

OFFICIAL RECORD OF PROCEEDINGS

Thursday, 23 June 2011

The Council continued to meet at
half-past Two 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

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 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 LAU KONG-WAH, J.P.

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

THE HONOURABLE EMILY LAU WAI-HING, 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 AUDREY EU YUET-MEE, S.C., J.P.

THE HONOURABLE WONG KWOK-HING, M.H.

THE HONOURABLE LEE WING-TAT

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

THE HONOURABLE ANDREW LEUNG KWAN-YUEN, 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 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 TANYA CHAN

THE HONOURABLE ALBERT CHAN WAI-YIP

THE HONOURABLE WONG YUK-MAN

MEMBERS ABSENT:

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

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

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

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

THE HONOURABLE ANDREW CHENG KAR-FOO

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

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

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

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

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

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

PUBLIC OFFICERS ATTENDING:

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

MR GREGORY SO KAM-LEUNG, J.P.
SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT

CLERKS IN ATTENDANCE:

MRS CONSTANCE LI TSOI YEUK-LIN, ASSISTANT SECRETARY
GENERAL

MRS PERCY MA, ASSISTANT SECRETARY GENERAL

PRESIDENT (in Cantonese): This Council now continues with the debate on the motion "Expeditiously implementing the formulation of standard working hours".

MEMBERS' MOTIONS

EXPEDITIOUSLY IMPLEMENTING THE FORMULATION OF STANDARD WORKING HOURS

Continuation of debate on motion which was moved on 22 June 2011

MR ANDREW LEUNG (in Cantonese): President, when the Chief Executive delivered his Policy Address in the Legislative Council last year, he mentioned standard working hours in one paragraph. It is paragraph 62, which reads (I quote) "With the Minimum Wage Ordinance enacted, some suggest it is time to embark on a policy study on standard working hours. We must handle this complex and controversial issue with care to strike a balance between the interests of various sectors. I have asked the Secretary for Labour and Welfare to conduct the study."

Eight months have elapsed, and the issue is still being considered by the Government. The Legislative Council Panel on Manpower has just proposed to conduct an overseas duty visit during the summer recess to South Korea to study the implementation of standard working hours in that country. Members representing the labour sector are so impatient that they press for the expeditious implementation of standard working hours.

In May this year, Hong Kong implemented the minimum wage. The business and industrial sectors and the small and medium enterprises (SMEs) as well as members of the public are still feeling the pains of rising wages, increasing management fees and higher dining bills, resulted from the legislation on minimum wage. I do not support formulating hastily standard working hours at this time. Instead, the issue should be considered by the Labour and Welfare Bureau, and "handled with care" as stated by the Chief Executive. We reiterate that the business and industrial sectors are not against protecting workers' welfare. We just hope that with the support of strong justifications and after thorough consideration, employees' welfare can be enhanced progressively.

President, the battle of "minimum wage" has rendered all of us very cautious. In discussing the minimum wage, we all agreed that the legislation would not affect the existing employment contracts or agreements. We also agreed that wages should be calculated on an hourly basis. That is, for every hour that an employee has worked, the employer has to pay wage for the hour worked at a rate not lower than the statutory minimum wage. This was the understanding of the "hours worked" in our deliberation of the bill.

The Government has all along stressed that in setting the level of minimum wage, we must have objective data, and everything is based on data. However, under political pressure, we finally arrived at a very high bottomline for minimum wage. Intimidated by pressure from the labour sector, the Government even conceded to pay for rest days. As a result, some SMEs are still being branded as "unscrupulous employers" even though they pay an hourly wage of \$28.

As a matter of fact, a pay level of \$28, together with the rippling effects, has already pushed up the operation cost of some SMEs. Even before the legislation was put into effect, some enterprises already had to lay off employees, cut down working hours, or in some cases, even close down. Trades employing low-paid employees, such as cleaning, security, and elderly homes are particularly affected.

We remember that some time ago, residents of a private housing estate in Tin Shui Wai jointly opposed a big pay hike for their security guards. It was because if security guards were given a pay rise, they would earn as much as \$10,000 a month, and the overall salary would increase by as much as 50%. The bill would ultimately be footed by small property owners. Consequently, management fees would increase substantially. This is not an isolated case. With pay hikes brought about by minimum wage, many property owners will adopt the same attitude. "The wool still comes from the sheep's back". Can ordinary citizens in the community afford to pay? Take security guards as an example, we have already warned that an excessively high level of wage would push up management fees sharply, and single-block buildings would have to bear the brunt; either they would stop hiring watchmen and install iron gates instead, or the original two-shift schedule would be replaced by a single 12-hour shift. If standard working hours are implemented now, I dare say that the 12-hour shift will become an eight-hour shift. Security guards will earn less as their working

hours will be shortened though the pay per hour is increased. The whole building might have to face a situation with no watchman for 16 hours a day.

Most people in Hong Kong work in the service industries which have gained worldwide recognition. In industries such as tourism, hotels and retails, they all have special characteristics, different operational modes and standards. As for the creative industries which have attracted many young people, as well as the science and research industries, the working hours are very long. We have all along allowed employers and employees to work out among themselves the operational modes and make self-adjustments to the hours of work. If we rigidly set across-the-board standard working hours applicable to all trades and jobs, the requirements of various trades and work types cannot be met.

Perhaps, some say that we might give certain trades exemption. Let us see the practice abroad. In the United Kingdom, the United States and Taiwan, exemptions are given to many professions, for example, executives, management staff and professionals. In Singapore, the minister concerned may even revise the scope of exemption at anytime. If reference to foreign countries is to be made, then teachers of primary and secondary schools, management staff, doctors, policemen and bakery workers all come under exemption. If there is exemption for employees of so many trades, the legislation will exist in name only. Is this the real objective of the legislation?

Yesterday I heard quite a few Members speak from a moral highland, saying that legislation should be introduced for the sake of maintaining family life and good health. Yet, in the end, there came the request seeking to provide specifically in the legislation that there should be "an offer of 150% pay for overtime work". That is to say, money can buy family life and health. Is this what we want to see?

President, the manpower market in Hong Kong used to have great flexibility. At present we can make adjustments to adapt to the environment. Thus enterprises could survive the difficult times of SARS and the financial tsunami. The recent implementation of minimum wage has already strained the relation between employers and employees, and if we start discussing standard working hours before the relation has been fully patched up, the conflicts between the two sides will only intensify.

I hope that the discussion of standard working hours will proceed in a gradually and orderly manner. The Government should negotiate with all stakeholders and implementation should only be effected when there is a consensus. We should not repeat the mistake made in respect of the minimum wage. I so submit.

MR TOMMY CHEUNG (in Cantonese): President, as a matter of fact, ever since the implementation of the Minimum Wage Ordinance, many people, either by giving me a call, running into me in the street or sending an email to me, told me that my observation and views with regard to the legislation were very accurate. Now everybody came to realize what I once said was true. In particular, the rippling effect has turned out to be more serious than expected. However, I am sure that when middle-level employees see the big pay increase given to junior-level employees, they will look forward to getting a corresponding pay rise that reflects their seniority and nature of work. Hence, in the next few months, the pressure for pay increase undertaken by enterprises will remain tremendous. Society and enterprises will have to face another round of chain price increases.

What I would like to say is that as the impacts of minimum wage on society and economy are yet to be assessed, I have great reservation about making preparation for legislating for standard working hours, an issue that has more far reaching effects than minimum wage.

Standard working hours entitle employees working overtime to overtime pay. Employees of every level will be involved. So, the pay increases to be brought about will be bigger than those of minimum wage. In fact, our society is quite unique. Very often, many types of work require employees to work eight hours a day, sometimes even 10 hours. President, as the Government has already started the study on standard working hours, for the sake of our long-term development, it is also necessary to thoroughly assess its impact on the business environment.

One of the areas to be studied should be the likely impact of fragmentation of work on Hong Kong. Upon the implementation of minimum wage, many employers have reduced the number of working hours of employees in order to avoid sharp rise in pay. The most evident case is the watchman. Their working hours have been reduced from 12 hours to eight hours a day. Some

buildings ceased to employ night-shift watchmen or employ part-time watchmen instead.

The phenomenon of fragmentation of work is emerging in many trades, especially those making low net profits. Standard working hours will only aggravate the situation. It is just a matter of intensity. Do employees want to have a stable work with an income just enough to live on; or do they prefer to work for a few hours a day with a higher pay per hour, but the total amount of money earned cannot sustain their living? The Government must conduct in-depth study on this issue.

Some people hold that ever since the implementation of minimum wage, there has been no extensive layoff, and employers are just over-worried. I also feel relieved, as our present economy is booming, we can offset the pay increases by raising the prices.

However, the market is in fact undergoing intensive restructuring. Low-technology and labour-intensive operational modes are constantly being replaced by trades running on streamlined manpower structure, offering middle-priced goods or services.

Last week, according to a survey conducted by a multinational manpower consultancy, with the implementation of minimum wage, the recruitment sentiment of the catering industry and cleaning service has weakened despite a strong market. On the contrary, the recruitment sentiment of high-end retail trades is growing strong. Government figures for March to May this year also indicate that the unemployment rates of the catering industry, the warehousing and transportation industries, and the repair and maintenance industry were on the increase. The unemployment rate of the catering industry stood at 5% between January and March, it was 5.5% between February and April, and 6% between March and May.

I firmly believe that in the days to come, more and more small and medium enterprises (SMEs) will have to close down as they cannot afford the rapidly rising operating cost. Large chain enterprises will take this opportunity to enlarge their share of the market. On the surface, there will be little impact on both the overall economy and the unemployment rate; yet, the market in fact is

being tilted gradually. SMEs are doomed to dwindle. People in Hong Kong have less and less chance of moving up.

Once external factors turn bad continuously, the economy of Hong Kong will be affected and take a turn for the worse. The aftermath of minimum wage will then become more apparent. As enterprises are subject to the Minimum Wage Ordinance, they can no longer flexibly lower the hourly pay; the only alternative to cut cost is to sack a large number of grass-roots employees.

If there is another "Golden Hoop" of standard working hours, the situation will become worse, and the level of impact will be more extensive. Even big enterprises will have to control, as far as possible, the cost of overtime pay. The overtime allowance of employees at all levels, which include marketing, clerical, management, accounting, and so on, will be minimized. The volume of labour input will consequently drop sharply, thus intensifying the vicious cycle. It will be hard for the economy to bottom out, as in the case of the United States today.

In 2006, Dr Francis LUI, head of the Department of Economics of The Hong Kong University of Science and Technology, pointed out, in an article on whether Hong Kong should implement standard working hours, that Japan introduced standard working hours and additional statutory holidays in the 1980s, hence it was unable to make flexible adjustment in the 1990s when grave economic recession set in. The capital accumulated in the past was totally offset by the drastic drop in the volume of labour input, thus leading to a continuously stagnant economy. Hong Kong should draw on this lesson.

Here is my advice to the Government. If a study is to be conducted on standard working hours, the impact of standard working hours on SMEs should also be assessed in great depth, in particular, whether the local market has the flexibility and resilience to meet the challenge when the economy turns bad. We should not repeat the history in handling the minimum wage by merely relying on the conservative data from the Census and Statistics Department, which has not assessed carefully the rippling effect on enterprises.

Recently I read an article in *Headline Daily* on 14 June 2011, written by CHU Pui-kwan under the column "Trendy Talk by Five Persons". In the article, she wrote about how her good friend, an employer, was deeply affected by the ripple effect of pay hike due to minimum wage, with labour relation turning from

good to bad. The last paragraph of the article reads: "How to survive? To preserve his business that is not easy to come by, the employer has to consider shifting to hourly pay, contractual terms, or cutting back bonuses. The worst scenario is to close the business before running into heavy debts and become a wage-earner again to earn at least \$28 per hour. Do you think he is an unscrupulous employer? It is the ruthless policy that compels him to become unscrupulous."

President, one single move is enough to affect the entire situation. For any legislation designed to regulate working hours or pay, careful assessment of the impact is a must. The Government definitely should not act irresponsibly by driving employers to take desperate acts and does nothing to help.

President, these are my remarks.

MR JEFFREY LAM (in Cantonese): President, with regard to the request to expeditiously formulate standard working hours as contained in the original and amendment motions, I have considerable reservation.

Ever since the Government of the present term set out to study and discuss legislating for minimum wage, there have been endless disputes between employers and employees. The situation was aggravated owing to the Government's unclear explanation regarding the legal provision, the dubious attitude adopted by the Government, the inadequate projection and rash implementation of the legislation. Even though the legislation has been in effect for almost two months, there have been incessant news about the winding up of small and medium enterprises (SMEs) due to rising operating cost resulted from minimum wage. Moreover, upon the implementation of minimum wage, many low-skill workers have become unemployed; or there are cases in which workers earn less due to the reduced number of hours of work. All these indicate that in a free market, the introduction of an across-the-board labour policy that affects the operation of the market may not only fail to help grass-roots workers, but also cause hardship to employers. Ultimately, a lose-lose situation will arise. This is the case of minimum wage, and standard working hours may just add fuel to the fire.

President, regarding the pay level of minimum wage, meal break pay, rest day pay, as well as its impact on economic development, we had already stated our stands during the process of legislating for minimum wage. We believe that the implementation of minimum wage will, as predicted by many local and foreign economists, have unpredictable impacts on the future of our economy.

