced some pretexts and made certain evasive remarks. It has acted shamelessly, unwilling to do the relevant work. The Chief Executive and the Secretary have been criticized for being biased in favour of property developers and colluding with businesses. What do they think about these criticisms? I really cannot think of any reasons.

The Government has stated that it takes time to enact legislation. Honourable colleagues around me have also said that the Government already submitted the Trade Descriptions (Amendment) Bill 2007 (the Bill). However, it deliberately removed the clauses relating to the sale and purchase of residential properties. According to the Government, it takes time to enact legislation. However, the related clauses were removed from the Bill submitted. Secretary and Chief Executive, borrowing two colloquial expressions used by young people, now, is it that only you people have the final say and the upper hand? The relevant clauses were not included in but rather removed from the Bill. Then, it said that it took time to enact legislation. Secretary, in this world, human beings have fair judgment. We will not throw things around, nor will I take off my shoes and throw them at you. I am not that kind of person. However, when young people see you, they will blame you for colluding with business and express in a sharp tone their views on your practice. In that case, I would actually sympathize with them. When such a major consensus has been forged in society, how can the Government possibly procrastinate for such a long time?

President, I wish to spend a couple of minutes talking about a viewpoint. A number of Honourable colleagues may ask this question: What purpose does it serve for LEE Wing-tat to propose this resolution? As the other side has furnished all the information, you are doing a spent job. First, I certainly think that this resolution affords Members a very good opportunity to present their views on the 39 Conduit Road incident and the sale of residential properties. I

think it is well worth doing, although Members must be feeling dog tired. Second, I hope Members can bear in mind that our first request for information was met with the refusal of the relevant Bureau. I had written four letters to the Director of Lands and the last one was also copied to the Secretary. I merely requested that information be furnished. After reading my letters, both of them paid no heed to me. Given this, I had no alternative but to propose to invoke the Legislative Council (Powers and Privileges) Ordinance (the Ordinance). When I made this proposal, the Government said it would take the initiative to furnish me with it then. Come on, do not do such cosmetic work. Had I not proposed to invoke the Ordinance, the Secretary and the Henderson would have ignored me.

On Monday two weeks ago, the Government furnished some information. Thanks to Mr WONG Kwok-hing, Chairman of the Panel on Housing (the Panel), for convening the meeting of the Panel. The Government furnished members with some documents, including seven letters and the relevant replies. That means there were seven letters and seven replies. I asked the Secretary whether or not all the information had been furnished, and the Secretary answered in the affirmative that all the information had been provided to members. Subsequently, this past Monday came and I have to thank WONG Kwok-hing again. The World Cup Final was held that day. I had only slept for two hours but, as usual, I participated in the meeting of the Panel at 8.30 am. I had a look. Why was there another bundle of documents? It turned out that there were not seven but nine letters, in addition to over 10 replies and a bundle of new attachments. President, the Government can really not act without integrity and in such a confused and sloppy manner.

This resolution, once passed, will become an order, which compels the Secretary to give a clear account on the question of whether or not all the information in the drawer has been produced to Members fully. If she has not done so, this will constitute a criminal offence, which will render her liable to a fine and imprisonment. Hence, Members please do not believe her just because she says "yes" to your question of whether or not the all the information has been furnished, for her so doing will not incur any sanctions. We are endowed with the duty of making her furnish with us some relevant information through an order. I hope Members can support this resolution. Thank you.

Mr LEE Wing-tat moved the following motion: (Translation)

"That the Legislative Council Panel on Housing be authorized under section 9(2) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) to exercise the powers conferred by section 9(1) of the Ordinance so as to order the Secretary for Transport and Housing of the Hong Kong Special Administrative Region to attend before the Panel to produce all the correspondences between the Lands Department and the developer of 39 Conduit Road relating to the Lands Department's enquiry into the property transactions of 39 Conduit Road."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by Mr LEE Wing-tat be passed.

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, the Government has all along been committed to enhancing the transparency of the sale of first-hand private residential properties on the market and protecting the reasonable rights of consumers, so as to ensure that they have access to accurate and comprehensive information before purchasing uncompleted first-hand private residential properties. The Government does not tolerate any fraudulent transactions and the release of misleading or incomplete information on the sale of residential properties.

Like the public, the Government is concerned about the 24 transactions relating to the 39 Conduit Road. Related government departments, for example, the police, are conducting investigations into the relevant transactions pertaining to the 39 Conduit Road.

The motion moved by Mr LEE Wing-tat aims to seek authorization of the Panel on Housing (the Panel) in accordance with the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) to order the Government to produce all the letters between the Lands Department (LandsD) and the property developer of the 39 Conduit Road (the property developer) about the property transactions relating to the 39 Conduit Road.

In fact, on 5 July this year, the property developer delivered to the Legislative Council its letters in reply to the LandsD's enquiries. On the same day, the Government delivered forthwith to the Legislative Council in one go all the eight letters issued by the LandsD to the property developer as at that day. Members will please check carefully the receipt of such letters. Please do not be infected with the sensitivity of the property developer to numbers and skip numbers. On 9 July this year, the Government delivered to the Legislative Council the ninth letter issued subsequently by the LandsD to the property developer. The said letter was issued after the Government had delivered to the Legislative Council all the previous letters issued by the LandsD to the property developer.

In view of the concern of some individual Members that the Legislative Council may not have received all the letters between the LandsD and the property developer, on 12 July this year, the Government further delivered to the Legislative Council a set of copies of letters arranged in chronological order between the LandsD and the property developer about the 24 transactions in question. It included the letters and appendices delivered earlier to the Legislative Council by the property developer in reply to the LandsD enquiries.

In addition, upon the request of the Clerk to the Panel of the Legislative Council, the Government delivered to the Legislative Council the respective stamped sale and purchase agreements of the 24 transactions relating to the 39 Conduit Road. The 24 sale and purchase agreements did not form part of the correspondence between the LandsD and the property developer.

Apart from furnishing the said information and documents, the Transport and Housing Bureau attended upon invitation the two meetings held by the Panel of the Legislative Council on the fifth and 12th of this month to discuss the 39 Conduit Road incident. The LandsD also attended upon invitation the meeting held on the 12th of this month to answer members' questions about the 39 Conduit Road incident. The Transport and Housing Bureau and the LandsD will attend another meeting of the Panel to be held on the 20th of this month to discuss the 39 Conduit Road incident.

All of these actions have fully reflected that where circumstances permit, the Government has all along adopted a co-operative and sincere attitude towards Members' request for information on the transactions relating to the 39 Conduit

Road and attendance at meetings. President, however, I must emphasize that since the relevant government departments, including the police, are now conducting investigations into the incident, they will not disclose at this stage any details and progress of the investigations concerned, nor will they comment on the 39 Conduit Road incident.

I hope Members can understand that in normal circumstances, the Government will not make public any information on cases under investigation by law-enforcement agencies, so as to not to prejudice the investigations underway which would thus hinder the impartiality of the investigations and affect the possible actions to be taken in the future by the Government after the completion of the investigations.

However, the decision made by the property developer to deliver its letters to the Legislative Council changed the circumstances in that one of the legal considerations no longer existed, that is, our *ex parte* release of the relevant letters might cause injustice to the property developer. Although the investigations conducted by the Government were still underway, the Government opined that it was necessary to enable the Legislative Council and the public to gain full knowledge of the contents of the letters between the Government and the property developer.

Despite the Government having delivered to the Legislative Council a full set of copies of letters between the LandsD and the property developer about the 24 transactions concerned, Mr LEE Wing-tat still moved this motion. His so doing is unnecessary.

I hope Members can understand clearly that even if this motion is passed, up until now, the Government does not have any additional documents concerning the 24 transactions of the 39 Conduit Road for submission to the Legislative Council. Hence, this motion will not achieve any practical effect.

President, after listening to the speeches to be given by Members in this motion debate, I will give a consolidated response. Thank you, President.

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

MR WONG KWOK-HING (in Cantonese): President, same as before, I will also encapsulate my views in my speech. President, on behalf of the several Members of the Hong Kong Federation of Trade Unions (FTU), I put forward our views on Mr LEE Wing-tat's motion on invoking the Legislative Council (Powers and Privileges) Ordinance, as follows.

The several Members of the FTU are keenly concerned about the 39 Conduit Road incident, for it might involve a conspiracy to rig the market and the release of false information that misled the market. However, given the Administration's submission of the relevant documents, the Secretary's earlier clarifications in her letters and the criminal investigations commenced by the police and related law-enforcement departments, we will keep a close watch on the developments of this incident. Meanwhile, we will urge the Government to exert all its efforts in conducting thorough investigations on all fronts and pursue the responsibilities of the relevant parties, so as to give a responsible account to this Council as early as possible.

President, after careful consideration, the four Members of the FTU have decided not to cast any vote on this motion at this stage. On the other hand, we hope the Government can legislate on the "nine proposals and 12 requirements" as soon as possible. Only by so doing can the frequent criticisms of the Government colluding with business and conniving at property developers' conduct be curbed. I hope the Government can legislate on the "nine proposals and 12 requirements" as soon as possible.

Thank you, President.

MS AUDREY EU (in Cantonese): President, I wish to look at this issue from the angle of law. President, I have in hand an agreement signed for the sale and purchase of a flat in the 39 Conduit Road. In the legal sector, it is commonly known as "Formal SP", that is, the Formal Sale and Purchase Agreement. The Henderson indicated that it had invoked clause 11. President, having been on the Bar for more than 30 years, I have come across an innumerable number of this type of standard agreements. I believe Mr Abraham SHEK must have also seen many of such agreements. Clause 11, as highlighted by the Henderson, relates to the "Rights of the Purchaser", as appeared in the English language. It stipulates that the purchaser can opt to cancel the agreement. The vendor, that

is, the Henderson, the property developer, will forfeit the 5% deposit. President, where is the problem? It lies in the fact that it was impossible to invoke clause 11 in this case. Clause 11 provides that if the purchaser has not violated the agreement and once he opts to cancel it, clause 11 may be invoked. However, in relation to the 20 units in the 39 Conduit Road, the transaction dates had already passed. In other words, the purchasers concerned have breached the agreements. Hence, the clause applicable should not be clause 11, but rather clause 16.

Clause 16 relates to the "Default of Purchaser". That means when the purchaser violates the agreement, this clause will be invoked. Clause 16 stipulates the situation following the purchaser's failure to make payment in accordance with Schedule 5. According to Schedule 5, the property developer will notify the purchaser of the transaction date and the latter has to complete the transaction in 14 days. In other words, after the property developer has notified the purchaser but if the latter fails to complete the transaction in 14 days, he will violate the agreement. In this case, clause 16 will apply.

What are the contents of clause 16? In addition to stating clearly that the property developer can forfeit the 5% deposit paid by the purchaser, it also stipulates that the property developer can issue a notice to the purchaser, requesting him to complete the transaction within 21 days; otherwise, the deposit will be forfeited. After the deposit has been forfeited, the property developer can claim the purchaser for the price differential. That means if the property developer puts the unit on sale again but it fails to be sold at \$70,000 per sq ft, the property developer can claim the purchaser for the price differential. In instances involving a breach of the agreement, generally speaking, the property developer will absolutely not be so kind as to only forfeit the 5% deposit and refund the remaining sum to the purchaser. This is absolutely impossible. The property developer will definitely retain the money and then claim that given the fall in property prices, the unit cannot be sold at the original price, thus incurring losses. So, the resultant losses will be deducted from the money retained. As a general practice, the property developer will only refund the remaining sum after the unit has been sold. I have not come across any property developer that is so kind as to refund the remaining sum to the purchaser without even charging any interest.

For these reasons, Members will know at a glance that there is a big problem here because it was impossible for the property developer — if it is professional — to have failed to distinguish between clause 16 and clause 11. Under this circumstance, it was impossible for it to have refunded the deposits on the ground of overpayment by the purchasers. Certainly, there was another problem and that is, if the purchasers had failed to complete the transactions on their respective transaction dates, the property developer should have given them a 21-day notice. However, the property developer did not do so. Besides, it even allowed them to postpone the transactions. President, on certain occasions, an extension of the transaction date may be granted. If on the transaction date, the purchaser fails to raise sufficient money, he will need to negotiate with the property developer or vendor. Generally speaking, the property developer will agree to extend the transaction date, but interest will be charged. According to the agreement, an interest rate of 2% will very often be levied. Having worked as a lawyer for so many years, I have not heard of any extension that takes the verbal form, nor have I heard of the practice that no charge whatsoever is levied on the extension, unless the property developer is well-acquainted with the purchaser or there are special reasons. Generally speaking, I really have not heard of any instances in which the vendor agrees to an extension on the ground that the purchaser has insufficient money and no charge is levied at all, not to mention refunding the overpaid sum to the purchaser. I have been a lawyer for more than three decades, but I have never seen such instances.

President, a number of questions have been raised by the press and I do not wish to say too much about them. For example, initially, it was claimed that the purchasers of the 24 units in question did not know one another. However, it is now found that 20 of the 24 units were bought in the name of one single purchaser. It was also mentioned that the prices of the units concerned were higher than "astronomical prices". However, were those units really that expensive? Regarding a number of inconsistent remarks, I will not make any conjecture but will solely look at the agreements. As people who know how those agreements work, we know at a glance that there were big problems in the sale of these 20 units in the 39 Conduit Road.

President, I wish to tell Mr LEE Wing-tat that I will support the motion moved by him today. However, I do not think it will be of any help to this incident, for even if we ask them to submit all the documents, we will not obtain

all the answers because the answers cannot be found in those documents. Besides, they said that they had already submitted the relevant documents. Even if this motion is passed today — I do not believe this will be the case — I do not think this matter can be resolved. In order to gain an understanding of the inside story, we may really need to exercise our privileges and establish a Select Committee. Certainly, some Honourable colleagues may say that the police had conducted a search of the Henderson and the law firm in question and investigations are now underway, so there is no reason for the Legislative Council to waste any public money and time. Of course, President, we may consider this question some time later since we are not considering the establishment of a Select Committee. However, I wish to point out that the police are conducting investigations from the criminal perspective. In general, after collecting evidence to a certain level, they will institute prosecution or take actions. However, the role of this Council is very different. We are not seeking to initiate criminal prosecution or civil claims. Very often, if an incident involving significant public interest occurs, thus arousing great public concern, Members of this Council will have to exercise their powers. In addition, some Honourable colleagues have remarked that this incident is related to private commercial transactions, so why does the Legislative Council have to intervene? I do not think this is a private matter because whenever the sales and purchases of residential properties are suspected of involving fraud or false pretences, this will become an important issue of public concern.

President, in 1995, I was not yet a Member of this Council but a practising barrister. Hong Kong was already very concerned about the sale and purchase of residential properties, in particular, the sale and purchase of uncompleted flats. Back then, the Law Reform Commission already indicated clearly that legislation should be enacted to regulate the sale and purchase of residential properties. However, over all these years, the Government has been unwilling to do so. In the latest Chief Executive's Question and Answer Session, Mr Alan LEONG and Members of the Democratic Party or the DAB put questions to the Chief Executive in this connection, who indicated that the possibility of enacting legislation would not be ruled out. Frankly speaking, I will not rule out the possibility of implementing dual universal suffrage in 2012 and a lot of things. However, from 1995 or 1996 to the present, the Government has only remarked that the possibility of enacting legislation will not be ruled out. When it comes to real estate development, it is evident that the Government has been soft acting.

Interestingly, on that day, when the Chief Executive came to this Council and Honourable colleagues asked him questions about regulating the sale and purchase of residential properties, he said that there were only a few property developers and he compared this to the number of fingers in one hand. President, this revealed his mindset. How could he say that since there were only a small number of property developers, so there was no need for regulation? A great many members of the public actually work for property developers, given the expensive prices of residential properties. On the issue of minimum wage, our discussion has spanned a number of days. Very often, the Hong Kong public have to pay high rents or service heavy mortgages. The property market or property prices actually affect the living of each humble citizen. For these reasons, on this matter, the Government impresses us as being soft all along.

Regarding the 39 Conduit Road incident, the Government has claimed that it will conduct investigations seriously. So, let us wait for the findings of the police investigations. However, President, I have to tell Mr LEE Wing-tat that although the Civic Party and I support his motion, this absolutely will not resolve any problems, nor will this provide any answers. If the police were to institute criminal prosecution, they must obtain sufficient evidence. Hence, if the police investigations come to no avail and thus no actions can be taken, I hope this issue can be brought back to this Council. I also hope that by then, Mr LEE Wing-tat or other Honourable colleagues can propose a motion, for I believe further in-depth inquiries are required to gain an understanding of the inside story of this incident.

President, I so submit. As I have explained, despite my support for this motion, I actually do not think that at this stage this motion will achieve the objective we need to achieve. Thank you, President.

MR CHAN KAM-LAM (in Cantonese): President, I remember that from 2006 to 2007, several luxury residential developments in Kowloon West were put on sale. At that time, the price was as high as \$7,000 to \$8,000 and even \$10,000 to \$15,000 per sq ft and this caused a furore in society because when the economy was gradually climbing out of the trough in 2003 or 2004, the property market was only expected to gradually find its feet again and it had never occurred to anyone that the property market could surge within such a short period of time. In recent years, property prices have risen to between \$15,000 and \$20,000 and even \$30,000 per sq ft. It is generally believed that this is perhaps attributable to

the lack of investment opportunities for international capital. As a result, there has been an influx of hot money into Hong Kong, thus making property prices in Hong Kong rise to a high level due to the strong demand in the market.

This year, some units in 39 Conduit Road suddenly commanded a price of \$70,000 per sq ft, thus setting in Hong Kong a world record for multi-storey residential buildings and arousing great attention. If property prices in Hong Kong can rise to such a high level, are they supported by the real economy? I believe all of us have great doubts about this. Certainly, it takes two to tango and no matter how much the price is, there is nothing wrong with it. Yet, judging from the 39 Conduit Road incident, there are many aspects open to question. However, we believe that there are at least several reasons for supporting thorough investigations by the authorities into this incident as soon as possible.

First, the completion of the transactions for 24 apartments of the 39 Conduit Road was deferred and 20 buyers even defaulted on the completion of transactions at the same time. In this process, we think that there are many questionable areas relating to what transpired between the two sides to the sales, the arrangements after the defaults, such as the refund of deposits, the decision not to recover the price differences, the format of the documents, and so on. If criminal offences such as falsifying transactions, market rigging or "market shoring" are involved, naturally, the authorities must deal with them duly and carry out in-depth investigations.

Second, this incident has affected the reputation and business renown of the people and companies involved in this case. If this incident is actually legal and legitimate *per se*, it is all the more necessary for the authorities to carry out a thorough investigation as soon as possible to vindicate them.

Furthermore, this incident has caused enormous impact on the business environment and reputation of Hong Kong as a whole. If the authorities can disclose the truth of this incident at an early date, this will be helpful to the healthy development of the market. For this reason, we firmly believe that the law-enforcement and regulatory agencies should uncover the truth of this matter as soon as possible, so that the truth of this incident can be made known and the offenders will be sanctioned by the law, while those who did not violate the law can be vindicated as soon as possible.

President, a couple of days ago, the police sent their officers to various locations to collect evidence. This means that law-enforcement agencies of the Government have entered the stage of investigation in relation to this incident and that the authorities take this incident seriously. We hope that the law-enforcement agencies will complete their investigations and disclose the results of the investigations as soon as possible.

President, today, we have to deal with the resolution proposed by Mr LEE Wing-tat, who demands that the Legislative Council (Powers and Privileges) Ordinance (the Ordinance) be invoked to order the Government to submit all the documents relating to this incident to the Legislative Council. I think it may no longer be appropriate to deal with this motion today because the Government has made it clear and promised in writing that it will submit all the relevant documents to the Legislative Council. Moreover, it has already handed over to the Legislative Council copies of the full set of correspondences between the LandsD and the Henderson relating to the 24 transactions involving 39 Conduit Road together with the appendices on 6 July and 14 July. In fact, on 6 July, the Henderson also took the initiative to submit to Legislative Council Members their replies to the letters of the LandsD. It can be said that the Government has already met the demand made by Mr LEE in advance. This being the case, I believe there is no longer any need to invoke the Ordinance.

President, the DAB believes that in the final analysis, this incident has exposed the fact that there are still inadequacies in the Government's regulation of property sale practices and the grey areas may lead to unfairness in the market or manipulation by speculators. In recent years, property prices in Hong Kong have kept rising, so we should not simply regard this as a normal market phenomenon, nor can the Government leave it to the market to exercise self-regulation or make adjustments. Rather, it should regard this situation as the consequence of financial investments as well as possible false highs resulting from speculations in the market.

It is not easy for the public to acquire their own homes and often, it may cost them a large sum of money and even their lifelong savings. Moreover, they have to spend half of their lifetime paying off the mortgages on their properties. They spend their savings made through a lifetime of hard work on a cosy home and pin their hope of a lifetime of happiness on this cosy home. If the public have to spend their lifelong savings on properties the prices of which are jacked

up by property speculators, this is really unfair to them. This is also the greatest reason for our demand that the Government enact legislation to regulate the property market. If there are laws for the market to follow and the sale of first-hand flats is strictly regulated, so that transparency can be enhanced and the penalties increased to enable the public to acquire their properties with peace of mind and without being deceived and the property market can also develop more healthily, I believe this is something that all of us wish to see.

Therefore, the DAB urges the Government to enact legislation to regulate this as soon as possible, so as to enhance the transparency of the sale process and ensure the healthy operation of the market.

President, I so submit.

DR RAYMOND HO (in Cantonese): President, like the members of parliament in overseas countries or the Deputies to the National People's Congress, Members of the Legislative Council perform mainly two functions, that is, to supervise the Government and enact legislation. Under the Basic Law and the arrangements of an executive-led system, the legislature has only two "imperial swords" in supervising the Government, one being appropriation and the other being the Legislative Council (Powers and Privileges) Ordinance (the Ordinance). Apart from affording immunity to the existing laws to Members and officials speaking in the meetings of the Legislative Council, the Ordinance also confers various powers and privileges on Members of the Legislative Council to facilitate them in discharging their duty of monitoring the Government. When necessary, they can summon any person, including any official and other people, to attend hearings. However, when exercising the relevant powers and privileges, Honourable colleagues of this Council must exercise caution or they may give members of the public the mistaken impression that this Council is abusing its powers.

Regarding this incident relating to 39 Conduit Road, our consideration must be prudent. This incident purely involves the conveyance of properties between private companies. Government departments are now conducting in-depth investigations into this case and following it up closely. I believe it is really inappropriate for the Council to intervene at this stage.

I think some Honourable colleagues may query why, given that the Lehman Brothers-related minibonds and structured financial products also involved private transactions between investors and banks, the Subcommittee to Study Issues Arising from Lehman Brothers-related Minibonds and Structured Financial Products, which is chaired by me, can invoke the powers conferred by the Ordinance to carry out an inquiry? I believe these two instances are fundamentally different in nature. For one thing, the number of investors involved in Lehman Brothers-related minibonds and structured financial products is numerous, and for another, the incident also involves questions relating to the responsibilities of the relevant regulatory bodies, so it is entirely appropriate for the Legislative Council to intervene and conduct an inquiry.

As regards the incident relating to 39 Conduit Road, it only involves the property transactions between offshore companies and the property developer. This is within the scope of normal commercial activities and is by no means within the scope of monitoring by the Legislative Council. Before the Government has released its result of investigations, that is, before we have received any report, any intervention by us at this stage may be regarded by the business sector as an act of intervention in the market and the confidence of investors in Hong Kong's business environment will be affected. I believe that after the release of the investigation reports by the Government, if we are not satisfied with the investigation results or think that there are areas in which our standards cannot be completely met or in which doubts still exist, at that stage, we should consider in depth and prudently whether or not the Legislative Council should carry out an independent inquiry.

I fully understand the concerns of Honourable colleagues about this incident, but the authorities are now taking follow-up actions and an in-depth investigation by the police is also involved. In this process, the authorities are also providing papers to this Council on an ongoing basis. Nevertheless, some Honourable colleagues are concerned that this Council may not be able to obtain all the correspondences between the LandsD and the property developer concerned. In order to remove their doubts, not long ago, the relevant authorities already handed over all the correspondences between the LandsD and the property developer concerned to the Legislative Council.

President, I believe this Council should let the Government carry out in-depth investigations into this incident first. After the conclusion of the

investigations and submission of reports, Members should decide what step to take according to the contents of the reports. I believe this course of action would be more appropriate. Thank you, President.

MR LEUNG YIU-CHUNG (in Cantonese): President, in the speech delivered by the Secretary just now, two main points were raised in reply to Mr LEE Wing-tat's comments.

The first point that the Secretary made very clear is that she had already handed over all the relevant letters (the correspondences with the developer) to this Council. Although chronologically, there may be some misunderstanding, for example, whether seven or eight letters have been handed over to us, this is only an issue relating to the chronology but ultimately, all letters have been handed over to us. The second point is that she said the government departments concerned, including the police, are carrying out in-depth investigations into this incident, so it is not true that the Government is ignoring this matter. These are the two messages put across by the Secretary.

In view of these two messages, in the positive light, as other Honourable colleagues said, a response has actually been given to Mr LEE Wing-tat's motion, so we should no longer continue to support this motion. However, my thinking is quite similar to that of Ms Audrey EU because I think that even if this motion were passed — of course, it would be very difficult to have it passed — actually, the immediate effect would not be very great. It really would not be great.

We have to believe that the Secretary is telling the truth, that she has already handed over all documents to us. Otherwise, as Mr LEE Wing-tat said, she would have committed a criminal offence and in addition to being liable to a fine and imprisonment, I think another point is that the integrity of the entire Government would also be brought into question. In that case, that would be a serious problem.

Of course, today, she said that she had handed all documents over to us and it is very difficult for us not to believe her because even if we do not, there is nothing we can do. How can we investigate her? We are not police officers, nor can we obtain warrants to search her office to see if any document has been omitted. There is nothing we can do unless a "mole" in the Government leaks

the information, otherwise, there is no way for us to find out. Therefore, I think that in this regard, we can only believe in government officials, and this is a fact.

However, what is the main purpose for us supporting Mr LEE Wing-tat's motion today? I believe there are two. The first one is that I wish to convey a message to society and the sector (that is, property developers) that this legislature is really very concerned about this issue. We did not spot this problem all of a sudden, then deal with it immediately. This is not the case. In fact, this is an issue with far-reaching implications. If false transactions are involved here, this will give rise to an unhealthy situation in property prices and the property market. I believe, just like the general public, this Council is very, very concerned about this. Therefore, we must support this motion.

The second purpose is even more important. Ms Audrey EU said just now that the police were carrying out an investigation from the criminal perspective but does this mean that this problem can be solved easily from the criminal perspective? I have heard many lawyers say that it would not be so easy because even for criminal offences, it is necessary to find hard evidence before the offenders can be brought to justice. Therefore, it may not be possible to solve the problem solely from this angle.

However, it does not mean that many of the problems in connection with this incident have not been exposed. For example, there may be loopholes in our policy, thus leading to some so-called unhealthy conduct. Therefore, the second purpose in supporting the motion is that we hope some foreshadowing can be made, so that after all the business has been concluded, we can still follow up those matters that have not been thoroughly dealt with. I think that this is very important, and there are two emphases. The first one is that we hope by doing so, healthy transactions can be promoted and market development along this line can be fostered on a normal track.

Nevertheless, I hope that our inquiry can also do justice to the developer and give it a chance. In fact, we can see that the developer has also been making a lot of effort. When we asked for certain documents, it placed a series of advertisements and took action even more quickly than the Government by giving us some responses first. In view of this, the thinking of the developer is that it also wants to give an account of this incident to us. This being so, if we investigate further, this is actually giving the developer a chance to state its case.

If it has really done nothing inappropriate, it will have the chance to vindicate itself. This I think is what matters the most.

Now, this incident involving this developer is causing a furore and it affects the whole society. We all know that this incident has impact on its reputation and market sentiment has also been affected, so an undesirable situation has arisen. Therefore, after the Government has completed the relevant tasks and we think that there are still problems, if there is an opportunity in the future, we can continue to take follow-up actions to uncover the truth. I think this would be a healthier course of action that can also serve to promote development, thus making us feel more confident. We all know the problem is that Hong Kong people are most sensitive to and very concerned about property prices because they have the greatest bearing on us. Many members of the public, particularly ordinary members of the public, all say that they have spent their life-time savings on their properties. In this regard, if the property market in Hong Kong does not develop healthily and normally, the effect on us would really be very great.

Therefore, although in reality, the passage of the motion may not have a very great and immediate effect, I think it is the underlying significance that is the most important. For this reason, I hope Members will understand the underlying significance instead of looking at the immediate effect. In addition, on this point, I wish to tell the Secretary that it is not the case that we do not believe in you. You have told us everything and I believe in you, only that, as I said just now, we hope the whole society can have a clearer picture of this incident. For this reason, I support Mr LEE Wing-tat.

MS MIRIAM LAU (in Cantonese): President, the Liberal Party believes that buying a property is a major decision and investment in the lives of members of the public. For this reason, we attach great importance to whether or not there is free flow of information in the property market, whether or not property sale practices are appropriate and whether or not the sale process is fair.

Recently, the transactions relating to a property development in the Mid-Levels West, the 39 Conduit Road, have aroused the concern of various sectors. The cause for concern lies not just in the fact that when the first batch of 25 units was put on sale last year, the average price per sq ft was as high as

\$30,000 and that the price of one of them even set a record of more than \$70,000 per sq ft. It also lies in the fact that in this batch of 25 units, it turned out that the buyers of 20 of them subsequently defaulted on completing the sales and when the developer forfeited the deposits, it gave people the impression of being generous by forfeiting only the deposit of 5%. While it did not recover the price differential, it also gave a refund on the balance of the deposit paid. All these unusual happenings led to a great deal of speculation in society, and some people even cast doubts on whether or not there are falsifications in the sale process for purposes of boosting property prices and even driving up the share price of the company concerned.

Since the allegations relating to this incident involving the 39 Conduit Road are very serious, the Liberal Party agrees that the law-enforcement and regulatory departments concerned must carry out in-depth and thorough investigations to find out the truth. If any violation, falsification or market rigging is really found, we definitely support taking appropriate actions to pursue responsibility.

However, concerning the aim of today's Resolution, which is to invoke the Legislative Council (Powers and Privileges) Ordinance (the Ordinance) for the Legislative Council Panel on Housing to "order the Secretary for Transport and Housing of the Hong Kong Special Administrative Region to attend before the Panel to produce all the correspondences between the Lands Department and the developer of 39 Conduit Road relating to the Lands Department's enquiry into the property transactions of 39 Conduit Road", the Liberal Party has some reservation about it. I must stress that while we do not oppose enabling the Panel to make thorough inquiries and request documents to see clearly how the Government investigates these "unusual" transactions, we believe that it is not absolutely necessary to invoke the Ordinance to request documents that have already been handed over to this Council.

In fact, the developer has already issued statements on two occasions on 30 June and 2 July to say that it would hand over to this Council of its own accord its replies to the letters of the LandsD. The Secretary for Transport and Housing also said that she was prepared to hand over to the Legislative Council the letters sent by the LandsD to the Henderson Land Development Company Limited (Henderson).

Consequently, before the Panel convened its meeting on 5 July, the Legislative Council Secretariat had already received the letters issued by the developer of 39 Conduit Road (that is, Henderson) and the LandsD concerning the incident surrounding 39 Conduit Road. Copies of the letters were distributed to the relevant panels on the same day and the mass media also gave extensive coverage to the contents of the letters on the same day and the next.

In addition, this Monday, that is, on 12 July, in a special meeting of the Panel, the authorities further undertook to produce the full set of correspondences between the LandsD and the developer of 39 Conduit Road and the relevant appendices as of 5 July to the Panel after sorting out the chronological order. Since the Panel has already obtained the correspondences requested by it and these correspondences have become open information, there is no need at all for the Legislative Council to request the letters already obtained from the authorities again by authorizing the Panel to do so in accordance with the Ordinance.

According to the explanation given by Mr LEE Wing-tat to the mass media, although Henderson has already submitted the relevant letters to the Legislative Council, it is difficult to ensure that no letter or memorandum has been omitted, so he hopes that by invoking the Ordinance, when it is considered that there is a need to follow up the matter, it can be ensured that the authorities have submitted the relevant information to the Legislative Council without any omission.

It can thus be seen that the request made by Mr LEE Wing-tat is only a precaution. However, I think that the developments have already overtaken the presumptions made by him when he initially proposed the motion. For example, the Commercial Crime Bureau of the police, which was reported to be about to take action, applied for a court warrant on Wednesday and removed a large number of relevant documents for investigation from more than a dozen locations, including the head office of Henderson, the law firms responsible for the property transactions on this occasion and the purchasing companies that have defaulted on completing the sales. It is reported that on this occasion, the police intervened in an unprecedented and high-profile manner in the property transactions involving the developer on the ground of conspiracy between the buyers and seller to defraud and the scope of evidence collection certainly far exceeds the correspondences covered by the Resolution today. If the Legislative

Council invokes the Ordinance to obtain the letters already in its possession, what purpose will this serve in getting to the truth of this matter?