In just two months since the implementation of minimum wage, there has been successive news about the closing down of SMEs. It is anticipated that more SMEs will wind up in the future. It has also been reported that some SMEs which engage in security and cleaning services have to get bank loans to meet their cash flow problem due to the rapid increase in wage expenses. As enterprises only live from day to day, how can they still survive? Likewise, low-skill workers of these SMEs are greatly worried that the company might wind up and they would lose their job.

What's more, even though some low-skill workers can have a higher income with the implementation of minimum wage, they, as well as other members of the public, are affected by the surging inflation. Although inflation is caused by various factors, the implementation of minimum wage is one of the causes for pushing up inflation. Hence, many low-income workers have reflected to me that minimum wage does not necessarily bring them real benefits.

As the effectiveness of minimum wage remains questionable and its impact has yet to be fully understood, we hold that the Government and society should focus on addressing the adverse effects of minimum wage. Minimum wage is basically a "strong medicine". If we now proceed to study on prescribing standard working hours, it may seem conducive to the livelihood of wage earners of all sectors, but in reality, we are spinning a cocoon around ourselves.

President, around this time last year, the Legislative Council passed a motion moved by Dr LEUNG Ka-lau, urging the Government to legislate for standard working hours according to the principles of fairness, flexibility, and having regard to the business environment and competitiveness of Hong Kong. First of all, the motion was adopted on the premise that the business environment and competitiveness of Hong Kong should be taken into consideration. Following the adoption of the motion, Prof Francis LUI, Head of the Department of Economics of The Hong Kong University of Science and Technology, wrote

an article saying "This is an inane motion that brings no benefit to workers but has artificially created negative impacts on our economy. This reflects the superficial knowledge of our Legislative Council about the economy."

Prof LUI pointed out that several conclusions have been drawn from the voluminous economic research on standard working hours. First, if there is a flexible adjustment mechanism in the labour market, standard working hours can neither reduce the working hours of employees nor create additional employment opportunities. Second, if the labour market has already been distorted, say, the implementation of minimum wage when wages cannot be adjusted freely, standard working hours will further push up the unemployment rate. Third, with the market already distorted, standard working hours can lead to prolonged economic downturn. Fourth, it is likely that standard working hours may delay the retirement age of people, and the total working hours throughout one's life span might not necessarily be shortened.

From this we can see that standard working hours will, at its best, not have any impact on the labour force and the economy, and at its worst, make the labour market turn rigid, cause losses to workers and lower productivity. Being a flexible and free economy, there are different types of jobs and modes of operation in Hong Kong. The effectiveness of the working hours may be very different. To implement standard working hours across the board will totally stifle the flexibility of our SMEs. For wage earners of different trades, I wonder if standard working hours are a blessing or a curse. I hope the Government and the public would give due consideration to this issue.

President, I so submit.

MR ALAN LEONG (in Cantonese): President, at the first Legislative Council meeting right after Father's Day of last year, this Council passed a motion with no legislative effect (which quite a few Members mentioned earlier) asking the Government to conduct a study on legislating for standard working hours. Last year, the Chief Executive also stated, for the first time, his stand on the formulation of standard working hours. The issue of standard working hours has been discussed for years. It seems that the matter is gradually seeing the light at the end of the tunnel, and there is a chance that wage earners' wishes would come true. Coincidentally, it is also at the first Legislative Council

meeting following this year's Father's Day that we debate the relevant motion moved by Mr IP Wai-ming today.

After one year, this subject is again being brought up for discussion in this Chamber. What progress has been made over the year? As a matter of fact, it seems that over the past year, there has been little concrete progress in this respect. Let us look at the situation in some overseas countries, such as the United Kingdom and the United States which are further away for us, or Japan, South Korea as well as both sides of the Taiwan Strait which are close to us. All these countries have in fact formulated standard working hours, with high flexibility in the arrangement details. President, take the experience of the United States as an example. In fact, it is possible for standard working hours, creativity and productivity to co-exist without affecting the operation of the enterprises. Hong Kong claims to be an international city, yet it still lags far behind other countries or regions in this respect.

President, I have read carefully the original motion moved by Mr IP Wai-ming and the amendments moved by Mr WONG Sing-chi. As a matter of fact, they are not asking for immediate implementation of standard working hours. They only wish to urge the Government to have regard to the well-being of employees at large, make every effort to prepare for legislating for standard working hours, and expeditiously carry out some tasks, including carrying out education and publicity, as well as setting a deadline and timetable for conducting the study.

President, the suggestions made by Members are actually quite sensible, reasonable and very humble. In brief, I think at present we should no longer discuss the question whether or not standard working hours should be formulated. Instead, we should consider how to draw up a policy for standard working hours. The original motion and the amendments moved respectively by Mr IP and Mr WONG today are precisely related to the preparatory work for the formulation of tailor-made policies on standard working hours in Hong Kong.

This is how the Civic Party understands today's original motion and the amendments. Based on this understanding, we believe that it is hard for any person to oppose the motion. The reason is that we have taken into consideration the fact that the Government has been promoting family-friendly policies, and has also expressed the wish for employees to pursue continuing

education after work. Members of the public are also encouraged to engage in life-time learning. We also emphasize the need for parents to spend more time with children at home. There can be no tenable argument for these policies unless they are backed up by the measure of standard working hours. How to put these policies into effect? It is just impossible to implement these policies when parents cannot spend time with children or cannot pursue further studies because they have to work excessively long hours.

Surely, the Civic Party will not under estimate all the problems and difficulties that have to be dealt with in the course of formulating the policy on standard working hours. However, we still have to make a start, President. The relevant tasks mentioned in today's motions precisely set an outline for launching the work.

Finally, I would like to highlight one point. I notice from the papers that I have read that local trade unionists do not actually equate standard working hours with maximum working hours. According to trade unions, the enactment of the legislation does not imply that employers will be forced to give up the right to discuss with employees overtime arrangements. The intent of the legislation is to ensure that wage earners would be duly respected and rewarded for their labour, thereby creating a more harmonious working environment with a higher morale.

Given such analysis and understanding, the Government has no more excuses not to make preparation for enacting legislation on standard working hours and expeditiously implement the relevant tasks, as stated in today's original motion and the amended motion. The Civic Party in particular holds that if the Government is to get the work done properly, it should honour its promise and set up a study group on legislating for standard working hours comprising representatives of the Government, employees and employers.

The Civic Party will support the original motion moved by Mr IP Wai-ming and the amendments moved by Mr WONG Sing-chi. I so submit.

MR IP KWOK-HIM (in Cantonese): President, on 25 June last year (just one year and two days ago), this Council conducted a debate on a motion on

legislating for standard working hours. At that time I pointed out here that "if matching measures should be formulated to tie in with the implementation of minimum wage, the stipulation on the regulation of working hours would be of greater practical needs in future." Following the enactment of the principal ordinance on minimum wage, the Government had, in response to request from society, launched a policy study on standard working hours late last year.

Given such a new situation, the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) must stress that legislating for standard working hours is definitely not second to that for minimum wage in complexity even though the controversy among members of the public over the issue of standard working hours has become considerably less intense compared with that in the past. It is because, I believe, people on the whole agree that if relevant regulations are to be formulated, the main purpose should be to protect the economic benefits of employees and prohibit unscrupulous employers from wilfully lengthening working hours to exploit the workers.

Also, the Government may also need to consider specifying the maximum hours of continuous work for special work types as long hours of work may damage certain functions of the body; it should also give consideration to the maximum working hours and minimum rest time mentioned earlier by Mr Alan LEONG. All these are matters that will have to be looked into and considered when formulating standard working hours.

Also, in order to strike a balance between protecting the rights of employees and maintaining economic flexibility, I wonder if exemptions for certain work types should be granted by the Government in formulating standard working hours in the future, and employers and employees should be allowed to negotiate for not complying with certain regulations. These are some of the important issues that we will have to address in the future. If we allow employers and employees to be exempted from certain regulations, the legislation will be totally ineffective in times of economic downturn when people have difficulties in finding a job. However, if it is not allowed, the restriction may become an obstacle to the enhancement of productivity when the economy is vibrant.

President, in recent days, Hong Kong enjoys favourable economic growth, and with good employment situation, the working hours of employees have

improved. According to the latest statistics, the median working hours of Hong Kong people in seven days are a little shorter than before, standing at 47 hours in the first quarter of this year.

However, following the implementation of statutory minimum wage, the working hours of certain workers have been cut by their employers. As we all know, recently the Kowloon Motor Bus Company Limited has revised the agreement with their cleaning work contractor, drastically reducing the working hours of contract-out workers.

In addition, according to the Interactive Employment Service website of the Labour Department, many employers have started breaking up jobs well before the implementation of minimum wage. In March, there were about 13 200 part-time vacancies, which represented a monthly increase of 30%, the biggest increase in the past 12 months.

Information from all sources indicates a general trend of decreasing working hours for low-skill workers upon the implementation of statutory minimum wage. This phenomenon mainly attributes to the strategy of fragmentation of jobs adopted by employers to cut cost upon the implementation of the legislation.

This is, of course, a side effect brought about to the employment market with the implementation of minimum wage. At the same time, we also have to point out that if this is going to be a standing structural change of our employment market, the implementation of standard working hours is likely to regulate the working hours of medium or high-skill workers in the coming days. Compared with that for statutory minimum wage, such regulation is bound to have bigger and more far-reaching impact on the operation cost, business environment, and competitiveness of our enterprises.

Hence, the DAB stresses that should Hong Kong implement standard working hours in the future, it should be particularly careful. In formulating the Minimum Wage Bill, we demanded for its expeditious implementation owing to the limitation of time. During the deliberation of the Bill, we relied to a large extent on the consensus forged between employers and employees, and respected the established practices and arrangements as stipulated in the employment contracts. As such, after the enactment of the Bill, some organizations and trade

unions raised some disputes. This being the case, we request the Government to allocate sufficient time for discussion by the three parties, namely employees, employers and the Government in deliberating the issue of standard working hours.

Thank you, President.

MR CHAN KIN-POR (in Cantonese): President, minimum wage has been in effect for a month. According to assessment by some trade unions, at least 100 000 wage earners have been benefited. The average pay increase is as high as 20%.

The implementation of minimum wage well illustrates that the relation between employees and employers in Hong Kong is absolutely not polarized. It is possible for the two sides to reach a consensus through consultation as well as through peaceful and sensible discussions.

We all know that employees who gain most from minimum wage are those at the lowest level. Standard working hours, however, will benefit all wage earners.

Standard working hours are in fact more flexible than maximum working hours. It is a common practice in many developed nations, such as in Europe, the United States, and Asia. The spirit of standard working hours is that employers are forbidden by law to force employees to work in excess of the weekly statutory hours of work. Employees may opt not to work overtime. If overtime work is required, employers are required to give employees overtime pay.

In Hong Kong, most people work long hours, irrespective of the types of work they engage in or the ranking of their positions. Working overtime has become a habit, which affects the health of employees. Working parents have less time to spend with their children; they have less time for family life, which may give rise to all sorts of social problems. The reasons why I have all along supported setting minimum wage and standard working hours, and spare no efforts in promoting work-life balance is that I hope to rebuild family-oriented core values.

Minimum wage has been in effect for just a month or so. It is still necessary to monitor its operation for some time. We notice that following the implementation of minimum wage, many grass-roots workers have been benefited. However, we should not ignore that the adverse effects of minimum wage which start to emerge one after another. Society needs time to adjust and digest. The most obvious impact is that some middle-aged or elderly employees with low educational attainment and low skills have been laid off. Security guards in residential buildings are especially hard hit, many of them who are senior in age have been sacked.

According to information available to the Minimum Wage Committee, even though more than 310 000 people could get an immediate pay rise after the implementation of minimum wage, we have lost 40 000 posts. The impact on our social welfare system remains to be seen.

The Government has to face another problem, that is, Hong Kong has now entered the high inflation period, with soaring prices and rising rents, the business sector has a difficult time. Under the requirement of minimum wage, small and medium enterprises (SMEs) bear the brunt as they are overburdened with the surging wage cost.

In the face of minimum wage and the competition law as introduced by the Government, as well as the study on prescribing standard working hours as announced by the Chief Executive in his Policy Address, the business sector (in particular, the SMEs) is overburdened, giving rise to numerous grievances and complaints. The business sector has already been badly battered in complying with the requirement of minimum wage, their budget has been upset with regard to rest day pay and meal break pay, and worse still, employers may be labelled as "unscrupulous" for no reasons at all. Given all the rippling effects, members of the business sector can hardly feel at ease. The Government should give the matter further thought and address the issue of standard working hours with caution.

In fact, standard working hours are not that dreadful. To gain acceptance by the public, the Government must draw on the lesson of legislating for minimum wage, it should step up the communication with the business sector, especially SMEs, listen carefully to the opinions of employers and understand their operation difficulties; decision should only be made after extensive

consultation and due consideration of the interests of various stakeholders, so as to avoid the recurrence of the confusion and grey areas concerning paid rest day and paid meal breaks.

The prescription of standard working hours and minimum wage involve very complicated issues. The burden is heavy and the road is long. Any mishandling may deepen the rift between employees and employers, and have far-reaching effects. The Government should first get the study done properly; topical studies should be conducted in various areas, which include making reference to the experience and practice in other countries; conducting in-depth analysis on the situation of Hong Kong as well as the merits and demerits of prescribing standard working hours, so as to pave the way for an extensive consultation.

In Hong Kong, employees generally have to work excessively long hours. This is definitely detrimental to their health and family life. Though the operating cost of different trades will rise when standard working hours are set, it would, in the long run, bring benefits to the entire society if employees are happy and healthy.

President, I would like to stress that in enacting any legislation, the business environment and competitiveness of Hong Kong should both be taken into consideration. Through extensive discussion and negotiation, we can reach an agreement acceptable to employers and employees. Standard working hours should be implemented in accordance with the overall affordability of our society and economy. An across-the-board and one-step measure cannot be accepted by the society.

I hope the Government will expeditiously conduct consultation work, so as to get prepared for legislation. In this way, Hong Kong people can, as soon as possible, enjoy a well balanced life between living and working.

President, I so submit.

DR LEUNG KA-LAU (in Cantonese): President, although I have not prepared to speak, I just cannot help saying a few words after listening to the speeches of Honourable colleagues.

Earlier, Honourable Mr Jeffrey LAM mentioned that last July, Francis LUI wrote an article saying that the motion I moved was inane and superficial. Several months later, on 1 January (just several months ago), I finally asked my assistant to write an article in response, pointing out how superficial he was. Being a scholar, he cited data from Japan and concluded that Japan suffered from economic recession after it lowered the standard working hours in 1988. He was quoting information selectively. As a matter of fact, Japan set up standard working hours as early as 1947. If setting standard working hours would lead to economic downturn, I wonder why Japan's economy was so vibrant in the 1950s and 1960s. What are the reasons for that? Hence, such an argument is not acceptable from him, being a scholar. In addition, he also put forward some other points, all of which are quite "rubbish". I am not going to make any response.

With regard to the motion moved by Honourable Mr IP Wai-ming, I have carefully read the details. The main point is to urge the Government to increase transparency when studying standard working hours, discuss with employers, and enhance the communication among the parties through education, so as to reduce the fear of employers. Initially I doubted the need to do so. However, after listening to the speeches of a few Members representing the business sector, I indeed think there is a need to enhance communication and let them know that they need not be afraid.

As pointed out by Honourable Mr Alan LEONG earlier, setting standard working hours actually does not restrict the working hours. Should such needs arise, employers still may ask employees to work overtime. All they have to do is to pay for the overtime work. In fact, many big enterprises in Hong Kong have already adopted such a practice.

Last year, I commissioned the University of Hong Kong to conduct a questionnaire survey to find out the views on standard working hours held by employers of small and medium enterprises (SMEs). It was found that 56% of employers of SMEs are in favour of implementing standard working hours. In comparison with their views on minimum wage earlier, only 44% of employers supported minimum wage. This shows that more employers support standard working hours. Why did I deliberately target employers? If the target of the survey had been on employees, all employees would support standard working

hours. However, what matters most are the views of employers. So, at present, most employers, that is, 56%, support the idea.

If the measure is to be applicable to all trades across the board, will there be any problem? The law only sets a standard. As trades differ in operation needs and manpower supply, the actual working hours certainly vary. So, it has to be dealt with by way of compensation for overtime. Hence, there should be no problem in setting standard working hours for all trades. Just that if overtime work is needed and there are not enough manpower, additional allowance should be paid. It is just that simple.

In the motion that I moved last year, I deliberately took into consideration the concerns of the business sector, and pointed out that every labour policy must take into consideration of the business environment. These words are in fact irrelevant. Not a single employee wants to see his employer's business go bust. So, when we implement policies for the protection of workers, we must also take employers' concern into consideration. If the implementation of standard working hours will cause employers to go bankrupt, and push up the unemployment rate, of course we had better not to implement it. However, let us take a look of the case of minimum wage. It has been in effect for a month, in the coming months, actually we have predicted the situation, the unemployment rate will not go up, it still stands at about 3.5%.

At present, some people apply for the post of security guards owing to the high pay. Given such observation, I can tell you all, the implementation of standard working hours will be easier with the implementation of minimum wage. Why? He who works as a security guard does not mind working for another 12 hours because he will get extra pay for extra hours of work. Prior to the implementation of minimum wage, he would argue with his employers about the hours of work. However, human beings are very funny. So long as he is rewarded, he would not mind working a few extra hours.

Why are we talking about having more discussions? For example, Honourable Mr IP Kwok-him just now mentioned one point. Would there be any impact on the labour market upon the formulation of standard working hours in the event of an economic downturn? If flexibility is available, and employees are allowed to opt out, that is to come to agreement with employers not to comply with standard working hours, what is the point of enacting the legislation?

Thus, there should be more deliberation. This is not a problem. However, the crux is that employees should know what to do when the economy goes bad following the formulation of standard working hours. They definitely will not remain aloof to see the employers go bankrupt. They will yield a little, and jointly "ride out the storm" in times of poor economy.

On the contrary, I wonder what the situation will be like in the event of an economic upturn following the enactment of the legislation. The employee may give the employer prior notice — there is such an arrangement under the regulations of foreign countries — say, two or three months in advance that he would terminate the previous agreement signed with the employer, and ask for protection under standard working hours. The employer cannot dismiss the employee because of this. Put it in simple words, this is one form of job protection. The arrangement is just that simple. Hence, when the economic situation is bad, employees may come to terms with employers not to comply with the requirement of standard working hours and they are willing to work slightly longer hours. However, when the economic situation is good, employers have to comply with the requirement of standard working hours. Furthermore, employee would not lose his job if he requests for standard working hours. Things are that simple.

Quite a few Members of the business sector have raised a lot of views, expressing their worries. There is one last point that I would like to present to you. There are presently only five countries in the world, all among the poorest that are still without regulations on working hours. Most countries already have such arrangement. So we really need not worry.

Thank you, President.

MS STARRY LEE (in Cantonese): President, when Honourable Mr IP Kwok-him spoke earlier, he did not state the stand of the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB). DAB supports the original motion. With regard to Honourable Mr WONG Sing-chi's amendment, we will, at this stage, abstain from voting as the amendment contains suggestions about specific details. We also understand that the issue of "standard working hours" can only be implemented smoothly if a consensus in society has been forged.

As stated by quite a few Members earlier, I also spoke when we discussed the said topic last year. Last year I spoke on behalf of a group of accountants who worked overtime on a long term basis. They said those words to me when they learned that I would leave the profession to go into politics. They hoped that I would speak for them in the Council.

I am going to speak again on this occasion, and I have to tell you that the phenomenon of crazy overtime work do not just apply to members of the labour sector, it also applies to a lot of professionals. One of the reasons for Dr LEUNG Ka-lau to move his motion last year was, I believe, that many doctors were in extreme misery. Apart from doctors, many accountants also have to work overtime month after month, year after year. So, this year I have to speak out their feelings again. I also have to remind the Government, after my speech made one year ago — though I have not cherished any hope of making changes in one year — the reality is that there have been no changes at all. I have browsed through websites or chat with fellow colleagues. There is still the phenomenon of crazy overtime work. The Government must face the situation squarely and rectify the situation. Otherwise, there is growing resentment — especially among young accountants — against society. I also fully understand that members of the business sector, especially small and medium enterprises (SMEs), are very concerned that standard working hours might further affect the business environment. The Government should also learn from the inadequacies in legislating for minimum wage and try to communicate with all stakeholders. Without adequate communication, the legislation can hardly be effectively implemented.

I have found the script of my speech of last year. I also learn, through the Internet, how some accountants felt. However, due to the time constraint, I do not have enough time to read them all out. For this year, I picked a piece of article written by another accountant to let you know the feelings of colleagues who are in extreme misery. They share the same feelings. So long as one works in those firms for a few more years, one will talk about the same things every day, every hour or every moment.

I am going to read you an article from a blog. It is easy for you to locate it: "Do you want to work for the Big Four? Do you think it is easy to work for the Big Four for four or five years? Do you want to know the actual working environment at the Big Four? I have worked for the Big Four for some time.

Life there can be described as too horrible to witness! To work there, you may have to give up many things, including friends and even your beloved ones. Very often, you have to work from Monday to Sunday continuously without overtime payment, and your managers tend to shift all responsibilities to you. Also, partners of the company do not care a dime about you, they just keep pushing you to get the work done, and do not assign other colleagues to help you with the job. The only result is endlessly long hours of work!

People will always ask, are auditors required to work overtime? In Hong Kong, overtime work is a must. Many people would say, he who eats salted fish must stand the saltiness. Must this be like that? The major enterprises in the United States are so much larger in size than our listed companies — as we all know, the United States even has the Sarbanes-Oxley Act — "Why do auditors in foreign countries not required to work overtime till late in the night? Many people think that in Hong Kong, there is no profession that needs not work overtime. Correct, this is the fact. However, many people do not realize that auditors in Hong Kong do not merely have to work overtime for two or three hours; they have to work overtime for seven or eight hours every day! (Auditing has both peak season and slack season. Peak season roughly runs from February to July or August. It, however, varies from person to person. Slack season roughly comes after September. During the peak season, one usually works till 12 am every day, sometimes up to 2 or 3 am, or even up to the next morning. I had once worked continuously from Monday to Sunday from February onwards. It went on like that for two or three months, without a single day of rest. Furthermore, it was so tough that I threw up in the toilet quietly! There is less work in the slack season, when it is often possible to leave the office as scheduled or after working overtime for two or three hours.) In my opinion, it is acceptable to work overtime, however, working overtime for seven or eight hours a day is absolutely not acceptable! I personally think that it is not necessary to work overtime every day. We are human beings, not machines. It is not possible for a person to work continuously without rest. Being a civilized society, this is definitely not acceptable. These days, the Hong Kong society is very strange. It seems to have gone back to the time of the Industrial Revolution, when consortia exploited workers. It should be noted that many European and American nations have labour laws to protect workers. In Hong Kong, the protection given to workers under the labour law is very limited. What is more, the accounting sector does not have a trade union of its own. Apart from collecting annual membership fees, and revising accounting codes,

the Hong Kong Institute of Certified Public Accountants (HKICPA) has done nothing to protect accountants with regard to the perennial problem of long hours of work. I have once received from the HKICPA an email about accountants working long hours. The survey was done. What has the HKICPA done to ensure that accountants can have a normal life? People working for the accounting firm and have not yet passed the accountancy examinations and gained the relevant experience, as well as those engaging in accounting work, for example, the account clerks, are also without protection, and they are subject to employers' exploitation. On the one hand, they are not yet qualified for admission into the HKICPA, and on the other hand, only members of the HKICPA may vote for the accounting functional constituency of our Legislative Council. So, there is basically no one to represent them and fight for their legitimate interests. Should we not protect them just because they have not become qualified accountants? This definitely is not the sort of attitude that a civilized society ought to have!"

This article is very long. Last time I could not finish reading the whole article; nor can I finish this time. If you make a search on the Internet, a lot of such articles can be found. I have been through that all. What they say is true. The issue is always brought up in casual talks or during meals. It is not that they are not willing to work overtime. We all understand that accountants have reporting deadlines. When an accountant works overtime, he cannot acknowledge to that effect. In his monthly work sheet, he cannot let his boss know how many hours of overtime work he has performed. Even making a report is not allowed, not to mention getting overtime pay. With overtime records, they surely will not get overtime pay. First, they cannot acknowledge that they have to work overtime. Second, they do not get reasonable pay in return — overtime payment. This will indeed build up grudges among accountants.

President, I so submit.

MS CYD HO (in Cantonese): President, standard working hours and minimum wage actually complement each other. In implementing these two policies, we have to uphold a basic principle, which is to safeguard that employees who have fulfilled their duties at work would receive reasonable rewards and the wages earned can at least enable them to maintain the basic living of a family of two,

without having to work around the clock for over 10 hours a day and wear themselves out as if they were slaves.

Though legislation on minimum wage has been enacted, it is not enough. We are only halfway through the task because if the wage level is set too low or if it fails to catch up with inflation in the future, the livelihood of workers can still not be safeguarded, as workers have to work long hours at the minimum wage rate to earn enough money to support their families. Hence, after prescribing the minimum wage, we must set standard working hours in order to protect grass-roots workers. At present, only half of the task has been accomplished. Legislation for protecting employees' wage level was enacted last year, and logically, we should work on the remaining half of the task, which is to set standard working hours. If we only do half of the task while leaving the remaining half undone, we fail to achieve the policy objective of enabling workers to receive reasonable rewards to maintain their basic livelihood.

Legislating for standard working hours is indeed more complicated than that for minimum wage because it involves various industries and trades, job levels and duties, and employers may also have different expectations on employees at different grades. For some jobs, it is quantity that counts. For example, an employee may only have to seal letters for nine hours, and he can only stay in the same grade without any prospect for promotion. By sealing more letters, he will not gain work experience of a different level which will enable him to switch to other jobs. However, for jobs in which quality counts, such as jobs requiring professional skills and those at management levels, it is very difficult to regulate the working hours. Besides, employees may also have different expectations on themselves. In particular, fresh graduates may wish to get a promotion shortly after joining the sector. They will then work very hard and thus fall victim to never-ending competition without being aware of it. Moreover, after being promoted to the management level, they may even impose the same expectation on new entrants, thinking that there is no reason why these new entrants could not follow their footsteps. I heard a similar situation in the medical sector. The former Secretary said, "Doctors are supposed to work for over 80 hours and remain standing at work for over 30 hours. Why do doctors nowadays consider this impossible, and some of them have even fainted? Why are they so feeble?" However, this idea is unhealthy indeed.