In addition, when responding to the enquiries of the mass media about the actions of the police, Commissioner of Police TANG King-shing stressed that people involved in this case would not be able to get away. This being so, we really cannot see why the Transport and Housing Bureau, which is also a government department, would retain any letter relating to its communication with Henderson to cover up this matter.

Finally, I wish to reiterate that we hope very much that the law-enforcement agencies must not relent in any way in their investigations, so as to help find out the truth of this matter, and that the relevant government departments will take necessary measures to ensure the transparency and fairness of property transactions. Just now, Mr LEUNG Yiu-chung mentioned that the police may end this case inconclusively due to their inability to find out anything. He also reminded us of the need to get to the bottom of this matter. The position of the Liberal Party is that this is a matter of public interest and we attach great importance to it. However, given that, the law-enforcement agencies are currently carrying out investigations, we should let them do their work to investigate clearly if this incident involves any offence. Concerning the whole incident, in the days to come, it may also be necessary for the Legislative Council to take follow-up action in such areas as the policy aspect and the regulation of developers by the Government. For this reason, we will surely retain the powers in this regard and we are also duty-bound to do so. If there is a need for us to invoke the Ordinance, we will make a decision then. I believe, at the present stage, the most important thing is to let the law-enforcement agencies investigate the incident thoroughly and we should not intervene at this stage. This is the present position of the Liberal Party.

President, I so submit.

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

MR KAM NAI-WAI (in Cantonese): President, I wish to respond to Dr Raymond HO's comments on whether or not the Legislative Council (Powers and Privileges) Ordinance (the Ordinance) should be invoked. Perhaps due to his capacity as Chairman of the Subcommittee to Study Issues Arising from Lehman Brothers-related Minibonds and Structured Financial Products (the Subcommittee), Dr Raymond HO used the Subcommittee as an example. I am also a member of the Subcommittee.

Just now, Dr Raymond HO talked about why the Ordinance was invoked in relation to the Lehman Brothers incident. He thinks the reasons for the propriety of doing so are: First, although apparently, only the transactions between the banks and the victims concerned were involved, in fact, a large number of people were involved. Second, the Subcommittee also has to investigate what the responsibilities of the regulatory bodies in relation to this kind of structured products are.

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

These viewpoints are, as I see it, raised by Dr Raymond HO, who is the Chairman of the Subcommittee. If these two viewpoints are cited in considering this incident, are they really appropriate? Although this time around, we mainly want to obtain the relevant documents, I also heard Ms Audrey EU point out just now that we should establish an inquiry committee. I also agree that such a committee should be established.

However, at the present stage, in respect of obtaining documents, can we actually invoke the Ordinance? First, this depends on whether a lot of people are involved in this incident or it purely involves the relationships between Henderson and the 20 buyers who defaulted on completing the sales. I think this is not the case. First, we all know that in this incident let me give an example, which is my personal experience. When the relevant property development priced at \$70,000 per sq ft was offered for sale, I had a look at some of the properties for sale in the vicinity of this development. An agent contacted me to talk about viewing the flats for sale. What did the agent say to me? He said, "Mr KAM, the property development two blocks away is selling at \$70,000 per sq ft but the flat you are going to look at is asking \$7,000 per sq ft, so

it is very good value. The units there are selling at \$70,000 per sq ft but the one you are going to look at is asking \$7,000 per sq, yet they are just several blocks apart.". You will find that the whole incident actually has an impact on people prepared to buy properties and on property prices. We can see from this incident the sale practices of estate agents, who also cited the deals at \$70,000 per sq ft to encourage people to buy properties. They would say, "Look, those people are selling their properties at \$70,000 per sq ft and the flat you are looking at is selling at \$7,000 per sq ft, so it can be considered great value.". This example indeed affected a lot of people prepared to buy properties at that stage. I do not have a specific figure, but I estimate the number to be quite large.

Second, we all know that of course, I do not have the specific figures on share prices but we all know that had the transactions been completed, Henderson would have received over \$2 billion in revenue and according to information, this sum would account for over 30% of the revenue of Henderson in that year, so clearly, it would have had an effect on its share price. How many shareholders have actually been affected? I have no idea, but the number is probably not small. As I mentioned just now, in terms of numbers, this incident has not simply affected Henderson and those 20 buyers. Actually, it has affected people prepared to buy properties and it may also have an impact on shareholders, whose number is very large.

Third, it depends on whether this incident is related to the regulatory bodies. Concerning structured products related to Lehman Brothers minibonds, how do the Securities and Futures Commission (SFC) and the Hong Kong Monetary Authority and even the Government regulate them? In this connection, we have to do some recapping. First, we have to look at the conduct of government regulation of property transactions. We all say that we want to enact legislation. How is the regulation of this kind of the so-called transactions of uncompleted new flats and properties? We can see that at present, the Government has introduced the so-called "nine proposals and 12 requirements" but in reality, in terms of regulation, there is a major when regulatory bodies regulate the transaction of this kind of properties, are the measures, laws and regulations adequate? This is the first point. We have to look at the measures introduced by regulatory bodies to regulate property transactions. Of course, the second point relates to the SFC. Concerning the effect of this kind of sensitive

information on share prices, how does the SFC regulate the release of this kind of important news? Is there actually any problem in the process of regulation?

This incident is also an example illustrating the regulation by government departments. Of course, we all remember that the Chief Executive said in the Chief Executive's Question and Answer Session that he wanted to make use of this incident relating to 39 Conduit Road to deal with the situation of the so-called lack of transparency and clarity in property transactions. The case cited by the Chief Executive was precisely this one. Concerning this incident, we are asking for the documents, although we also hope that an independent committee of inquiry can be established to deal with this incident. Whether or not it will be established in the future is another question, but at least, we are taking the first step by requesting the relevant documents. I think that this situation is similar to the Lehman Brothers incident in that the number of people affected is also large. We also have to examine whether or not the regulatory bodies have made adequate efforts to deal with this incident.

Just now, some Honourable colleagues said that we do not have to request the documents because they have all been provided to us. Members can look at the chronology. After the Democratic Party had requested the production of documents, up to June — let me look at the information — up to 30 June, Henderson provided only eight letters; on 5 July, the Government asked Henderson to provide the ninth letter and on 12 July, Henderson provided the ninth letter to us together with the copies of some agreements. In this regard, as the Deputy President said just now, the incident is still unfolding. Eventually, the day before we were to move this motion, the Commercial Crime Bureau (CCB) visited various places and obtained the information. Of course, I do not know if there is any direct relationship because we are neither the Government nor Henderson, so we have no way of seeing the truth behind this incident clearly. However, from the time when Mr LEE Wing-tat asked the Government and Secretary Eva CHENG for the correspondences, through her refusal to provide them, to our proposal to invoke the Ordinance and the subsequent discussion in the Panel on holding a special meeting, it can be seen that we have taken some actions and even conducted this debate in this Legislative Council meeting. Something special had happened and Members can see clearly that something special had happened. As the Deputy President said just now, this incident is still unfolding. Therefore, we requested the information because, as pointed out just now, there is one purpose, which is obviously to make the incident unfold

continually and enhance the transparency continually. The most important thing is to enhance the transparency of this incident continually.

Certainly, some people are saying that the Government has already provided all the documents, so there is no need to make any further requests. I personally think that this is our basic request and if we do not make the request and pass this motion, can we really have access to all the relevant information? We are doubtful about this point.

Therefore, I think that we are only taking the first step today. I hope that today, Members can approve of this first step of obtaining the documents. I agree with what Ms Audrey EU said just now, that is, obtaining these documents does not mean that a conclusion has been reached, nor has anything material been uncovered. However, we hope that the first step in our inquiry into this incident can be made, so that we can get to the bottom of this matter and it is hoped that in property transactions, we can really make the numerous ordinary members of the Hong Kong public although the Government is talking about adopting the so-called "nine proposals and 12 requirements" to enhance transparency, it is hoped that as concrete steps, after we in the Legislative Council have found out the truth of this matter, we can make some specific recommendations to the Government on improving the present state of affairs in property transactions.

Thank you, Deputy President.

MR JEFFREY LAM (in Cantonese): Deputy President, in recent weeks, the mass media in Hong Kong has reported in detail the incident relating to the failure to complete the transactions of 24 units of the luxury development, 39 Conduit Road, in Mid-Levels West as scheduled. In particular, after the developer of 39 Conduit Road had taken the initiative to disclose to the public its correspondences on seven occasions with the LandsD and published a statement concerning this incident in the mass media, this incident aroused even greater concern among quite a large number of members of the public. The CCB of the police went to the offices of the developer concerned, the solicitors' firms concerned and the buyers' offices to search for evidence, so it can be seen that this incident has entered the stage of formal investigation.

Deputy President, from the correspondences between the LandsD and the developer of 39 Conduit Road since March this year and the relevant press reports, I notice that of the 25 units in the first batch of 39 Conduit Road put on sale, only one transaction has been completed and registered with the Land Registry as scheduled, whereas the transactions in respect of the remaining 24 units were not completed, despite verbal agreements to defer the completion of transaction. In the end, the buyers still defaulted on completing the sales and the follow-up actions taken by the developer after the defaults are also a matter arousing public concern.

Although this is a case of transactions involving the properties of a private developer, some people consider that some of the practices employed may have implications for the property and stock markets in Hong Kong and may affect public perception. For this reason, I believe the Administration and the regulatory bodies concerned should be concerned about the whole incident and make enquiries with the developer to understand clearly the circumstances surrounding this incident, so as to look into the practices arousing doubt and allay public concern. This is the duty of the relevant regulatory bodies in a society practising the rule of law.

Hong Kong is an international financial centre, and if it wants to preserve its reputation, it has to rely on a favourable investment and business environment, in addition to legal protection, the clarity of policies and the transparency of the relevant transactions, which are also crucial factors. Concerning this incident, Chief Executive Donald TSANG also gave his assurance in the Chief Executive's Question and Answer Session in the Legislative Council on Tuesday, that no false transactions, market rigging or price boosting would be tolerated in the sale of properties. I hope the Government can keep its promise and give a clear account to the public.

Deputy President, I am just as concerned about this incident as other Members. For this reason, I hope that the Government can complete the relevant investigations as soon as possible and publicize the results to address the concerns of society. However, the Legislative Council as the legislature should avoid interfering with the work of the executive or the Judiciary, so it should preserve a neutral and independent role in this incident by all means. Deputy President, different matters should be accorded different priorities, and the powers and responsibilities of various departments should also be distinguished

clearly, with no party exceeding its ambit. Since the relevant government departments have already intervened by investigating the relevant incident, I believe that at this stage, the Legislative Council can wait for the Administration to complete its investigations, examine the relevant investigation reports and then consider its next step.

The Resolution proposed by Mr LEE Wing-tat requests that the Legislative Council Panel on Housing be authorized under the Legislative Council (Powers and Privileges) Ordinance (the Ordinance) to order the Administration to produce all the correspondences between the LandsD and the developer of 39 Conduit Road relating to the LandsD's enquiry into the property transactions of 39 Conduit Road. It is entirely justified for the Legislative Council to exercise the investigative powers conferred by the Ordinance to look into incidents involving major public interest. The great concern demonstrated by Members is understandable. However, in a special meeting of the Panel on Monday, the Administration has already given us an account and the nine letters sent by the LandsD in succession were also all handed over to the Legislative Council and disclosed on the Internet. In view of this, the correspondences numbering 20 in total exchanged between the two sides have all been made public.

Moreover, the Ordinance is like the imperial sword of the Legislative Council and unless absolutely necessary, it should not be used arbitrarily. Since the Government has already given such a response and the relevant information has also been disclosed, I believe the Government has already produced all the letters, unless Members choose not to trust the Government or the integrity of the officials concerned. For this reason, I believe that at this stage, there is no need to invoke the Ordinance to ask for the letters.

Deputy President, I understand that transparency in property transactions and whether or not the sale practices of the developer concerned have violated the rules are the focuses of public concern. For this reason, it is right to ensure that all transactions are carried out under a fair and sound system, which is the Government's responsibility. Therefore, I call on the Government and the police to complete the relevant investigations as soon as possible in order that the concerns of the Legislative Council and the public can be allayed.

Deputy President, I so submit.

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

MR ALAN LEONG (in Cantonese): Deputy President, the reason that 39 Conduit Road as a private residential development has caught territory-wide attention lies in the fact that one of its units set a record price of over \$70,000 per sq ft. This has indeed set a world record in the sale price of residential flats and at that time, it even became a piece of global news.

The subsequent developments in connection with this incident are even more intriguing. Deputy President, I believe you are also aware of two clauses in the agreements in question, that is, clauses 11 and 16. According to clause 11, the purchaser shall at any time before completion of the sale and purchase be at liberty to cancel the transaction and in such an event, the purchaser needs only pay the deposit of 5%; whereas clause 16 provides that when there is noncompliance with the agreement on the part of the purchaser, such as default on completing the sale on the due day, apart from forfeiting the 5% deposit, the developer can also recover the price differential.

Why is this incident intriguing? Let us look at the developments of the whole incident. First, that the price is as high as \$70,000 per sq ft is already very strange because the price of properties in the secondary market in the same area is less than \$20,000 per sq ft. Moreover, there are hardly any newly completed buildings in the area and even in respect of newer buildings, it is very unusual for them to command a price of \$30,000 per sq ft.

Apart from the questionable price per sq ft, if the purchasers want to postpone the completion of sales, they only have to make a verbal request and the developer also only has to give a verbal consent. I believe the Deputy President will also remember that subsequently, the developer cited the ground that the purchasers were shell companies in claiming that even if legal action was taken, it would only suffer double losses because the purchasers did not have any capital to pay the compensation. However, in fact, the developer should have noticed this from the very beginning. Given that it said it had never had transactions with this kind of shell companies before, it should have been all the more cautious. When the purchasers requested postponement in completing the sales, it should have requested the payment of more deposits to prevent them from getting away in the event that the transactions fall through.

The third dubious point is: Why did the developer not recover the price differential according to clause 16 of the agreement but invoked clause 11 instead? Moreover, clause 11 was actually no longer applicable in that case. Taken together, these doubts make a lot of people wonder if there is any attempt to boost the prices and rig the market. I believe that this Council is concerned about this matter is because of this point.

Putting aside the question of pushing up property prices and rigging the property market, since the developer is also a listed company, I also found looking into this matter that the share price of Henderson Land Development Company Limited (Henderson) actually rose at one point due to the big-ticket sales relating to 39 Conduit Road. If there are suspicions of price boosting and market rigging in relation to 39 Conduit Road, are there also not suspicions of boosting the share price of the company concerned?

Deputy President, I have some information here. In October last year, that is, after the big-ticket sales relating to 39 Conduit Road, Daiwa Securities and Credit Suisse both released reports on Henderson, with the former raising the target share price of Henderson to \$64.5, an increase of 19.1%, and the BUY rating was maintained whereas Credit Suisse said that since the sale prices of 39 Conduit Road owned by Henderson were higher than expected, the target share price of Henderson was raised to \$73.4 and its BUY rating for Henderson was maintained. However, in June this year, due to the impact of the incident relating to 39 Conduit Road, even though the share prices of property companies in general rose in line with the trend of the stock market, the share price of Henderson bucked the market trend by falling and a number of major investment firms all lowered the target price of Henderson by 6% to 16%. The report of Credit Suisse even stated explicitly that the practices of Henderson in selling properties had made the market lose confidence. Moreover, there were also many issues relating to 39 Conduit Road that required follow-up actions, so the share price of Henderson was under pressure.

In view of such information, not only is there suspicion that some people are boosting property prices in an attempt to rig the market, there is also an impression that the persons in charge had the intention of manipulating share prices. Therefore, I think the authorities should continue with the current investigation. Deputy President, section 298 of the Securities and Futures Ordinance makes it an offence for a person who discloses, circulates or

disseminates false or misleading information likely to induce the sale or purchase of securities by another person, induce another person to subscribe for securities, or deal in future contracts, with knowledge of its falsity or was made with reckless disregard of whether it was true or not, and the person shall be liable to a fine of \$10 million and 10 years' imprisonment. This provision is precisely designed to target such behaviour as dissemination of false information, false transactions and even share price manipulation and rigging in the stock market.

In fact, by nature, the property market and the market regulated by the Securities and Futures Ordinance are not significantly different because in Hong Kong, properties are often regarded as a tool of speculation and I have also said in the relevant Panel that when we go to the market to buy food and is cheated on the scale, the person committing this offence of tampering with the scale would also be arrested and handed over to the authorities for action, so why is the Government so lax when dealing with property developers?

Of course, in the Chief Executive's Question and Answer Session, we heard the Chief Executive avow when talking about the "nine proposals and 12 requirements" that if it was confirmed that the "nine proposals and 12 requirements" were ineffective, he would not rule out enacting legislation to regulate the sale of uncompleted flats. Deputy President, I believe you are also well aware that as early as 1995, the Law Reform Commission already made legislative recommendations to the Government on clamping down on misleading property descriptions in the sale of uncompleted flats in Hong Kong. Therefore, the legislative recommendations have actually been made. However, 15 years on, the Government still says that it has to observe the situation, only introducing the "nine proposals and 12 requirements" that are all thunder but no rain.

In view of the remarks made, I think this Council should by no means rule out the possibility of establishing a committee of inquiry. We can see that under the chairmanship of Dr Raymond HO, the subcommittee relating to the Lehman Brothers incident has achieved actual results. Since the Legislative Council is conducting an inquiry in parallel with law-enforcement agencies, many victims may be benefited because after Honourable colleagues posed incisive and appropriate questions in the committee of inquiry, some of the faults of the banks concerned have been exposed, such that they have to consider whether or not to offer compensation to their clients. For this reason, the legislature should not refrain from taking steps on the ground that the police are carrying out an

investigation or due to speculations among the general public that the SFC is now carrying out an enforcement investigation.

The effects of an inquiry conducted by the legislature are often different from those of the investigations conducted by law-enforcement agencies. Under the inquiry mechanism of this Council, the reactions of the subjects of inquiry may be different from their reactions to enforcement investigations. For this reason, I believe this Council should certainly consider seriously whether or not a committee of inquiry should be established under the Legislative Council (Powers and Privileges) Ordinance to conduct an inquiry.

Just now, I heard many Honourable colleagues say that this motion moved by Mr LEE Wing-tat today may have already been overtaken by events because those documents have already been handed over to Members. However, I have formed this view. If we really want to pave the way for the establishment of a committee of inquiry under the Legislative Council (Powers and Privileges) Ordinance, the motion moved by Mr LEE Wing-tat today is significant because the process of disclosing those documents was somewhat like squeezing toothpaste from a tube. Moreover, even now, we still cannot be absolutely sure whether all the documents have been disclosed or not. If we have to ascertain the facts in order to make a decision on whether or not to conduct an inquiry in the future, the motion moved by Mr LEE Wing-tat will be all the more justified.

For this reason, today, we will support the motion moved by Mr LEE Wing-tat and we also call on the agencies and departments conducting enforcement investigations now to seize the time in looking for clues because this is really a matter of great concern to the Hong Kong public. This is the stance of the Civic Party on the motion moved by Mr LEE Wing-tat.

Thank you, Deputy President.

MR CHAN KIN-POR (in Cantonese): In moving this Resolution today, Mr LEE Wing-tat actually wants to invoke the Legislative Council (Powers and Privileges) Ordinance to summon the Secretary for Transport and Housing to produce all documents relating to 39 Conduit Road. Obviously, Members all know full well, and the Secretary has also made it very clear, that she has produced all the documents and reiterated that she has no other document to

furnish. I believe Mr LEE Wing-tat's Resolution has already achieved its purpose indeed. Unless he does not believe in the Secretary — but I personally do very much because I do not think she would risk her pension and personal reputation to hide those correspondences — I believe Mr LEE has already accomplished his mission.

However, this does not mean that I am not concerned about the incident relating to 39 Conduit Road because all members of the public are very much concerned about it. In the future, after the police have concluded their investigation, if we consider it necessary, we have to seriously think about exercising the powers conferred by the Ordinance to establish a committee of inquiry.

Just now, Mr Alan LEONG talked about Dr Raymond HO. I think we should not let Dr Raymond HO chair another committee of inquiry because at present, since he is the chairman of the Subcommittee relating to the Lehman Brothers incident, he often has to work until late at night and the next day, he would come back very early. He even wants us to follow his example, but we have families and children, so we cannot be as hardworking as he is. Therefore, I also hope that Dr Raymond HO can finish his work relating to the Lehman Brothers incident as soon as possible.*(Laughter)* We are concerned about being unable to complete the work within the tenure of this Legislative Council, so we must by no means let Dr Raymond HO serve as the chairman of such a committee of inquiry again. However, I believe that if necessary, we really should launch an inquiry in earnest because the incident relating to 39 Conduit Road really affects a lot of people and it is also worthwhile to find out the truth.

Deputy President, I so submit.

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

DR JOSEPH LEE (in Cantonese): Deputy President, many Honourable colleagues have presented their views on this matter, so I only wish to talk about my personal views.

Personally, I am very cautious about the Legislative Council exercising the powers under this law on powers and privileges. I also believe that this issue is attributable to the incident relating to 39 Conduit Road, so I am not going to waste time talking about it any further. However, I hope the Secretary can give us an assurance in her speech that she has handed all information in her possession to us and that next week — by then, some people may have turned into Red Indians — when the Panel convenes its special meeting, a clear account of what can be disclosed can be given. Moreover, if the Government wants to conduct investigations, it can also disclose the results as soon as possible.

Of course, the police are also investigating this incident relating to 39 Conduit Road and I think at this stage I have some reservation about invoking the law on powers and privileges to obtain the letters. However, should the need arise, it would be absolutely necessary for us to invoke the law on powers and privileges to see if the Government has done anything inappropriate in this incident relating to 39 Conduit Road or if there is any impropriety in the Government's handling of this incident. I think it would be more appropriate for us to invoke the relevant law in this way. Therefore, I will not support Mr LEE Wing-tat's proposal this time. Thank you.

MR JAMES TO (in Cantonese): Deputy President, I have joined the Legislative Council for 19 years. I wish to share with Members how the division of labour and the discharge of duties are like when the Legislative Council (Powers and Privileges) Ordinance (the Ordinance) is invoked or when inquiries are conducted.

I cannot cite a lot of examples. Since Members mentioned the Lehman Brothers incident just now and the inquiry is ongoing, the facts are still fresh in our minds, so I will use it as an example. In the Lehman Brothers incident, in the broad sense, various government departments are discharging their duties. Under the overarching principle of public interest, when the police have received a report, for example, a complaint about the falsification of documents, the police will carry out a criminal investigation and the Securities and Futures Commission (SFC) will also carry out a criminal investigation or look into whether or not anyone has neglected his duties under the law on securities. In the end, these investigations may lead to a civil settlement in exchange for the SFC not to

institute prosecution or hold any disciplinary hearing. However, the Legislative Council does not carry out any criminal investigations. We will look at all matters other than criminality, including structural misrepresentations and negligence. Judging from past instances, the outcome may be legislative amendments to plug the loopholes or the condemnation of some officials or people in private organizations. Compared with the cases investigated by the police and the civil settlements restricting disclosures reached by the SFC in exchange for not holding disciplinary hearings, the Legislative Council is often capable of revealing more facts.

Deputy President, having presented this background, I believe there are some similarities in this incident relating to 39 Conduit Road. Deputy President, when the police carry out a criminal investigation, the emphasis may be on conspiracy to defraud or even money laundering, whereas the SFC will focus on whether or not there was market rigging or dissemination of certain news to influence share prices and the accuracy and compliance with regulations in the publication of annual reports. But the Legislative Council will have public interest as its foremost consideration when carrying out a non-criminal inquiry.

Deputy President, at this stage, I agree that the Democratic Party is only invoking the Ordinance cautiously by demanding that the Government hand over some documents — please bear in mind that only some documents rather than all documents. At one point, we considered whether or not we could at this stage make amendments to this motion relating to the Ordinance to demand that the Government produce the documents that it had considered or the documents that the departments concerned had discussed internally, just like the documents it disclosed to us relating to the incident involving Mr LEUNG Chin-man, so as to explain: how the Government drafted the questions in the correspondences; based on what documents or documents for internal discussion the Government asked those questions; on obtaining the replies after making the enquiries, through what kind of discussions and from what angle the Government decided whether or not anyone had neglected or fulfilled his duties; whether the Government has asked the best questions at various stages and whether or not the developer was asked to give the most appropriate answers in accordance with the law and lease conditions.

Deputy President, I once said on a public occasion that at this stage, even for the questions asked by the Government, it seems there are some doubts to which we cannot find answers. For example, concerning the report of the *Next* magazine on 17 June, in which one of the buyers, Samuel TSUN Sin-man, said he had never intended to complete the sales, the LandsD only chose one item among the host of dubious information or questionable information, that is, the so-called non-disclosure agreement, to ask Henderson questions. At this stage, I would not go so far as to say that the LandsD has neglected its duties but I have one question. Regarding the report published on 17 June, which the LandsD cited on 22 June, why did it raise only one of the five queries? Did the LandsD hold internal discussions, and based on what information or questioning strategy did it plan to elicit admissions and carry out investigations step by step? Is this due to strategic considerations? I do not know. However, on the face of it, I have to continue to follow this up in the Panel and, as I said just now, I do not rule out invoking the Ordinance to demand the internal documents obtained by the Government in the process to see how it came up with and drafted the questions.

Separately, the attitude of Henderson is really a marvel. They chose not to attend the meetings of the Panel to explain and clarify the groundless accusations against the company arising from this incident or to shed light on the truth of this incident by answering Members' questions, so that the truth of this matter can be uncovered.

Honourable colleagues once said openly that if Henderson preferred to take along lawyers to the meeting or when it came to certain questions Deputy President, at that time, the police had not yet conducted the search for documents and had it chosen to take lawyers along and attend the meetings of the Panel, it could have refused to answer certain questions according to the Legislative Council Ordinance when the questions were put to it. Had it been posed questions that may be self-incriminating, they could have also refused to answer them, and had they expected that criminal investigations would be launched, they also could have refused to answer them. However, Henderson chose to answer some of the questions asked by Members selectively through statements published in newspapers.

Deputy President, even though the police have already visited offices to search for documents, I will still invite Henderson to attend the meetings of the

Panel to give an account once and for all and as far as possible in order to clarify and answer questions logically and coherently.

Deputy President, lastly, since the amounts involved are quite large, we have to decide carefully who to believe in and deal with this matter very cautiously. Regarding the Government, we will ask it to comply with statutory orders solemnly and fulfil its constitutional responsibilities by handing over the documents. This is a more sure-footed course of action. The police have to decide carefully which inspector will lead the team, which Chief Superintendent will take charge and the CCB also has to proceed particularly cautiously in the investigation. In addition, we also have to monitor each other in our political party and if reporters call to make enquiries about this matter, we will be particularly cautious.

Deputy President, I believe it is only through the adoption of such a more stringent, serious and prudent attitude by all parties in dealing with this issue that we stand any chance of uncovering more truth and giving an account to the public, so that the community can be convinced that various parties have fulfilled their duties by exerting their utmost to help society resolve certain issues.

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

MR PAUL TSE (in Cantonese): Deputy President, I also agree that this matter must be dealt with very cautiously, so I have eight points of observation to share with Members.

First, concerning the law on power and privileges (the P&P law), although it is not comparable to the powers of the Court, since the Legislative Council has such great powers, naturally, it has to exercise them with great caution. For example, it is only when there is no alternative or truly necessary that the power of the Court to demand documents or to provide evidence to the Court through injunctions is exercised. Having regard to this, since the Secretary has already confirmed openly and clearly that all the documents have been handed over to us, what is at stake is not just her personal authority or integrity but also the integrity of the whole Government. I believe she would not take this risk of misleading this Council deliberately. Therefore, since all the documents have been

produced, if we still want to pass this motion on invoking the P&P law regardless of the situation, I do not think this is absolutely necessary. Of course, as some Honourable colleagues pointed out just now, if there are further developments in the future, will it become necessary to invoke the P&P law to make further inquiries? This is a matter to be decided in the future.

Deputy President, concerning the P&P law, I am grateful to Mr James TO for explaining the past practices relating to the P&P law based on his past experience. If I understand it correctly, it is due to the emergence of structural problems that it is necessary for us to consider how to make changes, for example, how the SFC should regulate Lehman Brothers minibonds or the conduct of the entire banking sector. In that event, it is necessary to make amendments to the law and changes to the system. This is one point.

Second, if officials or departments have been negligent, it is even possible that some heads may have to roll. This is not confined to the Lehman Brothers incident alone. For example, in the past, in such incidents as the opening of the new airport, the substandard piling works incident or any other major incidents, when it was necessary to invoke the P&P law, I am afraid it was only when some government departments were involved or there was sufficient *prima facie* evidence indicating serious negligence that prudent inquiries had to be conducted, in the hope that not only would the officials concerned assume political responsibility but that the relevant regulatory bodies, regulatory regimes or laws would also be changed.

In this incident, no matter if Members are concerned about the numbering of a floor as the 88th floor or the big-ticket sales I think that as a comparison, of course, this is a bit exaggerated but I hope Members would not mind: Whether it is the legal battle over an estate and whether the will in Tony CHAN's possession was authentic or fake, which were matters attracting a great deal of public attention earlier on, or the recent incident of "what is real cannot be falsified and what is fake cannot be real" involving a media organization, I think our concern about public interest is not the only criterion. Rather, when the Legislative Council wants to use public funds to make an enquiry, the two aspects mentioned by me just now must be involved, that is, there must be a serious neglect of duty on the part of government departments or officials, or there are structural problems. Otherwise, we cannot waste public funds and time rashly to

play the role of an investigative body and override other existing investigative bodies like the ICAC, the CCB or the police.

Third, I wish to respond to the issue of agreements raised initially by Ms Audrey EU and elaborated by Mr Alan LEONG later on. I believe my understanding may be somewhat different from his, so we may as well examine this a little. Concerning clause 11, Mr Alan LEONG thinks that it is only applicable to the period prior to the completion of sale, but if we look closely at the wordings — I wonder if Members would agree — in my view, they do not refer to a designated date and the date of completion of sale but to "at any time before completion". "Completion" is a generic term meaning that at any time before the completion of sale, clause 11 can be invoked. In this incident, it seems that so long as the sales have not been completed, both parties can still make an agreement. In fact, it can be seen from the documents in the entire dossier that the developer concerned was requested in writing to cancel the agreement and it also agreed to do so, so both parties have documents as their basis. On this point, I do not agree with the analysis made by Mr Alan LEONG just now.

As regards clause 16(2) and the decision not to forfeit the deposit, I also wish to add that the clause on the forfeiture of deposit limits the amount to only 5%, which is called the deposit. Although some buyers had already paid 10% and even completed the sales, the money beyond this 5% is not the deposit but part payment. According to this clause, part payment cannot be forfeited. I also have some general understanding of the sale of uncompleted flats and it is only possible to forfeit the deposit of 5%, whereas the remainder is the part payment.

What I wish to add is that paragraph 26 of the agreement also states that the nature of the money is trust money, that is, money held on trust by the solicitors firm as depository and custodian services for the interests of both parties. The question of "can retain", "can retain permanently" or even "winning a lawsuit before sealing off" in relation to this sum of money does not arise. Regarding this sum of money, both parties have to deal with it as a responsibility of the stakeholders. I hope Members can further examine the issues in this regard.

Fourth, Ms Audrey EU raised the query that she had never heard of any developer that was so kind as to let those people off lightly. I wish to share

some of my experience. In the era of the TUNG Chee-hwa Administration, around the time of the financial turmoil, I made some investments together with my "beloved" by buying uncompleted flats with a substantial amount of money. However, after the outbreak of the financial turmoil, we found on calculation that the situation was quite bad. For this reason, we immediately defaulted on the completion of sales and cancelled the deals. According to my experience back then, with the exception of a listed company, several other companies were willing to let us go — so long as you are willing to let your deposit be forfeited and give up without making any further claim, they would not pursue any further either. This is because we used the so-called "offshore" companies (that is, one-dollar companies) to buy those uncompleted flats, so both parties knew full well that legally, there was no use in pursuing any further. Concerning the other uncompleted flat, since we bought it in our personal capacity by drawing lots, there were problems and eventually, we had to pay a penalty before we could get away. I believe many members of the public also know that if they make use of a limited company to speculate on properties, often, they can enjoy this kind of protection and to avoid troubles, property developers would not pursue to the bitter end.