President, there is a portmanteau word "workaholic", which refers to a pathological state, that is, people are addicted to work, just like they are addicted to alcohol. If they finish work early, they do not know what to do as they live on their work. There are indeed some people who keep on working not because of financial and livelihood pressure. Thus, members of the community have a wrong impression that standard working hours will only protect grass-roots employees but not management personnel and professionals, and people with high pays and good prospects or opportunities for promotion do not require such protection. However, this is not true. Yesterday, we learnt from Mr Paul CHAN the situation of the accounting sector. Ms Starry LEE also mentioned just now, and Dr LEUNG Ka-lau often mentions the inhumane life led by members of the medical sector. Actually, many professionals and management personnel have no choice but to work pathetically hard these days. This is particularly true in multinational corporations. Nowadays, globalization is very common. Employees in Hong Kong finish work at eight o'clock in the evening, but their counterparts in the United States just start to work. They have to make long-distance calls to their colleagues in the United States before they go home and they have to answer long-distance calls at home at midnight when their colleagues in the United States have done some preparatory work. The situation for those who work in European based multinational corporations is better because the office hour in Europe starts in the afternoon, Hong Kong time, and so employees may hopefully finish their day's work a bit earlier.

In the world of international trade which operates 24 hours non-stop around the globe, employees will burn themselves out in their forties if we do not cultivate a good work culture and adopt a humane and caring management style. This also explains why so many middle-class people have indicated that they wish to retire at the age of 40 as they will physically be unable to cope with such work. On the management level, we have to distinguish separately work which performance is assessed qualitatively and quantitatively. Occasional overtime work may be accommodated, and I believe it is acceptable to both employers and employees. However, if overtime work is required over an extended period of time, additional staff should be employed. President, actually our Secretariat staff are victims of continual overtime work. Even if they are compensated at a rate equivalent to 150% of their salaries or offered even higher pays, employees may not want to work overtime. What they want is family life. It is only when the management monitors the workload and has better staffing planning that employees will be able to maintain work-life balance.

However, President, the problem is some people are actually so indulged in their work that it has become their interest, and even if a three eight-hour system is implemented, they may still work for 16 hours a day; and the more they work, the happier they will be. Under this circumstance, we certainly have to allow them to give full play to their talents. Most importantly, however, grass-roots workers should receive protection and be given a choice, so that those who just want to work standard working hours and not aim at making outstanding achievements should have reasonable livelihood protection; and we should change the established "workaholic" practice so that everyone can enjoy normal family life.

MR LEUNG KWOK-HUNG (in Cantonese): President, I heard Dr LEUNG Ka-lau mention Francis LUI, and I think Dr LEUNG's remark was right. The other day when I was attending an economic forum, Francis LUI said I did not know anything about economics. I told him that it was not that I did not know economics, just that my viewpoints were different from his. Then he said I was a socialist and he would not discuss with me, and then he left. Here, I would like to address a doggerel couplet to him: "Loud as thunder¹ his claims for filial piety, fraternal duty and loyalty²; clattering like pigs oinking and dogs growling his sense of propriety, righteousness and incorruptibility³". He has "filial piety, fraternal duty and loyalty" but not honesty, as evident in the way he cited information. Integrity is what matters most for scholars, and wrongfully or selectively citing part of the information is irredeemable. Such an act would be condemned in court — Ms Audrey EU may know this very well. With "clattering like pigs oinking and dogs growling his sense of propriety, righteousness and incorruptibility", I mean pigs and dogs would only oink and bark without being able to feel people's pain; and by referring only to the "sense of propriety, righteousness and incorruptibility", I mean he has no sense of shame. Your Party is always rebuked by us this way. Then, what is on the head banner? It is "Mr NAN Guo⁴". What does it mean by "Mr NAN Guo"?

¹ "thunder", "loud" and "clatter" are used to denote the Chinese name of Francis LUI.

² filial piety, fraternal duty, loyalty and honesty are the four virtues commonly used as a group; by saying a person has the first three virtues, it actually implies that he does not have the fourth virtue.

³ Sense of propriety, righteousness, incorruptibility and shame are the four virtues commonly used as a group; by saying a person has the first three virtues, it actually implies that he does not have the fourth virtue.

⁴ Nan Guo was a character who pretended to play a musical instrument in order to make up the number for an orchestra. He represents people who holds a post without qualification.

It means holding a post without qualification, right? Perhaps it should be "Mr DUNG Guo", I forget. Anyway, it means holding a post without qualification.

As a prominent professor, he considers himself exceptionally gifted, and so he insisted on talking about economics. What is economics? Economics is about human relations. When referring to commodity fetishism in *Capital*, Karl MARX said it is a kind of human relation. However, he said that it was a relation among objects, depicting this human relation as heaps of figures. What figures do you represent, and what figures does he represent? Frankly, it is a waste of money to allow such kind of people to teach in The Hong Kong University of Science and Technology. Forget about it, this small fry is not worth talking about. If he has the chance to reproach me in his writings, I will further respond to him.

Now, back to the subject. Actually, the Government is dreadful. First, as I have mentioned time and again, when I sought a judicial review, the Government said it would implement minimum wage, which was a means to deceive the Court, and minimum wage was not implemented until a very long time afterwards. However, in legislating for minimum wage, it even incidentally deleted the provision in the Trade Boards Ordinance on the Chief Executive's duty to convene a meeting of the board of the relevant trade to prescribe appropriate working hours when the relevant working hours are so long that they are unbearable. Yet, the Hong Kong Federation of Trade Unions (FTU) even agreed to delete this provision. Originally, they had a sword

(Mr WONG Kwok-hing rose)

MR WONG KWOK-HING (in Cantonese): President.

PRESIDENT (in Cantonese): Mr WONG, do you have any question?

MR WONG KWOK-HING (in Cantonese): President, Mr LEUNG Kwok-hung's allegation against the FTU just now is wrong.

PRESIDENT (in Cantonese): Mr WONG, it is not your time to speak.

MR WONG KWOK-HING (in Cantonese): In that case, when can I make a clarification?

MR LEUNG KWOK-HUNG (in Cantonese): Go ahead and make your clarification now.

PRESIDENT (in Cantonese): Would both of you please sit down. We conduct debates in accordance with the Rules of Procedure, which require that Members shall not interrupt the Member who is speaking except to raise a point of order. If any Member wishes to seek elucidation from the Member who is speaking, he has to seek the approval from the Member concerned. However, if a Member considers that his previous remarks are misunderstood by the Member who is speaking, he can only make a clarification after the Member has finished speaking.

Mr WONG, as the point you have raised just now does not fall into any of these situations, you should not interrupt the Member who is speaking. Mr LEUNG, please continue.

(Mr WONG Kwok-hing rose again)

PRESIDENT (in Cantonese): Mr WONG, do you have other questions? Is it a point of order?

MR WONG KWOK-HING (in Cantonese): President, it is a point of order.

PRESIDENT (in Cantonese): What is your point of order?

MR WONG KWOK-HING (in Cantonese): Thanks for pointing this out to me. I now seek elucidation from Mr LEUNG Kwok-hung on when the FTU opposed the Trade Boards Ordinance. Would he please give an elucidation?

MR LEUNG KWOK-HUNG (in Cantonese): Mr WONG Kwok-hing, this is not what I mean. What I mean is that when the Government legislated for minimum wage, it requested for the deletion of the provision in the Trade Boards Ordinance related to appropriate working hours. In other words, in enacting a piece of legislation, it was trying to take the opportunity to repeal other provisions. As to whether the FTU had cast its vote, I really have no idea. I think it had. Can you recall whether it had cast its vote? I did not say that the FTU opposed the Ordinance. This is the incident I was referring to. Do you remember it? Go and find out about what happened before speaking so loudly.

PRESIDENT (in Cantonese): Mr LEUNG, please face the President when you speak.

MR LEUNG KWOK-HUNG (in Cantonese): Sorry, President. I am now telling him formally that I do not remember clearly, it seems that he does not remember clearly either. Then, what should be done? Please make a ruling on this.

PRESIDENT (in Cantonese): You may continue with your speech.

MR LEUNG KWOK-HUNG (in Cantonese): Very well. Today, Donald TSANG said a survey would be conducted so that the next Chief Executive could work on legislating for maximum working hours I mean legislating for standard working hours rather than maximum working hours. What kind of government is this? It only knows how to slash people's takings without offering them any compensation, and it will not deal with this issue until two years later, like what it did in the past. It seems that this Government, in view that it has not done any good deeds, takes this opportunity to undertake this work when its popularity rating is at its lowest. How can one act like this? It is

indeed mean and stingy. It should listen to WANG Guangya, who said that in resolving deep-rooted problems, one should not just give petty favours; now even "pig's bones" and "dog's bones" are offered, and yet, this is not the worst.

I learn about the issue concerning the Labour Advisory Board (LAB) in person. Matthew CHEUNG, please look at me. You said that the LAB has been operating effectively for over 60 years. What is the LAB made up of? It is made up of representatives from employers, employees and the Government, and no reform can be carried out without the approval of the employer side. The other day I almost threw objects at you because you said it had been operating effectively — I probably did throw objects at you. You were lying to all workers in Hong Kong. Actually, nothing can be done without the approval of the employer side. Just accept your fate, "buddies".

What exactly are the advantages of standard working hours? Actually, it is not maximum working hours but a uniform standard. Even if one wishes to enslave workers, one should not be allowed to do so without offering compensation, right? In a slave society, slaves are animals that speak; in a capitalistic society, workers are tools that speak, and the treatment received by workers is even worse than that received by machines. While machines will get repaired when they are out of order, which involves cost; workers will simply be laid off when they cannot work anymore. Will they be taken to the chiropractor? Certainly not. What about when they have tennis elbow? Who knows what are the causes, may be they get hurt when did their shopping in the market? Matthew CHEUNG, do you remember that case? I went to beg you, but you refused to replace those facilities, and subsequently employees suffered from tennis elbow. Afterwards, you resolved the problem which had impressed me back then. Yet, no one would have known that the situation would be getting worse.

The Government has taken the lead to regard that workers' strain do not incur a cost. If workers' problems cannot be identified, their health may deteriorate after prolonged hard work, they may fail to learn a living, their children may be led astray, they may quarrel with their wife, and if they smoke, they have to pay a few dollars more. What are we asking for? We are simply asking for standard working hours, we request for a relatively fair platform despite all the unfair conditions, so that we can get back what we are entitled to.

Besides, did the Government not say that it intended to create jobs? When standard working hours are established, workers, particularly low-paid workers, will not be subject to infinite exploitation. When employers find that they will have to offer monetary compensation to workers for overtime work, they will create more job opportunities.

Secretary, I am not going to throw objects at you, but do give me your response. Secretary, do not lower your head. What is your opinion?

President, this Council has made a mess out of things and failed to address workers' utmost concerns. Yet, it does extremely well in depriving people of their right to vote. I have nothing more to say.

MS AUDREY EU (in Cantonese): President, recently, a friend of mine from Singapore visited Hong Kong. As his brother had once worked in Hong Kong, I asked him how his brother was doing. He told me that his brother found it unbearable to work in Hong Kong after working for a short while, and he is now in Canada.

His brother said when he came to work in Hong Kong, he was clearly told that his working hours would finish at six o'clock. However, his boss called him for a meeting at five o'clock every day; hence he could not finish work at six. He also said that no one dared to leave the office before the boss. It is very common in Hong Kong that employees would only leave their office after their boss has left. Failing to cope with this working condition, my friend's brother left for Canada.

This Singaporean friend of mine told me that in Singapore, he leaves his office at around four o'clock when the official working hours end, and he will not stay in the office after that time. He wonders why the situation of Hong Kong is like this. Ms Starry LEE has just read out some online comments, describing the work situation at the four big accounting firms, in particular the work of auditors. She highlighted that overtime work should not be taken for granted, and questioned why accountants have to work overtime every day. There are accountants all over the world, but their situation is not like that in Hong Kong.

President, I wish to express my special thanks to Ms Starry LEE for reading out the online comments here because, President, my daughter is an auditor in one of the Big Four. Therefore, I am well aware of the situation described by Ms LEE. However, if this point is raised by me, I figure I would be in great trouble when I get home this evening. My daughter would blame me for bringing up this point as she may lose her job.

Actually, this situation is very common in the accounting sector, and all of us, as well as all accountants, know it very well. However, this situation has remained unchanged throughout these years.

Many Honourable colleagues point out in their speech that if standard working hours are set, parents can spend more time with their children at home. Let me tell you that it is also true the other way round. If standard working hours are set, children may also go home earlier. At least, mothers will not have to wait for their children to come home.

You may find it strange why I have to wait for my daughter working in an accounting firm to come home. Actually, this is really what happens. When she is not yet home at one or two o'clock in the morning, I really cannot go to sleep. President, the reason is I do not know in which industrial district she is still working on her tasks. When I think of her having to take a taxi home all alone in the pitch dark night, I really cannot get to sleep. Many people, even my daughter, do not understand why I cannot get to sleep. I said she would understand when she becomes a mother in the future. This situation has persisted for years, but why has it remained unchanged?

President, many Honourable colleagues who have spoken and the Member who moved the original motion today said we should "have regard to the well-being of employees at large". I heard Members representing the industrial and commercial sectors, that is, Members representing employers, say that this move does not work and has to be taken forward slowly.

President, I wish to explain to employers from another perspective why this move is also beneficial to them. I think we can look at it from the perspective of time management and efficiency enhancement.

President, I believe you may always be asked this question on various occasions. This morning, I attended an activity known as the Blue Sky Project. Many budding school principals attended the activity and some speakers were invited. When I met them this morning, one of the questions they put to me was — I believe many Honourable colleagues present may have been asked the same question — "Ms EU, you serve as a Member, and we can see from television that you work at the Legislative Council every day. At the same time, you are also a prolific writer, a Senior Counsel, a wife and a mother of three daughters. How do you find the time to do all these?"

Actually, President, I believe many people in Hong Kong are facing this problem — time management. How do we find so much time to do so many things?

I hope employers will consider the issue of time management. Prescribing standard working hours is like setting a target. Whether it is eight hours, six hours, 10 hours or nine hours per day, work should be finished within this period of time. When a target is set, people may work much faster instead of adopting a slow pace at work. Time is elastic in itself.

When there is a time management target, people will and should be able to finish their work within the targeted time frame most of the time. Besides, you may have heard of the law of diminishing return. The slower the pace you adopt, the less efficient you will be.

Therefore, if employers take standard working hours as their target for time management, their employees' efficiency will naturally be enhanced.

Moreover, I think there is yet another advantage of standard working hours, that is, there must be some degree of flexibility. We often say that the whole world is now on a level plane, and we often have to carry out projects across different regions and areas. Very often, time difference is one issue, and geographical distance is another. With effective time management, however, work can be carried out at different regions at the same time. As in the case of my elder daughter who is working in the United States, the headquarter of her company is in Germany, and time difference is involved. However, with effective time management, people in different places can work on the same project.

I know a friend who is a Hong Konger but he is a so-called "NET", that is, a native English teacher. NETs in Hong Kong have to teach in two primary schools. However, he said he cannot manage it, and he only wants to teach in one school and get half the pay. Actually, as minimum wage has been implemented, this can be achieved through time management. In fact, this is also conducive to the implementation of standard working hours.

I certainly understand and agree to the point made by many Honourable colleagues that the issue of standard working hours is very complicated, probably far more complicated than minimum wage. That is exactly why we need to make adequate preparation.

Both Mr IP Wai-ming's original motion and Mr WONG Sing-chi's amendment point to the same direction, that is, the authorities should do more preparatory work and refrain from following the same path taken in the case of minimum wage, causing many problems to surface in the very final stage, thereby creating much instability in both sides.

I believe this is the spirit of both Mr IP Wai-ming's original motion and Mr WONG Sing-chi's amendment. Therefore, we support the original motion and the amendment.

I hope the Government will adopt this perspective. Actually, it is beneficial not only to employees but also (*The buzzer sounded*) to employers in Hong Kong as a whole.

Thank you, President.

MR WONG YUK-MAN (in Cantonese): President, in 1938, the United States was yet to emerge from the recession caused by the Wall Street crash in 1929, and salary earners were leading a very hard life. However, with the advocacy of trade unions and public opinions, the Congress of the United States passed the Fair Labour Standard Acts (FLSA). Back then, President Franklin ROOSEVELT even immediately signed to enact the relevant legislation to enable its instant implementation. Apart from prescribing the hourly minimum wage rate, this piece of legislation also prescribed the maximum working hours at 40 hours per week, that is, eight working hours per day in a five-day week.

Regarding the economic situation of Hong Kong now and that of the United States back in 1938, I believe the Secretary does not need my further elaboration. Only by taking a simple retrospective view of history, one would know that prescribing standard working hours is a necessary means to labour protection. However, we have prescribed minimum wage but not standard working hours. Actually, trade unions fought for both of them at the same time. Some people said the reason for the Government not to introduce the relevant legislation at the same time is, as the Secretary has said, that the issue of standard working hours is more controversial. May I ask which piece of legislation is not controversial, buddies? Now, the Competition Bill has also aroused much controversy in this Council, and it seems that the Government has almost been compelled to withdraw it. Which piece of legislation is not controversial? It is precisely the well-being of the majority that the Government has to act for. There are bound to be oppositions to any proposal, but one should refrain from always describing opposition as controversy. Trade unions are no exceptions. They accepted the legislative proposal for minimum wage first and would only discuss the proposal on standard working hours afterwards. Why did they not discuss both of them at the same time? I really have no idea about it. Probably, some people thought that they could accept one proposal first and then history might repeat itself and then all of you people would have the opportunity to delay the process further. While allowing labour issues to delay for a long time, the authorities are hastily forcing through the legislative work for a certain evil law in an oppressive manner, insisting that the work should be accomplished within a month. What kind of a government is this? Which legislative proposal is not controversial? Stephen LAM, the "dog official", said it is not controversial. The fact that the public does not support the "*de facto* referendum in five geographical constituencies" has nothing to do at all with the Government's deprivation of the public's right to stand for election. This Government is simply vicious

(Mr Paul TSE rose)

PRESIDENT (in Cantonese): Mr Paul TSE, do you have any question?

MR PAUL TSE (in Cantonese): President, it seems that you have already made a ruling on the expression "dog official". May I ask whether your ruling still applies?

PRESIDENT (in Cantonese): According to the Rules of Procedure, public officers and Members attending a meeting enjoy the same status. Therefore, Members should not use offensive language about public officers attending a meeting. Now, unless a Member considers that Mr WONG Yuk-man's remarks are offensive to the relevant public officer, I will not stop him from speaking.

MR PAUL TSE (in Cantonese): In that case, I will raise this point. We should do so especially when it involves public officers not present. If you think this expression is unacceptable, someone has to raise this point whether or not the person concerned is present.

(Mr Albert CHAN also rose)

MR ALBERT CHAN (in Cantonese): President, I wish to clarify

PRESIDENT (in Cantonese): Mr WONG Yuk-man, you may sit down first.

MR ALBERT CHAN (in Cantonese): the main point in the relevant provision of the Rules of Procedure. As far as I can recall, and I certainly still have to refer to the relevant provision before I can be sure, but if my memory serves me right, the remarks referred to are those made on public officers and Members attending the relevant meeting. Therefore, President, I hope you will explain and rule on whether, in interpreting the relevant provision, public officers not present are within the scope of the provision.

PRESIDENT (in Cantonese): Concerning language used in a parliamentary context, there are two restrictions. First, there is the so-called unparliamentary language. In other words, Members should not, in a parliamentary context, use

inappropriate language against any person under all circumstances. Second, according to the Rules of Procedure, Members should not make offensive remarks about other Members. As public officers attending meetings of this Council enjoy totally equal rights as Members, the latter requirement is also applicable to all public officers in the Chamber.

As Mr Paul TSE requested for me ruling on whether or not the remarks made by Mr WONG Yuk-man just now have contravened the Rules of Procedure, I have to consider the issue further. I now suspend the meeting.

3.50 pm

Meeting suspended.

3.54 pm

Council then resumed.

PRESIDENT (in Cantonese): Clerk, please notify the Members who spoke just now to return to the Chamber.

(The Members who spoke just now returned to the Chamber)

PRESIDENT (in Cantonese): A Member requested just now that I should rule on the language used by Mr WONG Yuk-man in his speech. Regarding this request, the relevant provisions in the Rules of Procedure are Rule 41 and Rule 10. I now read out the relevant provisions. Rule 41(4) provides that "It shall be out of order to use offensive and insulting language about Members of the Council." This provision applies to all Members of this Council but does not specify whether or not they must be present. Therefore, it shall be out of order to use offensive and insulting language about Members of the Council.

I now read out Rule 10(2) of the Rules of Procedure: "These Rules of Procedure shall apply, in relation to the item of business in respect of which

a public officer attends a meeting, to that public officer as they apply to a Member". This provision clearly states that the Rules of Procedure shall apply, in relation to the item of business in respect of which a public officer attends a meeting, to that public officer. Therefore, Rule 41(4) certainly also applies to the relevant public officer.

The public officer referred to by Mr WONG Yuk-man just now is not attending this meeting, so the Rules of Procedure does not apply to him. The Rules of Procedure have to strike a balance between protecting Members' freedom of speech and respecting Members and public officers attending a meeting.

Although Mr WONG Yuk-man's remarks just now are not in breach of the Rules of Procedure, I think there is actually no need for Members to resort to derogatory language to describe public officers in expressing their views. I suggest that Members should make the best use of their language skills and avoid using such language.

Mr WONG Yuk-man, you may continue with your speech.

MR PAUL TSE (in Cantonese): Excuse me, President, I wish to make a clarification first. As that public officer is not attending this meeting, it implies that the content of the Member's speech is irrelevant to the subject. Rule 41(1) of the Rules of Procedure stipulates that "A Member shall not introduce matter irrelevant to that subject." In other words, if the public officer referred to in Mr WONG Yuk-man's speech just now is attending the meeting, the matter raised by him should be relevant to the subject. However, how come he digressed and mentioned Secretary Stephen LAM without any apparent reason? I find this perplexing. According to Rule 41(1) of the Rule of Procedure, the content of his speech is already outside the scope of the subject.

PRESIDENT (in Cantonese): Mr TSE, I understand what profession you are in. On careful observation, one may notice that Members may, when delivering their speeches, often refer to various individuals who are not in the Chamber. However, there is no precise standard to delineate whether or not these individuals are relevant to the contents of Members' speeches. Similarly, to

protect Members' freedom of speech, we should not lay down very stringent requirements to the effect that all public officers not present in the Chamber are definitely irrelevant to the subject under discussion, so that Members must not mention their names. I do not consider this approach viable. Therefore, I think Mr WONG Yuk-man may continue with his speech.

Mr WONG, please continue.

MR WONG YUK-MAN (in Cantonese): Thank you, President, for your wise ruling. What I said was actually relevant to the subject. The Government has been delaying in legislating for standard working hours, and it even did not intend to introduce the legislation at all. For other laws, however, the public officer from the same governing team would force them through in an oppressive manner and cut the Gordian knot. Why did he do so? Because he is a lackey of the totalitarians. Stephen LAM is a lackey, a crawler of the totalitarians and rulers, and that is why he did so. What is wrong with my saying so?

MR PAUL TSE (in Cantonese): This serves him right, President, your ruling will serve him right.

MR WONG YUK-MAN (in Cantonese): You shut up. This is your comment on me, and you may say whatever you like, whatever it is that serves me right, and it does not matter even if you hurl a death curse on me. I have to show you how the two are related

PRESIDENT (in Cantonese): Mr TSE, your remark just now was out of order. Mr WONG, you may go on.

MR WONG YUK-MAN (in Cantonese): the President instructed us to make good use of our language in our speeches, and I just did what I was told to. He is nothing but a traitor, the totalitarians' accomplice, the lackey of the lackeys. Why can I not say so? I remember the President also said so in his writing, am I right? Very well, I will drop it, and let us get back to overtime work. Meetings

are indeed very boring, yet this is fun, thanks to Mr Paul TSE, since I also find it very obscure. As someone who stages resistance in this Council, I really do not care, and I will definitely accept the President's ruling. After all, you always evict me from meetings, which is the ultimate punishment. Now, even Panel chairmen may evict me from meetings, and do not forget that

PRESIDENT (in Cantonese): Mr WONG, please go back to this subject.

MR WONG YUK-MAN (in Cantonese): No, President, this is education. Parliamentary politics is a kind of education, and thank you for

(A Member spoke)

MR WONG YUK-MAN (in Cantonese): President, he is interrupting.

PRESIDENT (in Cantonese): Members please observe the Rules of Procedure. Mr WONG Yuk-man, please go on.

MR WONG YUK-MAN (in Cantonese): Thank you. It is fine. It does no harm to drag on a little. Now, I have spoken for slightly more than four minutes, President, you have to give me some more time to make up for the time lost.

Regarding the importance of standard working hours, many Members have already made it clear just now. Our focus is that as legislation on standard working hours is not available now, it is useless even though minimum wage has been prescribed. When people can find loopholes in law, many workers still have to work overtime and be subject to various forms of exploitation, and they will not be able to enjoy the protection of law. One should bear in mind that some workers, particularly low-paid grass-roots workers with no bargaining powers, are forced by their employers to work overtime. Besides, people who are financially better off have the freedom to choose whether or not to engage in a particular job which requires longer working hours, while grass-roots workers

who can barely make ends meet have no bargaining power as they have to live from hand to mouth. Therefore, this is a very solemn issue, and grass-roots workers cannot have a free choice as other people.