Deputy President, I also wish to respond to Mr Alan LEONG's detailed analysis of the relevant share price, for example, the target share prices suggested by Daiwa Securities and Credit Suisse. He said that at that time, an optimistic view was taken regarding the share price — of course, the stock market at that time was quite positive but I could not hear any *prima facie* evidence suggesting any market manipulation — but after the scandal relating to 39 Conduit Road had come to light, various parties took a rather negative view of the developer. This is natural. Once the price of a stock falls, everyone is afraid of getting into trouble. For example, even for such a large company as Goldman Sachs, when something happened, its share price also tumbled. Two days ago, when it said that it had reached a settlement and would offer a compensation of US\$500 million, its share price rose immediately by 4% on the same day. Such fluctuations in share prices are natural. However, although the fluctuations in the price of a share are great, we must have evidence indicating that there is deliberate dissemination of information to make the share price rise or fall before there is *prima facie* evidence of market manipulation. In this regard, I think that before there is more concrete evidence, it is not at all fair to make speculations and conjectures.

Sixth, some people hold that we can actually carrying out an inquiry in parallel, that is, regardless of whether or not the police are carrying out an investigation, we can conduct an inquiry all the same. However, I must also repeat the comment I made just now. There is no problem with a parallel inquiry so long as such an inquiry is worthwhile, for example, when the structural problems mentioned just now exist or some officials or departments have clearly neglected their duties, there is certainly no need to wait for the police to complete their investigation and a parallel inquiry can be conducted. However, such an inquiry is worthwhile only if it is conducted by virtue of the P&P law. Otherwise, we should not conduct a parallel inquiry easily.

Concerning Mr James TO's query about making disclosures on the documents in the style of "squeezing toothpaste out of a tube" just now, the Secretary has already explained clearly that it was because some of the documents were received earlier while others were submitted only after they had subsequently been received. In addition, some of the so-called agreements or documents were not considered correspondences, so they were only submitted subsequently. I believe this does not amount to disclosure of the "squeezing-toothpaste-out-of-the-tube" style in which no documents were submitted if no pressure was applied. Rather, this is because different parties had different views on the scope, thus leading to differences in the extent or the chronological order of the documents produced. This is how I look at this matter.

As regards the issue of asking one question out of five, first, I have great reservation about the reports of weekly magazines because I have worked for a period of time in the mass media before. I have a great deal of experience in this regard, be it as someone playing a part in it, as a victim or even in representing clients in taking legal actions against libel. Some people say that one can only believe in 20% of what the weeklies in Hong Kong say, but I think even 20% is too much, particularly with regard to that kind of weeklies. Therefore, I am afraid the information reported by a weekly cannot constitute a basis for invoking the P&P law.

Regarding this issue of asking one question out of five, Mr James TO's query is why it only asked about the non-disclosure agreement but not other areas. If we look at the documents exchanged between the LandsD and the developer in detail, we would find many questions were actually asked, so many

as to be terrifying as they were tantamount to interrogation. I think the attitude adopted by the LandsD right from the start was to pursue each matter in a stringent manner. From the wordings, it can be seen that the tone employed was not a benign investigation but an interrogation about some impropriety. This made the developer send a letter to the LandsD and ask the latter on what basis it was asking so many questions and taking such an approach in asking them. It also requested the LandsD to explain the scope of its investigation. Of course, in the end, the LandsD explained that the scope of its investigation was only limited to the Condition of Exchange 7423 concerning the issue of land exchange. In this example, it is evident that this matter was pursued stringently. If there is any neglect of duties, I believe this time around, the LandsD has done too much. These documents give me such an impression but of course, I do not know if there is any other major underlying reason. However, judging from the documents, it has done too much, having assumed an investigative role.

An Honourable colleague said that we had to give the developer an opportunity to vindicate itself — I believe it was Mr LEUNG Yiu-chung — but I am afraid this cannot be a basis for invoking the P&P law. Of course, vindication is very important, for example, if the police or the CCB find that there is no case after investigation, of course, this is also a form of vindication. Even if one is found not guilty after prosecution has been instituted, this is also a kind of vindication. But I am afraid we should not take all the trouble and spend public funds to invoke the P&P law, all for the sake of giving the developer an opportunity to vindicate itself.

Deputy President, in sum, all of us are very concerned about whether or not there is too much collusion between the Government and business in the property market in Hong Kong, as we have said for years. When such claims are repeated many times, a lot of people would believe in them. However, we have to produce concrete evidence and this is the only way — as Mr James TO said and I also agree very much with him — to address this problem stringently. In this incident, for the time being, I cannot see any structural problem that warrants the invoking of the P&P law immediately. Regarding the relevant departments, be it the LandsD, the SFC or any other department, have they neglected their duties in dealing with this incident? I cannot see any *prima facie* evidence either. As regards the investigation into market manipulation, we have to look at whether or not the SFC has neglected its duties by not investigating any market manipulation, that is, we have to be very careful about the depth of our analysis. We must not focus on whether or not there is any problem with any individual

developer or private transactions. Rather, we must focus on whether there is any problem with our institutions, government officials or the framework, thus making them incapable of carrying out thorough investigations. This should be our concern. Therefore, if there is no *prima facie* evidence, I am afraid there is no need to and we should not, or we cannot, exercise our special powers and privileges rashly to deal with this matter.

Of course, it is possible that the investigations this time around or future developments may make us think it necessary to restructure the entire real estate sector in Hong Kong. Finally, I also wish to add that I agree with enacting legislation as quickly as possible to do more in regulation because, according to the past recommendations of the Law Reform Commission and in view of the recent developments, we believe this may be an appropriate time to enact such legislation. Thank you, Deputy President.

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

MR ABRAHAM SHEK (in Cantonese): Deputy President, the real estate sector welcomes the healthy development of the property market and also hopes very much that there can be a sunshine policy to enable transactions to be carried out in high transparency, so that all people can buy their properties with their own savings on this basis and live and work in contentment.

We can see that over 1 million private properties have been built in Hong Kong and the property market, given its development hitherto, has attracted not only members of the Hong Kong public but also many investors worldwide to buy properties in Hong Kong. A number of people in the Democratic Party have painted the property market in Hong Kong as very seamy. Deputy President, Hong Kong upholds the rule of law and no property developer would agree with market manipulation and the dissemination of false information. Even if any property developer should do so, other property developers would not condone it. Why? Because this constitutes the so-called unfair practices and they would not be beneficial to other property developers in any way. The competition in the property market is keen and in a market that is developing rapidly, no instances of market manipulation and fabrication and dissemination of false information would be tolerated. Therefore, when the Government

introduced the "nine proposals and 12 requirements" to regulate the sale of uncompleted flats, property developers all welcomed and strongly supported them because they were conducive to the development of the property market as a whole. We in the real estate sector think that the measures of the Government to regulate the sale of uncompleted flats deserve our support.

Just now, Ms Audrey EU mentioned the sale and purchase agreement, but those clauses were not drafted by property developers themselves. Rather, there are very clear templates for the consent to forward sales and if property developers do not follow them, they cannot offer uncompleted flats for sale. For this reason, just now, in the discussion on whether clause 11 or clause 16 should be invoked insofar as the units at 39 Conduit Road are concerned, Members can see that the Government also asked about this in its letters because there is an established procedure. Many people asked why more of the deposit was not forfeited. As Paul explained clearly, no matter if clause 11 or clause 16 is invoked, the developer cannot forfeit the deposit in this way and at the most, it can only forfeit the deposit of 5%. Property developers cannot seize buyers' money at will merely because they have buyers' money in their hands.

Just now, Ms Audrey EU mentioned Schedule 5 of clause 16, saying that the buyers had paid a lot of money. However, that was not the deposit and as Paul explained, the money was part payment. I only wish to explain that I do not mean that 39 Conduit Road is when the Legislative Council discussed this incident for the first time, I said that any investigation would be welcome, particular one by the police. The Government has already said that both government departments and the police are carrying out investigations. At that time, we already welcomed them, believing that if there was any instance of market manipulation or dissemination of false information causing anyone to suffer any loss, investigations should be launched. At that time, a number of Honourable colleagues all said that the Government should carry out investigations because criminality involved. Even if the Legislative Council wants to carry out an inquiry in public interest, we should wait until the police have completed their investigation before doing so.

This motion moved by Mr LEE Wing-tat demands that the Legislative Council (Power and Privileges) Ordinance (the Ordinance) be invoked to obtain some documents. Had we been unable to obtain any document or sufficient documents so far, I personally would have supported this motion because, as I said just now, we in the real estate sector hopes very much that this incident can

be thoroughly investigated, so as to prevent the entire property market from being tainted. We hope that the truth of the whole matter can be uncovered and even Henderson is happy to be investigated and to co-operate with the police. Now, the Government has intervened into this incident, with the CCB launching an investigation. I hope that the truth of this matter will be uncovered with the efforts of various parties, which is very important.

Today, I will not support Mr LEE Wing-tat's proposal on invoking the Ordinance. As the Secretary said just now, all letters have been handed over and Henderson has also handed over all letters. We do not mean that we believe in a certain party or disbelieve in another, but we can see all the questions and answers in those letters. Therefore, I do not think we need to pass this motion at this point in time. If any criminality is involved, we should leave it to the Government and the police to carry out investigations. Thank you, Deputy President.

MR CHIM PUI-CHUNG (in Cantonese): Deputy President, this incident relating to the sale of uncompleted flats has drawn the attention of all sectors in Hong Kong and the responsibility rests with the Government because long ago, we already demanded that the Government enact legislation as members of the public are disadvantaged in the transactions involving uncompleted flats and other kinds of properties. In these circumstances, the public would pay great attention to any such news in society. The Government keeps evading its responsibility and the Chief Executive also offers the explanation that the existing measures are proven, so there is no need to enact legislation. However, if everything is proven, can we just repeal all the laws? Why is it necessary to put in place laws?

(THE PRESIDENT resumed the Chair)

The law is the ultimate basis. It is not true that Hong Kong would come to an end and the SAR Government would also come to an end tomorrow, so there is no need to do anything. Laws are permanent in nature and the Government must also take note that defending the rights and interests of the public does not mean that all parties have to keep their promises, so no matter how the result is like, it has to look into this matter and enact legislation as soon

as possible to protect the rights and interests of the public and the reputation of the sector. If the Government evades its responsibilities time and again, the Secretary and the SAR Government should I am not calling on you to resign or such like, but if you cannot deliver, you are not fulfilling your responsibilities. No matter who serves as the Secretary or the Chief Executive, this is something that must be done.

Moreover, if we look at the whole matter, of course, the business associations in the real estate sector or other business associations would defend their own interests and deal with this matter casually. When pursued by questions, they would agree to co-operate but to whom would they subsequently pass the buck? The problem on this occasion does not lie in the property sale practices adopted by Henderson. We are not trying to defend any property developer, nor are we duty-bound to protect their interests because they are already rich people who have legal professionals as well as other professionals to help protect their interests.

Today, we are discussing the Resolution moved by Mr LEE Wing-tat in accordance with the Legislative Council (Powers and Privileges) Ordinance and Members have already expressed their views on certain matters. They also have the right to decide on their own instead of being led around by the nose. I was once interviewed by a newspaper and I expressed my personal view that since the Hong Kong Police Force under the Government has already intervened into this matter — although some Honourable colleagues said just now that the Government could take its own actions and we could also take our own actions, can nothing more be done after today? If this were the case, I would reserve some space to lend it my support. As to the question of whether or not we would take any action in the future, that would be another matter. However, if the CCB of the police takes action against criminal offences after today and once there is an outcome, naturally, the consent of the Department of Justice would be sought to take appropriate legal actions. In these circumstances, the people concerned would definitely be liable to criminal prosecution. The outcome of criminal prosecution may be a conviction or exculpation, and this has to be decided according to the judicial process in Hong Kong. Must the Legislative Council respect other departments responsible for criminal matters? Some people say that the actions taken by both parties are totally unrelated, but if the evidence obtained involves criminality, what should we do then?

In addition, if we make enquiries or raise doubts with other people, the people concerned have the right — given that there are many members of the legal profession in the Legislative Council, although I often criticize members of the legal profession — since there are two parties, that is, the prosecution and the defence, the situation in this case is different. However, Members must understand that the people concerned absolutely have the right to defend their own rights, that is, whether or not they want to be treated as defendants. If they are treated as defendants, they have the right to remain silent because the CCB has already intervened. Therefore, in these circumstances, apart from the documents, which would surely be seized, the people concerned absolutely have the right to remain silent indeed. I am sure members of the legal profession all understand this point.

Therefore, President, it is undeniable that the advantage of Hong Kong lies in its legal foundation. Recently, we can see a case involving a lawyer who was sentenced to six years of imprisonment and a Justice of Appeal who will serve as the highest ranking judicial officer in Hong Kong on 1 September being strongly condemned by his five future colleagues in the Court of Final Appeal together. This is precisely what is so valuable about the Judiciary in Hong Kong. However, we must also understand that even members of the legal profession have different viewpoints and angles on various matters, and also their own stances. Therefore, it is also necessary for the Legislative Council to respect other law-enforcement agencies on this matter. I personally believe that we should wait patiently. When the police or other law-enforcement agencies, having taken actions in respect of criminality in this incident, announce the results after a period of time but Legislative Council Members are not satisfied — not that we are not satisfied, but we consider it unfair to the Hong Kong public or the people concerned, thus necessitating the disclosure of the truth of the whole incident and presenting it to the people of Hong Kong — President, at this point, Legislative Council Members can still make use of this law and achieve its goal through the procedures of the Legislative Council. I personally believe that, to put it more bluntly, this matter may drag on for two years and by then, this Legislative Council will have been dissolved. However, it does not mean that the legislature in Hong Kong will come to an end as there will still be the next Legislative Council. Of course, I hope that we do not have to wait for such a long time because ultimately, we have to let Hong Kong people exercise their right to know and give them a fair account. In this way, there will be true manifestation of the powers and privileges possessed by Legislative Council

Members. I personally believe that Hong Kong people appreciate these powers of the Legislative Council very much because in the past we have done our utmost to make the public understand the truth of many matters.

President, no matter what, I am convinced that the responsibility falls on the Government because, for reasons unknown, it has failed to enact legislation. For some time, many Honourable colleagues have talked about issues relating to securities. What has been done has actually exceeded the standards of what the public consider to be fair and equitable. In Hong Kong society, apart from the general belief that it is unacceptable for one to miss out on opportunities, fairness is also considered very important.

Therefore, no matter what, I hope that the Secretary can discuss this issue with the Chief Executive or other people who are directly in charge of this. Of course, the Government may say that, for now, it is possible to make those people toe the line without enacting legislation and that all property developers comply fully with our requirements. However, in the final analysis, I still think that this explanation is not in line with the spirit of fairness and equity upheld in Hong Kong. Under the spirit of fairness and equity, it is necessary to treat all sectors equitably and accord them equal treatment. Moreover, properties in Hong Kong really have a direct bearing on the wealth of members of the public and the international perception of Hong Kong.

President, I once said that although Hong Kong has no resources, due to trust, the whole world, in particular, Chinese with better means, are making Hong Kong their second home in their development because they can create or establish companies and even buy residential properties in Hong Kong. All of these are all very helpful to Hong Kong's development in various areas.

Of course, some people believe that this is the reason for the constant increase in property prices in Hong Kong. However, Hong Kong is a free society, a society that absorbs capital and resources, so this cannot be helped. It is said that "one cannot have the best of both worlds", so if we want to attract other people to come here and help develop Hong Kong, naturally, it is necessary to make people feel that our laws are fair and make them feel assured.

I am sure that with their development in the past several decades in Hong Kong, property developers in Hong Kong have made achievements both financially and in their representativeness in the economy. This incident involving Henderson really warrants reflection by the parties concerned. Boastfulness will only cause trouble to oneself and the showing off of wealth will not win the support of Hong Kong society and the public in modern times.

The old mentality is history and the concepts of society have also changed. However, no matter what, a responsible government should gain a deep understanding of the mentality of society and members of the public as a whole.

Therefore, President, today, I will oppose the Resolution moved by Mr LEE Wing-tat. However, in spite of this, I support his spirit and action, only that I am even more convinced that Legislative Council Members should have the opportunity to express their own views. Whatever motion is under discussion, Members can all have different stances, attitudes and views. Therefore, criticizing other Honourable colleagues will not help the whole thing. It is even more important to spur the Government on in doing its job, to fight for justice in law and the right to know for all members of the Hong Kong public and to uphold the interests of society as a whole, so as to bring about development in various areas in Hong Kong.

Thank you, President.

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

(No Member indicated a wish to speak)

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, the question today is concise and brief, so I will also give a concise and brief reply.

I said at the beginning and also found that Members are very concerned about this matter. Our various departments and units will do their utmost in following up the incident relating to 39 Conduit Road on all fronts. I also said

earlier that if there was any falsification or fabrication, we would by no means condone it.

A Member said that in producing the documents, the Government had adopted the style of "squeezing toothpaste out of a tube". I also said at the beginning that if Members keep a good count of the correspondences submitted by us on that day, they will find that we have handed over all the correspondences to the Legislative Council. We have even handed over other documents in addition to the correspondences.

All along, the Government has advocated a property transaction environment characterized by information transparency and fair transactions. In the past, we have also made a lot of effort, for example, by standardizing the provision of information on the gross floor area and the saleable area in the sales brochures, and so on, and by introducing the recent requirement to provide the price list three days in advance and to provide the sales brochures seven days in advance. In the future, we will also step up the work in this regard.

As I said earlier on, since this case is still under investigation, I am not going to comment on it. For this reason, we will not comment on the details, agreements and clauses mentioned by many Members just now. However, insofar as the aim of the motion is concerned, that is, the submission of documents, we have already provided all of them. Therefore, we believe it will not serve any actual purpose.

This is my response. Thank you, President.

PRESIDENT (in Cantonese): Mr LEE Wing-tat, you can now speak in reply.

MR LEE WING-TAT (in Cantonese): President, first of all, I am grateful to Honourable colleagues for having debated for over two hours despite their fatigue, evident that Members are very much concerned about this matter. I believe that the public are also very concerned about this matter. I will only give a brief reply, so I will not use up all the 15 minutes.

The first point relates to information, but I am not going to make any repetition. I believe only information obtained through the order would be complete and free of omission. The experience I gained in the past couple of weeks is that the Government did have oversights and omissions when producing information. Second, why are we talking about the Legislative Council (Powers and Privileges) Ordinance today instead of issuing summonses, asking questions or establishing a committee of inquiry? Sometimes my attitude to property developers is rather hard-line though, I will still proceed step by step. Several weeks ago, when this incident had not seen so many developments, I believed that obtaining the information was the first step.

Members must bear in mind the chronology of this incident. A month ago, I sent four letters to the Director of Lands and the Secretary to request information but did not get any reply. President, you also know that we have a deadline in proposing Resolutions. President, I remember that on 25, 26 or 27 June or thereabouts, I had to inform you of my intention to move this Resolution today. However, up to 20 June, the Government had not given me any response. We have to set the record straight. Since the Government is so enlightened and, despite my having written four letters to the Director and the Secretary, they did not give me any response, so I proposed this Resolution in accordance with the Legislative Council (Powers and Privileges) Ordinance. Subsequently, the Government began to consider whether or not to provide the information. Of course, it provided the information subsequently. I wonder if it was for the same reason that eventually, Henderson also provided the information.

However, I agree that even if information has been obtained, it does not mean that the issue has been resolved. A number of Honourable colleagues and I have read almost all the information and it has deepened our understanding of this issue. But even more questions than we originally imagined have emerged. Is there any conclusion? Before a thorough inquiry, it is not possible to draw any conclusion and Members have to agree with this. However, since there are even more questions now, it is evidently very difficult to bring this matter to a close at this stage.

Third, Honourable colleagues said that the police are carrying out an investigation and it is even reported that the SFC is also carrying out an investigation, so should we pause? President, you also know that even if we do

not want to, we still have to pause because Members all want to have a summer break. I cannot force Members to come back for a meeting in August and the President cannot convene a special Legislative Council meeting to deal with this issue either. Therefore, there will be an opportunity of further discussion again only in October at the earliest, when the Legislative Council meets again. I am a patient person who never wants to do anything in great haste and right away.

However, the problem is that Members have painted this matter in a very optimistic light. They believe the police will surely investigate until the truth of this matter is uncovered and will even follow this matter up in certain ways and institute prosecution. We all know that in order to institute criminal prosecution, a very high standard must be met. Although I have not received any legal training, I know that criminal prosecution can be instituted only when there is no doubt. It is better for civil litigation as the onus of proof is equal for both sides, but this incident is not civil in nature. Even after the investigations are completed, we cannot foresee if the police will institute any prosecution. Therefore, this is the first point that we have to take note of and we should not think that prosecution will surely be instituted in relation to this incident.

Second, I did not hear Commissioner of Police TANG King-shing say that the information would be disclosed after the completion of the investigation. It seems Honourable colleagues are very confident, thinking that even if the investigation is unsuccessful, it does not matter and it is only necessary to let us look at the information. I do not think Members can be so sure. How possibly would he suddenly disclose the information? This was never done in the past. If the party carrying out an investigation is the SFC, this is even more troublesome. Concerning this incident relating to 39 Conduit Road, I once wrote to the SFC to ask it if an investigation can be launched in the light of the information provided by me to them. They only replied that they had received my letter but would decide on their own whether or not an investigation would be conducted. In other words, they would make a decision but would not give us any account. Last year, Mr James TO and Mr Albert HO followed up the incident relating to the Citic Pacific. We all know that a major incident last year, that is, certain members of the board of directors of the company incurred heavy losses in foreign exchange transactions but no disclosure was made by them in a statement. My two colleagues wrote to the SFC but so far, the latter has still not given us any reply. Has it actually conducted any investigation?

Was any evidence obtained in the investigation? They can give us no reply. I am also very interested in joining the Panel on Financial Affairs chaired by Mr CHAN Kam-lam next year to follow up the relevant work. Although I agree very much that the SFC should carry out an independent investigation, it is sometimes necessary to strike a balance between independence and the need to give an account. If the power is so great that it does not have to give any account, it is tantamount to an independent kingdom. However, this is not the subject of discussion today.

Finally, Honourable colleagues raised the issue of whether or not a committee of inquiry should be established. Of course, it is too early to make a decision at this stage, but I would never rule out such a possibility. By the time the Council meets again, the police will have been conducting the investigation for some time. If by then, the results cannot convince the public and Honourable colleagues that the truth has been uncovered, we can discuss further.

President, of course, I hope Members can support my Resolution. Today, Members have spent over two hours debating it and I believe the public will find that the Legislative Council has fulfilled its responsibility by debating this question healthily and in detail in this Chamber. Thank you, President.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by Mr LEE Wing-tat be passed. 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.

(Members raised their hands)

Mr LEE Wing-tat rose to claim a division.

PRESIDENT (in Cantonese): Mr LEE Wing-tat 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:

Dr Margaret NG and Mr CHEUNG Man-kwong voted for the motion.

Dr Raymond HO, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Ms Miriam LAU, Mr Abraham SHEK, Mr Tommy CHEUNG, Dr Joseph LEE, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Mr CHIM Pui-chung, Mr CHAN Kin-por and Mr Paul TSE voted against the motion.

Ms LI Fung-ying abstained.

Geographical Constituencies:

Mr LEE Cheuk-yan, Mr Fred LI, Mr James TO, Ms Emily LAU, Mr Andrew CHENG, Mr Frederick FUNG, Ms Audrey EU, Mr LEE Wing-tat, Mr KAM Nai-wai, Ms Cyd HO, Mr WONG Sing-chi and Mr Alan LEONG voted for the motion.

Mr CHAN Kam-lam, Mr LAU Kong-wah, Mr TAM Yiu-chung, Ms Starry LEE and Mr CHAN Hak-kan voted against the motion.

THE PRESIDENT, Mr Jasper TSANG, did not cast any vote.

THE PRESIDENT announced that among the Members returned by functional constituencies, 17 were present, two were in favour of the motion, 14 against it and one abstained; while among the Members returned by geographical constituencies through direct elections, 18 were present, 12 were in favour of the motion and five against it. Since the question was not agreed by a majority of each of the two groups of Members present, he therefore declared that the motion was negatived.

PRESIDENT (in Cantonese): Two motions with no legislative effect. I have accepted the recommendations of the House Committee: that is, the movers of these motions each may speak, including reply, for up to 15 minutes, and have another five minutes to speak on the amendment(s); the movers of amendments each may speak for up to 10 minutes; and other Members each may speak for up to seven minutes. I am obliged to direct any Member speaking in excess of the specified time to discontinue.

PRESIDENT (in Cantonese): First motion: Proactively developing social enterprises.

Members who wish to speak in the debate on the motion will please press the "Request to speak" button.

I now call upon Mr Frederick FUNG to speak and move his motion.

PROACTIVELY DEVELOPING SOCIAL ENTERPRISES

MR FREDERICK FUNG (in Cantonese): President, the subject of the motion debate sponsored by me today is to proactively develop social enterprises. What are social enterprises? President, as we all know, Hong Kong is a capitalist society founded mainly on the operation of the free market which is mainly profit-oriented, so all companies or businessmen would make careful calculations to ensure that profits can be made before operating a particular business. Usually, their aim is to maximize profit, that is, to maximize profits by minimizing the cost. In these circumstances, if enterprises can find suitable people, for example, young and knowledgeable people or professionals who can help them make profits, they will hire such people by all means. In contrast,

people who have less knowledge and lower educational attainment or who are older in age cannot help enterprises make profits, so they would be eliminated from the market. However, from the angle of society as a whole, we believe that people with work capacity should not be eliminated by a market dictated by the jungle rule, thus making them appear almost totally incapable of working and compelling them to apply for Comprehensive Social Security Allowance (CSSA) or other financial assistance from the Government.

(THE PRESIDENT'S DEPUTY, MR FRED LI , took the Chair)

Social enterprises are one of the ways to help these socially disadvantaged groups and disadvantaged workers rebuild their work capacity, so that they can return to a specific market and through their own efforts, make money to support themselves and their families. Social enterprises are enterprises, organizations or companies operating in market or business modes and they enable workers and socially disadvantaged groups marginalized by the market to become self-reliant. Therefore, social enterprises are a mode of operation in the existing market, but they also carry some social goals. From my observation of the experience of other countries in promoting social enterprises, I found that the social goals of these countries in promoting social enterprises are not limited to helping unemployed workers, socially disadvantaged groups and disadvantaged workers. They even use social enterprises to promote environmental protection, green economy and cultural efforts. Even in Hong Kong, the task of revitalizing cultural heritage is also given to social enterprises. It can thus be seen that the social goals of social enterprises can be diverse.

I wish to review with Members what the Government has done in respect of social enterprises in Hong Kong. Members will probably all remember that when Donald TSANG ran for the Chief Executive office in 2007, social enterprises were included as one of the major policies in his platform. He claimed that social enterprises would be vigorously developed to help the poor and adopted as a measure to promote employment and narrow the wealth gap. He even claimed that officials, the business sector and the public would be mobilized to bring about tripartite co-operation and directly create a large number of employment opportunities at the district level — this is the platform of Donald TSANG as a candidate for the Chief Executive office in 2007.

In the policy address of 2007-2008, Chief Executive Donald TSANG still stated that emphasis would be placed on the development of social enterprises and that a Summit on Social Enterprises would be convened. However, the length devoted to social enterprises in the policy address of 2008-2009 was reduced drastically and the outcome of the Summit also amounted to "old wine in a new bottle". The focus was placed entirely on the Enhancing Self-Reliance Through District Partnership Programme (ESR Programme), which was under the charge of the Home Affairs Bureau and aimed at financing the establishment of social enterprises and the creation of employment opportunities. However, concerning the creation of employment opportunities, the reference to "a large number of" could no longer be found. In the policy address of 2009-2010, the goal of creating a large number of employment opportunities vanished without a trace and it only said that the efforts of the community would become the mainstay, as if the emphasis of promoting the development of social enterprises could be found in the community and the Government no longer mentioned vigorous tripartite promotion by the Government, the business sector and the public. For example, under the ESR Programme, only a one-off grant (although it is said that the maximum amount is \$3 million, usually, the amount of financial assistance is only about \$1 million) would be provided to civil organizations, particularly to voluntary agencies, to give them two years to establish social enterprises. If they can make it, that will be fine but failing that, so be it.

The Social Enterprise Advisory Committee established recently only keeps carrying out one study after another, then makes recommendations to the Government but so far, this committee has not made any specific recommendation. From the election platform to the three policy addresses, from the grand plans during the election to actual implementation, we found that the Chief Executive is "all thunder but no rain". When running for the Chief Executive office, he made the pledges but after being selected the Chief Executive, he started to take measures in a haphazard manner. Even the ESR Programme mentioned by me just now was introduced in the era of the former Chief Executive, TUNG Chee-hwa. Therefore, in the mind of Chief Executive Donald TSANG, why does his attitude towards social enterprises when running for the Chief Executive office and after becoming the Chief Executive display such a vast difference? Why is he all words but no action?

I wish to review with Members the situation concerning social enterprises since Chief Executive Donald TSANG took office. In 2006-2007, the Government earmarked \$150 million to implement the ESR Programme and so

far, 90 social enterprises have been allocated a total of \$94 million to create 1 500 jobs. Of course, there may be a time-lag in this figure because I can only find the past figures released by the Home Affairs Bureau, so I hope the Secretary can provide us with the latest figures later on. How do Members interpret these figures? Different people may have different interpretations but I can tell Members that at present, there are 170 000 unemployed people in Hong Kong, but social enterprises have just created some 1 000 jobs, so this is only a drop in the ocean. If, as Chief Executive Donald TSANG said, he wants to solve the unemployment problem in Hong Kong by means of social enterprises, indeed, the road is long and the goal distant. Even if we take into account all the 300 or so social enterprises in Hong Kong, since some of them are not funded by the Government, they have hired only 8 000 people. Compared with the 3.48 million people in the working population of Hong Kong, they account for only 0.235%, so it can be seen that this is a far cry from the social goals that social enterprises are supposed to attain. The Chief Executive said that he wanted to solve the wealth gap problem through social enterprises, but I think he has fallen far short of this goal.

Deputy President, let me cite some examples in other countries. The Legislative Council Subcommittee on Poverty Alleviation visited Spain and the United Kingdom in 2007 to look at the policies and measures of these two countries in promoting social enterprises. We also met with local officials and representatives of social enterprises and made site visits to inspect their work. We could see clearly that their determination was far greater than ours. Take the United Kingdom as an example, it gives social enterprises a definition by way of legislation. Be it the companies established by NGOs, welfare agencies or the business sector or even enthusiastic individuals, so long as they meet the definition of social enterprises in the law, they can become social enterprises. After becoming social enterprises, apart from carrying names different from other enterprises, they can also receive certain kinds of financial assistance from the Government and it is easier for them to bid for the contracts offered up by the Government. So far, social enterprises have been introduced into the United Kingdom for less than a decade, but 55 000 social enterprises have already been established, accounting for 5% of the enterprises in the country and 1% of the GDP and generating £8.5 billion in output for the British economy.

Meanwhile, more than 51 500 social enterprises hiring more than 2.4 million employees have been established in Spain and they account for 25% of the total working population in Spain. The business turnover of social

enterprises is \$922 billion, accounting for 7% of its GDP. If these figures are compared with ours, are we not lagging too far behind? Of course, one may say that Hong Kong has just started to introduce social enterprises whereas others have done so for many years. In that case, I will use Korea as an example. Last year, we visited Korea, where social enterprises were introduced only in 2008. Within a year, that is, in 12 months, 240 social enterprises were established and this figure is more or less the same as the figure of 300 social enterprises in Hong Kong cited by me just now. However, these 240 social enterprises have brought over 10 000 people under their employ within a year. From so many figures, it can be seen that other people are setting up social enterprises as we are, but why is our effectiveness always falling far short of other people?

I will cite some actual examples in overseas experience to show what policies others are using to promote social enterprises successfully. One example that is cited frequently by me is an association for the visually impaired in Spain. The local Government awarded a licence for selling lottery tickets to the association, whereas another three licences were put up for tender by the business sector. Through the sale of lottery tickets, the association has hired 7 000 visually impaired persons and its annual turnover is as high as €223 million. With this source of revenue, the association is able to operate 14 other social enterprises hiring over 10 000 employees. The policy of the local Government is to give this social enterprise operated by this association for the visually impaired a business to run.

We also visited Taiwan. In Taiwan, there is this organization known as "Xi Han Er" (喜憨兒). I wonder if Members still remember that a year ago, there was an advertisement in the press in which characters such as "Good Luck", "I Love You", and so on, are carved on beans. After the beans are soaked in water and grow into plants, the characters will still stay on the two leaves that sprouted. This is one of the businesses operated by Xi Han Er. In addition, it also sells cakes and pastries and runs a restaurant in which the attendants are persons with intellectual disability. Thirty percent of its employees are persons with intellectual disability. But it cannot be financially independent, so the Government has to provide financial assistance to meet 30% of its annual deficits over the long term. In Korea, there is also a social enterprise operating shops for second-hand items. Apart from renting shop spaces on its own to run its businesses, it also receives support from the business sector, with many large shopping malls designating areas that are as large as 3 000 sq ft for it to operate

shops for second-hand items. Through this mode of operation, this social enterprise can survive, with 1 000 employees.