Working overtime will not only affect the health and psychological well-being of employees, as mentioned just now, it will also deprive employees of their time with their families and children, which will in turn bring about all sorts of family problems. This is the reality, and that is why other countries have set standard working hours some 70 to 80 years ago. Certainly, many Members of this Council in support of the industrial and commercial sectors will not allow us to open this breach because the breach of minimum wage has been opened, so how can they stand another blow of standard working hours.

However, Honourable colleagues who seek to fight for the rights and interests of the grass-roots workers should continue to pursue this course unrelentingly and request the Government to legislate for standard working hours. This issue should brook no further delays. Our initial idea was to allow the Government one year's time, that is, it should introduce legislation on standard working hours one year after the implementation of minimum wage. How can we allow any further delay? The episode that happened just now was, in my view, attributed to the fact that the Government has adopted a double standard. The Government's standards are very problematic. While it adopts a delaying tactic on certain laws, it hastily forces through other laws without conducting any consultation. This Government is really disgusting. As there is still one year before Matthew CHEUNG's term of office ends, I hope he can make use of this time to do some good deeds. If he can enact legislation on minimum wage and succeed in legislating for standard working hours within his term of office, he will be able to live up to the expectation of the next and future generations. How difficult would this task be? Can he tell me?

Therefore, we hope the Government will refrain from delaying any further. This practice of delaying the legislative process will not win the support of the public. Besides, the grassroots, in particular the workers are indeed leading a very hard life now. I hope the Government will take on board the proposals put forth by this Council, particularly Members who seek to strive for grassroots' rights and interests.*(The buzzer sounded)*

PRESIDENT (in Cantonese): Mr WONG, your speaking time is up.

MR ALBERT CHAN (in Cantonese): President, "the eunuch is more anxious than the emperor", so the Chinese saying goes. However, the lackey under the eunuch is even more anxious. Such a political phenomenon is really interesting.

President, Mr WONG Yuk-man asked Secretary Matthew CHEUNG just now why there was a delay. The answer is simple, because different classes and benefits are involved. Matthew CHEUNG represents leaders of the establishment, and he is in control of all production-related capital and policies. He represents neither the working class nor employees, including professional accountants — what I mean are those professional accountants under employment rather than those accountants being the bosses — and I mean doctors under the Hospital Authority (HA) rather than the senior management of the HA. His class and stance are very clear. He represents the class which controls assets, capital and production tools. Therefore, without the instruction from the highest echelon, he dares not and will not take any actions in connection with maximum working hours.

Stephen LAM is different. Mr LAM the Eunuch received orders from the Central Government. Just like ordinary lackeys, who will follow what their masters order them to do, he will definitely follow the instructions of his master. This is a political relation as well as a class relation.

President, maximum working hours and minimum wage are actually twin brothers — perhaps I should call them twin sisters or else I may be accused of sex discrimination — and they are related to each other. Just now, we were informed that maximum working hours were prescribed in the United States in the 1930s, and in most of the European countries, maximum working hours were actually introduced before the War. The reasons were simple. With the development of industrial countries after the industrial revolution, workers had to work extremely long hours, which were detrimental to their health and psychological well-being; and industrial accidents had happened one after another. Many workers, particularly those engaged in industrial operations, suffered from fatigue due to excessively long working hours, so much so that they were even unable to control their hand movements, leading to numerous industrial accidents, resulting in employees' physical disabilities or even death.

These problems happened in many mine sites. As mentioned just now, prescribing maximum working hours not only allow employees to have more time to enjoy their family life but also play a vital function in safeguarding their lives and safety.

During a period of time in my youthful days — which lasted as long as three months — I took up two jobs at the same time. I worked in a Chinese restaurant from five o'clock in the afternoon to one o'clock in the morning, and I had another job from eight o'clock in the morning to four o'clock in the afternoon, amounting to 16 working hours per day. One day during the last one or two week of that period, I dozed off while driving in the morning, and after jumping the red light, my car hit an elderly person by the waist and he fell down. The elder had a heart condition. When I got off my car, I noticed that his whole body was shivering, and he sat down at the roadside to take his medication. In the blink of an eye, 30 years have passed, but up till now, I can still remember vividly the reaction of the elder at that time, and I still feel sorry about what happened. Fortunately, the incident did not result in any casualty, but I deeply realize that working overtime is very exhausting and will affect my self-control.

Earlier, I heard many doctors say that they always have to work overtime, so much so that they even do not have time for sleep, which have caused dispensing errors and misdiagnosis. Therefore, excessive working hours will have direct impact on the employees themselves or the people they serve.

Hong Kong is a highly developed place. We have huge reserves and surplus, and our annual per capita GDP stands at some US\$30,000. There is absolutely no reason why maximum working hours are not set. This is obviously because the Government, in formulating policies, is only tilted to employers while disregarding the fundamental political rights of employees. We always say that Hong Kong is a developed place in the world — "developed" with the "ed" suffix. Why are we lagging behind developing places before the War in the area of labour protection legislation?

Back to the fundamental argument, it has something to do with the political system. There is no democracy in the political system, and the Chief Executive is controlled by a small-circle election. The accountability officials appointed by him will certainly continue to serve the groups with vested interest, which are large consortia and hegemonic developers, who are indifferent to the life and

death of employees. If they have a little conscience, as in the case of the FTU's fight for paternity leave earlier, these hegemonic developers would actually offer maternity leave sorry, it should be paternity leave. For men, it is paternity leave, while maternity leave is for women I may have the chance to give birth in the future.*(Laughter)* President, I remember the Henderson Land Development Company Ltd seems to offer four or five days of leave to its male employees so that they can keep their wives company when they give birth, this is really a benevolent measure. Therefore, I hope the Secretary will learn from good employers and prescribe maximum working hours at an early date.

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

MR WONG KWOK-HING (in Cantonese): President, I speak in support of the motion moved by the Honourable colleague, Mr IP Wai-ming.

I joined some members of the Prosperous Men's Club to petition outside the Government Secretariat last Sunday, which was Father's Day. During the petition, I used a song to describe why it is necessary to stipulate paternity leave and standard working hours. The song, which was composed by me by rewriting the lyrics of a folk song called "雞公仔", goes like this, "Wage earners, bending their back, find it formidable to be parents. Even if they get up when it is still dark, it is considered too late. All they want is just to make ends meet."
(Mr WONG Kwok-hing sang the song)

President, men are supposedly the masters, not the slaves, of their own lives. Why then in Hong Kong nowadays, wage earners at large have to face excessively long working hours and toil without compensation? In view of this, the Chief Executive proposed in the policy address last year that studies would be conducted on the enactment of legislation on standard working hours. I think we have to give credit to the SAR Government and the Chief Executive of this term for honouring the pledge of implementing minimum wage. Subsequently, the Government has also embarked a study on legislating for standard working hours and will submit a report before the term of this Government comes to an end, that is, before Secretary Matthew CHEUNG's departure.

We should give credit when something nice has been done, and criticize when there are inadequacies. In respect of these two important and controversial subjects, namely minimum wage and standard working hours, the Government of this term has finally taken a step forward, thanks to years of efforts by the labour sector. It is commendable that the Chief Executive has finally honoured his pledge. It is also commendable that Secretary Matthew CHEUNG has demonstrated his sincerity in achieving this task within his term of office. However, we Hong Kong Federation of Trade Unions (FTU) and Legislative Council Members still have worries. With 10-odd months to go, this Government will come to an end. By then, it will be run by government officials of the new term. Moreover, the term of this Legislative Council will also end and re-election will be conducted. Under such circumstances, will the baton be passed smoothly for the next Government and Legislative Council to enact legislation on standard working hours? This is why we are a bit worried. This is the first point.

Furthermore, in respect of the process of legislating for minimum wage and the situation after the commencement of the legislation, we need to sum up our experience, learn a lesson and make improvements. Only in doing so can we achieve better co-operation between employers and employees, more harmony in society and more advanced economic development, so that everyone can live and work in contentment. Owing to these two factors, the Government should put in more efforts in its studies on legislating for standard working hours and draw up the timetable and a roadmap. This explains why Mr IP Wai-ming mentioned in the first point of his motion that the Government should conduct studies and set a deadline and timetable. And, in order to ensure that the studies be conducted, a study group has to be established.

Actually, Members representing the interests and views of the business sector need not have undue worries and fears. Moreover, they need not express their dissatisfaction in an exaggerated manner upon the implementation of minimum wage. This is because minimum wage and standard working hours should originally coexist. Like a person who is standing, he must have two legs. If he has only one leg, it is impossible for him to walk. This is actually the case. With minimum wage in place, the next thing to do is to formulate standard working hours. We understand that the Government has to overcome many obstacles and hardships in taking forward standard working hours. In any case, we think the Government should press ahead in a step-by-step manner.

Actually, the content of the motion proposed by Mr IP Wai-ming is just that simple. Why should Members be worried and frightened?

Hence, I call on representatives of this Council with or without political affiliation, and speaking for the interest of different classes not to resist the enactment of legislation on standard working hours. In fact, many countries in the world already have different degrees and different forms of regulation in respect of standard working hours. As mentioned by Dr LEUNG Ka-lau just now, only five countries in the world do not have regulation on standard working hours. Why is Hong Kong so backward? Therefore, we should not resist standard working hours.

President, with only dozens of seconds for me to speak, I cannot but respond to Mr LEUNG Kwok-hung's comments — "Long Hair" is not in this Chamber at the moment. He has repeatedly made slanderous charges against and smeared the FTU, accusing the FTU of opposing the Trade Boards Ordinance. His accusations are wrong. Since he has criticized Prof Francis LUI so harshly for misquoting information, he should criticize himself with the words he used to criticize Prof Francis LUI, because he has also criticized and slandered the FTU wrongly. In fact, if not for the efforts of the labour sector, the FTU and other Honourable colleagues, the Trade Boards Ordinance would not have been retained. Thank you, President.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): Mr IP Wai-ming, you may now speak on Mr WONG Sing-chi's amendment. The speaking time limit is five minutes.

MR IP WAI-MING (in Cantonese): President, as I mentioned yesterday, we think standard working hours can help promote work-life balance. My original motion seeks to express our hope for the Government to increase the transparency of the work on studying standard working hours because, since the announcement by the Chief Executive last year of conducting the relevant study, we have no

idea at all of the progress of the study and what is being studied. Therefore, my original motion seeks to bring up these matters.

We in the labour sector have no objection to Mr WONG Sing-Chi's amendment that standard working hours should cover all sectors in Hong Kong because, without the support from other sectors, we could not have successfully fought for the enactment of legislation on minimum wage. Furthermore, Mr WONG's amendment mentions "giving due compensation for overtime work". I would like to point out to him that compensation for overtime work is actually included in our request for enacting legislation on standard working hours. As it is our hope that the Government can account for the transparency of the progress of its study, we have not clearly spelled out in concrete terms some of our aspirations for standard working hours.

As for the formulation of relevant family-friendly policies for the purpose of promoting work-life balance, this is actually our ultimate goal in persistently advocating standard working hours, that is, to strike a balance in life. We support the Government's hope of promoting family-friendly policies before the enactment of legislation. This is like the proposal put forward by Mr CHAN Kin-por on a new career life, which is in line with the new career culture put forth by the FTU and the Hong Kong Clerical and Professional Employees General Union. However, we all the more hope that the Government can refrain from merely paying lip service to promoting family-friendly policies because, before the enactment of legislation on minimum wage, the Government had promoted a policy of offering minimum wage voluntarily. But can our goodwill be achieved so easily without the enactment of legislation for regulation purposes? Not only do we hope the Government can think twice, we also hope that the Government can step up its effort in promoting family-friendly policies, so that the whole community would have a better understanding of the underlying reasons for enacting legislation on standard working hours, and engage the community in more discussions. Thank you, President.

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): President, I would like to once again thank Mr IP Wai-ming for proposing this original motion today. I am also grateful to Mr WONG Sing-Chi for moving an amendment as well as 23 Honourable Members for participating in the debate.

From Members' speeches, we can see their concerns about standard working hours and their diverse views. In conclusion, members of the community and Members who support the implementation of standard working hours share the view that implementing standard working hours can safeguard labour rights and interests, increase worker productivity, promote Hong Kong's economic development and, most importantly, help employees strike an appropriate work-life balance, thereby improving their quality of life. On the other hand, people who have reservations about the implementation of standard working hours consider that doing so will increase the operating costs of enterprises. Moreover, it still takes some time before the commercial and industrial sectors, especially small and medium enterprises (SMEs), can adapt completely to the newly implemented minimum wage. If standard working hours are prescribed now, the flexibility of enterprises will definitely be impacted. Moreover, if the operation of enterprises is undermined, the interests of employees will also ultimately be undermined. It is thus evident that views are still divided.

In fact, we understand that working long hours continuously will have adverse impacts on the health of employees as well as their family lives and social lives. Hence, work-life balance is vital to members of the public and even the development of the entire society. In fact, the Government has been undertaking a lot of work in promoting rest breaks for employees, family-friendly employment measures and occupational health.