Deputy President, why are others so successful? What are their approaches? First, it is necessary to give social enterprises a definition. We should not require that social enterprises be operated by social welfare organizations. Rather, commercial organizations can also establish social enterprises and even individuals aspiring to setting up social enterprises can do so, so that all of them can flourish. Second, it is necessary to provide a start-up fund for social enterprises to give them the capital to start their businesses and this is all the more necessary for individuals and voluntary agencies. Third, it is necessary to provide low-interest loans to social enterprises such that they can have reserve funds to cope with financial difficulties or cash flow problems. Fourth, it is necessary to introduce projects to help people with special needs, just like Xi Han Er and the association for the visually impaired mentioned by me just now, rather than just putting the emphasis on disadvantaged workers, the unemployed and the semi-unemployed.

Deputy President, in fact, I still have a lot, a lot to say, but due to the time constraint, I may perhaps stop here for the time being. I still have five minutes to give a reply in the end. I also hope that later on, I can talk more about how Hong Kong should deal with this issue. Thank you, Deputy President.

Mr Frederick FUNG moved the following motion: (Translation)

"That, this Council urges the Government to proactively develop social enterprises, review the various existing support measures, and conduct in-depth consultation with the public and the industry, and at the same time make reference to the relevant overseas experience, so as to map out a development blueprint for social enterprises in the future, formulate support measures on all fronts and offer policy incentives, and provide appropriate arrangements and support in areas such as laws and regulations, financing, management and operation, manpower training, public education and promotion, market opportunity exploration, and procurement of services and products provided by social enterprises, with a view to offering social enterprises extensive and sustainable room for development."

DEPUTY PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by Mr Frederick FUNG be passed.

DEPUTY PRESIDENT (in Cantonese): Two Members will move amendments to this motion. This Council now proceeds to a joint debate on the motion and the two amendments.

DEPUTY PRESIDENT (in Cantonese): I will call upon Mr WONG Sing-chi to speak first, to be followed by Dr PAN Pey-chyou; but no amendments are to be moved at this stage.

MR WONG SING-CHI (in Cantonese): Deputy President, today, Mr Frederick FUNG has moved the motion "Proactively developing social enterprises". This is actually very timely because we have just spent tens of hours discussing the issue of minimum wage. A minimum wage can indeed protect low-income workers but for the old and weak, persons with disabilities with little competitiveness or fledging young people, it may not be able to provide more employment opportunities to them. In fact, social enterprises can help socially disadvantaged groups find employment through the development of services and they can also promote initiatives useful to society as a whole in response to certain social goals. In response to the policy address this year, the Democratic Party has also put forward a number of proposals and it is hoped that through the motion moved by Mr Frederick FUNG today and some specific proposals, more views on the actual implementation of initiatives relating to social enterprises in the future can be offered to the Government as reference. Members have at one time discussed that the goals of social enterprises are actually quite extensive, not confined just to a certain area. They mainly include the provision of social services (such as support services for the elderly) or products needed by society, the creation of employment or training opportunities for socially disadvantaged groups, environmental protection, the funding of social services under their management using the profits made by them, and so on. We hope that the Government would not pay lip-service only by saying that social enterprises are very useful but appearing to be ineffectual in promoting them. We hope that the Government can make greater efforts in promoting social development.

In fact, social enterprise programmes are also implemented in many countries. In comparison, there may be room for improvement in the measures to assist social enterprises in Hong Kong.

Take the United Kingdom as an example, the Government there has created a business environment favourable to social enterprises. Insofar as institutions are concerned, the United Kingdom Government has established the Social Enterprise Unit, which belongs to the Office of the Third Sector under the Cabinet Office responsible for setting the Government's policies on social enterprises; whereas in Hong Kong, only the Home Affairs Bureau is responsible for doing so. The Home Affairs Bureau is also a Policy Bureau, but does it have enough manpower to formulate a policy on social enterprises. Let us wait and see.

The United Kingdom Government also provided a financing channel by setting up the £125 million (close to HK\$2 billion) Futurebuilders Funds to provide capital to social enterprises. This fund is managed by Futurebuilders England to provide funds for a number of community development finance institutions to offer loans to social enterprises. The maximum loan amount for each social enterprise is £10 million (about HK\$158 million). I believe social enterprises in Hong Kong can only sigh in envy. I have read some information relating to the United Kingdom. One of the social enterprises operates an old furniture business, and who is its boss? He is the retired president of Rolls Royce. It can thus be seen that in overseas countries, the retired bosses of large corporations would devote themselves to promoting social enterprises, whereas retired bosses in Hong Kong continue to be involved in 880,000-dollar or 88th-floor affairs designed to deceive the public.

The United Kingdom Government is also promoting the development of alternative finance providers, particularly the community development finance institutions (CDFIs), for social enterprises. It also launched the Community Investment Tax Relief scheme to provide tax relief to investors who support businesses in disadvantaged communities by investing in accredited CDFIs. The tax relief, spread over five years, amounts up to 25% of the value of the investment in a CDFI. However, social enterprises in Hong Kong are mainly operated by charitable organizations that have been granted tax exemption status under section 88 of the Inland Revenue Ordinance. Therefore, their tax is fully exempted but it seems that no other incentives are provided to other enterprises.

The United Kingdom is one of the countries which have made good headway in the development of social enterprises. As I said just now, we can see that the United Kingdom Government has indeed spared no effort in promoting social enterprises and it has also assisted quite a number of organizations in their development. I hope that the Hong Kong Government can make reference to the experience of overseas countries and vigorously promote the development of social enterprises in Hong Kong.

The Democratic Party proposes that the Government establish a "social enterprise seed fund" (seed fund), inject a capital of \$500 million into it and merge it with the funds for the Enhancing Self-Reliance Through District Partnership Programme (ESR Programme). The funds for the ESR Programme have almost been used up, so we hope that more funds can be injected into the ESR Programme. As regards the seed fund, we hope that another \$1 billion can be allocated to set up a "loan fund for social enterprises" with a grant component and a loan component in it, so as to assist social enterprises operating on commercial principles and attaining social goals.

The Secretary for Labour and Welfare once stated that the ESR Programme implemented by the Home Affairs Department had allocated \$94 million and that the Labour and Welfare Bureau had also put in place the Partnership Fund for the Disadvantaged. Together, these two programmes have helped social enterprises implement many projects. The ESR Programme has also provided seed funds to 90 social enterprise projects. Secretary TSANG Tak-shing of the Home Affairs Bureau also said that, according to the progress reports submitted by the social enterprises funded by the ESR Programme, about two thirds of the approved projects were profitable and among the 53 projects the funding periods of which had expired, five social enterprises had ceased operation as they were unable to meet their projected business targets and the remaining social enterprises were still operating. However, the survey published by the Hong Kong General Chamber of Social Enterprises indicates that from 2007 to last year, only 20% to 30% of the social enterprises in Hong Kong recorded profits and 40 social enterprises even closed down. I believe Members are aware that many social enterprises do not know how to do business and in the end, they have to close down. Therefore, the report by the Secretary may not be the actual situation and he has probably only conveyed some recent information.

Most of the applicants of successful applications under the ESR Programme — in fact, one can say all of them — are social welfare organizations

or social enterprises that have received support from these organizations for their launch. Here, I have to make a declaration of interest. I have not made any application under the ESR Programme, but I myself have also pooled together some funds to launch some social enterprises through a charitable organization established by me. Now, profits have been made and the results are quite satisfactory. These organizations hire professionals to write up proposals or give professional advice, so their chances of success are greater. The organization established by me co-operates with an enterprise which provides the entire business plan and I only assist them in liaison and in looking for more people in need to participate in the work. However, without these networks or professionals to help draft the plans for social enterprises, it would be difficult to make applications and often, no approval would be granted even after the submission of applications.

I have a suggestion for the Secretary. At present, social enterprises have to apply for funds under the ESR Programme every six months but sometimes, some organizations have to observe the situation and the trend before making applications, hoping to apply for and obtain the resources to launch their businesses as soon as possible in order to cash in on a trend. But after conceiving their plans, they may have already missed the deadline, so they have to wait for another six months and by then, they may have missed the opportunity. Is it possible to consider applying flexibility in enforcement of the application deadline? At present, under the Quality Education Fund, applications for funds amounting to less than \$300,000 can be made immediately and there is no need to wait for three months or half a year as was the case in the past.

We also hope that a seed fund of \$500 million can be established and combined with the ESR Programme. In sum, we hope that the Government can exercise flexibility in providing financial assistance and more substantial support to enable these social enterprises to be launched as soon as possible. In addition, the Government can also assist in looking for professionals to offer professional know-how to these social enterprises, so as to assist them in their sustained operation. We hope that the Secretary can consider these views. Thank you, Deputy President.

DR PAN PEY-CHYOU (in Cantonese): Deputy President, first of all, I have to declare my interests, as I am a member of a number of social service

organizations, and some of them have actively participated in the operation of social enterprises.

Compared to foreign countries, insofar as the size and history of social enterprises are concerned, first, the social enterprises in Hong Kong have been developed relatively late; and second, their size is quite small. Taking the United Kingdom as an example, in 2001, that is, nearly nine years ago, there were already 55 000 social enterprises, accounting for 5% of the total number of enterprises in the country. If we compare ours with the figures in the United Kingdom in terms of the population, I think Hong Kong should have at least 6 000 to 7 000 similar social enterprises. But so far Hong Kong actually has no more than 300 social enterprises.

In fact, social enterprises as they stand can become quite a strong economic force not to be ignored in a society or region. As shown by the data about Spain cited by Mr Frederick FUNG earlier on, nearly one quarter of its GDP are contributed by social enterprises.

From my experience of working with these voluntary agencies, I have seen how the social enterprises are developed, and from this I feel that their development in Hong Kong is just like riding on a bumpy road. Taking a social service organization of which I am a member as an example, it is one of the first batch of organizations to apply for funds from the Enhancing Self-Reliance Through District Partnership Programme (ESR Programme). Upon its establishment, it received an amount of fund with which it was incorporated as a limited company, and then rented premises and took part in the bidding for service contracts. However, it has been suffering losses all these years. When all funds were spent by the enterprises initially established, they had to rely on subsidies and loans provided by their parent organization, and such loans entailed repayment. Externally, they have to compete with private enterprises and other social enterprises. Even some public organizations, such as the Hospital Authority, may not show favour to social enterprises when they bid for, say, the operation of convenience stores in hospitals. This will put huge pressure on the colleagues operating the social enterprises. First, the social enterprises cannot sustain long-term losses and must break even in their operating accounts. Otherwise, they have to offer a lower pay to their staff. Second, the social enterprises have employed many people from the socially disadvantaged groups, for example, ex-patients, who may feel that they are being exploited. As such, it is hard for the management to please both sides.

Under such circumstances, the social enterprises had struggled for a few years, and finally made some money, which was used to repay the loans provided by the parent organization. I have recounted such situation because I believe most of the other 200 or so social enterprises have had similar experience. It is in fact not easy for social enterprises to survive in Hong Kong. According to the figures provided by Dr LAW Chi-kwong, a former Legislative Council Member from the Democratic Party, nearly 85% of the social enterprises will be "game over" in three years' time. Even if the parent organizations of these social enterprises have substantial strength and enjoy a good standing in the welfare sector, they are independent entities insofar as their accounts and capital are concerned. So very often the social enterprises are in a state of isolation and helplessness without any policy support.

Of course, long-term subsidization is not an option. But where does the root of the problem lie? I think it actually lies with the policy. Let us liken the government policy to a beam balance, so if we weigh and measure it on both sides, that is, supporting the social enterprises and leaving them to run their own course without support, we can see now the balance moves more to the side where the social enterprises are left to run their own course without support.

To many social enterprises, I think the greatest problem now faced by them is: how can they survive after the expiry of the period of eligibility for subsidy. A shortage of fund will indeed beset the day-to-day operation of these social enterprises. Payments for orders and services they have successfully bidden will very often be delayed, and they can only receive the payments after a long period of time, thus giving them great difficulty in liquidity. Many organizations participating in the social enterprise market are themselves social service organizations, which know how to spend money, but not much about making it. Most of the time, they learn as they go. We are also aware that the Government will encourage these newly established social enterprises and social service organizations to establish a partnership relationship with the business sector. However, as far as I can see, actually they are still at the very initial stage of establishing such partnership relationships, and I think many organizations have yet to form such a partnership.

The greatest problem is the absence of a very clear definition of social enterprises though we can assert that they usually have a social mission of helping the disadvantaged, who may be their staff as well as their customers. For instance, if the relevant services are to be provided to the elderly, the social

enterprises cannot charge them high prices owing to their meagre income. The social enterprises also employ some people with intellectual disabilities, ex-mental patients and people with other disabilities, whose productivity is limited. Under such circumstances, the operation of social enterprises is more difficult than ordinary enterprises. Frankly speaking, if a social enterprise can really make a huge profit, it will be simply not a social enterprise as some big tycoons would have already joined in the operation to make profits.

Besides, the Government provides too little support, and there is no support in the provision of land, and very often the social enterprises can obtain government subsidies only at the very beginning of their operation. As far as I can remember, the ESR Programme provides operating funds for two years only. On the other hand, as an important component of Hong Kong economy, the orders placed by Government to purchase and procure some services or other items from the market are very often too huge for the social enterprises, which are small and limited in capital, to bid successfully. To the social enterprises, these potential orders are just vain hopes to resolve their problems.

I think the Government has not put in place a co-ordinated policy for social enterprises. Let us look at the funds provided to the social enterprises. There are probably four types, namely the Enhancing Employment of People with Disabilities through Small Enterprise Programme, the Community Investment and Inclusion Fund, the ESR Programme, and the Revitalizing Historic Buildings Through Partnership Scheme, which are under the purview of different Policy Bureaux. So, we can see that the Government lacks a co-ordinated policy in this aspect. It has also never tried to standardize the definition of social enterprises, which is currently very loose and broadly based. As such, we can also well appreciate that the Government is wary of providing more assistance to social enterprises for fear being criticized of colluding with the business sector. What is the result then? Let me cite an example for illustration. In 2008, the Government introduced a pilot scheme under which 38 government cleansing services contracts were reserved for priority bidding by social enterprises. What was the result? The result was that only 16 contracts were awarded to social enterprises. As for the remaining 22 contracts, the social enterprises participating in the bidding were not awarded with these contracts due to the fact they could not afford to offer such a low price as offered by some "big players" in the market. So the social enterprises failed in these bids.

As such, I feel that now the Government really needs to think about the issue clearly. What actually are social enterprises? What is the role of the Government? The Government has already provided funds to help the disadvantaged groups. And the Government should think in another way. Is it better for the Government to use these funds to help them become active participants and build up their confidence through work and participation than to provide them with the funds to help them become negative and passive recipients of assistance? The funds provided will remain the same, but the effect achieved will be very different. Only in doing so and with the determination of the Government can policies be formulated anew. Our suggestions are multi-pronged. For example, firstly, we suggest that an inter-departmental working group be set up to help these enterprises by removing the restrictions and barriers and providing them with more support. Secondly, we think the Government should provide the social enterprises with more resources that do not entail repayment. Honestly, it is too far-fetched to expect that the social enterprises will make a lot of money one day. Moreover, we also hope that the Government can parcel out the procurement contracts, and strengthen the manpower training for social enterprises.

I so submit.

SECRETARY FOR HOME AFFAIRS (in Cantonese): Deputy President, I would like to thank Mr Frederick FUNG for moving the motion on "Proactively developing social enterprises", and Mr WONG Sing-chi and Dr PAN Pey-chyou for proposing the amendments.

Social enterprises run their businesses with the mindset of an entrepreneur, and employ business strategies to achieve their social objective. They are self-financing, and the profits derived from the sustained operation will be used mainly as reinvestment in their charitable cause. They incorporate creative thinking into their mode of business operation so as to establish a new caring culture and take forward the development of a harmonious society.

To encourage the establishment and development of social enterprises in Hong Kong is one of our important tasks. In recent years, despite an increasing awareness of social enterprises in society, quite a few people still know very little about social enterprises, thinking that social enterprises are welfare undertakings

subsidized by the Government or run only by social welfare agencies. Actually, social enterprises are now developing flourishingly in Hong Kong. There are not only social enterprises the initial operation of which is supported by the Government through the various funds mentioned by some Members earlier on, but also social enterprises run by business entities, charity organizations and individual investors. And even overseas social enterprises have started to develop their business in Hong Kong.

As regards the promotion of social enterprises, the first task for the SAR Government is to enhance public awareness of social enterprises. All along, we have been exerting efforts in conducting promotion and publicity for social enterprises, and a website specially for social enterprises has been set up to provide information about them. Besides, we have also launched publicity on social enterprises at the district level to promote their services and products. For example, we have made arrangements for the social enterprises to set up booths to display and sell their products in the past three Hong Kong Brands and Products Expo and the 2009 Hong Kong Food Carnival. Moreover, we have also arranged for the media to interview some social enterprises and prepare brochures for the social enterprises to tell their stories of success.

Like other enterprises, the initial business operation is relatively difficult for social enterprises. As the concept of social enterprises is still new in Hong Kong, the Home Affairs Department (HAD) has launched the Enhancing Self-Reliance Through District Partnership Programme (ESR Programme), which not only provides seed funds to the newly established social enterprises to support their initial operation, but also assists in vetting the business plans of applicants as well as offering advice, so as to create a more favourable environment for the operation of social enterprises and to encourage investors to partner with people experienced in such operation to set up social enterprises. The ESR Programme has approved about 100 new social enterprise projects in seven phases involving grants of about \$100 million in aggregate, with some 1 600 jobs created.

Currently, some social enterprises are unable to maintain sustained development or make profits mainly because their business model is not feasible, thus making it impossible to maintain sustained operation and difficult to allure individuals or business investors to put in additional resources. This to some extent reflects the lack of experience of the social enterprise operators in business operation. Pinpointing such situation, we have been actively promoting

cross-sector collaboration to strengthen the operation capability of social enterprises. In 2008, the HAD launched the Social Enterprises Partnership Programme with a view to enhancing cross-sector collaboration in a more systematic manner so as to take forward the development of social enterprises. Through a matching forum and acting as a go-between, we have enabled interested business entities to team up with non-governmental organizations (NGOs) to set up social enterprises or provide support to social enterprises. Such collaboration is diversified, ranging from outsourcing certain jobs to the social enterprises and providing concessionary rents by the business sector to sharing their business network with the social enterprises.

In addition, we also encourage the business sector to participate in the Mentorship Scheme and register as volunteer mentors for social enterprises so as to provide professional and business advisory services to them. Since the launch of the Scheme, we have successfully lined up more than 20 social enterprise projects through cross-sector collaboration and matched up 18 social enterprise operators with business organizations or professionals through the Scheme.

For the sustained development of social enterprises, we must promote social entrepreneurship among the new generation so as to nurture more young social entrepreneurs with potentials. Every year since 2007, we have been organizing a business plan writing competition for students of tertiary institutions, which has been increasingly well-received year by year, indicating that the concept of social enterprises is gaining popularity in the academia, and that our task of nurturing young social entrepreneurs is also moving towards the target gradually.

To further pull together the forces of the community, the NGOs and the Government, the Home Affairs Bureau established the Social Enterprise Advisory Committee early this year to help formulate and improve policy initiatives conducive to the development of social enterprises.

The foregoing are measures taken by the Government to promote the development of social enterprises, including launching public education, promoting the products and services of social enterprises, providing financial support to assist the establishment of social enterprises, and facilitating cross-sector collaboration, so as to strengthen the management and operation capabilities of social enterprises, and to nurture social entrepreneurship and social

enterprise talents. We welcome Members' valuable views on these aspects, and I will give another response later on.

Thank you, Deputy President.

MR LEE CHEUK-YAN (in Cantonese): Deputy President, I have mixed feelings of love and hate towards social enterprises. I love them for I run social enterprises, too. As to why I hate them, I will talk about it later. Despite the fact that I am also engaged in the operation of social enterprises, I find it actually not easy.

There are three social enterprises under the Hong Kong Confederation of Trade Unions, of which two are subsidized, and the other one is not. The project receiving subsidy is called the "Leisure Zone", which is intended to allure busy city dwellers to our social enterprise to enjoy massage services. Its social objective is mainly to provide a practice ground for staff who have just finished massage training. The newly trained staff need to practise their skills under the guidance of their masters. So the overall objective of the social enterprise is to give staff who have just finished training a place to practise their massage skills before they try their luck in the outside market. Of course, this social enterprise has met the same difficulties in operation as other business entities do, and the problem of rent gives us the biggest headache. The rent is really too expensive, especially in Yau Ma Tei.

The second social enterprise called "食德好" is in fact a carbon reduction or carbon neutral project, which has been presented with a carbon neutrality award. What is this all about? The project recovers vegetables from the wet markets in Tai Po, which will then be sent to and cooked in the kitchen of the retraining centre. The cooked vegetables will be made available to the unemployed workers and the elderly in the district at a much affordable price of \$10 per meal. The vegetables will be given away to the elderly to bring home if there is any surplus. Please do not mistake that the vegetables given away are rotten ones, as we will select the best from the recovered vegetables before giving them to people. We also find that the vegetables recovered in Hong Kong are very good in quality, for I have tried them on quite a few occasions and they tasted very nice. But the only drawback is that the project must be subsidized. Why? Because the project is impossible to make profits, unless we run a vegetarian restaurant that uses the recovered vegetables. In so doing, we can create employment opportunities as well. However, our objective is only to give

the unemployed workers and the elderly some vegetables free of charge in time of need. A certain amount of costs will be incurred in the transportation of vegetables. So this is our second subsidized SE.

The social enterprise which does not enjoy any subsidization is a project called the Workers' Support Recycling Centre, which collects old clothes or handy electrical appliances for sale at a second-hand shop in Sham Shui Po. The second-hand shop has employed more than 10 unemployed workers — they used to be unemployed. The project has received no subsidy from the Government, and all of its operating funds come from the proceeds generated from the sale of the recovered items, and the profits will be used to sponsor some impoverished children. We will also give the recovered items to the needy families under the Comprehensive Social Security Assistance (CSSA) Scheme. We are entirely self-financing. Any profits will be used to help families and children in poverty, for example, we have on several occasions sponsored children to visit the Disneyland. Perhaps, Members might ask: Is that not very expensive? Not actually, for the admission fee for CSSA children is only \$20, but we have to sponsor the travelling expenses, which are more expensive than the admission fees. In doing so, we hope to bring fun to these families.

These three social enterprises are operating differently: two are subsidized, and the other not. Actually, it is more fun to receive no subsidy than being subsidized, as it is able to sustain itself and maintains its operation. However, with subsidies, we are more worried that the subsidy will stop one day. We have adopted both of these two modes of operation.

Where comes the feeling of hate? One day, I met — sorry, I have to talk about the minimum wage again — the Methodist I do not know whether I should mention somebody by name. I met the General Secretary of the Methodist Centre, who told me that if the minimum wage was set at \$33, the social enterprise restaurant operated by them would have to cut staff or increase prices. I mused on what business that social enterprise was doing. As for the staff of the restaurant, there is nothing particular about them, that is, they are not people with disabilities. As we know, people with disabilities can opt for an assessment. So I do not know why he is so worried about a wage increase if it happens.

Actually, I think we do not have to cut staff should there be a wage increase. Honestly, in the event of a wage increase, it will be better to cut working hours than to cut staff. For instance, if the wages increase by 20%, we

can cut working hours by 20%. In so doing, the staff will receive the same amount of income while having the working hours reduced by 20%. I do not know why the social enterprises do not give consideration to this, instead of putting the blame on minimum wage whenever a problem arises. So, what actually is the social objective of a social enterprise? Is it for its own survival or really for some other social objectives? I am also very confused sometimes, and we need to straighten this out ultimately.

First, I think we have to classify the social enterprises into different types. The first type are those social enterprises whose mission is to carry out welfare work, that is, to help the disadvantaged who cannot find a job for themselves, such as the persons with intellectual disabilities mentioned yesterday. This type of social enterprises must be subsidized by the Government, and there is no question about it. This is the first type of social enterprises.

The second type are those social enterprises which can bring creativity into play. There are possibly a lot of talents in the business sector. But we have to give them opportunities to bring their creative power into play. These social enterprises do not need subsidies, but what they need is a social objective, and they have to explain clearly their social objective to members of the public. For this type of social enterprises, the Government should exempt them from tax as a form of incentive, and assist them in gaining more publicity exposure.

The third type are those social enterprises to which the Government should provide the complementary facilities, including land, and give them assistance as far as possible.

Thank you, Deputy President.

MS LI FUNG-YING (in Cantonese): Deputy President, the Chief Executive had spoken of the development of social enterprises in the 2005-2006 Policy Address so as to help increase the employment opportunities for the unemployed. In 2007, the former Commission on Poverty (CoP) proposed in its report to develop social enterprises with the aim of encouraging self-reliance in an innovative manner and providing district-based employment opportunities, so that the unemployed can rejoin the job market. The CoP also specifically laid down some principles of implementation, including providing start-up support, training, and sharing of experience, so as to eliminate the barriers in the development of

social enterprises at the district level, and to incorporate the concept of social enterprises into the government procurement policy.

Time flies and five or six years have passed since the Government proposed the development of social enterprises. Yet, we are still far behind the target of enabling social enterprises to take root in the community and providing employment opportunities for the disadvantaged groups. When I read the report submitted last week by the Subcommittee on Poverty Alleviation, I noticed that the initiatives to promote social enterprises included launching the Enhancing Self-Reliance Through District Partnership Programme by the Home Affairs Department in 2006, providing the social enterprise seed fund to NGOs, organizing the Summit on Social Enterprise in 2007, introducing a pilot scheme in 2008 under which government cleansing services contracts were reserved for priority bidding by social enterprises, setting up a website specially for social enterprises, and strengthening the publicity and promotion for social enterprises. However, I doubt very much whether these initiatives can support the sustained development of social enterprises.

Deputy President, to enable the sustained development of social enterprises and prevent them from becoming another form of charitable services that will cease with the exhaustion of resources, there must be effective collaboration in three aspects, including the Government's co-ordination and promotion, the participation of the business sector with a business mindset, and the commitment of NGOs towards the community and the disadvantaged groups. I have to admit that the Government has taken some initiatives to take forward the development of social enterprises. Of course, there is further room to strengthen and develop these initiatives insofar as Members' views on today's original motion and the amendments are concerned. I hold that the role played by the business sector and its participation in social enterprises is very vague in the community despite the fact that we have NGOs that are prepared to show care and concern for the community and the disadvantaged groups.

Deputy President, I have read some information about social enterprises in the United Kingdom. How do they run their business? In the United Kingdom, there are social enterprises employing the homeless to publish magazines with worldwide circulation, and social enterprises selling bottled water all over the world. The social enterprise projects operated by the British celebrity chef, Jamie OLIVER, from providing school children with healthy lunches to training young people to become chefs, are renowned internationally.

Behind the success of these social enterprises, apart from the idea of providing social services or serving the community, there lies the business mindset that has played a role in it. So, today we request the Government to consider increasing the resources allocated to the social enterprise seed fund and adjusting its procurement policy to support the social enterprises. How can we facilitate the social enterprises in operating in a commercial mode? How can we encourage the enterprises and business talents in Hong Kong to work for social enterprises? I think these questions are vitally important to the flourishing growth of social enterprises. Today, I speak to urge the Government to strengthen its support for social enterprises. More than that, I also hope that the Government will make greater efforts to propel the business sector to participate in the development of social enterprises. Thank you, Deputy President.

MS STARRY LEE (in Cantonese): Deputy President, this is the fourth time that we opened a motion debate on the development of social enterprises in this Council since 2004, reflecting that the effort of the Government in taking forward the development of social enterprises is still not satisfactory.

The development of social enterprises can enhance employment, particularly in helping workers from the disadvantaged groups to get employment direct, so that they can build up their personal confidence and value in the workplace, which will be conducive to the healthy development of a society in the long run. For this reason, the Government can never ignore the development of social enterprises. Currently, our neighbouring regions, such as Taiwan, Japan and South Korea, are taking proactive steps to develop social enterprises. The South Korean Government enacted the Act on the Promotion of Social Enterprises in 2007. In Western countries like the United Kingdom and Spain, they started developing social enterprises as early as in 1980s, and so far there are more than 50 000 social enterprises in these two countries, for which the credit goes to the government assistance. The Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) presented a research report on the development of social enterprises in 2007, in which we advanced the view that there was room for the development of social enterprises in Hong Kong, so were potentials. But social enterprises must have the support of the Government in their initial stage of development.

At the present stage, the DAB opines that the Government has to assist the social enterprises in terms the following three basic policies. Firstly, the

Government should set up a department with special responsibility of formulating a development strategy for social enterprises and co-ordinating various support initiatives concerning social enterprises. So far, the Government has still not set up any department designated for the development of social enterprises. The operations of various major seed funds are respectively under the purview of different departments, for example, the Enhancing Self-Reliance Through District Partnership Programme of the Home Affairs Department, the Enhancing Employment of People with Disabilities through Small Enterprise Project of the Social Welfare Department, the Community Investment and Inclusion Fund of the Labour and Welfare Bureau, and the Revitalizing Historic Buildings Through Partnership Scheme of the Development Bureau. This shows that different policies concerning social enterprise funds come from different departments.

Currently, the countries that have been performing quite well in the development of social enterprises have also set up government departments with special responsibility for the formulation of a strategy for social enterprises. For instance, it is the special responsibility of the Ministry of Labour and Social Services in Spain, and of the Quality of Life Policy Bureau, the Cabinet Office in Japan to take forward the relevant policies, so that better policy continuity and consistency as well as more significant results can be achieved.

Secondly, we have to review the existing policy of granting short-term loans to social enterprises, and to make available more financing channels, including providing guarantees for bank loans or loans at low interest rates, strengthening network construction and offering matching funds, so as to facilitate more collaboration between public organizations and private entities.

A survey released by the Hong Kong General Chamber of Social Enterprises early this year reveals that only 20% to 30% of the social enterprises in Hong Kong recorded a profit, while 40 social enterprises went bankrupt in the period from 2007 to 2009. It is never easy to start up a business, not to mention that the operator of that business seeks not to make money. For a social enterprise to develop its business, it actually takes at least two years to establish itself, from exploring the market and finding the right consumers to enhancing public recognition and fostering the customer base. However, currently, the various social enterprise seed funds provide subsidies only for a period of two years, in which the social enterprises may get a subsidy for their initial development. But in the third year when the subsidy ceases, an additional burden will be imposed on the operation of these social enterprises. No wonder

there has been an incessant wave of social enterprises going bankrupt. As such, the Government has to extend the subsidy period to, say, four years, so as to give social enterprises more time to develop their business.

Besides, the Government should provide social enterprises with more financing channels, such as adopting methods similar to those currently used to finance small and medium sized enterprises (SMEs), providing credit guarantees or loans at low interest rates, and helping the social enterprises to obtain funds, so that they can tide over the difficulties. To encourage corporate and individual donations to social enterprises so as to assist social enterprises in obtaining more operating funds, the Government should proactively study the possibility of further increasing the total amount of tax deduction against the donations received by the social enterprises to 50% so as to improve the cash flow of social enterprises.

Thirdly, the Government should give priority consideration to social enterprises in regard to the public procurement policy. Though the Government has been aware of this and introduced a pilot scheme under which 38 government cleansing services contracts were reserved for priority bidding by social enterprises in 2008, many social enterprises reflected that a lot of these contracts were simply beyond their capacity and capability to undertake. So one could imagine what the outcome was — only 16 of these contracts were successfully won by social enterprises. As such, if the Government really wants to help the social enterprises, it should appreciate the capability and condition of the social enterprises and reserve a certain proportion of suitable public procurement contracts for them apart from lowering the threshold for participation in the bidding of these contracts. Deputy President, I so submit.

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

MR ALAN LEONG (in Cantonese): Deputy President, the biggest problem in the development of social enterprises in Hong Kong now is that our Government still applies a very old-fashioned and inflexible mindset in understanding social enterprises. What is that mindset? We can know something about it from what the Chief Executive's explanation to this Council on his views on social enterprises.

Basically, the SAR Government holds the view that the social enterprises are meant to help provide job opportunities, tackle unemployment and resolve the poverty problem. There is nothing wrong with such a view as currently the international community also regards a social enterprise as a business. How is a social enterprise different from other ordinary businesses? It differs in such a way that it is built on a need to tackle an environmental protection issue or a social problem as its objective, and any profits generated by it will be reinvested in the continued pursuit of its cause in protecting the environment or dealing with the targeted social problem.

Ms LI Fung-ying mentioned some successful social enterprises just now — actually it might not be the case that social enterprises can never make money as Dr PAN Pey-chyou has said. I believe the example cited by Ms LI Fung-ying is Jamie OLIVER. As we all know, he opened a restaurant called "Fifteen" when he first engaged in the social enterprise business. Next are a magazine called *The Big Issue*, and another business called "Divine Chocolate" which sells "fair trade chocolate". These social enterprises are very successful and have been developed into multinational enterprises. How do they operate actually?

As regards Jamie OLIVER, of course, he is well-known to many people as a very famous chef who has published a lot of culinary books. Seeing that many youngsters were wandering around and doing nothing, he thought up a way to maintain contact with them, namely, teaching them to cook. He also opened a restaurant to absorb these youngsters to work there as waiters. Since then, the social enterprise has branched out with more and more restaurants and is now a very successful listed multinational corporation.

The Big Issue magazine mentioned just now is managed by a group of writers, and designed for some street sleepers and "shell-less snails". The "shell-less snails" and the homeless may get the magazines at a price of 85 pence each and then sell it at £1.7. Apart from helping the street sleepers, the profits generated will also be reinvested in helping them. The same also applies to "Divine Chocolate" as it engages in fair trade business.

Actually, there are such social enterprises in Hong Kong. I believe Members may perhaps have heard of a football team called Wofoo Tai Po, which is one of the social enterprise projects managed by Mr Joseph LEE and Wofoo Social Enterprises. I have had an opportunity to make some enquiries with Mr LEE, who said the football team was formed when they saw in Tai Po some

youngsters who had dropped out from school or were jobless, thus wandering around and having nothing to do. The football team gives them a place to pin their hope and a chance to move upward and challenge themselves constantly.

Deputy President, why have I quoted these examples? Because the success of these social enterprises has to rely on people from the business sector who can easily and conveniently apply their business experience, network and wisdom in the operation of social enterprises. We need only identify an environmental protection issue or a social problem as a matter of concern or a cut-in point.

However, currently the Government only allows some NGOs to apply for most of the provisions or resources to be used to support the social enterprises, and it is also inclined to granting these social enterprise projects to some organizations which have no commercial background and have all along been doing community work or carry a social welfare background. As such, Deputy President, if we really want the social enterprises to help tackle some of the problems currently confronting Hong Kong, be they environmental issues or other social problems, the Government's mindset must be significantly adjusted so as to allow people from the business sector to apply their experience to the operation of social enterprises more easily.

Thank you, Deputy President.

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

(No Member indicated a wish to speak)

DEPUTY PRESIDENT (in Cantonese): Mr Frederick FUNG, you may now speak on the two amendments. You may speak for up to five minutes.

MR FREDERICK FUNG (in Cantonese): Deputy President, my motion is mainly a motion in principle and pointing to a direction, such that different Members can make different suggestions. Which is the best way to develop social enterprises? Actually, there is an unlimited array of ways to do so. Generally speaking, it can be anything as long as it works. Talking about the

development of social enterprises, I may have to declare my interest as I am the chairman of a charitable organization which has established four social enterprises.

Whenever I discuss this issue with the Government, it always looks very worried, saying that we should not get involved or intervene in the free market, and we need to be assured whether our involvement will result in a "zero-sum game" as when we employ three more workers, there will be three more people losing their jobs. First of all, I think there is no such thing as a "zero-sum game", and a free market has its own inclination. If the entire Government permits the existence of a free market so that the business sector can do business in their own way, some services outsourced by the Government will actually end up helping a certain group of people from the business sector. I have said this many times: why does a piece of land put up for auction by the Government always end up being bought the business sector? Because they have money. Irrespective of the lot size, say, 1 000 sq ft, 10 000 sq ft or 100 000 sq ft, only developers of a corresponding size can buy it. Actually, is the Government inclined to helping the large developers or the small ones?

By the term "social enterprises", it means that we will expressly set forth that some government procurement contracts are reserved for them as they are less competitive with little capital, and that we will not let some big enterprises take away their business. Apart from the problem of capital that I have just said, what actually matters most is whether they have business opportunities. Now the cleaning services or gardening services of the Government are put up for open bidding. Has the Government thought of any works that can be outsourced other than these two types of services? For example, how about the maintenance works? Four years ago, I had negotiated some maintenance works with the Housing Department which required us to pay a deposit of \$1.5 million first and be experienced in undertaking business worth \$20 million, in addition to a history of operation of at least five years, so that we might be included in the list of eligible contractors before we could take part in the bidding. In this way, the social enterprises were excluded from the bidding as they were not qualified more often than not. Can the Government look into the situation and let us know whether there are some contracts being outsourced by the government departments that are suitable for the social enterprises to provide the targeted services?

Besides, we also have to consider whether the size of a social enterprise can fulfill the requirements for the provision of services specified in the contract. For example, a social enterprise had been awarded a cleaning contract for the Lam Tin (West) Estate Community Centre only to find that the contract included the cleaning of the slope adjacent to the community hall apart from cleaning the hall itself. A social enterprise normally has eight to ten workers only. So it became a big problem confronting the social enterprise, which found that the contract was beyond its capability. This is one of the problems. And for example, two years ago the Government awarded a contract to a social enterprise requiring that the refuse in the water off 10 beaches be cleaned up. It was also a big problem as the social enterprise did not know whether it should hire 10 dinghies or buy one for the performance of the contract, which stipulated that the job was to clean the refuse in the water off the beaches but not the beaches. Such contracts are beyond the capability of social enterprises.

Therefore, we have to adopt appropriate measures to deal with the existing situation of social enterprises. We have proposed that the Government allocate a provision of \$500 million to set up a social enterprise head office of a size big enough to compete with other companies doing similar business in the market, so that it can participate in the bidding for services that are impossible for the small social enterprises to undertake. If it succeeds in bidding for the contracts, it can outsource them to the small social enterprises affiliated to it, so that they can provide the services. The head office can do things that some small social enterprises cannot, though they have the same objective of providing job opportunities to workers from the disadvantaged groups.

I want to reiterate that we have visited South Korea and discussed with the Minister of Labour there, who said the most important welfare for a worker is to give him a job, not money, and a social enterprise can provide jobs to people with the ability to work.

I totally agree to the proposals put forth by the Members in their amendments, in which there are actually some suggestions that can be considered by the Government. As mentioned in the Members' amendments, the issue of capital is important, and I support the proposal on the granting of loans. Besides, I think the source of business is even more important. As the Government has the money, I think that it can appoint a commissioner to monitor the development of social enterprises, who can also assist the social enterprises in understanding various ways of doing business, providing training, and even introducing some mentorship schemes, and so on. However, more importantly,

we need to give social enterprises a definition. Social enterprises should not be restricted to welfare organizations only, for the business sector and individuals can also set up social enterprises according to the definition of social enterprises so long as they are committed to the cause, like those social enterprises in the United Kingdom.

Deputy President, as regards all the suggestions, I just want to give some more views to the colleagues proposing the amendments, so that we can deal with the issue of social enterprises in a diversified manner, and enable the more prosperous development of social enterprises.

SECRETARY FOR HOME AFFAIRS (in Cantonese): Deputy President, I am grateful for the views expressed by the Members, and would like to give a few responses here.

It is stated in Mr Frederick FUNG's motion and also by several Members, including Mr WONG Sing-chi and Dr PAN Pey-chyou who have proposed amendments, in their speeches that they hoped the Government would review the existing supporting measures for social enterprises so as to gain an understanding of the views of the public and the industry, and make reference to the relevant foreign experience with a view to mapping out a blueprint for the future development of social enterprises.

Members' views are largely consistent with the policy direction of the Government. As I said earlier on, the Government had introduced the Enhancing Self-Reliance Through District Partnership Programme (ESR Programme) in 2006 to provide seed funds to newly established social enterprises, allocated resources to nurture social enterprise talents in 2007, and launched the Social Enterprises Partnership Programme (SEPP) in 2008, thereby exemplifying the series of initiatives taken by the Government to support the development of social enterprises.

Actually, over the past few years, with the concerted efforts of the Government and many people committed to the cause, we are glad to see that the concept of social enterprises is gradually known to members of the public and many social enterprises have successfully established a foothold in Hong Kong, continued to operate and develop, and built up their brands. Some of these social enterprises are not subsidized by the Government. Instead, they are supported by commercial or charitable organizations, and even individual

investors, and hence achieve self-sufficiency in their operation, as shown in one of the examples Mr LEE Cheuk-yan has shared with us. Moreover, NGOs have also established business centres with government subsidies to provide social enterprises with "one-stop" supporting services, including consultancy and advisory services, and set up an online platform for the promotion and sale of social enterprise products and services. It is thus evident that the development of social enterprises is flourishing continuously, thanks to the effort initiated at the community level.

Certainly, like ordinary enterprises, social enterprises also have to face the real challenge of survival of the fittest in the market, rely on effective operation to overcome difficulties, and put in place an appropriate business operation model to support their development. The sustained development of social enterprises is a matter of concern to Members who have spoken on the issue. These Members, including Ms LI Fung-ying, Dr PAN Pey-chyou and Mr Alan LEONG, have mentioned the importance of strengthening the business capability of social enterprises and promoting further participation of the business sector in the development of social enterprises, which is also the direction of future development to which the Government has attached paramount importance.

Today, the development of social enterprises has moved on from the first stage where the main driving force came from the Government to the second stage where community involvement has taken the lead with NGOs, civil organizations and the business sector playing an increasingly important role in the development of social enterprises. In January this year, we established the Social Enterprise Advisory Committee (SEAC) with members comprising social enterprise operators, people from the business sector, academics, and individuals who are enthusiastic in promoting the development of social enterprises.

Speaking of the SEAC, one of its functions is to foster mutual understanding among the stakeholders, and to encourage all sides to promote the development of social enterprises in a more closely-linked and systematic manner. With the establishment of the SEAC, we hope that it can further pull together the forces of the Government and the community to perfect policy initiatives conducive to the development of social enterprises. The SEAC held two meetings respectively in March and June this year, in which views were proactively exchanged on various issues, including the existing policies and supporting measures for the development of social enterprises, and the major issues to be explored in the future.

A common feature in the examples of local social enterprises being successfully founded and able to maintain their business is that they can turn social and market needs into business opportunities with the effective implementation of business management and operation models. Foreign social enterprises have also come to Hong Kong to develop their business mainly through the establishment of representative offices or franchised operation. All these indicate that the concept of social enterprises is gaining increasing popularity in Hong Kong. Apart from allowing a cluster of local social enterprises to build their brands in Hong Kong, the market also attracts foreign social enterprises to set up their business in Hong Kong, so that members of the public are given more opportunities to learn about and participate in social enterprises. Social enterprises in Hong Kong can also tap the successful foreign experience to foster their business capability.

Some Members have earlier said that the Government should consider making reference to foreign experience in offering more preferential policies to social enterprises, for example, granting tax concessions and outsourcing some government services to the social enterprises, with a view to providing more spacious room of development for social enterprises.

We share the view that the Government should make its best effort to create a favourable market environment to encourage the establishment and development of social enterprises. To this end, we have adopted a wide range of measures, including the seed funds mentioned by me earlier on, the SEPP, and so on, with a view to providing funds for the initial operation of social enterprises and facilitating cross-sector collaboration.

Besides, in 2008, the Government introduced a pilot scheme under which social enterprises were invited to participate in the priority bidding of 38 government cleansing services contracts offered by 19 departments with a term of one year, which involved an amount of about \$17 million and services to be performed all over the 18 districts in Hong Kong. In this connection, 16 contracts were awarded to social enterprises. We relaunched the pilot scheme in 2009-2010, providing a total of 53 contracts worth about \$20 million in aggregate for priority bidding by social enterprises.

All of these are policy initiatives to help expand the room of development for social enterprises. We will also conduct timely reviews of the relevant arrangements to bring them on par with the overall development of social enterprises.

A social enterprise has to realize its dual objective, *viz.*, the social objective and the economic objective, achieve financial self-sufficiency, and fulfill its charitable cause by adopting a commercial mode of operation, a view shared by the several Members who have spoken earlier on. Insofar as long-term sustainability is concerned, social enterprises should be operated completely according to commercial principles, as we are of the view that social enterprises should compete with ordinary enterprises on an equal footing, and that it is undesirable to introduce tax concessions or other preferential policies for social enterprises. Social enterprises must persistently strive for innovations and seek market opportunities so as to provide products or services needed by the community or some particular groups, but otherwise not available in the market, and strive to operate according to the commercial principles and achieve sustained development.

Some Members (including Mr WONG Sing-chi and Ms Starry LEE) mentioned that the Government should provide different financing channels to social enterprises, including setting up seed funds and loan funds, so as to grant loans to organizations intent on establishing social enterprises. We understand that social enterprises, like other enterprises, will experience greater difficulty in the initial period of operation, and for this reason we have launched the ESR Programme, with a view to providing seed funds to projects to finance the establishment and operation of social enterprises. We are now conducting a review of the effectiveness of the ESR Programme so as to make suggestions on the way forward and formulate appropriate measures for the provision of financial support to newly established social enterprises. As regards the establishment of loan funds, it involves a lot of considerations, and so we must study the matter prudently.

Some Members have said that some foreign countries have enacted legislation on social enterprises and drawn up statutory definitions of social enterprises. The SEAC has recently held preliminary discussions on this, but has yet to reach a full consensus. To sum up, the SEAC stresses that as the development of social enterprises in Hong Kong is only at an early stage, the so-called "official definition" of social enterprises must be one that is sufficiently and broadly based, so as to avoid stifling the room of development of social enterprises. We hold that it is not the right time now to legislate on social enterprises as a specific regulatory regime may impose unnecessary restrictions and hinder the development of social enterprises.

Deputy President, the Government considers that it is a long-term task to take forward the development of social enterprises. We will continue to listen to the views of all sides and strengthen the collaboration between the Government, the community and the business sector so as to enhance the development of social enterprises with concerted efforts.

Deputy President, I so submit.

DEPUTY PRESIDENT (in Cantonese): I now call upon Mr WONG Sing-chi to move his amendment to the motion.

MR WONG SING-CHI (in Cantonese): Deputy President, I move that Mr Frederick FUNG's motion be amended.

Mr WONG Sing-chi moved the following amendment: (Translation)

"To add "in order to narrow social inequality," after "That,"; and to add "; in developing social enterprises, the Government may: (a) set up a 'social enterprise seed fund' with an injection of \$500 million, which is to be merged with the funds of the Enhancing Self-Reliance Through District Partnership Programme; and (b) allocate \$1 billion to set up a 'social enterprise development loan fund' and, based on a principle of emphasizing both commercial operations and social objectives, grant loans to organizations which intend to set up social enterprises" immediately before the full stop."

DEPUTY PRESIDENT (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mr WONG Sing-chi to Mr Frederick FUNG's motion, be passed.

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

(Members raised their hands)

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

(Members raised their hands)

DEPUTY PRESIDENT (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the amendment passed.

DEPUTY PRESIDENT (in Cantonese): Dr PAN Pey-chyou, as Mr WONG Sing-chi's amendment has been passed, I have given leave for you to revise the terms of your amendment, as set out in the paper which has been circularized to Members. When you move your revised amendment, you may speak for up to three minutes to explain the revised terms in your amendment, but you may not express further views on the motion and the amendments, nor may you repeat what you have already covered in your earlier speech. You may now move your revised amendment.

DR PAN PEY-CHYOU (in Cantonese): Deputy President, I move that Mr Frederick FUNG's motion as amended by Mr WONG Sing-chi be further amended by my revised amendment.

I think that there is no conflict between Mr WONG Sing-chi's amendment and the amendment proposed by me.

Dr PAN Pey-chyou moved the following further amendment to the motion as amended by Mr WONG Sing-chi: (Translation)

"To add "(c) to comprehensively review the role of the Government in the development of social enterprises, so as to formulate targeted support measures; (d) to set up an inter-departmental working group to remove the barriers for social enterprises, so as to provide them with more comprehensive support; (e) to clearly define the meaning of social enterprises, establish criteria for them and introduce a licensing system to

facilitate regulation; (f) to provide social enterprises with more resources, including increasing non-repayable subsidies instead of offering only loan support; (g) to explore parcelling out government tender contracts to facilitate bidding by social enterprises; (h) to optimize the use of vacant government premises to create a better operating environment for social enterprises; and (i) to enhance manpower training for social enterprises to boost community economic activities and job opportunities" immediately before the full stop."

DEPUTY PRESIDENT (in Cantonese): I now propose the question to you and that is: That Dr PAN Pey-chyou's amendment to Mr Frederick FUNG's motion as amended by Mr WONG Sing-chi be passed.

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

(Members raised their hands)

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

(No hands raised)

DEPUTY PRESIDENT (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the amendment passed.

DEPUTY PRESIDENT (in Cantonese): Mr Frederick FUNG, you may now reply and you have two minutes 47 seconds. This debate will come to a close after Mr Frederick FUNG has replied.

MR FREDERICK FUNG (in Cantonese): As we have already been in this meeting for so many days, it is only natural that we have had fewer Members speaking on this motion today. That said, we have not taken the issue lightly as Members are aware that we have conducted four debates on the relevant question in this Council over the past four years or so.

In conclusion, I think the Government has not taken any complementary measures to deal with this issue, though the Chief Executive had declared during the Chief Executive election that he would mobilize tripartite collaboration among the Government, the business sector and the NGOs to create a lot of employment opportunities in the community direct. However, it is very obvious that the Chief Executive has so far failed to deliver on his election undertaking. I propose that instead of adopting the current practice that only the social enterprises of organizations exempt from tax under section 88 of the Inland Revenue Ordinance are recognized as such, the Government should clearly set out in law a definition of social enterprises. This is the first thing to do.

(THE PRESIDENT resumed the Chair)

Secondly, social enterprises can also be classified into two types as suggested by Mr LEE Cheuk-yan and me earlier on. One type is the welfare social enterprises, and the other is the general social enterprises. What are the differences between these two types? The welfare social enterprises are those which employ, for example, 30% or more of their workers from the socially disadvantaged groups, including people aged 45 or above, and those with intellectual disability or physical disability, and which will be granted a subsidy of up to 30% by the Government when their business turnover exceeds a specified percentage. The function of the welfare social enterprises is to provide jobs to people from the disadvantaged groups, who may otherwise have to apply for CSSA or other assistance from the Government. Actually, if these people can earn money through work, they will not need to apply for CSSA. The other type is the general social enterprises which are able to become fully self-financing after receiving subsidies from the Government for a period of time. I believe such social enterprises can achieve self-sufficiency if the funds subsidized by the

Government can be maintained over a period of two to four years, and government services (apart from cleansing services) can be outsourced to them.

President, looking at the experience of other countries in the development of social enterprises, we find that Spain is a very good example, where the social enterprises have employed one quarter of the workers and their output has accounted for 7% of its GDP. The social enterprises in the United Kingdom are working in a similar vein, whereas South Korea and Taiwan have also begun developing their social enterprises. I think the Hong Kong Government is not doing enough to take forward the development of social enterprises as it just lets them chart their own course. I hope the Government can put forward a comprehensive plan with complementary initiatives to show its determination to get the task done, instead of just treating it as an election platform. The Government should adjust its policy to dovetail with the development of social enterprises so as to make it a reality.

Thank you, President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by Mr Frederick FUNG, as amended by Mr WONG Sing-chi and Dr PAN Pey-chyou, be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

PRESIDENT (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the motion as amended passed.

PRESIDENT (in Cantonese): Second motion: Comprehensively upgrading the quality of talents in Hong Kong to complement the upgrading and transformation of small and medium enterprises.

Members who wish to speak in the debate on the motion will please press the "Request to speak" button.

I now call upon Ms Miriam LAU to speak and move her motion.

COMPREHENSIVELY UPGRADING THE QUALITY OF TALENTS IN HONG KONG TO COMPLEMENT THE UPGRADING AND TRANSFORMATION OF SMALL AND MEDIUM ENTERPRISES

MS MIRIAM LAU (in Cantonese): President, 98% of the enterprises in Hong Kong are small and medium enterprises (SMEs). They employ about 50% of the employees in Hong Kong, making an contribution to the development of the local economy and the labour market. However, uncertainties in the global and local economies have subjected local SMEs to severe challenges. Leaving aside the more distant challenges, the close ones include the surging wage levels on the Mainland and the rising inflation rate in Hong Kong, which have increased the costs. These challenges have dealt a blow to local enterprises, particularly the SMEs, forcing them to face squarely the imminent challenges of upgrading and transformation.

However, unlike Taiwan, the Mainland and Singapore which give active support to facilitate enterprise upgrading and transformation, the Hong Kong Government has not provided sufficient support in talents training, funding and technologies, landing the SMEs in a very difficult position in their attempt to upgrade and transform. Given the fact that Hong Kong does not have any natural resources, it has to rely on its talents to compete with its rivals. As the saying goes, "Where there are talents, there will be money". It is thus vitally important to improve our talents training efforts. Hence, I am moving this motion today to arouse the Government's attention to this situation, hoping that it strengthen its support for talents training.

Actually, the State issued its first manpower planning document in June this year. The document titled State Medium and Long-term Talent

Development Plan (2010-2020) sets out detailed planning on the guiding principles of talents development, strategic goals and overall planning, organization and implementation, and so on.

The SAR Government, however, has not formulated any comprehensive policy on talents nurturing throughout these years. In 2006, the SAR Government took the lead to pool commercial and industrial professionals together and formed four focus groups. An Action Agenda on "China's 11th Five-Year Plan and the Development of Hong Kong" was completed in 2007, in which the Focus Group on Trade and Business proposed that the SAR Government should set up manpower development advisory committees and establish a platform for tripartite collaboration among the industries, the academia and the Government, with a view to nurturing local talents for key industries. However, to date, it is very disappointing that no real action has been taken to implement the proposals. Although the Chief Executive pledged in his last policy address to develop the six major industries with a clear advantage, he has not touched on how talents training is going to tie in with the development of these new economic domains. Even the Central Policy Unit has indicated in its study that in the testing and certification industry alone, there is a shortfall of 15 000 talents in Hong Kong. I once put this question to the Administration, but the reply I got was that different academic institutions had more or less provided talents training for these industries. But I believe such training is insufficient, too fragmented and piecemeal. If focused talents training is to be provided, there should be a specific training programme for it.

Although the Government set up a Manpower Development Committee (MDC) in 2002 to advise the Government on manpower development in Hong Kong, the MDC has not submitted any systematic and comprehensive manpower development report to the Government in the past eight years since its establishment. The Education Bureau has also formed Industry Training Advisory Committees (ITACs) which provide a platform for 13 industries to discuss and exchange views on manpower demand within each of the industries concerned. But as far as the four pillar industries and six major industries with a clear advantage are concerned, only Chinese catering, logistics and banking are covered by the 13 ITACs. All the others are not covered.

Moreover, both the MDC and the ITACs operate on their own without any liaison with each other, and they are only low-level committees under a Policy

Bureau. Thus, the Government should give active consideration to the proposals in the Action Agenda, that is, the establishment of manpower development advisory committees and a high-level platform for industry-academia-government collaboration, so as to groom local talents for key industries and put an end to the fragmented and low-level manpower planning approach adopted currently.

We can maintain our foothold in this ever-changing economic trend only by planning our talents training efforts properly, such that we can promote the development of new industries and create a new outlook for the economy of Hong Kong.

Apart from putting in place a comprehensive policy on talents training, the Government should also provide more support for talents nurturing programmes tailored for the SMEs. For instance, the SME Training Fund launched by the Government in 2001 was terminated in 2005 for its duplicating other support measures for SME employers and work skills enhancement measures for employees. But many SMEs have reflected to the Liberal Party that the SME Training Fund is different from other support measures of skills enhancement.

As a matter of fact, in response to the outbreak of the financial tsunami in 2008, our neighbour Singapore allocated \$600 million to launch the Skills Programme for Upgrading and Resilience to specifically enhance the work skills of employees. The Programme was well-received after launch. We therefore think that it is imperative for the Government to make extra efforts to promote employee training and allocate \$400 million to relaunch the SME Training Fund, so as to encourage SME employees to tie in with company policy and take work-related courses. In this way, their own competitiveness and that of the enterprise concerned will be upgraded. In order to make the scheme target at specific needs, the Government can refine the scheme by allowing only employees to apply, such that the Government and the employers will each meet half of the course fees with a ceiling of \$20,000 as subsidy per employee.

In order to further foster a culture of continuing education among the people for better competitiveness, and considering the fact that the development of the four pillar industries and the six major industries with a clear advantage would require a large number of talents, the Government should further inject \$1.5 billion into the Continuing Education Fund (CEF) to allow people who have already been subsidized to apply for another \$10,000. Many people contacted

by us said that many people had already applied for the CEF since its inception in 2002. But as time moves on, they may wish to pursue further studies again, but they cannot apply for government subsidy for another time. This defeats the idea of lifelong learning as promoted by the Government. We therefore hope that the Government can increase its funding for the CEF, so that each person, irrespective of whether he has been granted such subsidy before, can apply for a maximum subsidy of \$20,000 in his lifetime for continuing education. This will meet the needs of economic transformation, self-improvement and continuous enhancement.

Moreover, the Government should launch a training programme for middle-aged people, so that middle-aged low-income earners with low educational attainment can apply for subsidized places to take an introductory course lasting about six months on such subjects as language and computer, in a bid to help them enhance their employability and better adapt themselves to the development of a knowledge-based economy.

Moreover, to broaden the international outlook of young people, we agree that the Government should strengthen exchange programmes for talents. For instance, the Labour Department has set up bilateral working holiday schemes with six countries. These schemes provide a golden opportunity for young people to gain living and working experience in foreign countries. However, that only six choices are available is apparently inadequate. The Government should draw up more working holiday schemes with countries and places with which Hong Kong has close ties, such as Taiwan, Korea, Singapore, the United Kingdom, and so on, and increase the quotas to give more young people the opportunity to widen their horizons and enhance their personal qualities.

Meanwhile, the Government should also attract more talents from around the world to work and live in Hong Kong and engage in exchanges with local talents. Since they will bring along their children to study here as a general rule, it is thus very important to upgrade the matching facilities for the international schools in Hong Kong. However, local international schools have been unable to provide sufficient places to meet the great demand in recent years, thus discouraging some overseas businessmen and professionals from working and investing in Hong Kong. This is detrimental to exchanges between Hong Kong talents and their overseas counterparts. Hence, the Liberal Party once again urges the Government to address this problem seriously. We hope that the

Government can allocate more land and formulate a one-stop application procedure, so as to streamline the application process to facilitate the opening of more international schools here.

Meanwhile, the Government should also step up its efforts, such as by increasing promotion and streamlining the formalities, in order to attract renowned overseas institutions to set up branches in Hong Kong. This will enable them to bring in their outstanding education philosophy and success experience here, thereby enhancing the quality of local students who will then be able to contribute to the upgrading and transformation of the SMEs in future. In this connection, the Government has made a right move in introducing a top-notch British school, the Harrow International School, and also the Savannah College of Art and Design to Hong Kong in recent years.

President, apart from talents training, I think SMEs are also in desperate need of support for their cash flow. We advocate that the Government should copy the approach adopted in Taiwan, the Mainland and Singapore to provide special financial support for the upgrading and transformation of SMEs. Although the SMEs may wish to upgrade and transform, they would often need professional advice on and technical support in improving their business or their management structure. However, the relevant support schemes for SMEs now, including the Special Loan Guarantee Scheme, do not cover the costs for hiring consultants or experts, and SME Development Fund only provides funding for conducting studies on the development of industries as a whole and it does not provide support for individual enterprises. Therefore, the majority of the SMEs can only rely on personal experience or interpersonal networks to find a way out, often without any systematic and scientific advice, thereby seriously jeopardizing their success in upgrading and transformation.

The Liberal Party advocates, for example, the digitization of the logistics industry, including the use of new technologies such as the radio frequency identification (RFID) system. But the SMEs may not be able to afford the costs of using these technologies and the SME Loan Guarantee Scheme often cannot give them any support in this respect.

Hence, the Government should launch a fund for the upgrading and transformation of SMEs and put technology application, business consultancy and brand building into its scope of funding. Only by so doing can SMEs intent on

upgrading and transforming their operation truly benefit. Moreover, the Government should also establish an enterprise training centre to provide tailored business information and matching services to enterprises aspiring to upgrading and transformation, so that those SMEs with less resources can expedite their upgrading and transformation.

President, the SMEs are the lifeline of the Hong Kong economy, and talents and capital are like the two legs of the SMEs. Supporting the SMEs means supporting Hong Kong. To enable the continuous vibrant development of Hong Kong economy, the Government must support the upgrading and transformation of SMEs so that they can move forward in a quicker and secure manner. To this end, I hold that the first and foremost task is to enhance the quality of talents for the SMEs. Thank you, President.

PRESIDENT (in Cantonese): Ms LAU, please move your motion.

MS MIRIAM LAU (in Cantonese): President, I move that the motion, as printed on the Agenda, be passed.

Ms Miriam LAU moved the following motion: (Translation)

"That talents have been an important element contributing to the vigorous development of small and medium enterprises ('SMEs') in Hong Kong over the years, but for many years, the Government has not formulated a comprehensive policy on nurturing talents to complement the upgrading and transformation of SMEs which employ a large number of employees, resulting in their development being hindered and hence their employees' income cannot improve substantially; as such, this Council urges the Government to:

- (a) formulate a comprehensive policy on talents training to upgrade the quality of talents in Hong Kong in the long run, thereby complementing the upgrading and transformation of SMEs;
- (b) consider relaunching and enhancing the 'SME Training Fund', introduce training programmes for the middle-aged, and enhance

the relevant talents nurturing programmes such as the 'Continuing Education Fund', etc.;

- (c) increase the opportunities for young people to go overseas for further studies and exchanges and to receive on-the-job training;
- (d) increase efforts to attract overseas talents, including formulating complementary measures such as increasing the number of places available in international schools to attract overseas talents to stay in Hong Kong, thereby strengthening the exchanges between Hong Kong talents and their counterparts from other places; and
- (e) assist SMEs in upgrading their creativity and innovative capabilities, study the establishment of a fund for industrial upgrading and transformation, and formulate a one-stop programme for enterprise incubation, so as to provide support for SMEs intending to upgrade or transform as well as their employees."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by Ms Miriam LAU be passed.

PRESIDENT (in Cantonese): Dr PAN Pey-chyou will move an amendment to this motion. This Council now proceeds to a joint debate on the motion and the amendment.

PRESIDENT (in Cantonese): I now call upon Dr PAN Pey-chyou to speak and move his amendment to the motion.

DR PAN PEY-CHYOU (in Cantonese): In a highly competitive society like Hong Kong, everyone has to face the issues of training and continuing education. Thus, many organizations, both public and private, will conduct many training and learning programmes. Training initiatives are diverse. For instance, such public organizations include the Education Bureau, Hong Kong Council for Academic and Vocational Accreditation, Vocational Training Council,

Employees Retraining Board and Construction Industry Council Training Academy. Although many institutions are responsible for providing training, too many policies from different departments have prevented Hong Kong from establishing a comprehensive policy on talents training, thus sometimes leading to a mismatch of talents in the market. In the end, government resources are wasted, so is the time of the employees receiving training.

In response to the acute unemployment problem of young people, the Government has launched a series of programmes in recent years, such as the Youth Pre-employment Training Programme, Project Yi Jin and other programmes providing training opportunities for young people. However, in the absence of a clear objective and division of labour, these programmes fail to help these young graduates find jobs and put what they have learnt into practice. Despite the fact that some of these training programmes are good, the market is unable to absorb the graduates, leading to an oversupply of labour. Beauty care training programmes offered by many organizations in recent years are a very good example.

On the other hand, the Government has been actively developing the six major industries with a clear advantage such as technological research, environmental protection, green production, testing, and so on. These are industries which the Government hopes to vigorously develop as a matter of policy, but there is always a shortfall in the supply of such talents and locally trained talents are not sufficient to meet the large demand. In the end, we have to admit talents from outside Hong Kong. It is thus necessary to put in place a comprehensive talents training programme which will not induce conflicts between individual sectors for purposes of nurturing an appropriate quantity of quality talents compatible with the development direction of our economy.

President, in my amendment to be moved later on, I mention that we need to admit overseas quality talents but we should not blindly and indiscriminately absorb a large number of overseas talents. First of all, I must point out that Hong Kong does have talents. According to the information provided by the Census and Statistics Department, in 2009, almost 25% of the population aged over 15 are educated to the tertiary level; and every year local tertiary institutions produce over 14 000 graduates from publicly-funded degree courses and 28 000 graduates from associate degree courses. Thus, Hong Kong does not lack talents with high academic qualifications and professional expertise. In recent years,

the poverty problem of university students is a great concern to the Hong Kong community. As most of these young people can only find relatively low-income jobs and their salaries remain low even after a few years' time, coupled with the fact that they have little career prospects and development, they often have a sense of discontent with society.