We understand that industrial accidents may occur if employees work long hours continuously without sufficient rest. Hence, the Labour Department (LD) has been making an effort in proactively promoting the importance of appropriate rest breaks from the angle of occupational safety and health. After consultation with representatives of employers and employees and occupational safety and health professionals, the Committee on Occupational Safety and Health of the Labour Advisory Board has been promoting the Guide on Rest Breaks since 2003 — perhaps Members also remember this — to encourage employers and employees to, having regard to the different circumstances of various trades and industries, draw up through consultation rest break arrangements which suit employees and can cope with operational needs. In fact, the Committee concluded at that time that legislation should not be enacted on rest breaks because doing so may push up the operating costs of some SMEs and diminish the flexibility required by individual industries, trades or posts.

Furthermore, through legislation and guidelines on working hours, we ensure that people working in some special industries, such as security guards, bus captains of franchised buses and drivers of green minibus, have appropriate rest breaks.

The Employment Ordinance already sets out basic conditions for establishing a family-friendly working environment, such as stipulating various types of holidays, such as rest days, statutory holidays, annual leave and maternity leave. Job security for pregnant employees is also provided for. In case an employee is absent from work under an agreement with the employer (for example he takes no-pay leave to attend to family business), the continuity of his employment contract will not be affected by his absence. There is protection in this regard.

To maintain the usual flexibility of the labour market, we are committed to encouraging employers and employees to work out working arrangements through voluntary consultation. In recent years, the LD has been actively publicizing and promoting Good People Management Practices and family-friendly employment measures. Through continued efforts to organize a variety of publicity activities, as well as the network with 18 Human Resources Managers Clubs and nine industry-based Tripartite Committees, the LD encourages enterprises to foster frank communications and co-operation with their employees in formulating measures to help employees strike a balance between work and family responsibility.

In order to develop the culture of caring about families, the Family Council organized the "Family-Friendly Employers Award Scheme 2011" to arouse concerns in the business sector about family core values, honour commercial organizations and enterprises which emphasize the family-friendly spirit, and take this opportunity to foster a pro-family culture and environment, thereby encouraging employers to implement family-friendly employment policies and measures. Participating companies or enterprises may receive awards in different categories, such as Family-Friendly Employers, Distinguished Family-Friendly Employers, Awards for Innovation, and so on. Commencing in early April this year, the Scheme is now accepting nominations and applications. I encourage all social sectors to enthusiastically support this Scheme.

Work-life balance is indeed very important. However, as the life balance for each person may be different, we think that it is most pragmatic and effective for employers and employees to engage in direct and frank communications to discuss conditions of employment and working arrangements that suit the actual circumstances of both parties. This is why the Government has all along encouraged employers to adopt family-friendly employment measures to help employees strike a balance between work and family responsibilities and requirements. The family-friendly employment measures mentioned by me earlier are one of such examples. The Government will continue to promote the relevant measures proactively.

President, before implementing any policies, the Government must consider the arguments put forward by various parties and conduct a detailed analysis and evaluation in an objective, comprehensive and prudent manner. Standard working hours are a very complicated subject. We cannot underestimate its impact on employers, employees and even the entire Hong Kong society and economy. However, it is precisely due to the significance of this subject that the policy study must be conducted properly and seriously. We must act pragmatically and prudently to study the issue in great depth.

Some Members have asked why legislation is enacted for minimum wage but not standard working hours. I would like to point out that minimum wage has been raised and discussed in the community for years, and it can only be fully and formally implemented after the interests of various parties have been duly balanced and a consensus forged. At present, it is most important to ensure the smooth implementation of the Minimum Wage Ordinance to safeguard grass-roots workers. Meanwhile, we will observe the impact of the implementation of minimum wage on the operation of enterprises, employment conditions, working hours and work pattern. Compared to minimum wage, the subject of standard working hours is, as pointed out by me just now, even more complicated. The relevant policy study can give us a deeper understanding of this subject. It also helps society as a whole to contemplate and discuss issues in this area. Upon completion of the policy study, we will maintain communication with the relevant stakeholders. Of course, we will report to the relevant Panels of the Legislative Council and the Labour Advisory Board on the outcome of the study. Before a consensus is forged among various social sectors on this subject, it is indeed premature for us to decide to enact legislation to regulate standard working hours or draw up a timetable for this purpose.

President, the rapid economic development of Hong Kong over the years is indeed attributed to our human resources. The labour force in Hong Kong, whether in the past or at present, has been known for high flexibility and strong adaptation. The key to maintaining Hong Kong's edge is to strike a reasonable balance between maintaining Hong Kong's competitive edge and the strengths of local talents and safeguarding labour rights and interests. We will continue to move in this direction and study standard working hours, a subject with a far-reaching impact, in a pragmatic manner.

President, I so submit. Thank you.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the amendment, moved by Mr WONG Sing-chi to Mr IP Wai-ming's motion, be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mr TAM Yiu-chung rose to claim a division.

PRESIDENT (in Cantonese): Mr TAM Yiu-chung has claimed a division. The division bell will ring for three minutes.

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

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

Functional Constituencies:

Mr CHEUNG Man-kwong, Mr CHAN Kin-por, 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, Ms Miriam LAU, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Jeffrey LAM, Prof Patrick LAU and Dr LAM Tai-fai voted against the amendment.

Mr CHIM Pui-chung and Mr Paul TSE abstained.

Geographical Constituencies:

Mr Fred LI, Mr James TO, Ms Audrey EU, Mr WONG Kwok-hing, Mr LEE Wing-tat, Mr Ronny TONG, Mr KAM Nai-wai, Mr WONG Sing-chi, Mr WONG Kwok-kin, Mr Alan LEONG, Miss Tanya CHAN, Mr Albert CHAN and Mr WONG Yuk-man voted for the amendment.

Mr TAM Yiu-chung, Ms Starry LEE, Mr CHAN Hak-kan and Dr Priscilla LEUNG abstained.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 17 were present, six were in favour of the amendment, nine against it and two abstained; while among the Members returned by geographical constituencies through direct elections, 18 were present, 13 were in favour of the amendment and four 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.

PRESIDENT (in Cantonese): Mr IP Wai-ming, you may now reply and you have one minute 15 seconds.

MR IP WAI-MING (in Cantonese): Minimum wage and standard working hours are actually two sides of a coin. The fragmentation of the labour legislation has now resulted in the present disputes over minimum wage. In my opinion, the problems occurred after the implementation of minimum wage are attributed to the slackness and casual attitude of the relevant government departments, not the legislation itself.

I have recently heard about these two incidents. First, some employees in the airport were required to work more than 300 hours a month. Some of them even brought with them sleeping bags when they went to work. Second, I have recently watched an interview with Mr Leo GOODSTADT on the television. During the interview, he pointed out that people would invariably argue that productivity or economic development would be affected when labour legislation was revamped in the 1960s and the 1970s to, for instance, give workers holidays. He asked in the interview this question: Given our present economic development, what stage have we reached? I hope Members can think twice about these words from Mr GOODSTADT. Thank you.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by Mr IP Wai-ming be passed.

PRESIDENT (in Cantonese): 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)

Dr Philip WONG rose to claim a division.

PRESIDENT (in Cantonese): Dr Philip WONG has claimed a division. The division bell will ring for three minutes.

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

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

Functional Constituencies:

Mr CHEUNG Man-kwong, Mr CHAN Kin-por, Dr LEUNG Ka-lau, Mr CHEUNG Kwok-che, Mr IP Wai-ming and Dr PAN Pey-chyou voted for the motion.

Dr Raymond HO, Mrs Sophie LEUNG, Dr Philip WONG, Ms Miriam LAU, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Jeffrey LAM, Prof Patrick LAU and Dr LAM Tai-fai voted against the motion.

Mr CHIM Pui-chung and Mr Paul TSE abstained.

Geographical Constituencies:

Mr Fred LI, Mr James TO, Mr TAM Yiu-chung, Ms Audrey EU, Mr WONG Kwok-hing, Mr LEE Wing-tat, Mr Ronny TONG, Mr KAM Nai-wai, Ms Starry LEE, Mr CHAN Hak-kan, Mr WONG Sing-chi, Mr WONG Kwok-kin, Mr Alan LEONG, Miss Tanya CHAN, Mr Albert CHAN and Mr WONG Yuk-man voted for the motion.

Dr Priscilla LEUNG abstained.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 17 were present, six were in favour of the motion, nine against it and two abstained; while among the Members returned by geographical constituencies through direct elections, 18 were present, 16 were in favour of the motion and one abstained. 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): Second Motion: Safeguarding the room for business and development 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 Dr LAM Tai-fai to speak and move the motion.

SAFEGUARDING THE ROOM FOR BUSINESS AND DEVELOPMENT OF SMALL AND MEDIUM ENTERPRISES

DR LAM TAI-FAI (in Cantonese): President, I move that the motion, as printed on the Agenda, be passed.

As Members, we should follow the Rules of Procedure in the conduct of Council business but rules are rigid while human beings are flexible. Moreover, different matters should receive different priorities. If we are too preoccupied with rules in the conduct of Council business and stick to rules rigidly, this would often lead to low efficiency of work, Members cannot speak their minds freely and issues cannot be resolved effectively either. This is also not a blessing to the public.

The motion proposed by me today is very different from the one that I originally intended to propose. The motion that I originally intended to propose was focused on the Competition Bill presently under scrutiny, but the President considered that in doing so, I had contravened the Rules of Procedure and asked

me to revise the contents. I could only comply because I am just a humble Member.

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

Honourable colleagues, the wording of the motion that I originally intended to propose was as follows: That, in view of the many ambiguities in the provisions of the Competition Bill (the Bill) under scrutiny at present and the many loopholes in the specific regulatory guidelines, small and medium enterprises (SMEs) are worried that if the Bill is enacted in the future, they may easily be oppressed by large enterprises bringing private litigations against them, and they may fall foul of the law easily and have to bear heavy compliance costs and litigation fees, thus dealing a severe blow to their business and development, causing many innocent SMEs to be victimized and producing inestimable negative impact on the overall economic development and employment in society; in this connection, this Council urges that the Government should completely exempt SMEs from the scope of the Bill, so as to effectively safeguard public interests as well as SMEs' room for development.

Deputy President, of all the companies in Hong Kong, 98% are SMEs and they hire over 1.3 million people. Not only are SMEs an important pillar of our economy, they also provide job opportunities for the general public to earn a living. For this reason, the survival and development of SMEs is not just an economic issue but also a livelihood and political issue. After the financial tsunami, the European and American markets have not yet fully recovered even now. Here, I will provide some figures for Members' reference: Exports to the European Union and the United States in the first quarter of this year amounted to \$80.9 billion and \$72.7 billion respectively, which were lower than the levels before the financial tsunami. In fact, the unemployment rates in the United States and the European Union are also very high. The unemployment rate in the United States is more than 9% and in the Euro zone, it is close to 10%. In the short term — I believe Members all know this very well — it will be very difficult for these unemployment rates to come down. The number of orders for SMEs in the export business is also insufficient and even if they can secure orders, they are afraid of defaults in payment, hence the risk they face is actually very great.

Deputy President, since the US dollar is weak, various foreign currencies are appreciating continually, which have directly eroded the profits of SMEs. A year ago, the exchange rate between Renminbi and Hong Kong dollar was \$1.14 but the exchange rate is now \$1.2, with an increase rate of over 5%. Experts also predict that Renminbi is likely to appreciate by another 5% this year. As a result, many SMEs with weaker bargaining power have to operate at a loss and may have to close down. The prospects of SMEs running local businesses are not optimistic. Why? With rising rents, stocks and raw materials, the operating cost is being pushed up. The inflation rate on the Mainland has already exceeded 5.5% and it is expected that it will continue to rise. Therefore, if their goods are sourced from the Mainland, the prices will only become increasingly expensive. Since SMEs have little financial power, their operation will become more difficult.

Deputy President, the minimum wage was implemented on 1 May and after its implementation, the operating cost has risen immediately. This has dealt a blow to many sectors, in particular, to small shops in the retail business and restaurants. Of course, for consortia, chain enterprises, such as fast food shops and stores which are rich and powerful, they can stand up to the challenges, and they would even take over those shops and restaurants operating with a small capital. However, the SMEs are in a great plight.

Deputy President, the Government often describes Hong Kong as a pluralistic city that tolerates pluralistic voices, cultures and talents; but in reality, our economic and industrial structures are highly homogenous and are skewed towards finance and real estate, with other industries being almost neglected. For this reason, the room for development of SMEs is very small. Large property developers, apart from raising rents constantly, also do not miss a single opportunity in running other lines of business at the same time. Take supermarkets for an example, they even sell vegetables and pork at the same time, using their big capital to crush their rivals. Frankly speaking, the room for development of SMEs is shrinking.

Deputy President, it is very difficult to operate export or local businesses and the Government often says, "Go back to the Mainland and get into the domestic market. If you have no rice to eat, eat noodles." It is true that the Mainland market is really huge and that its development is also rapid and vigorous. However, is it really so easy for SMEs to gain entry into the Mainland

and develop in the domestic sales business? The Government is preaching one thing but actually practising another. It does not have any actual measures or policies to support SMEs in going to the Mainland, upgrading and restructuring or developing there.