The Hong Kong Federation of Trade Unions conducted a statistical analysis in February this year and found that people with high academic qualifications were finding it increasingly difficult to earn money. For instance, in the first quarter of 2009, among the 700 000 employees belonging to the lowest income bracket (that is, employees with a median salary of \$3,100 to \$6,200), 12.3% had acquired tertiary educational qualifications, which was substantially higher than the corresponding figure of 6.9% in 1999. This represents a 78% increase. Hence, we cannot agree to the proposal in the original motion on indiscriminately absorbing overseas talents. Conversely, we think that if Hong Kong lacks certain kinds of quality talents or professionals, or our labour market cannot supply such talents, and if these job openings are conducive to the development of certain industries (such as technological research, environmental industries, creative industries, sports industry, and so on), we agree that more schemes and measures should be drawn up to attract these professionals and quality talents to Hong Kong to develop their career, so as to promote the development of relevant local enterprises and in turn create employment opportunities for local people. President, as mentioned in my amendment to be moved later on, the Government should expand various employment services, training and support schemes, so as to assist the employees to apply their knowledge to their work and develop their career in the industries concerned. Moreover, we also urge the Government to put in place measures to provide training leave for employees, so that they will have a genuine opportunity of pursuing further studies.

It goes without saying that workers in Hong Kong have to work very long hours. According to the first Quarterly General Household Survey this year, in relation to the part on working hours, the average working hours of major local industries are 48 hours per week. Some people working in such industries as the retail sector may have to work for more than 50 hours. If there is no training leave (that is, paid leave specifically for training purposes), it will be very difficult for employees who wish to pursue learning and self-enhancement to receive training and strike a balance among work, family and learning.

President, nowadays many workers are required to enhance themselves and receive training. For instance, courses on how to make milk tea are available for bartenders in Hong Kong-style cafes. In future, there may even be similar qualifications framework for the profession of bartender. But if bartenders have to work over 10 hours a day, how could they still find the time to better their milk tea-making skills? After all, they have to reserve some time for their family. It will be most inconsiderate if they are required to use that little time left for training. Hence, to conduct talents training properly, the Government, business sector and small and medium enterprises (SMEs) should provide training leave for their employees so that the latter can set aside their worries and devote their energy to self-enhancement and upgrading their knowledge and skills. Otherwise, talents training will become empty talk and turn into a means to pressurize employees into surrendering more of their own time.

With these remarks, President, I hope Members will support my amendment to be moved

PRESIDENT (in Cantonese): Dr PAN, you should move your amendment now.

DR PAN PEY-CHYOU (in Cantonese): Yes, that is what I was going to do. I now move that Ms Miriam LAU's motion be amended. Thank you, President.

Dr PAN Pey-chyou moved the following amendment: (Translation)

"To add ", as" after "That"; to add "quality" after "increase efforts to attract overseas"; to add "quality" after "international schools to attract overseas"; to delete "and" after "other places; "; and to add "; and (f) expand various employment services, training and support schemes, and provide employees with 'training leave', so as to enhance the competitiveness of our manpower resources" immediately before the full stop."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Dr PAN Pey-chyou to Ms Miriam LAU's motion, be passed.

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): President, I am very grateful to Ms Miriam LAU for moving the motion on "Comprehensively upgrading the quality of talents in Hong Kong to complement the upgrading and transformation of small and medium enterprises" today.

As regards the factors contributing to the success of Hong Kong's economic development, apart from an absolutely free flow of capital and information, enhanced infrastructure facilities, a sound legal system and a simple tax regime, an indispensable factor is precisely talents. Having gone through various stages of development and transformation for more than half a century, Hong Kong has become a highly developed and mature economy. In the face of the current globalization of world economy, not only do we have to maintain a high level of alertness to the market, we also need to upgrade our competitiveness continuously. In the global trend of moving towards a high value-added and knowledge-based economy, we also have to equip ourselves and cannot fall behind the current situation. The nurturing of talents is naturally an important element.

There are now a total of about 280 000 SMEs in Hong Kong, accounting for 98% of the total number of enterprises, and employing in aggregate half of the workforce in the private sector. Hong Kong economy depends very much on the prosperous development and successful operation of SMEs. To enhance the competitiveness of SMEs in Hong Kong, the Government and a number of industry support groups as well as industrial and commercial organizations, including the Vocational Training Council (VTC) and the Hong Kong Productivity Council, have been providing the SMEs with manpower and management training as well as other services.

Speaking of education and vocational training, the Government has also put in a lot of resources to cope with the economic development and social needs and to nurture talents. With the ongoing economic transformation, there has been increasingly keen competition in the market, and consumers have become ever more demanding of the quality of products and services. Enterprises must tie in with the trend and strive for upgrading and transformation so as to enhance their profit-making and innovative abilities. To this end, the Government has successively introduced the Innovation and Technology Fund, the Research and Development Cash Rebate Scheme, and the DesignSmart Initiative to provide

support to the SMEs. For the low-skilled workers, the Government has also provided them with training, retraining and continued learning opportunities through the Employees Retraining Board (ERB), the VTC, and the Labour Department (LD).

President, the Secretary for Education will next speak on education, training and how to attract foreign talents. I will give another response after listening to the views of Members.

SECRETARY FOR EDUCATION (in Cantonese): President, the Secretary for Commerce and Economic Development has spoken just now. Now, I will elaborate on the Government's policy regarding education and training as raised in the motion.

All along, the Government has been committed to nurturing talents in Hong Kong through various education and nurturing initiatives with a view to coping with the long-term development needs of Hong Kong, and providing the small-sized enterprises with support to meet the challenges arising from their upgrading and transformation. We have implemented such measures as encouraging local students to engage in overseas exchanges to broaden their international outlook, setting up scholarships to allure more overseas and Mainland students to pursue studies in Hong Kong, relaxing the restrictions on non-local students seeking employment in Hong Kong after graduation, and attracting more talents to stay in Hong Kong to develop their career. Meanwhile, we also support and encourage the tertiary institutions to enhance the learning capability of students through the provision of internship opportunities in order to strengthen their ability to adapt to the job market.

Besides, we have also introduced initiatives to support the development of international schools so as to provide solid support to overseas and Mainland talents and their families coming to Hong Kong for development.

Through various schemes and initiatives, the Labour and Welfare Bureau has also striven to intensify job training for youngsters. In the light of the needs of the labour market, the ERB, the VTC and the LD have provided training to youngsters of different backgrounds through various training programmes, including the Youth Work Experience and Training Scheme, the Youth

Pre-employment Training Programme, the Apprenticeship Scheme, and the Youth Training Programme, so as to prepare them for the employment market.

Youngsters aside, the LD also provides job seekers with all-round and free employment services through the job centres, the Interactive Employment Service website, and job fairs. The Government will continue to encourage employers to adopt complementary measures for employees who are interested in continued learning, such as leave arrangements or staggered working hours.

President, I will listen attentively to Members' views on the motion, after which I will elaborate further on the initiatives taken by the Government in respect of education and training in my concluding speech.

I so submit.

MR WONG TING-KWONG (in Cantonese): President, Prof James HECKMAN of the Department of Economics of the University of Chicago pointed out that the return on human capital investment can be as high as 30% to 40%, and it should not be underestimated compared with the return on fixed assets investment. However, limited by their scale of operation, SMEs often lack sufficient resources and experience to formulate appropriate staff training schemes to meet the challenges of knowledge-based economy. Thus, Hong Kong must formulate a policy to comprehensively upgrade our manpower resources and help facilitate over 1 million SME employees in skills upgrading, with a view to raising the competitiveness of SMEs which account for 98% of the enterprises in Hong Kong.

The Democratic Alliance for the Betterment and Progress of Hong Kong is of the view that the SAR Government should adopt a strategy which considers education, training and the labour market as a whole, and review from the angle of demand what kinds of skilled labour Hong Kong needs, and examine and review from the perspective of supply whether the existing manpower training initiatives provided by educational institutions and training programmes can meet the needs of society (including those of SMEs), in a bid to meet in a focused manner the demand of the labour market. Apart from providing formal education, the Government must also provide in-service training and

complementary incentives for continuous learning, as well as formulating a set of comprehensive manpower training policies.

Insofar as tertiary education is concerned, the authorities should place more emphasis on the education of vocation, research and development and engineering, and provide more tertiary courses and more opportunities for tertiary institutions to provide training in business operation and administration of SMEs. The authorities should work closely with employers by inviting their input in the course programmes, scale of training programmes and tracking assessment of their effectiveness, so as to tailor the programmes to the needs of employers.

Moreover, schools can introduce more sandwich courses or provide internship opportunities in partnership with employers, so as to enable students to acquire working experience as early as possible and, more importantly, to gain a better understanding of the industries and skills required so as to map out their future career development path.

The Government must also work with different industries to expedite the formulation of qualifications frameworks for individual industries, and step up promotion to strengthen the talents bank for different industries. If the Government wishes to attract more young people to join the testing and certification industry, innovation and technology industry, environmental industry and creative industry, it can formulate qualifications frameworks for these industries.

Enterprises can assist their employees to chart their individual career development path, including their promotion prospect in the enterprise and the skills required, so that the latter can have a direction for continuous learning for their career development. Insofar as personnel management is concerned, the Government can consider assisting SMEs in developing career development path for their employees.

The Government must also enhance the Continuing Education Fund. First, an analysis should be conducted on the training needs of high-growth industries, coupled with the implementation of qualifications frameworks and formulation of training programmes in collaboration with different sectors. Apart from consolidating existing programmes, the Government must also upgrade the quality. To maximize the cost-effectiveness, the focus should be

placed on providing programmes with qualifications assessment, professional certification and high recognition. Consideration should also be given to providing more tailored programmes in collaboration with different trade associations or individual SMEs to better meet the development needs of different professions and enterprises, so as to progress from a career-based training programme to an enterprise-based or profession-based programme.

President, Hong Kong and Guangdong can also step up co-operation in manpower resources training, so as to facilitate workers of the two places in exchanging knowledge of the other's system, business operation, technology and market information, and expedite co-operation in new product development and the service industry. Joint training of talents by Hong Kong and Guangdong is not only conducive to the development of SMEs in the two places, but also to the establishment of a talents bank in the Hong Kong-Guangdong region, which will in turn provide new impetus to the development of the two economies.

President, it goes without saying that talents are the key to the successful transformation and development of enterprises or even the entire economy. The SAR Government should work with different industries and the academia to draw up a pragmatic and forward-looking policy and measures to train quality talents for Hong Kong, so that workers, SMEs and the economy of Hong Kong can achieve sustainable development.

President, I so submit.

MR KAM NAI-WAI (in Cantonese): President, I will raise several views on behalf of the Democratic Party in relation to today's topic, which is the policy on local talents training. The economy of Hong Kong is transforming. I believe any training policy also needs to tie in with the overall economic policy. Later, I hope that the Secretaries can talk about how they are going to ensure that the talents being trained now, such as those being trained by various tertiary institutions, can find job openings in society. This is very important. Unless enterprises are able to employ the talents they need, resources are not used effectively. This may substantially affect the training result and may also lead to a mismatch of manpower, the last thing we would like to see.

Ms Miriam LAU just now mentioned the employment of middle-aged people. I believe there is a large number of middle-aged people in the labour market. They are important resources of society. I thus find it very important that these people who have accumulated valuable working experience can be recognized by employers as an asset in interviews. Otherwise, a large number of talents will become idle.

Ms Miriam LAU just now also mentioned a training programme for the middle-aged. The Democratic Party proposes that the Government should enact an anti-age discrimination law to eliminate age discrimination in job placement, so that middle-aged job seekers can enjoy equal treatment. Of course, we are able to find announcements of public interests (APIs) on television about the working capacity of middle-aged people, but promotion through APIs alone is not enough. What matters is how to help this group of middle-aged people with rich working experience to land jobs by means of legislation and training programmes.

Moreover, training policies should be drawn up for long-lasting and sustainable goals. The Government should not formulate such policies in a piecemeal manner. Nor should it launch short-term programmes as a perfunctory measure. The Democratic Party thus proposes that the ERB should examine the employment status of their retraining programme graduates and endeavour to find out why some of them remain unemployed or have met employment difficulties. Meanwhile, it should also strengthen its post-graduation placement counselling services, in a bid to improve its retraining programmes and increasing the placement rate of retrainees. I do not want them to idle away their time in joining these course, unable to find a job after retraining. This can effectively help low-skilled retrainees with a low educational level to join the job market again.

The issue of how overseas talents can be attracted to Hong Kong has also been mentioned in this motion debate today. According to our statistics, the Immigration Department issued over 20 900 work visas in 2009 under the general employment policy. Among them, 6 000-odd were administrators, managers and executives and 4 000-odd were professionals and technicians, apart from other professionals such as lawyers, professionals in food and beverage and professors. Nevertheless, we have to emphasize that while it is important to admit these professionals to Hong Kong, who are essential to local training and

exchanges, we cannot abuse this system and let enterprises make use of this system to import cheap labour. This is not what we would like to see.

However, the admission of professionals is important to Hong Kong, and the Democratic Party agrees with it. But how should professionals be admitted? I believe that the gatekeeping by the Government is very important. If the professionals are truly the kind of talents needed by Hong Kong, their admission will certainly be useful to Hong Kong, benefitting enterprises, local labour and our economic development. As I mentioned just now, Hong Kong is competing for talents with countries worldwide. Then, how can we attract these professionals to come to Hong Kong? I believe complementary measures are very important. In the motion debate we have mentioned measures such as increasing international school places, and as mentioned by Ms Miriam LAU just now, the allocation of more land for the construction of international schools.

Certainly, we always mention the need to improve the environment. For instance, we have to improve our air quality, which is also an important factor in attracting overseas talents to Hong Kong. Today, the Environment Bureau has no public officer here, but I hope the two Secretaries can relay this message to the Secretary for the Environment. According to past surveys, this is one of the crucial factors considered by overseas talents in deciding whether or not come to Hong Kong.

Moreover, we also talked about young people and professionals just now. How can young people be enabled to tie in with the labour market? Young people are more adventurous and innovative, and I believe they can bring more creativity to enterprises. How can we encourage young people to join the SMEs? Their creativity can help SMEs in their upgrading and transformation. This is also important. However, SMEs do not have sufficient resources and manpower for training young people, which, I believe, has resulted in their general reluctance to employ young fresh graduates. We thus hope that the Government can formulate a comprehensive employment and training policy for young people to help them join the job market. This policy should include providing more internship opportunities in university programmes, putting in place internship quotas for secondary school leavers and assisting young people to secure internship opportunities in the Mainland so as to enhance their competitiveness. In this way, both SMEs and young people will stand to benefit.

President, the Democratic Party supports the original motion moved by Ms Miriam LAU and the amendment moved by Dr PAN Pey-chyou. Thank you, President.

MR CHIM PUI-CHUNG (in Cantonese): President, many SMEs in Hong Kong originated from clothing and textile factories owned by Shanghai entrepreneurs who relocated their capital and machineries to Hong Kong after the liberation of Mainland China in the 1950s. After 1950s, the electronic and transistor industries took shape in Hong Kong and SMEs producing plastic products also emerged. Meanwhile, having secured worldwide production quotas which enabled them to reap handsome profits, the clothing industry continued to prosper. By the 1960s, the real estate sector assumed the leading position in Hong Kong.

President, in recent years, Hong Kong has undergone a major transformation with the service sector becoming the mainstay. Has the Government borne this in mind in developing the service industry? For instance, has it designed education programmes to specifically nurture talents for this industry? Take financial services, hotel and tourism as examples, the Government said it has provided retraining to complement the development of these sectors, but I can say that these efforts are not enough. Truly, money has been spent by the Government, but not well spent to meet the market needs and young people are unable to join these industries either.

Let me cite another example. The Hong Kong Exchanges and Clearing Limited (HKEx) claims to hold a leading position in global finance, but some of its employees in the listing section do not have any wits for or knowledge of the mining industry. How could the HKEx take its development to the next level? The HKEx says that it has to improve its grading and impose more stringent requirements, but President, it is not the only exchange in the world. If the requirements laid down in Hong Kong are so stringent, why does the HKEx not attempt to list on the New York or London stock market? So, how competitive can Hong Kong be? Has relevant government department taken note of this problem? If the financial sector is given such weight, there should be corresponding subjects in school to enable some students to receive formal training in the operation of the HKEx, so as to increase their opportunities of working in the HKEx or in China in future. The financial sector should not only

teach people how to speculate on stocks. This is just a disguised form of betting and gambling.

President, the earnings of the Macao gaming industry in the first quarter were \$41 billion and the earnings in May and June were \$17 billion and \$13.6 billion respectively. Granting no major change, the Government should be able to make on average over \$60 billion per annual from the gaming industry. Compared with the 450 000 people in Macao, Hong Kong has a population of 7 million people, which is more than 10 times that of Macao, but does Hong Kong have a revenue to the tune of a hundred billion dollars? I thus always say that if Hong Kong is marginalized in the future, the people of Hong Kong will have to emigrate to Macao. Moreover, the per capita economic growth of Singapore has recently been adjusted from 13% to 15%. However, Hong Kong still indulges in its own world, and we are preoccupied with frequent wrangles. Hong Kong will definitely be marginalized in future.

We certainly hope that after the passage of the constitutional reform package, the Government can truly focus its attention on looking into this problem. Indeed this problem cannot be solved overnight, but efforts must be made to find out how to meet the needs and demands of society as a whole and prescribe the right remedy to the problem. The Minimum Wage Bill discussed only offers a framework, without setting an actual wage level. We do not want our wage to fall within the scope of minimum wage. We only want to have such a law in place and everyone to have a wage above this wage floor, so that we can compete fair and square with Macao and Singapore in future.

Although many people criticize the Singaporean Government for being too people-oriented and pretentious, what is wrong with being people-oriented in serving its people? In response to the needs of the people, the Government cannot say that it has already provided training or universities have already provided relevant courses because people simply cannot find a job to which they can apply what they have learnt. The Government must truly understand that Hong Kong has already changed course to the services industry. The high land-price policy, in particular, has pushed up the rents to such a state that many shop owners are effectively working for the property developers.

In any case, the truth is there and we must face the truth and deal with the pressure. The Government needs to provide suitable programmes at

universities, such that young people can get involved and meet the needs of Hong Kong after graduation. President, Hong Kong is leveraging on China and engaging itself globally. How should we make use of this advantageous timing and position? To my understanding, Hong Kong has a leading edge in these two respects. As for harmony among the people, this requires the concerted efforts of Members, the Government and other stakeholders. President, only by so doing will we not be left far behind by Singapore and Macao, and only by so doing will there be hope for SMEs.

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

(No Member indicated a wish to speak)

PRESIDENT (In Cantonese): Ms Miriam LAU, you may now speak on Dr PAN Pey-chyou's amendment. The speaking time limit is five minutes.

MS MIRIAM LAU (in Cantonese): President, first of all, I wish to thank Dr PAN Pey-chyou for moving an amendment to enrich my motion. I fully understand Dr PAN Pey-chyou's amendment, which has two main points, representing the labour's point of view. The first point is to add "quality" before "talents". He has already explained his rationale, but I wish to assure Dr PAN that I have no intention to advocate the import of cheap labour through this motion. I have no such intention at all. My idea is, as long as someone is a talent, he is good or quality. I thus will not oppose adding the word "quality". I do not wish to import non-talents into Hong Kong either. Genuine or quality talents are what Hong Kong needs.

The second point is that Dr PAN added training leave to my motion and I absolutely understand his concern. Although I am not an employer now, I used to be an employer, for about 30 years. I absolutely understand that it is impossible to request an employee to attend a training course after work at 6 pm. I believe no employee is willing to do so because he will be very tired by then. Hence, my past practice was that employees who had signed up for a course could have a day of paid leave to attend the course. This is fine with me. I will definitely advocate this. We cannot force workers to upgrade themselves by

continuing education at night because this will not be effective in reality due to lack of energy. If they are to receive training, they really have to have sufficient energy to do so.

In fact, Dr PAN also mentioned in his amendment today the need to expand various employment services, training and support schemes, so as to enhance the competitiveness of our manpower resources. These proposals are in line with the spirit of the original motion. I will thus support them. As a matter of fact, many SMEs attach great importance to talents and they have in-house staff training or initiatives to encourage their employees to pursue continuing education. If employees have the opportunity to upgrade themselves, this will be conducive to the employees themselves as well as the enterprise, large or small. I always hold that if you are good to your employees, they will pay you back and the employer-employee relationship will be harmonious. On the contrary, if the employer and employees always haggle over every ounce, such that the employees would haggle over the salary paid by the employer and the employer would calculate every minute the employees have worked, I believe such a relationship would not help the development of the enterprise. I thus always emphasize that an employer-employee relationship must be harmonious before the employees can be happy and satisfied with their work and the enterprise can achieve better development. This is a win-win situation. Offering training leave for employees to study is also a win-win approach. The employers are less stressed out for they can have leave to upgrade themselves through learning, and the employees after training and self-enhancement can also benefit the employer by applying the skills they have learnt to their work. I believe this is a win-win situation, and we should make more efforts to advocate this. I thus hope that the Government can accept the proposals in Dr PAN Pey-chyou's amendment and show more determination in allocating more resources to training, so that SMEs in Hong Kong can truly conduct proper talents training.

Thank you, President.

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): President, I wish to thank Members for speaking on this motion today. I shall focus on items (a), (b) and (e) of the original motion and the part of the amendment relating to them.

Talents training is essential to assisting SMEs in their upgrading and transformation. The Government is currently providing such assistance in many ways, with a view to assisting SMEs in their sustained development. Since its inception in 2009, the SME Development Fund operated by the Trade and Industry Department has approved fundings totalling some \$10 million for business and professional organizations to organize seminars, workshops and training programmes and to prepare codes of best practice and industry guidelines. The aim is to assist SMEs in upgrading the quality of their employees for the purpose of enhancing the competitiveness of enterprises.

Apart from providing support to training initiatives, we have set up the Support and Consultation Centre for SMEs for the special purpose of providing free business information and consultation services to SMEs. It is hoped that proprietors of SMEs can share their experience with new SME operators through this service.

Some Members have mentioned training programmes for the middle-aged. As a matter of fact, the Employees Retraining Board (ERB) has been providing the middle-aged with suitable training programmes and subsidies, with a view to encouraging enterprises of all sizes to take on unemployed persons aged 40 or over and to provide on-the-job training to their employees. From its commencement to the end of June this year, the Employment Programme for the Middle-aged made employment and on-the-job training arrangements for more than 48 000 job seekers.

Besides, people receiving on-the-job training may also enroll on the skills upgrading programmes offered by the Vocational Training Council to enhance their employability and competitiveness. It is hoped that this can help them adapt to the changing economic circumstances.

The Continuing Education Fund (CEF) has been in operation for many years indeed. Since 2002, it has been undergoing various changes and reviews, subject to some enhancements in this course, along with an expansion of its funding scope. As many as 7 000 programmes are now offered by 290 training institutions. Since the review of the CEF in 2009, the Government has added Italian and Russian to the programmes, thus providing applicants with a wide range of language courses. This is precisely an example of the support measures for language training mentioned by Ms LAU just now.

As for Ms LAU's proposal of relaunching and enhancing the SME Training Fund, as I have pointed out, the Government has already implemented various measures relating to manpower resources and training. We are of the view that the Government should continue to provide SMEs with training assistance through the existing funding schemes, so as to avoid any duplicated provision of resources.

As a matter of fact, the vocational training services rendered by the ERB have always been based on the market-oriented principle and kept abreast of the needs and changes in the employment market, with a view to providing Hong Kong enterprises with the required talents.

In order to tie in with social development and enhance its services, the ERB has carried out a strategic review of its direction of future development. The recommendations submitted by the ERB were endorsed by the Chief Executive in Council in March 2009. At present, the ERB is phasing in the various recommendations and striving to provide the local workforce with more integrated and diversified services, geared towards upgrading the employability and competitiveness of trainees.

President, I strongly agree to Members' recommendations on assisting SMEs in upgrading creativity and innovation. Our SMEs can no longer rely solely on low prices as a means of competing in the global market. Creativity and innovation shall be the key to determining the success or otherwise of our enterprises.

As a matter of fact, the application of innovative technologies as a means of improving operation is not restricted to emerging industries. The use of nano materials by the garment industry for the manufacturing of crease- and dirt-resistant cloth is a good example. The manufacturing of 3G watches incorporating information and communications technologies is another fine example. Besides, the use of glass panels coated with photovoltaic materials in solar power systems is also an excellent example of how traditional industries in Hong Kong make use of innovative technologies in their development.

To encourage and help SMEs to upgrade their creativity and capability of innovation, the Government has put in place various funding and loan guarantee schemes to finance the business development of SMEs and assist them in getting

commercial financing. At present, the SME Loan Guarantee Scheme (SGS) assists enterprises in taking out loans from lending institutions for the purpose of purchasing and upgrading the facilities and equipment helpful to raising their technological levels. The SGS also assists SMEs in securing operating funds to cope with their upgrading and transformation. Through this process, enterprises can also upgrade their capability of innovation.

SMEs may also obtain funding under the SME Export Marketing Fund for the purpose of opening up new markets. They may also apply for funding under the Small Entrepreneur Research Assistance Programme, so that they can conduct technological research and development and in turn explore new business areas.

President, with the support of the Legislative Council, we have introduced the Research and Development (R&D) Cash Rebate Scheme. This is literally the first time that the Government makes use of cash rebate as an incentive for enterprises to invest in R&D.

Actually, we should now encourage the promotion of tripartite co-operation among the Government, the business sector and academic institutions. We must capitalize on the capability of the R&D centres provided by the Government. We may also draw support from and make use of the R&D capability of universities. Through such tripartite co-operation, we should seek to upgrade the manufacturing technologies and productivity of enterprises, so as to prepare them for the challenges posed by upgrading and transformation.

Technological research aside, design is of course also very important. Therefore, we have put in place the Design-Business Collaboration Scheme, in the hope of assisting SMEs in making investment in design application and building design content into their products and services.

All the assistance measures and schemes mentioned by me are aimed at assisting local SMEs in self-enhancement, especially in respect of upgrading employee quality, so that they can emerge as winners in the keen competition of the global market. To help SMEs grasp the opportunities and face the challenges in the future, my Policy Bureau and other relevant government departments will continue to explore how best to integrate and deploy existing resources. Our efforts will cover enhancing the co-operation between CreateHK and the Hong Kong Trade Development Council, promoting Hong Kong

brand-name products and services overseas and in the Mainland, as well as encouraging industry organizations to work with the Hong Kong Council for Testing and Certification to jointly promote "Hong Kong testing and Hong Kong certification" as an international brand name. It is hoped that we can thus assist SMEs in transforming themselves in the direction of high-value added and high-tech production and operation.

President, I so submit.

SECRETARY FOR EDUCATION (in Cantonese): President, through the implementation of various education and training measures, the Government has always been striving to nurture appropriate talents for Hong Kong's sustainable development and also SMEs.

We hope that local students can have international visions. For this reason, in 2002, the Government set aside \$120 million for the tertiary institutions funded by the University Grants Committee (UGC) to expand their student exchange programmes for undergraduates. In the 2008-2009 academic year, about 3 300 students in the eight UGC-funded institutions were sent to overseas or Mainland institutions to take credit-bearing courses for at least one semester.

Through various measures, we also seek to induce non-local students to study in Hong Kong and stay behind for career development. Hong Kong is a metropolis where the East meets the West. We have world-class tertiary institutions, quality teaching staff and stringent quality assurance mechanisms. With such a sound basis, we have been raising our tertiary institutions' admission quotas for non-local students since 2008, with the aim of enabling them to admit a greater number of non-local students.

Besides, in 2008, we also established a \$1 billion scholarship fund for the purpose of inducing outstanding non-local students to receive education in Hong Kong. And, in 2008, we also started to relax the employment restrictions on non-local graduates. Fresh graduates may now stay in Hong Kong for 12 months after graduation without any conditions. These measures can greatly facilitate the development of non-local graduates in Hong Kong after completing their programmes.

In order to encourage a greater number of overseas students to get to know and grasp the educational opportunities offered by Hong Kong, apart from encouraging local tertiary institutions to conduct more exchanges with institutions in other places and promote their services to them, the Education Bureau also joins hands with representatives of tertiary institutions to organize visits to different places for strategic promotion. So far this year, we have visited Malaysia, Indonesia, Korea and Japan for visits and exchanges. This is a very useful means of enabling the students in these places to know more about Hong Kong and inducing them to study and start their careers here.

We support the adoption of various measures by tertiary institutions to upgrade the learning abilities of local students and to enhance their ability of adapting to the employment market. On the basis of the professional needs of different programmes, Hong Kong tertiary institutions have all introduced internship elements in their programmes. As for the Vocational Training Council (VTC), it has joined hands with various sectors to provide internship opportunities to roughly 30%, or 3 600, of its higher diploma students. With a view to further upgrading students' ability to adapt to different trades and occupations, the VTC plans to gradually increase the internship quota over the next few years. In the 2010-2011 academic year, there will be some 5 900 new places. And, in 2013-2014, there will be 2 300 new places.

In regard to the support for development of international schools, we mainly provide assistance in three ways — assisting international schools in in-situ expansion, allocating vacant campuses to existing international schools for expansion and allotting new sites for the expansion of existing international schools or the construction of new ones. With the support of all these measures, the number of international school places will increase from 35 000 at present to roughly 41 000 over time. The rate of increase will be as high as 16.5%.

For the purpose of upgrading the quality of local talents, we formally put in place the Qualifications Framework in May 2008. The aim is to assist the various sectors in establishing clear articulation ladders among qualifications that cut across academic pursuits, vocational training and continuing education and also encourage lifelong learning. We have so far established 13 Industry Training Advisory Committees (ITACs). These 13 industries cover 1.2 million workers, accounting for 30% of the total workforce. The ITACs are responsible

for formulating the required skill levels, knowledge and competency standards for their respective industries, so as to assist training institutions in designing qualifications and training programmes suited to the needs of the industries concerned and the market. We believe that SMEs will benefit from this.

The motion also proposes to increase opportunities of on-the-job training. The Labour and Welfare Bureau attaches very great importance to this. Through various schemes and measures, the Employees Retraining Board (ERB), the VTC and the Labour Department (LD) have been striving to upgrade the quality of local talents in order to cope with economic development.

In order to provide assistance to non-engaged youth aged 15 to 20, the ERB has also collaborated with the VTC and other training institutions to launch the pilot "Youth Training Programme". About 2 000 places are offered each year to provide young people with vocational training and foundational skills training while cultivating among the trainees a positive attitude to life and enhancing their self-confidence.

In addition, the VTC also operates the Apprenticeship Training Scheme (ATS) to enable youngsters to receive systematic vocational training in different industries as apprentices. Under the ATS, young people can choose from 120 different industries, including vehicle repairs, electrical engineering, infrastructure, and so on. Apart from the ATS, in recent years, the VTC has also operated a more flexible scheme called Modern Apprenticeship. This seeks to upgrade youngsters' employability through a combination of training and internship, so that they can join the services industries. In the 2009-2010 academic year, as many as 3 300 persons were enrolled on these schemes.

In 2009-2010, the Government allocated resources for the special purpose of combining the Youth Pre-employment Training Programme (YPTP) and the Youth Work Experience and Training Scheme (YWETS). A new integrated scheme called YPTP&YWETS combining pre-employment and on-the-job training was launched. In a one-stop manner, this new scheme provides more suitable and comprehensive training and employment assistance to young people aged 15 to 24 with qualifications lower than the level of sub-degree.

In order to further enhance the assistance for young people with particular employment difficulties, the LD will launch an employment assistance scheme especially for them in the fourth quarter of 2010. The targets are young people aged 15 to 24 with low academic qualifications who need special assistance due to emotional, behavioural and learning problems. With the assistance of non-governmental organizations (NGOs), such young people will be provided with internship and work opportunities for a period of 12 months.

The LD will introduce a series of new measures to provide further employment assistance to job seekers. Such new measures include the lending of Vacancy Search Terminals to NGOs on a pilot basis. Such Vacancy Search Terminals will be connected to the huge vacancy database of the LD to assist people living in remote areas in seeking employment. There is also the two-year Pilot Employment Navigator Programme, meant to cope with employment mismatches, fully exploit the productivity of local workers and encourage employment. And, a one-stop employment and training centre is also established in Tin Shui Wai on a pilot basis. The aim is to provide more coherent services and assistance that can better suit the needs of needy job seekers.

Dr PAN Pey-chyou has proposed to provide training leave to employees. In this connection, the Government has been encouraging employers to strive to provide various support measures, such as leave or flexi-hours, so as to make it easier for employees to upgrade their skills and knowledge and to cope with the manpower needs in response to changes in the economy. As far as our understanding goes, many employers will now make arrangements for their employees to receive training during working hours, with a view to upgrading employees' skills and their own organizations' competitiveness.

The enactment of legislation on the provision of training leave will have far-reaching impacts on employers' operating costs and even local productivity. We must consider this proposal very carefully and first secure an extensive consensus in society. We must also ensure that the proposed measure will not affect employees' employment prospects and opportunities.

President, I believe the said measures are able to cope with Hong Kong's long-term development and nurture talents for SMEs. I so submit.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the amendment, moved by Dr PAN Pey-chyou to Ms Miriam LAU'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.

(No hands raised)

PRESIDENT (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the amendment passed.

PRESIDENT (in Cantonese): Ms Miriam LAU, you may now reply, and you have two minutes and two seconds.

MS MIRIAM LAU (in Cantonese): President, given the fact that we have been debating for over 28 hours since 9 am yesterday morning, I am really touched that four Members still participated in this motion debate; I thought that the number would be even smaller. In fact, this is a rather boring motion debate, but thanks to the two Secretaries, their replies have made the entire debate even more boring (*Laughter*) because the two Secretaries Pardon me for saying so I think they have only read out Well I do not know for sure Anyway, I feel that they have only read out the information without responding to the motion at all.

My motion today seeks to comprehensively upgrade the quality of talents in Hong Kong. It is not about unemployment or setting up whatsoever in Tin Shui Wai, but about complementing the upgrading and transformation of SMEs. Thus, there is no point telling me how many training programmes the VTC, ERB,

CEF and LD have provided. No one says that the Government has not injected funds into these training programmes. Whether such funding is sufficient and, more importantly, whether such funding can serve its purpose are issues in question. If they have listened to what the five Members said just now, they should be able to note that their speeches boil down to one message only: the training initiatives launched by the Government fail to form a comprehensive training programme and target at the needs of different industries.

Hong Kong has to strengthen its four pillar industries and develop the six major industries with a clear advantage. From what you told us just now, which industries you have made targeted efforts to develop and provide specific training? None. This is precisely the grave concern to SMEs.

Recently, I had a meeting with some SMEs. For instance, one member from the jewellery industry has business in gold authentication. This industry possesses many traditional skills and is in urgent need of incorporating testing and certification into their work so that the gold content of gold jewellery can be tested. But they do not have any channels of training (*The buzzer sounded*) so I hope that the Government has listened to us and provide training tailored to the needs of different industries. Thank you.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by Ms Miriam LAU, as amended by Dr PAN Pey-chyou, be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

PRESIDENT (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by

functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the motion as amended passed.

PRESIDENT (in Cantonese): Motion for adjournment. Under Rule 16(6) and (7) of the Rules of Procedure, I determine that if at the expiration of 75 minutes from the moving of this motion, there are still Members who wish to speak, I shall extend the period of the debate until all Members who wish to speak have spoken, and the designated public officer has given his reply.

PRESIDENT (in Cantonese): As regards the speaking time, each Member may speak for up to five minutes, and the designated public officer making a reply may speak for up to 15 minutes.

PRESIDENT (in Cantonese): It is now 1.46 pm, the debate shall now proceed.

Members who wish to speak will please press the "Request to speak" button.

I now call upon Mrs Regina IP to speak and move her motion.

MOTION FOR THE ADJOURNMENT OF THE COUNCIL

MRS REGINA IP (in Cantonese): President, good afternoon. We have been greeting each other "good morning" and "good evening", and now it is time to say "good afternoon" again. After four days of meeting, Members are perhaps almost unconscious. However, a number of Members are still concerned about tree management. First of all, I thank the President for granting me leave to move this motion for the adjournment of the Council, so that we can have a debate on tree management.

I have moved this motion because tree management really involves significant public interest. In the past couple of years, two innocent members of the public were crushed to death by collapsed trees. The greatest cause for

concern is that there is still no improvement to this issue despite the fact that last year, the Government applied to the Council for funding and we also allocated \$16 million for establishing the Tree Management Office (TMO) under the Development Bureau. The TMO has been ineffectual. After the incidents of tree collapses, there is still a fragmentation of responsibilities. Several hours after the incidents, nobody came forth to assume responsibility. President, the word I used is "responsibility", not "accountability" because I am not demanding the resignation of any official. Just now, the Secretary told me that her very capable principal assistant — the official responsible for tree management — had already disappeared without prompting and joined the Hong Kong Monetary Authority (HKMA) to "make real money".

I think that tree management does not just concern the Development Bureau. It actually reflects many problems in the governance and administration of the SAR Government. People at the top echelon are unwilling to come forth to assume responsibility and they are even out of town frequently. If we ask a question on the number of days for which the Chief Secretary for Administration has been on overseas visits, I believe it will surely add up to a considerable number. Those at the lower level, such as competent Administrative Officers, may leave after the relevant posts have been established, so as to avoid receiving the hot potato. President, you studied mathematics. You probably know that given the rate of tree collapses in Hong Kong, in terms of probability, there will perhaps again be injuries in the near future. I hope that similar accidents will not happen again. As we all know, on the day before yesterday, that is, on Thursday, a beautiful Indian Almond tree at Tung Wah Hospital collapsed. Yesterday, a tree collapsed at Hiram's Highway. The branches of the tree nearly killed a driver. Although there were occasional gusts yesterday, we noted that, to my understanding, this Silver oak was found in the award-winning landscaping area in Sai Kung.

The most worrying thing is that, just as expected, the Government announced prior to this debate that there are 1 154 problematic trees, among which several hundred have more serious problems, but the trees that collapsed recently had passed the visual inspection test and were confirmed to have no problem. This casts doubt on whether or not the Government has any real tree experts. I think that the visual inspections adopted by the Government certainly has to be made with naked eyes, or does one mean that it has to be done from a distance? However, are the people who carry out the visual inspections experts? How many trees does the Government have to take care of? I have checked the

records and found that it is stated in the two written replies given by the Secretary for Home Affairs that there are 700 000 trees under the management of the Leisure and Cultural Services Department (LCSD). The cat came out of the bag recently when Secretary Edward YAU was answering questions. He said that there were over 1 million trees in the urban area. Are there actually 1.1 million or 1.9 million trees? This can make a big difference. How many trees is the Development Bureau responsible for? I know that the Development Bureau is in a very difficult position because tree collapses are a hot potato, so to speak. I believe no other Policy Bureau is prepared to take the responsibility. For this reason, the Development Bureau has created two directorate posts with a view to solving the problem by stepping up management. However, when the Permanent Secretary lobbied me for support last year, I was requested to believe that the problem could be solved with the creation these posts. I told him that as there were so many trees, I did not think that the problem could be solved by simply committing the resources to a Policy Bureau.

Therefore, may I ask the Secretary if it is really due to a new mode of operation adopted in 2002, in which the two grades of Amenities Officers and Recreation and Sports Officers were merged, that the present problem of half of the officers in the LCSD having no knowledge of trees has arisen. Moreover, after the tree registry in the 18 districts was scrapped in the wake of the Second Voluntary Retirement Scheme in 2003, the Administration extended the outsourcing arrangement. In fact, after the Administration has contracted out the work, the relevant departments in the Bureau and the LCSD do not have sufficient experts with sound knowledge of trees. Just now, the Secretary told me that it is very difficult to hire tree experts. Of course, there is also this conspiracy theory (*The buzzer sounded*) I will talk about this granting the opportunity, President.

Mrs Regina IP moved the following motion: (Translation)

"That this Council do now adjourn for the purpose of debating the following issue: the repeated occurrence of tree-falling incidents, and how to prevent the recurrence of similar tragedies."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That this Council do now adjourn.

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

MR ALBERT CHAN (in Cantonese): President, this last motion on trees in this Legislative Session is very meaningful because the trees have revealed the Government's governance culture and problem and its poor approach to administration. I will describe the existing problem in tree management in the following simple terms — basically, the entire system reveals bureaucracy, rigidity, lack of professionalism, fragmentation of responsibilities and abysmal efficiency.

In the past decade or so, I have had quite a lot of dealings with trees. I have kept lodging complaints with the Lands Department (LandsD), the Leisure and Cultural Services Department (LCSD) and the Highways Department. Several examples gave me a deep impression. Let me cite some of the complaints as examples. I once found that a tree branch posed a hazard, so I took a picture of it. Then I wrote a letter to the government department concerned — the LandsD, which subsequently referred the letter to the Agriculture, Fisheries and Conservation Department (AFCD). The response I got from the AFCD was that "there is no problem". Subsequently, when Typhoon Signal No. 8 was hoisted on a day during the summer holiday in Hong Kong, the said tree branch was broken by wind and it fell on to the road. Luckily, no one was injured. Even though I am not a professional, I could see that there was a problem. However, the authorities said after their study that "there is no problem".

Another complaint case involved a tree that appeared to be on the verge of collapse. Since an elderly person living in a cottage nearby felt his safety being threatened, I took a picture of it and wrote to the relevant department. However, the case was not properly dealt with despite the passage of six months and as a result, the tree finally collapsed. Luckily, it only fell down onto the other side of the cottage instead of onto the cottage itself. Although I made a complaint in my capacity as a Member, I could not solve such a simple problem. Therefore, we can see from these problems that there are many problems among various departments. In fact, I have raised my views with the Government in the past. Perhaps because I belong to the opposition camp and have left the Democratic Party, not to say any clout, the Government did not listen to my views. In fact, the simplest approach is to adopt a uniform regime in tree management. At

present, housing is also the sole responsibility of the Housing Department, so why can trees not be managed by a single department? The present situation is very complicated. Sometimes they are managed by the LCSD, and other times they are referred to the LandsD or the AFCD for management, thus leading to a waste of time. Moreover, it is also quite costly to prepare a report. I believe these departments, having finished handling a case, will have to spend tens of thousands dollars on preparing a complaint report. Therefore, this approach is extremely wasteful and the problem is also very serious.

Furthermore, it is also very time-consuming to handle problems relating to trees. The authorities may have to find someone to carry out an inspection and prepare a report first of all. Then, the report will be submitted to a superior, who may then refer the report to other departments after reading it. This may take one month or two. As a matter of fact, the authorities do not need to find a specialist to carry out inspections of trees. Regarding this kind of problems, the simplest approach is to assign a team to carry out an inspection directly upon receipt of a complaint. The problem will probably be dealt with straightaway. The Government should formally confer power on a professional team. After inspection, if these professionals consider that the matter can be dealt with right away, the problem can then be solved immediately, instead of duplicating the effort under a complicated structure. Since the Government can set up a professional team to take up this job, it has to trust the team and entrust the team to undertake the task. It should not be afraid of complaints by the public for wrongly felling trees. If they should fell trees by mistake and show a lack of professionalism, the Government can dismiss them. Since the Government has to pay money to hire the professionals, just like the staff hired by the Hong Kong Monetary Authority (HKMA), they are also paid handsomely. Does it mean that whenever the HKMA has to formulate a policy, it has to carry out consultations repeatedly? Therefore, when a professional department is tasked to handle a problem, we have to trust its professional capability.

For this reason, I hope that the Secretary can take bold measures to deal with the problem. The Government should not rely on the shilly-shallying Chief Secretary for Administration. I always think that it is very dangerous for the Government to let the shilly-shallying Chief Secretary for Administration to deal with trees because if the trees continue to be dangle, they will collapse and the consequences are extremely serious. Therefore, the Government has to reform

the system comprehensively, enhance administrative efficiency comprehensively and raise the professional standard fully, before appointing and authorizing a professional team to deal with it. In this way, the problem can be solved.

In addition, the Government also has to make improvements in various ares, such as equipment and facilities, for example, by using ultrasound or increasing the use of machinery or instruments, as well as taking actual measurements on site in some circumstances. When problems arise, action should be taken immediately to deal with the problem because not only is the safety of lives involved, it is also beneficial to the cityscape or other areas. I hope the Secretary can I have waited for four days before I could express my views on this issue today. I hope that after this last meeting, the Secretary can address this problem of tree management properly. Thank you.

PRESIDENT (in Cantonese): This is the most moderate speech given by Mr Albert CHAN in the whole term.*(Laughter)*

MR CHAN HAK-KAN (in Cantonese): President, I have also waited for nearly three days before I have this opportunity to speak on tree management here. First of all, I have to thank Mrs IP for moving this adjournment debate because we can see that in the past few days, quite a number of trees have collapsed. Apart from the tree at Tung Wah Hospital she mentioned just now, in fact, if Members have read the newspapers today, they would also have learnt that a driver was almost crushed by a collapsing tree driving in the vicinity of the Gold Coast in Tuen Mun.

I recall that the Chief Executive indicated in the Question and Answer Session a couple of days ago that we cannot rely solely on the Government when it comes to tree management. We also have to raise the public awareness of tree safety. In fact, we in the Democratic Alliance for the Betterment and Progress of Hong Kong strongly agree with this point and we have long since embarked on the relevant work. Last year, through local networks, we established tree inspection teams, identified sick trees and referred them to the Development Bureau. This year, using the same method, we have carried out a search in the 18 districts. The inspectors we sent out are ordinary members of the public and colleagues rather than professionals. However, we have made reference to the

guidelines of the Development Bureau on how to observe if trees are dangerous or not. After spending about one day carrying out inspections in the 18 districts, we identified 11 trees with more serious problems. Of course, the information has already been given to Mrs Carrie LAM. But I would also like to take this opportunity to talk about the 11 trees, which are actually very typical examples bringing out such issues as powers and responsibilities and other issues relating to knowledge of maintenance.

One of the trees identified was located in an old village school at Tai Po Old Market. The tree had in fact decayed seriously and there was a big hole in the middle of the root. While covering the story, a journalist who was bigger in build than me demonstrated how that his whole body could fit into the tree hole. Members can imagine how serious the tree had decayed. However, despite the school authority having made a report to the LCSD and requested an inspection, they were told by people from the LCSD that in fact, there was no immediate danger. However, we found a tree expert to study the photos of the tree. The tree expert thought that the tree in fact posed a danger and immediate follow-up action was required. President, what does this example show? The person in charge of the school contacted the LCSD. In theory, they should have actually contacted the Education Bureau because the tree is located within bounds of the school. However, these two departments shifted the responsibility to one another. The Education Bureau said that it had got no money to help the school remove the tree and the latter should approach the relevant department for follow-up action if it wanted to remove it. Therefore, we can see that this is a problem of unclear delineation of powers and responsibilities among departments.

The second problem that I wish to point out is that some front-line tree management staff are actually not up to scratch in terms of professional standard. Regarding the tree I mentioned just now, in fact, there were the tree hole and dead branches and there were also fungus on the trunk. According to the LCSD, the tree posed no immediate danger of collapse, but the tree expert said that the tree was actually critically ill and had to be removed immediately, or else there would be a danger of tree collapse.

The third problem arises from substandard professionalism, that is, the problem of insufficient manpower in front-line tree management. At present, the LCSD is the department with the largest number of tree management staff, at 210 officers. However, the number of trees managed by them is actually more

than 700 000. In view of such tight manpower, how can they have the time to pursue further studies? How can they have sufficient time to raise their professional standard?

President, I remember that when the Tree Management Office (TMO) was set up in March, the community at large had high expectations of Secretary Carrie LAM and others. However, we can see that they have failed to deliver outstanding performance in tree management. Therefore, I think that the TMO should change or enhance its present role of central co-ordination and stop being a commander with no soldiers. Rather, there should be commanders as well as soldiers. Therefore, the DAB proposes the establishment of a tree team in each district. They will mainly consist of dedicated officers from the LCSD who will work together with front-line staff members from other government departments in tree management. I believe that this approach will be more effective.

President, I so submit.

MR KAM NAI-WAI (in Cantonese): President, I have made it a point to speak on behalf of the Democratic Party on tree management in the last meeting of this Session. Reviewing the records of the last meeting before the end of the Session last year, I found that the adjournment debate was also about tree management. Members will know if they look up the records of meeting.

Going through the records of meeting, I found that Secretary Carrie LAM drew three conclusions at that time: First, it was hoped that scientific evidence would be available to reinforce the assessment on the risk posed by trees; second, it was hoped that a team on greening, landscaping and tree management could be established. Members are also aware that the Government has allocated a funding of \$16 million to establish such a body; third, at that time, a number of Members requested legislation on trees. At that time, the Secretary indicated that they had not passed a death sentence on legislation on tree conservation, but it was felt that there was no need to introduce legislative amendments at that stage. These are the three conclusions drawn on that day.

The Tree Management Office (TMO) was set up. At that time, Secretary Carrie LAM indicated that she hoped the TMO could establish its authority and

credibility and offer expert advice. Regarding this, I only wish to cite an example. Please allow me to read out a letter. This is a reply from the Government Property Agency (GPA) dated 6 July to me because at that time, there were many stonewall trees at the Former Hollywood Road Police Married Quarters, that is, where the Chief Executive used to live, and some of the over 1 000 trees listed in the report can be found there. At that time, a resident complained that the long dangling roots of those tree were affecting the residents. The contents of the letter are as follows: "A letter from a member of the public was received on 12 April, saying that the aerial roots of the stonewall trees are too long and may touch pedestrians, causing the risk of coming into contact with germs and disturbance and therefore, requested appropriate pruning. Having received recommendations from a landscaping contractor of the property management company and views obtained from consultation with the Development Bureau (I understand it to mean the TMO), we arranged for the landscaping contractor of the property management company to tie up the aerial roots which are too long on 25 May 2010 to avoid affecting pedestrians. However, the tying up of the aerial roots concerned caused some members of the public to think that such a temporary measure might affect the normal growth of the trees. After consideration, it was decided on 12 June 2010 to first untie the aerial roots to reinstate their condition in order to minimize the impact on the normal growth of the trees." Up to now, in this case, the expert team of the TMO is still discussing what should actually be done with the aerial roots. This is really ridiculous. In fact, what kind of experts are they? What authority do they have? When a member of the public said that there was a problem, they tied up the tree roots, but when some other members of the public raised objection, they untied the roots again. What kind of experts are they? How can they establish any authority?

Due to the time constraint, let me be brief. I repeat, and I hope that the Secretary should seriously consider drawing up legislation on the conservation of trees. The most important point about this piece of legislation is to let the public see the determination of the Government in tree conservation. Members can further discuss its contents in detail. This is the first point. The second point is to increase the number of front-line staff members to inspect over a million trees in Hong Kong. The Government has spent \$16 million to create a bureaucratic structure and now, even the person-in-charge has left the post. There is an inadequate number of front-line staff members and low frequency of inspections.

The monitoring devices are also insufficient. All these have to be increased. Third, I hope that the Secretary can really employ some experts. We often think that Professor JIM, the "tree professor", is an expert. Is there actually any expert in the Government? Indeed, does the Government know it or not? Although visual inspection is an internationally recognized professional approach, it is now being seriously challenged and completely lacks credibility. Actually, what should be done in the future?

The last point I would like to raise is that I hope the Secretary can be accountable. Should any tree I do not mean that the Secretary must step down if any tree collapses. This is not what I mean at all. Rather, if a tree really collapses less than one or two months after the authorities have inspected it and considered that there is no problem, the Secretary really has to bow and step down. This will show that the Secretary's management approach is an utter failure. Like the tree collapse incident at Battery Path, the authorities had inspected the tree and considered that there was no problem, but, two to three months later, it collapsed and it was found that it was actually a hollow tree. Does this not show that the management is an utter failure? Please do not tell us that it is a very effective method adopted internationally. This would not do. The management problems and the management methodology make it impossible to accept that the Secretary is a very "good fighter". Her claim as a good fighter actually cannot make the public feel very safe.

Thank you, President.

MS AUDREY EU (in Cantonese): President, just now, you described Mr Albert CHAN's speech as the most moderate speech he has delivered in this term. I am wondering if it has anything to do with his voice or the contents of the speech. This is the first time I agree entirely with Mr CHAN's speech. His words of wisdom precisely pointed out the problems of trees in Hong Kong.

President, I would like to remind Members that nearly two years ago, a tree collapse accident occurred in Stanley on 27 August 2008. In that accident, a 19-year-old young lady, Ms CHONG Chung-yin, who had been admitted to the medical school of the University of Hong Kong, was killed. On 30 March 2009, the Coroner's Court reached a unanimous verdict that her death could have been

avoided and criticized the staff of the LCSD for lacking professional knowledge. The Court also advised the Administration to establish a department to be solely responsible for tree management and set up a notification mechanism. Subsequently, a task force, led by Chief Secretary for Administration Henry TANG, spent three months to compile a report for submission, though the Chief Secretary refused to heed the advice of the jury. In March this year, the Legislative Council set aside \$20 million to create 20 posts and establish the Tree Management Office (TMO) and the Greening and Landscape Office.

President, it is obvious that the Government has not learnt any lessons from the death of Ms CHONG Chung-yin and achieved any result in tree management. Recently, another tree collapse accident occurred in Yuen Chau Kok, Sha Tin, killing a cyclist, Mr CHOI Kit-keung. Like many other colleagues, I do not mean to require Bureau Directors to assume responsibility whenever someone was killed by a collapsed tree. But the problem is, after the occurrence of the tree collapse accident in Yuen Chau Kok, Sha Tin, Miss Tanya CHAN (she is absent today because she has joined the Urban Renewal Authority on an inspection visit) immediately requested the Government to provide her with an inspection report so that she could find out when the last inspection was conducted. As far as I understand it, she had not received any report the day she set off for the inspection. This reflects the problem of unclear demarcation of responsibilities. If an inspection system is in place, we can tell from the records who should bear responsibility and when inspections were carried out, when trees are found to have problems, and examine if there is any problem and where the problem lies. President, an accident has now occurred, but the Government fails to provide us with the relevant information. This proves that the Government has not learnt any lesson, and the relevant mechanism is totally ineffective. President, after listening to the speeches delivered by many colleagues, I find that the problems they have identified are similar, and that is, the Government should unify tree management and must not allow unclear demarcation of responsibilities. Although the TMO is responsible for co-ordination, the Government should not make the TMO, which is under the Development Bureau, solely responsible for co-ordination. There are lots of trees in Hong Kong. The Government must set up a uniform mechanism to take charge of tree management instead of allowing government departments to be responsible for tree management, depending on the location of the trees. Whenever there is a tree collapse accident, they will check which department should have jurisdiction

over the fallen tree and make sure it has nothing to do with them. This attitude of passing the buck can never get the job done.

Besides, many colleagues have just mentioned the problem of professional training. Mr KAM Nai-wai has also mentioned a tree law. However, the law must be binding on the Government to make it deal with the relevant problems seriously. Otherwise, once a problem is encountered, the Government will only pass the buck on certain excuses instead of putting in place a mechanism for meting out proper reward and punishment in accordance with the law.

President, I know that the Government just published a form yesterday or the day before. However, this form is not the inspection form mentioned earlier by Chief Secretary Henry TANG. Instead, it can be filled out by members of the public to report on tree problems. Yesterday, Prof JIM pointed out that the Government had not done enough in this aspect and would possibly send out confusing messages. President, all in all, there is still a lot to be done by the Secretary in this respect.

MR ALAN LEONG (in Cantonese): President, Mr Albert CHAN has earlier shared his words of wisdom with the Secretary. I looked up the record and found that the Council was also adjourned for the purpose of debating tree management on 8 July last year. During the debate, Miss Tanya CHAN and I shared our words of wisdom separately with the Government, and they go like this: "running to a standstill and letting slip a golden opportunity" and "sticking in the old rut and persisting with its stubbornness". President, one year on, I believe our words can still describe accurately the way in which tree problems are being handled by the Government.

President, we must find out the cause of tree collapses in order to prevent the recurrence of such tragedies. However, officials would definitely blame strong winds and heavy rains whenever a tree fell. In fact, strong winds and heavy rains would only result in fracture or collapse of trees which have been growing unsatisfactorily. They would not cause a tree to fall.

In June last year, Chief Secretary Henry TANG announced the Report of the Task Force on Tree Management. He insisted on sticking to the usual practice of allowing 16 different departments to manage trees on their own, and

refuse to enact a tree law. What is more, he chose to set up the Tree Management Office (TMO) and the Greening and Landscape Office. In my opinion, this is not simply duplication and redundancy, it is utterly extra duplication and redundancy. The unclear demarcation of responsibilities has really made the situation very confusing.

President, I wonder if you have heard the rumour that when the tree outside the Central Government Offices fell two or three weeks ago, the LCSD sent its staff to cut the tree the next morning. When the staff were cutting the tree and prepared to remove all of its remnants, they were stopped by the staff of the TMO, who said that they had to inspect the remnants of the tree to find out the cause of its collapse. As a result, the LCSD was told not to remove the remnants of the tree. We can tell from this incident that the communication between the TMO and the LCSD was extremely poor. President, you can imagine this — if the staff of the TMO had arrived a bit late, the remnants of the tree would have been removed completely and no more investigation could be carried out.

President, both Ms Audrey EU and Mrs Regina IP mentioned earlier that the TMO had published a list of 1 154 trees and appealed to the citizens to jointly monitor them. They can fill in the form named "Tree Care Report" at the government website if tree problems are found. President, members of the public may now call at 1823 when tree problems are found. Of course, the callers will still have to wait for their calls to be transferred here and there before they can reach a department which is prepared to take up the case because, depending on the location of the tree concerned, their calls have to be transferred here and there before they can reach a department that is prepared to assume the responsibility. Now, on top of this, members of the public are even required to visit the website to fill in a form. I believe this will make the problem even more complicated.

In fact, President, no tree law has been enacted in Hong Kong. Hence, there is no law for government departments to follow when it comes to tree management. They can only rely on some administrative means, but this approach is threatening the safety of the people in Hong Kong every day. Meanwhile, the Government's chaotic administrative management and its failure to formulate long-term policy on tree protection for purposes of tree management are direct causes of the frequent occurrence of tree collapse accidents. I hope the Government can demonstrate its sincerity to tackle the administrative problem

in tree management at root and enact legislation promptly so as to really achieve harmony between men and trees and, preferably, create a green living environment.

Thank you, President.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): If not, I declare that Members have finished their speeches. I now call upon the Secretary for Development to reply.

SECRETARY FOR DEVELOPMENT (in Cantonese): President, I thank Members for their active participation in the discussion on tree preservation after this marathon four-day sitting. First of all, here, I thank Mrs Regina IP for proposing this adjournment debate today. Subsequent to the oral and written questions on 30 June and 7 July respectively, this occasion gives us another opportunity to explore together how to enhance tree preservation in Hong Kong.

In fact, in the past couple of weeks, due to some wind and rain in Hong Kong, there were a few more reports of tree collapses, thus arousing even greater public concern. Therefore, it is totally understandable that the Honourable Member proposed this adjournment debate.

As two Members recalled, on 9 July last year, we also had an adjournment debate in this Council following the Government's release of the Report of Task Force on Tree Management (the Task Force Report), which was headed by the Chief Secretary for Administration. At that time, I cited the Foreword of the Task Force Report, in which the Chief Secretary for Administration pointed out that the release of the report was just a start. It was also hoped that it could give us an opportunity to work together to enhance tree preservation efforts in Hong Kong. President, with the establishment of the Tree Management Office (TMO) in March this year, we actually entered the stage of implementing the proposals made on that day. It is also hoped that through actual implementation, our

efforts can be enhanced and improved. Therefore, regarding the criticisms made by the six Members today, I accept them wholeheartedly and the TMO under my supervision will make even greater efforts in the future.

In fact, the greatest challenge in tree preservation is how to achieve "People, Trees, Harmony", as stated in the title of the Task Force Report prepared by the Task force led by the Chief Secretary for Administration last year. We all hope that there can be green and shady trees everywhere in Hong Kong. However, it is really a great challenge to ensure public safety in such an environment. First of all, let me state one point here. I am aware that regarding this adjournment debate, Members have made a request to the Government through Ms Miriam LAU, Chairman of the House Committee, that the Chief Secretary for Administration should attend in person to give a reply. However, in fact, since the Task Force published the Task Force Report in June, the co-ordination of tree management policies has been handed over to the Development Bureau. In March this year, with the allocation of resources and approval by the Establishment Subcommittee of the Legislative Council, the Development Bureau also established the TMO. For this reason, it is most appropriate for me, being the Secretary for Development, to attend in person to respond in this debate and listen to the views of various Members. However, this does not mean that the Chief Secretary for Administration does not care about tree management in Hong Kong. In this week, we have actually given a briefing to the Chief Secretary for Administration to give him a general idea of the follow-up measures we are taking in relation to the tree collapse incidents in recent days.

As I have said, the TMO was formally set up only in March this year. Members of the public and Members have great expectations for this new office, and so do I as the Secretary for Development. However, of course, I do not just have expectations for the TMO but also a great responsibility to enable the TMO to function in the way conceived by us initially. The TMO belongs to the Greening, Landscape and Tree Management Section of the Development Bureau. I must clarify one point here as Mrs Regina IP mentioned just now a colleague who is heading the Greening, Landscape and Tree Management Section for the time being. Earlier on, over a chat, it is true that when Mrs IP asked why this colleague was still on acting appointment and I gave her an explanation. However, as I am concerned that Mrs IP might continue to contact this colleague, I told her that this colleague had already tendered a resignation and would leave

the Government very soon. I certainly find it a great pity that such a young and promising Administrative Officer has resigned. However, I also noticed that Mrs IP used three words, saying that the colleague was going to "make real money". First of all, I have to clarify that these were not my words. I certainly will not describe my own colleagues as such because the best thing that I learnt from Mrs IP is that she cares very much about junior Administrative Officers as I had been under Mrs IP for two years. Moreover, I think that even if a colleague switches to working for the Hong Kong Monetary Authority — this is also an open fact because it was also reported in the press — it is also a manifestation of the spirit of serving the community. I wish to state this point because I do not wish to make my colleagues who are watching the live broadcast on the television feel bad.

In the past three years, in fact, in many of the inter-bureau and inter-departmental work or government work described by Members as being "fragmented responsibilities", a more focused unit is needed to handle this problem because it is indeed quite complicated. It is not practical to expect a single department to handle what happens in the community every day single-handedly. For this reason, in the past three years, I also learnt that even at the risk of being criticized by Members for continuous expansion, I still set up some offices focused on specific tasks. Basically, they are only offices of a very small scale. First, there is the Commissioner for Heritage's Office to handle issues of heritage conservation in Hong Kong; then, there is the Harbourfront Commission to deal with harbourfront beautification in Hong Kong. It is because I think that this kind of focused units can perform three major functions within the Government, including supervision, advocacy and leadership.

Take tree management as an example, regarding supervision, our first task is to carry out tree risk assessment according to the Chief Secretary for Administration's Task Force Report. In particular, taking into account the fact that the rainy season has started since its establishment in March, it has been our prime task since March to carry out "area-based" assessment, then a "tree-based" risk assessment. Some Members also learnt that yesterday, we it is not for the sake of today's debate as we could not have anticipated that this debate would turn out to be a marathon, that it would not be my turn to speak until the fourth day. Conversely, it is because in answering Mrs IP's question on my behalf in my absence some time ago that the Secretary for the Environment (probably on 30 June) gave the undertaking that we would surely try our best to release in

mid-July the information on the overall condition of the trees on which detailed inspections mentioned by me earlier on have been carried out and upload such information onto the website. We have released the information on a total of 1 154 trees and I am not going to relate the details here.

There are two aims in publishing tree information. The first is to enhance the transparency of tree risk management; and the second is, and I believe the President will also agree, to promote community-wide surveillance and encourage active participation of the public in tree preservation in Hong Kong. After all, there are numerous trees in Hong Kong and they number at tens of thousands or millions. They cannot be dealt with simply by increasing departmental manpower. In this regard, my special thank goes to Mr CHAN Hak-kan. The Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) has been carrying out tree monitoring at the district level for a long time, and it has given us information on 11 trees. We have also followed up each of these trees. Seven of them are on Government land and four on private land. Regarding trees on Government land, Mr CHAN has talked about trees in schools. In fact, since the sites are under short-term leases — I remember that in another debate held earlier on, Mr Alan LEONG talked about the Wofoo Tai Po Football Club and ways of letting them play football — therefore, we also require tenants to deal with the trees on their sites and the Lands Department will also follow up. Allow me to do a bit of shoe-shining here. The DAB's follow-up actions at the district level really live up to the slogan "Work sincerely for Hong Kong". I hope that in the future, be it with district groups or political parties, there will be room for co-operation in this regard.

Another supervisory effort is of course to prepare a random check report and carry out inspections on the work of various management departments. A number of Members still do not fully understand how the division of labour in the Government is like and think that we can set up a single department to manage all the trees on Hong Kong Island, in Kowloon and in the New Territories. This is impossible and we have repeatedly stated the reasons for this. Most importantly, we must have a clear division of labour to let each department responsible for the maintenance of its own property, facilities and land to be also responsible for the maintenance of the trees there. This practice has also been applied to slope management in Hong Kong in the past 30 years. Slope management in Hong Kong is internationally renowned and it also proves that this kind of integrated approach, that is, each department being responsible for the maintenance of its

own slopes, or, in terms of the current work in question, that is, tree management, is actually efficient as well as practical. However, it is certainly necessary to have a central authority, that is, the TMO, to supervise and provide guidance in terms of the division of labour, delineation of scope as well as sharing experience.

Another thing that we need to supervise is of course the following up of complaints by departments. Here, Mr LEUNG may perhaps try to call the hotline 1823 later to see that we have made improvements. Any member of the public can lodge complaints concerning trees by calling the hotline 1823. Our colleagues answering the calls are not allowed to tell members of the public to contact a certain department, that is to say, we will not refer him to department A, B or C. Rather, the 1823 call centre will surely process the public enquiries and complaints, obtain all the information and identify the responsible departments through our internal mechanism so as to take follow-up action and then give an account to the complainants. However, it is true that we have currently accumulated some complaints pending action. President, we also hope that a better job can be done in this regard.

The second job of the TMO is to provide guidance. We must enhance the tree preservation knowledge of managers and front-line colleagues. Therefore, at present, different experts may hold different views upon inspecting the same tree. However, we hope that the professional standard can be raised by enhancing the knowledge of managers and front-line colleagues. So far, we have already provided training to more than 2 200 officers of government departments and staff of contractors. Of course, there are also experts within the Government. We have more than 130 colleagues who are Certified Arborist of the International Society of Arboriculture in various management departments and the TMO. Even among the 15 colleagues who have taken up their posts in the Development Bureau, 11 of them possess professional arborist qualifications.

The other aspect of guidance work is, of course, public education to achieve community-wide surveillance of trees in our community. The LCSD has now more than 1 800 District Tree Care Volunteers and it has also appointed 180 Green Ambassadors from local communities to assist us in promoting public education and community surveillance. The information disseminated on the Internet yesterday and this "Tree Care Report" standard form uploaded onto the tree website (including e-forms and standard tree care reports for download) are also designed for this purpose. Therefore, if Members care to take a look at this

"Tree Care Report", they will find that it is actually an outline to help members of the public identify problematic trees. Moreover, we have also prepared some simple pictorial guides and sent them to the relevant owners' incorporations and property management companies. Later, education toolkits for schools will also be produced to enable students to participate in tree care.

Thirdly, the role played by the TMO is of course that of leadership. It is pointed out in the Task Force Report published in June that in order to properly manage the trees in Hong Kong and deal with the issue of tree safety, we must get to the root of the problem. In other words, when we carefully consider the plans for greening and tree planting, the Development Bureau can also assume a leading role. We also notice that in fact, in tree planting, we should perhaps start from macro town planning and quality city. Therefore, the leading role can be played in such upstream initiatives as the planning standards for greening in the future, reserving sufficient planting space, planting strategies, as well as in such relevant areas as tree species. It is hoped that through the TMO of the Development Bureau, in the end, the upstream initiatives, monitoring and supervision can be properly carried out to formulate a comprehensive policy on tree preservation in Hong Kong.

Regarding our research efforts as raised by a Member, it is true that since the publication of our Task Force Report last year and after I have made some indications here, we have also launched some scientific research on trees. In this fiscal year, we will undertake four research studies, including one on common biological tree decaying agents in Hong Kong. Therefore, in order to perform a leading role properly, we must tap on collective wisdom and learn with humility in order to enhance exchanges among local, overseas and Mainland tree experts. Later on, an expert panel on tree management will be set up under the TMO. We are currently looking for experts to join the panel. As for the liaison with the Mainland, there is already a Hong Kong-Guangdong Afforestation and Conservation Special Panel to carry out research and study in this regard.

President, despite the length of the meeting today, I believe there are still Members who have not spoken or attended this meeting but who also have a passion for tree management and many insightful views. In fact, the Panel on Development has already listed this motion on the agenda for the meeting on 27 July. I hope that on that occasion, I can hear more Members give us their

valuable opinions, so as to enable us, together with our tree management departments, to do a better job of tree care in Hong Kong.

Thank you, President.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That this Council do now adjourn. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

PRESIDENT (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the motion passed.

END OF SESSION

PRESIDENT (in Cantonese): I now adjourn the Council. I wish Members a more wonderful time in the next three months than they have had in the past nine.

Adjourned accordingly at twenty-eight minutes to Three o'clock on the afternoon of 17 July 2010.

Annex I

MINIMUM WAGE BILL

COMMITTEE STAGEAmendments to be moved by the Secretary for Labour and Welfare

<u>Clause</u>	<u>Amendment Proposed</u>
2	<p>(a) In the definition of “employee”, by deleting “or (4)” and substituting “, (4) or (5)”.</p> <p>(b) In the definition of “employee with a disability”, by deleting “has been assessed under Schedule 2” and substituting “is stated in a certificate of assessment that has effect for the purposes of section 8(1)(b)”.</p> <p>(c) In the definition of “student intern”, by deleting everything from “means” to “for which” and substituting –</p> <p style="padding-left: 40px;">“means –</p> <p style="padding-left: 80px;">(a) a student undergoing a period of work arranged or endorsed by an education institution specified in Schedule 1 in connection with an accredited programme being provided by the institution to the student; or</p> <p style="padding-left: 80px;">(b) a student resident in Hong Kong and undergoing a period of work arranged or endorsed by an institution in connection with a non-local education programme being provided by the institution to the student,</p> <p style="padding-left: 40px;">for which”.</p> <p>(d) In the English text, in the definition of “wages”, by deleting the full stop at the end and substituting a semicolon.</p>

(e) By adding –

““assessment-opting PWD” (選擇受評估殘疾人士) means a PWD who, in accordance with section 3A(2) of Schedule 2, has elected to have an assessment made under that Schedule of his or her degree of productivity in performing the work required under the contract of employment;

“exempt student employment” (獲豁免學生僱用) – see section 2A;

“non-local education programme” (非本地教育課程) means a full-time programme of education which leads to the award of a non-local academic qualification which is at the level of degree or higher;

“option form” (選擇表格) means a form referred to in section 3A of Schedule 2;

“work experience student” (工作經驗學員) means a student who –

(a) is enrolled in an accredited programme; or

(b) is resident in Hong Kong and enrolled in a non-local education programme,

and who is engaged under a contract of employment at the beginning of which he or she is under the age of 26 years.”.

New By adding –

“2A. Exempt student employment

A work experience student and his or her employer may agree to treat a continuous period of up to 59 days during the contract of employment (“the current contract”) as a period of exempt student employment if –

(a) no period during another contract of employment to which the work experience student was a party and that commenced in the same calendar year as the current contract was a period of exempt student

employment; and

- (b) the work experience student provides to the employer before the commencement of the current contract a statutory declaration (or copy of a statutory declaration) made by him or her verifying the fact set out in paragraph (a).”.

3(1) By deleting everything after “wage period” and substituting –

“include any time during which the employee is, in accordance with the contract of employment or with the agreement or at the direction of the employer –

- (a) in attendance at a place of employment, irrespective of whether he or she is provided with work or training at that time; or
- (b) travelling in connection with his or her employment excluding travelling (in either direction) between his or her place of residence and his or her place of employment other than a place of employment that is outside Hong Kong and is not his or her usual place of employment.”.

3 By deleting subclause (2).

5(2) By deleting “for an hour (or any part of an hour) not worked” and substituting “for any time that is not hours worked”.

5(5) (a) By adding “(1),” after “subsections”.

- (b) By deleting “in a wage period after the first 7 days of that period, or within 7 days after the end of a wage period,” and substituting “, with

the prior agreement of the employee, at any time after the first 7 days of a wage period but before the end of the 7th day immediately after that period”.

- (c) By adding “under the contract of employment” after “otherwise payable”.

- 6(2) By deleting “or (2A) of that Ordinance” and substituting “of that Ordinance or who is engaged under a contract of apprenticeship registered under the Apprenticeship Ordinance (Cap. 47)”.

- 6 By adding –

“(5) This Ordinance does not apply to a work experience student during a period of exempt student employment.”.

- 8(1) (a) In paragraph (b), by deleting “provided under section 5 of Schedule 2; and” and substituting “referred to in section 5 of Schedule 2;”.

- (b) By adding –

“(ba) for an assessment-opting PWD who continues to be employed to do the same work for the same employer, until the end of the day on which the assessment of his or her degree of productivity in performing that work is completed under Schedule 2, the hourly rate that is the percentage specified in the option form of the prescribed minimum hourly wage rate; and”.

- 8(2) (a) By adding “who has undergone a trial period of employment” after “PWD”.

- (b) By deleting “of a trial period of employment” and substituting “of the trial period”.

8 By adding –

“(4) Schedule 2 also provides for determining the percentage of the prescribed minimum hourly wage rate that is applicable to an assessment-opting PWD until the end of the day on which the assessment of his or her degree of productivity in performing the work required under the contract of employment is completed under that Schedule.”.

10(2) In paragraph (b), by deleting everything after “public officers” and substituting –

“of whom –

- (i) not more than 3 must be persons who, in the opinion of the Chief Executive, have knowledge of, or experience in, matters relating to the labour sector;
- (ii) not more than 3 must be persons who, in the opinion of the Chief Executive, have knowledge of, or experience in, matters relating to the business sector; and
- (iii) not more than 3 must be persons who, in the opinion of the Chief Executive, have knowledge of, or experience in, a relevant academic field; and”.

10(3) By adding “and, in appointing members under subsection (2)(b) and (c), the Chief Executive may have regard to the need for there to be a balanced number of members appointed under each of the subparagraphs of paragraph (b) of subsection (2) and under paragraph (c) of that subsection” after “Chief Executive”.

11 By deleting subclause (1) and substituting –

“(1) The main function of the Commission is, when required

by the Chief Executive to do so, to report to the Chief Executive in Council its recommendation about the amount of the prescribed minimum hourly wage rate.”.

11(4) In the English text, by deleting “recommendations” and substituting “recommendation”.

13 By deleting the clause and substituting –

“13. Report of Commission

(1) The Chief Executive must require that a report under section 11(1) is made at least once in every 2 years.

(2) The Chief Executive must, as soon as practicable after receiving a report made under section 11, cause a copy of it to be published.”.

17 By adding –

“(3) For the purposes of section 2A, no account is to be taken of any period of employment that precedes the commencement of that section.”.

20(1) By deleting the proposed section 49A(3)(ea) and substituting –

“(ea) if the employee is an employee within the meaning of the Minimum Wage Ordinance (of 2010) and the wages payable to the employee in respect of any wage period are less than the amount specified in the Ninth Schedule (or the amount that bears the same ratio to that amount as the length of that wage period bears to the month in which that wage period falls, calculated where that wage period falls in more than one month

according to the number of days of that wage period falling in each particular month), the total number of hours (including any part of an hour) that are hours worked by the employee in that wage period;”.

20(2) (a) By adding –

“(3A) Despite subsection (3), subsection (1) must also be taken to require an employer to keep –

- (a) for an employee to whom the Minimum Wage Ordinance (of 2010) does not apply because of section 6(4) of that Ordinance, a document (or copy of a document) issued by an institution showing that the period of work is arranged or endorsed by the institution in connection with a programme being provided by the institution to the employee that is of a kind covered by the definition of “student intern” in section 2 of that Ordinance; and
- (b) for an employee to whom the Minimum Wage Ordinance (of 2010) does not apply because of section 6(5) of that Ordinance, the statutory declaration (or a copy of the statutory declaration) provided by the employee under section 2A(b) of that Ordinance and a document (or copy of a document) issued by an institution showing that the employee is at the commencement of the employment enrolled in a programme being provided by the institution that is of a kind covered by the definition of “work experience

student” in section 2 of that Ordinance.”.

(b) By adding –

“(5) The Commissioner may, by notice published in the Gazette, amend the Ninth Schedule.

(6) For the purposes of subsections (3)(ea) and (4), “hours worked” (工作時數), “wage period” (工資期) and “wages” (工資) have the same respective meanings as in the Minimum Wage Ordinance (of 2010).”.

New By adding immediately after clause 21 –

“21A. Ninth Schedule added

The following is added –

“NINTH SCHEDULE [s. 49A]

MONETARY CAP ON KEEPING RECORDS OF HOURS WORKED

per month”.”.

23 (a) By renumbering the clause as clause 23(2).

(b) By adding –

“(1) Schedule 5 to the Disability Discrimination Ordinance (Cap. 487) is amended by renumbering item 1 as item 4.”.

23(2) (a) By deleting “to the Disability Discrimination Ordinance (Cap. 487)”.

(b) By deleting –

“Part III Only a person”

and substituting –

“1. Part III Only a person”.

(c) In the proposed item 1, by adding a full stop after “Ordinance (of

- (b) In section 2(1), by adding “before commencing employment or before a variation of the terms of his or her contract of employment as to the kind of work to be done under that contract is due to take effect,” before “agree”.

- (c) In section 2(1), in the Chinese text, by adding “的安排” after “工期”.
- (d) By adding –

**“3A. PWDs employed before commencement
may opt for an assessment**

(1) A PWD who –

- (a) was employed immediately before the commencement of section 8;
- (b) continues to be employed to do the same work for the same employer; and
- (c) is employed at an hourly wage rate that is less than the first prescribed minimum hourly wage rate,

may, before the effective date of the first prescribed minimum hourly wage rate, elect to have his or her degree of productivity in performing the work required under the contract of employment assessed under this Schedule.

(2) An election is made by the employee signing an option form and giving it to his or her employer as soon as practicable after signing it.

(3) An option form must –

- (a) be in the form approved by the Commissioner;
- (b) specify the hourly wage rate (“the current contractual rate”) at which the PWD is then employed; and
- (c) specify the percentage of the first prescribed minimum hourly wage rate that the current contractual rate represents.

(4) The employer must countersign the option form before the effective date of the first prescribed minimum hourly wage rate and give a copy of it to the employee as soon as practicable after doing so.

- (5) This section is subject to section 4(5) of this Schedule.

3B. Other employees may opt for an assessment

(1) An employee who is a PWD (other than a PWD to whom section 2 of this Schedule applies who has chosen to undergo a trial period of employment or a PWD who is an assessment-opting PWD) may at any time, if he or she chooses to do so, seek to have his or her degree of productivity in performing the work required under the contract of employment assessed under this Schedule.

- (2) This section is subject to section 4(5) of this Schedule.”.

- (e) In section 4, by adding before subsection (1) –

“(1A) This section applies to an assessment under this Schedule with respect to the following employees –

- (a) a PWD who has chosen to undergo a trial period of employment under section 2 of this Schedule;
- (b) an assessment-opting PWD;
- (c) a PWD covered by section 3B of this Schedule who has chosen to have an assessment made.”.

- (f) In section 4(1), in the Chinese text, by adding “有關” after “執行”.
- (g) In section 4(2), by deleting “the employer, whether” and substituting “his or her employer. For a PWD who has chosen to undergo a trial period of employment under section 2 of this Schedule, that time may be”.
- (h) In section 4(5), by deleting “whose degree of productivity has been assessed” and substituting “in respect of whom an assessment of his or her degree of productivity has been completed”.
- (i) By deleting section 4(6).
- (j) In section 5(1), in the Chinese text, by adding “有關” after “執行”.

- (k) In section 5(2)(c), by deleting “by the PWD and the employer as well as”.
- (l) In section 5, by adding –
 - “(2A) The assessment of the degree of productivity of the PWD is completed for the purposes of this Ordinance when the certificate of assessment is signed by the approved assessor.
 - (2B) The PWD and the employer must countersign the certificate provided to them under subsection (1). On and from the first day after their doing so the certificate has effect for the purposes of section 8(1)(b).”.
- (m) In section 5(3), by deleting “signing” and substituting “countersigning”.

Schedule 4 In section 1(2), in the Chinese text, by deleting “任期” and substituting “任免”.

MINIMUM WAGE BILL

COMMITTEE STAGE

Amendment to be moved by the Secretary for Labour and Welfare

Clause

Amendment Proposed

Long title

By deleting “; to repeal the Trade Boards Ordinance”.

MINIMUM WAGE BILL

COMMITTEE STAGE

Amendments to be moved by the Honourable LEE Cheuk-yan

<u>Clause</u>	<u>Amendment Proposed</u>
2 [NEGATIVED]	<p>(a) In the definition of “employee”, by deleting “, (3)”.</p> <p>(b) By deleting the definition of “minimum wage” and substituting –</p> <p>““minimum wage” (最低工資) –</p> <p>(a) for an employee who is not a live-in domestic worker for a wage period, has the meaning given by section 7(2); or</p> <p>(b) for a live-in domestic worker for a wage period, has the meaning given by section 7(2A);”.</p> <p>(c) In the Chinese text, in the definition of “實習學員”, by deleting the full stop and substituting a semicolon.</p> <p>(d) By adding –</p> <p>““conversion multiplier” (轉換乘數) means the value specified in column 1 of Schedule 3A;</p> <p>“days worked” (工作日數), in relation to a live-in domestic worker, has the meaning given by section 3A;</p> <p>“live-in domestic worker” (留宿家庭傭工) means an employee who is employed as a domestic worker in, or in connection with, a household and who dwells in that household free of charge;</p> <p>“minimum daily wage rate” (每日最低工資額), in relation to a live-in domestic worker, means the wage rate derived by multiplying the prescribed minimum hourly wage rate by the conversion multiplier;”.</p>

3

[NEGATIVED]

By deleting the clause and substituting –

“3. Hours worked

The hours worked by an employee in a wage period include any time during which the employee is, in accordance with the contract of employment or with the agreement or at the direction of the employer –

- (a) in attendance at a place of employment, irrespective of whether he or she is provided with work or training at that time; and
- (b) travelling in connection with his or her employment –
 - (i) including travelling (in either direction) between his or her place of residence and his or her place of employment that is not his or her usual place of employment; and
 - (ii) excluding travelling (in either direction) between his or her place of residence and his or her usual place of employment.”.

New

[NOT PROCEEDED
WITH]

By adding –

“3A. Days worked

The days worked by a live-in domestic worker in a wage period include any day on which the live-in domestic worker is, in accordance with the contract of employment or with the agreement or at the direction of the employer, doing work or receiving training, irrespective of the number of hours the live-in domestic worker is doing work or receiving training on that day.”.

5

[NEGATIVED]

By adding –

“(2A) A payment made to a live-in domestic worker in any wage period for any day that is not days worked by the live-in domestic worker must not be counted as part of the wages payable in respect of that or any other wage period.”.

5

[NEGATIVED]

By adding –

“(2B) A premium pay made to an employee in any wage period for any time worked by the employee on a holiday or a rest day, or for an overtime hour (or any part of an overtime hour) worked by the employee must not be counted as part of the wages payable in respect of that or any other wage period.”.

6

[NEGATIVED]

By deleting subclause (3) and substituting –

“(3) Sections 3, 5(2), 7(2), 8 and 17(1) and (2) do not apply to a live-in domestic worker.”.

7

[NEGATIVED]

By adding –

“(2A) The minimum wage for a live-in domestic worker for a wage period is the amount derived by multiplying the total number of days worked by the live-in domestic worker in the wage period by the minimum daily wage rate.”.

10(2)

[NEGATIVED]

In paragraph (c), by adding “non-voting” after “other”.

10

[NEGATIVED]

By adding –

“(3A) When appointing a member referred to in subsection (2)(b)(i), the Chief Executive must have regard to any nomination made for the purposes of such appointment by any one or more of the labour organizations specified in Schedule 3B.”.

11

[NOT PROCEEDED
WITH]

By deleting subclause (1) and substituting –

“(1) The main function of the Commission is, when required by the Chief Executive to do so, to report to the Chief Executive in Council its recommendation about the amount of the prescribed minimum hourly wage rate.”.

11

[NEGATIVED]

By adding –

“(1A) Another function of the Commission is, when required by the Chief Executive to do so, to report to the Chief Executive in Council its recommendation about the value of the conversion multiplier.”.

- 11
[NEGATIVED]
- By deleting subclause (3) and substituting –
- “(3) In performing its functions, the Commission must have regard to –
- (a) the needs of employees and their families, taking into account the general level of wages, the cost of living, social security benefits, and the relative living standards of other social groups; and
 - (b) economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment.”.

- 11(4)
[NOT PROCEEDED WITH]
- In the English text, by deleting “recommendations” and substituting “recommendation”.

- 11
[NOT PROCEEDED WITH]
- By adding –
- “(5) The Chief Executive must require that a report under subsection (1) is made at least once in every year.”.

- 13
[NOT PROCEEDED WITH]
- By deleting the clause and substituting –
- “13. Report of Commission**
- The Chief Executive must, as soon as practicable after receipt of a report made under section 11, publish a copy of the report.”.

- 15
[NEGATIVED]
- (a) In the heading, by deleting “**Schedule 3**” and substituting “**Schedules 3 and 3A**”.
 - (b) By adding –

“(1A) The Chief Executive in Council may, by notice published in the Gazette, amend Schedule 3A to –

 - (a) specify in column 1 a conversion multiplier or increase or reduce the then current conversion multiplier specified in that column; and
 - (b) specify in column 2 the effective date for any amendment referred to in paragraph (a).”.

- 15(2)
[NEGATIVED]
- (a) By adding “or (1A)” after “subsection (1)”.
 - (b) By adding “or (1A)” after “section 11(1)”.

16

{NEGATIVED}

- (a) In the heading, by adding “, 3B” after “2”.
- (b) In subclause (1), by deleting “or 2” and substituting “, 2 or 3B”.

17

{NEGATIVED}

By adding –

“(2A) If the relevant date is a date after the beginning of a wage period of a live-in domestic worker, in calculating the minimum wage for the live-in domestic worker for that period no account is to be taken of any day worked by the live-in domestic worker in that period before that relevant date nor of any wages payable to the live-in domestic worker for any such day.

(2B) In subsection (2A), “relevant date” (有關日期) means –

- (a) the effective date of the first prescribed minimum hourly wage rate; or
- (b) the effective date of the first conversion multiplier,

whichever is the later.

(2C) If the minimum daily wage rate is increased or reduced under section 15(1) or (1A) after the beginning of a wage period of a live-in domestic worker, in calculating the minimum wage for the live-in domestic worker for that period the increased or reduced rate only applies to any day worked by the live-in domestic worker on or after the effective date of the increase or reduction.”.

New

By adding immediately before clause 20 –

{NEGATIVED}

“19A. Information to employees

Section 45 of the Employment Ordinance (Cap. 57) is amended by adding –

“(1A) If an employer is required under section 49A to set out in the wage and employment record particulars of a kind referred to in section 49A(3)(ea) of an employee in a wage period, the employer shall, upon receipt of a written request from that employee, inform that employee of –

- (a) the total number of hours that are hours worked by that employee in that wage period referred to in section 49A(3)(ea);
- (b) the wages, calculated in accordance

with section 5 of the Minimum Wage Ordinance (of 2010), paid to that employee for the total number of hours referred to in paragraph (a) in that wage period; and

- (c) the wages other than those referred to in paragraph (b) (if any) paid to that employee in that wage period.

NOT PROCEEDED
WITH

(1B) If an employer is required under section 49A to set out in the wage and employment record particulars of a kind referred to in section 49A(3)(eb) of an employee in a wage period, the employer shall, upon receipt of a written request from that employee, inform that employee of –

- (a) the total number of days that are days worked by that employee in that wage period referred to in section 49A(3)(eb);
- (b) the wages, calculated in accordance with section 5 of the Minimum Wage Ordinance (of 2010), paid to that employee for the total number of days referred to in paragraph (a) in that wage period; and
- (c) the wages other than those referred to in paragraph (b) (if any) paid to that employee in that wage period.”.”.

20(1)
NEGATIVED

By deleting “of the Employment Ordinance (Cap. 57)”.

20(1)
NEGATIVED

By adding –

- “(eb) if the employee is a live-in domestic worker, the total number of days that are days worked (within the meaning of the Minimum Wage Ordinance (of 2010)) by the employee in any wage period;”.

20(2)
NEGATIVED

By adding –

- “(4A) Nothing in subsection (1) requires an employer of a live-in domestic worker to set out in a record particulars of a kind

referred to in subsection (3)(*ea*) of the live-in domestic worker.

(4B) Nothing in subsection (1) requires an employer of a live-in domestic worker to set out in a record particulars of a kind referred to in subsection (3)(*eb*) for any wage period, or part of a wage period, of the live-in domestic worker that occurred before the relevant date.

(4C) In subsection (4B), “relevant date” (有關日期) means the date referred to in section 17(2B) of the Minimum Wage Ordinance (of 2010).

(4D) In this section, “live-in domestic worker” (留宿家庭傭工) has the same meaning as in the Minimum Wage Ordinance (of 2010).”.

21

NEGATIVED

By deleting the clause and substituting –

“21. Powers of officers

Section 72(1)(*b*) is amended by repealing everything after “this Ordinance” and substituting –

“and –

- (i) in the case of a record which includes particulars required to be included under section 49A(3)(*ea*), require that the particulars under section 49A(3)(*a*), (*d*), (*e*), (*ea*) and (*f*) are produced in a single document; or
- (ii) in the case of a record which includes particulars required to be included under section 49A(3)(*eb*), require that the particulars under section 49A(3)(*a*), (*d*), (*e*), (*eb*) and (*f*) are produced in a single document,

and inspect, examine and copy the same;”.

New

NOT PROCEEDED
WITH

By adding –

“SCHEDULE 3A

[ss. 2 & 15]

CONVERSION MULTIPLIER

Conversion multiplier

Effective date”.

New
NOT PROCEEDED
WITH

By adding –

“SCHEDULE 3B

[ss. 10 & 16]

SPECIFIED LABOUR ORGANIZATIONS

1. Hong Kong Confederation of Trade Unions.
2. The Federation of Hong Kong and Kowloon Labour Unions.
3. The Hong Kong Federation of Trade Unions.”.

MINIMUM WAGE BILL

COMMITTEE STAGEAmendments to be moved by the Honourable IP Wai-mingClauseAmendment Proposed

10(2)

NOT PROCEEDED
WITH

In paragraph (b), by deleting everything after “public officers” and substituting —

“of whom —

- (i) not more than 3 must be persons who are members of the Labour Advisory Board, elected by employee unions registered under the Trade Unions Ordinance (Cap. 332);
- (ii) not more than 3 must be persons who, in the opinion of the Chief Executive, have knowledge of, or experience in, matters relating to the business sector;
- (iii) not more than 3 must be persons who, in the opinion of the Chief Executive, have knowledge of, or experience in, a relevant academic field; and”.

10

NEGATIVED

By adding —

“(3A) Only the chairperson and 9 other members who are not public officers have the voting rights.”.

MINIMUM WAGE BILL

COMMITTEE STAGE

Amendments to be moved by the Honourable Emily LAU Wai-hing

<u>Clause</u>	<u>Amendment Proposed</u>
10 [NEGATIVED]	By adding – "(3A) In appointing the chairperson and members under subsection (2)(a), (b) and (c), the Chief Executive must have regard to a participation target of at least 30% of each gender."
10 [NEGATIVED]	By adding – "(3B) A member who is not a public officer may not be appointed as a member continuously for more than 6 years and may not serve as a member of more than 5 other public sector advisory and statutory bodies at any one time."

MINIMUM WAGE BILL

COMMITTEE STAGE

Amendments to be moved by the Honourable WONG Kwok-hingClauseAmendment Proposed

11

[NEGATIVED]

By deleting subclause (3) and substituting –

“(3) In performing its functions, the Commission must have regard to the need to assure the minimum wage—

- (a) must not be lower than the comprehensive social security level; and
- (b) is enough to afford employees’ personal and their families’ necessary living expenses.”.

11

[NEGATIVED]

By adding —

“(5) The Chief Executive must require that a report under subsection (1) is made at least once in every year.”.

MINIMUM WAGE BILL

COMMITTEE STAGE

Amendments to be moved by the Honourable Cyd HO Sau-lan

Clause

Amendment Proposed

15

[NEGATIVED]

By deleting subclause (4).

MINIMUM WAGE BILL

COMMITTEE STAGE

Amendments to be moved by the Honourable CHEUNG Kwok-che

ClauseAmendment Proposed

23

[NEGATIVED]

By deleting the clause and substituting –

“23. Further exceptions to this Ordinance

(1) Schedule 5 to the Disability Discrimination Ordinance (Cap. 487) is amended by renumbering item 1 as item 3.

(2) Schedule 5 is amended by adding –

“1. Part III

Only a person who holds a valid Registration Card for People with Disabilities issued by the Central Registry for Rehabilitation established by the Government being allowed to have his or her degree of productivity assessed under Schedule 2 to the Minimum Wage Ordinance (of 2010).

2. Part III

An employer in accordance with the Minimum Wage Ordinance (of 2010), paying a minimum wage to a person with a disability that is less than that payable to a person without such a disability.”.”.

Annex II

STAMP DUTY (AMENDMENT) BILL 2010

COMMITTEE STAGE

Amendments to be moved by the Honourable James TO Kun-sun

<u>Clause</u>	<u>Amendment Proposed</u>
2 [NEGATIVED]	<p>By deleting the clause and substituting-</p> <p>"2. Commencement</p> <p>(1) Subject to subsections (2) and (3), this Ordinance is deemed to have come into operation on 1 April 2010.</p> <p>(2) Sections 2A, 3(1A) and 4(5), (6) and (7) come into operation on the day on which this Ordinance is published in the Gazette.</p> <p>(3) For the avoidance of doubt, sections 2A, 3(1A) and 4(5), (6) and (7) only apply to an agreement for a sub-sale or a further agreement for a sub-sale as referred to in those provisions executed on or after the day on which this Ordinance is published in the Gazette."</p>
New [NOT PROCEEDED WITH]	<p>By adding-</p> <p>"2A. Charging of, liability for, and recovery of stamp duty</p> <p>Section 4(3) of the Stamp Duty Ordinance (Cap. 117) is amended by adding "(except the persons specified in Note 3B to head 1(1A) in that Schedule)" after "and any person who uses such instrument"."</p>
3 [NEGATIVED]	<p>By adding before subclause (1)-</p> <p>"(1A) Section 29C is amended by adding-</p> <p>" (2A) If a purchaser under a chargeable agreement for sale makes a chargeable agreement for a sub-sale before a conveyance on sale of the property is made in pursuance of the chargeable agreement for sale, then (subject to the notes to head 1(1A) in the First Schedule) the chargeable</p>

agreement for a sub-sale must be chargeable with an additional stamp duty in a sum of 2% of the amount or value of the consideration for the chargeable agreement for a sub-sale provided that the amount or value of the consideration for the chargeable agreement for a sub-sale exceeds \$20,000,000.

(2B) The principle in subsection (2A) applies, with necessary modifications, if there is a series of more than 1 chargeable agreement for a sub-sale in respect of the same immovable property; for example if a purchaser under a chargeable agreement for sale makes a chargeable agreement for a sub-sale, and the sub-purchaser makes a further chargeable agreement for a sub-sale, then (subject to the notes to head 1(1A) in the First Schedule) the chargeable agreement for the sub-sale or further chargeable agreement for the sub-sale must be chargeable with an additional stamp duty in a sum of 2% of the amount or value of the consideration for the-

- (a) chargeable agreement for the sub-sale provided that the amount or value of the consideration for the chargeable agreement for the sub-sale exceeds \$20,000,000; or
- (b) further chargeable agreement for the sub-sale provided that the amount or value of the consideration for the further chargeable agreement for the sub-sale exceeds \$20,000,000."."

3(1)

NEGATIVED

By deleting "of the Stamp Duty Ordinance (Cap. 117) ".

4

[NEGATIVED]

By adding-

"(5) The First Schedule is amended, in head 1(1A), by repealing paragraph (B) and substituting-

"*(B) 30 days after the relevant date (within the meaning of section 29B(3)); but see section 29C(11) and Notes 2, 3 and 3A to this sub-head".

(6) The First Schedule is amended, in head 1(1A), by repealing paragraph (C) and substituting-

"(C) All parties, except a party who on the relevant date (within the meaning of section 29B(3)) does not know that the agreement affects him, and all other persons executing; but see Note 3B to this sub-head".

(7) The First Schedule is amended, in head 1(1A), by adding-

"Note 3A

In the case of a chargeable agreement for a sub-sale under section 29C(2A), the person liable to pay the additional stamp duty as referred to in Note 3B must pay the additional stamp duty within 30 days after the execution of that chargeable agreement

In the case of a chargeable agreement for a sub-sale or further chargeable agreement for a sub-sale under section 29C(2B), the person liable to pay the additional stamp duty as referred to in Note 3B must pay the additional stamp duty within 30 days after the execution of that chargeable agreement or further chargeable agreement

Note 3B

In the case of a chargeable agreement for a sub-sale under section 29C(2A), the person liable

is the purchaser under the chargeable agreement for sale provided that the amount or value of the consideration for the chargeable agreement for the sub-sale exceeds \$20,000,000

In the case of a chargeable agreement for a sub-sale under section 29C(2B), the person liable is the purchaser under a chargeable agreement for sale provided that the amount or value of the consideration for the chargeable agreement for the sub-sale exceeds \$20,000,000

In the case of a further chargeable agreement for a sub-sale under section 29C(2B), the person liable is the purchaser under a chargeable agreement for a sub-sale provided that the amount or value of the consideration for the further chargeable agreement for the sub-sale exceeds \$20,000,000".

Appendix 1

REQUEST FOR POST-MEETING AMENDMENTS

The Secretary for Labour and Welfare requested the following post-meeting amendment

Line 4, second paragraph, page 701 of the Confirmed version

To amend "..... The United Kingdom is totally silent on it, and so are France and many other places" as "..... The United Kingdom is totally silent on it, and so are many other places" (Translation)

(Please refer to lines 4 to 5, first paragraph, page 12234 of this Translated version)