Deputy President, take that outdated section 39E of the Inland Revenue Ordinance as an example, although Secretary Prof K C CHAN knows full well that this provision is outdated and problematic, he is unwilling to take the initiative to amend it. He is callous and deals with this matter in the bureaucratic mentality of "less work, less error; no work, no error". We all know that it is a major trend for industries and businesses in Hong Kong to relocate across the border and this has practically nothing to do with tax evasion. However, no matter how, he still refuses to admit that this is the fact and offer the depreciation allowances for machineries to "import processing" enterprises, so of course, the upgrading and restructuring of the sector cannot be facilitated. Furthermore, the Government also spared no efforts in penalizing members of sector by checking their old records, thus sowing widespread fear in the industry, and leading to widespread voices of grievances.

Deputy President, although I do not want to say so, I have to say that Secretary Prof K C CHAN is actually a very hypocritical official. He often claims that he likes to listen to the views of the business sector, the accounting sector and tax experts but in reality, he does not even listen to the views of the Joint Liaison Committee on Taxation and rejects its recommendations without any ground and formulates policies without any regard to the reality. I once asked him to seek the advice of the Department of Justice and the legal profession but he did not listen to me. His mind is full of thoughts of bureaucratic hegemony and he does not care about the survival of SMEs.

Deputy President, apart from section 39E, the cross-sector Competition Bill proposed by the Government at present will also deal a serious blow on the room for development and the sustainable competitiveness of SMEs. Back then, when various sectors in society expressed the hope that the Government could enact the relevant legislation, they actually hoped that some large consortia and enterprises could be targeted and prevented from engaging in acts of monopolization in such areas as supermarkets and petrol stations, in the hope that the room for development of SMEs could be protected and consumer interests safeguarded. However, the current proposed legislation has turned and targeted against the SMEs in other sectors instead. This is, in essence, putting the horse before the

cart and violating the original intent of the legislation. The "big tigers" have not been suppressed; instead SMEs are victimized and being "punished" by the Government for no reasons at all and the public at large cannot be benefited as well.

During the scrutiny of the Competition Bill, many Honourable colleagues and SMEs have already pointed out that there are many ambiguities in the legislation and even some key terms, such as "prevent, restrict or distort competition", "substantially lessen competition", "appreciable adverse effect", and so on, lack clear definitions. Even the term "market" discussed recently also lacks a clear definition of the scope. Moreover, Secretary Gregory SO was frequently absent from the meetings, so I wonder if he knows how to give an explanation of these matters. However, he often says that a large number of overseas cases and examples are available for reference. Of course, I know that there are countless cases throughout the world but which ones are applicable and which ones are not? I am afraid only the Government will have the say but we SMEs will not have the right to say anything.

Deputy President, it is said that "every town has its own rules". If the Government plans to hold the overseas examples and cases up as the golden rule, follow these models fully and transplant them to Hong Kong, I believe that the Government, in doing so, will completely overlook the actual situation and deprive SMEs of their room for development. For example, the draft "Guidelines on the First Conduct Rule" proposed by the Government earlier was described by many people as tantamount to white terror. The 12 crimes listed therein cover all aspects of everyday business activities conducted by SMEs, such as information sharing, group purchasing and selling, as well as stipulating trading conditions, and so on. These guidelines are tantamount to setting up a gallows for SMEs and any slight lapse on the part of SMEs will result in beheading. As we all know, business associations of SMEs would exchange information and have discussions on the market conditions and these are perfectly normal commercial behaviours. However, in the future, they are at the risk of being prosecuted by the Government at any time and being accused of engaging in anti-competition behaviour, thus all SMEs feel insecure.

In addition, we have said on a number of occasions that the powers of the Competition Commission (the Commission) are really too great. Not only does it have the power to prescribe guidelines, it also has the power of regulation, investigation and prosecution. If this situation goes on, there will be accusations

that the Commission is hegemonic and this situation will arise easily. SMEs are the economic lifeblood of Hong Kong and they provide job opportunities for 1.3 million people. If this lifeblood is placed under the control of the Commission, I can tell you all, the development and future of SMEs will be hanging in the balance and devoid of any protection.

In fact, we can all foresee that the legislation will make SMEs live in constant fear every day. On the one hand, they will be afraid of falling foul of the law; on the other hand, they will be afraid of being oppressed by large enterprises that bring private litigations against them, as a result of which they have to pay hefty legal and administrative fees. If such a situation continues, SMEs may even be deterred from doing any business. In that event, all commercial activities in Hong Kong will be monopolized by consortia and the economic development in Hong Kong will be under the control of a small group of people. I wonder if this is a situation that the Government or the Central Government wishes to see.

Deputy President, I urge the Government not to be skewed towards the development of finance and property any more. It also has to take care of other industries and formulate more policies to support the development of SMEs, for example, help SMEs expand in other non-European and American markets and identify more sources of supply for their goods. Of course, the Government should also offer special concessionary measures and vigorously assist SMEs in taking part in exhibitions in various cities on the Mainland or in other countries, so as to promote their businesses. Of course, it is most preferable to amend section 39E of the Inland Revenue Ordinance expeditiously to provide more opportunities for SMEs to upgrade, restructure, gain entry into the Mainland market and do business.

Moreover, I hope that the Government can take the lead in revitalizing industrial buildings, so that they can be let to SMEs as offices and shops, so as to enable the latter to reduce their operating expenses. Lastly, I hope that the SAR Government can take into consideration the actual situation and exempt all SMEs from the coverage of the Competition Bill, so as to avoid causing collateral damage to innocent people.

Deputy President, I so submit.

Dr LAM Tai-fai moved the following motion: (Translation)

"That after the financial tsunami, European and American economies have not yet fully recovered, and market purchasing power has yet to revive, in addition, the US dollar has remained weak, the exchange rates of Renminbi, etc., have kept rising, rents and raw materials prices have continued to soar, causing operating costs to increase substantially and making the business environment of small and medium enterprises ('SMEs') very difficult; what SMEs worry more is that if regulatory legislation is enacted in the future, they may easily contravene the law inadvertently, be oppressed by large enterprises bringing private litigations against them, and they need to bear heavy compliance costs and litigation fees, thus dealing a severe blow to their business and development, and producing inestimable negative impact on the overall economic development and employment in society; in this connection, this Council urges that when enacting cross-sector regulatory legislation, the Government should completely exempt SMEs from the scope of regulation, so as to effectively safeguard consumer interests as well as SMEs' room for development and sustainable competitiveness."

DEPUTY PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by Dr LAM Tai-fai be passed.

DEPUTY PRESIDENT (in Cantonese): Five Members will move amendments to this motion. This Council will now proceed to a joint debate on the motion and the five amendments.

I will call upon Mr WONG Ting-kwong to speak first, to be followed by Mr Albert CHAN, Mr Ronny TONG, Mr WONG Yuk-man and Mr Fred LI; but no amendments are to be moved at this stage.

MR WONG TING-KWONG (in Cantonese): Deputy President, the Hong Kong economy has just walked out of the financial tsunami and is showing clear signs of recovery. However, the external economic environment is still fraught with uncertainties. Coupled with inflationary pressure, the business environment of

enterprises, in particular, small and medium enterprises (SMEs), is still full of challenges.

On the external economic environment, the European and American economies have not yet fully recovered and their purchasing powers have still not staged a recovery. The economic prospects of the United States and Europe are still uncertain and the trend of recovery will still see some reversals. Owing to a weak US dollar and soaring oil prices, quite a lot of risks still exist. Regarding the Mainland, in recent years, the tightening requirements relating to environmental protection and labour contracts, the increases in minimum wage and the tightening of the policy on processing trade, coupled with increasing inflationary pressure, the appreciation of Renminbi and rising production costs, have all put considerable operational strain on enterprises. Since SMEs are weaker in financial strength, the difficulties that they are facing are naturally greater.

Locally, owing to the low exchange rate of the US dollar, the appreciation of Renminbi and the inflow of more capital into Asian regions, Hong Kong is under the pressure of inflation and asset appreciation, and with rents and the prices of raw materials surging all the time, the operating cost and business environment of SMEs have been affected. Apart from the indistinct concerns and inflation in the external economic environment, SMEs in Hong Kong also have to face a series of new legislation introduced by the SAR Government, for example, the Minimum Wage Ordinance that came into operation in May this year and the Competition Bill being scrutinized at present, as well as a study on standard working hours which will soon be launched. Not only would all these result in rising cost for SMEs in Hong Kong, they would also increase business uncertainties and impose a lot of constraints, thus adding to the operational difficulties for SMEs and undermining Hong Kong's flexibility and competitiveness.

(THE PRESIDENT resumed the Chair)

The Competition Bill now under scrutiny not only targets at serious anti-competition behaviour, it also models on the competition law in the European Union, which is the most stringent in the world, for example, the

penalties are calculated on the basis of 10% of the global turnover. As many provisions are rather vague and private independent litigations are also allowed, if this piece of legislation is passed in its original form, even if SMEs are not involved in deeds that affect the market seriously, for example, even if they merely discuss the market situation or exchange information about the market, they may still easily contravene the law inadvertently. This will increase the compliance costs for SMEs and easily result in criminal liabilities. On the one hand, SMEs have to cope with unreasonable litigations and the operational risk of contravening the law inadvertently, which may even lead to a winding up of businesses established for many years. On the other hand, due to an increase in compliance costs and the fact that "the wool comes off the sheep's back", the relevant costs will naturally be transferred to consumers, so this is neither beneficial to SMEs nor consumers, and the Government will not benefit in any way either, since the cost of regulation will increase, so this will lead to a "all lose" situation.

President, we believe that SMEs have made considerable contribution to the Hong Kong economy. At present, there are some 285 000 SMEs in Hong Kong, accounting for over 98% of all business entities in Hong Kong and hiring almost 50% of the working population in Hong Kong as a whole. Hence, SMEs are a major pillar of Hong Kong's economy. As the development of SMEs has a bearing on the overall economic development, the Governments of many other countries have attached great importance to SMEs and provided substantial support for their development. Should the SAR Government increase its support for SMEs at a time of economic uncertainties? What the SAR Government should do is to formulate long-term and comprehensive policies to support SMEs and provide them with a better business environment.

We also propose that the SAR Government should conduct a comprehensive review and formulate a long-term and comprehensive policy to support SMEs, enhance the services provided by the Support and Consultation Centre for SMEs, co-ordinate various organizations in providing support services and helping SMEs in Hong Kong develop in such aspects as financing, taxation, human resources, product exploration, technological upgrading and marketing.

The SAR Government can consider enhancing the ongoing SME Loan Guarantee Scheme. The application period for the Special Loan Guarantee Scheme, introduced during the financial tsunami with a funding of \$100 billion,

had ended late last year. Although the worst time of the financial tsunami had passed, SMEs have along encountered difficulties in financing. We propose that the Government should enhance the ongoing SME Loan Guarantee Scheme, for example, by providing a guarantee level of more than 50% and offering low-interest loans for brand development, product research and development, the upgrading of technology, the upgrading and restructuring of companies, and so on.

President, entrepreneurs often lack actual business track records and they have no assets that can be used as collaterals, so it is more difficult for them to take out bank loans. Since the venture capital matching activities in Hong Kong are comparatively inactive, entrepreneurs have great difficulties in raising capital. Can the SAR Government consider establishing an entrepreneurship assistance fund? Or can the measure of tax concessions be introduced for entrepreneurial activities to encourage entrepreneurship funds to invest in Hong Kong companies with development potential? Meanwhile, consideration can also be give to the establishment of more "incubation centres for enterprises" to provide one-stop business consultancy service, so as to nurture more quality SMEs.

More importantly, even as we examine the laws, regulations and administrative measures that are unfavourable to the business environment, the Government also has to streamline the licensing system, improve the efficiency of customs clearance and fully implement the co-location arrangement. When enacting new legislation, the Government has to assess if they will have any serious impact on the business environment of SMEs. If the compliance cost of enterprises increases drastically and are beyond their affordability, this will undermine Hong Kong's competitiveness, thus affecting economic development and employment opportunities in Hong Kong. For this reason, when enacting legislation, the Government should consider offering appropriate exemptions to SMEs.

On the support for promotional activities, we propose that the Government should establish a "brand development council" and create a dedicated fund for brand development. The brand development council will be specifically tasked with advocating, researching, formulating and promoting the overall development strategy and measures for Hong Kong brand names, directing and co-ordinating activities relating to Hong Kong brand names and providing one-stop support services for brand names. Through this dedicated fund, the Government can

help Hong Kong companies in the Pearl River Delta (PRD) Region expand in the domestic market. When Hong Kong companies in the PRD Region open up the Mainland domestic market, they face great difficulties, such as a lack of publicity on their brands, a lack of understanding for the Mainland domestic market and a lack of free-flowing domestic sales channels. In order to assist these SMEs in gaining entry into the Mainland domestic market, the SAR Government can make use of the relevant funds to establish long-term exhibition and sales venues on the Mainland for Hong Kong goods, provide training and services in developing brand names and opening up domestic market channels, organize seminars for Hong Kong companies and experts to share their experience in gaining access to the domestic market, and so on.

At the same time, the Government should also further capitalize on and make better use of the Mainland/Hong Kong Closer Economic Partnership Arrangement and the Framework Agreement on Hong Kong/Guangdong Co-operation to enhance co-operation between SMEs in Hong Kong and Mainland enterprises. On expanding domestic sales on the Mainland, assistance should be offered in the removal of obstacles to facilitate the expansion of domestic sales by processing enterprises, the adjustment of the taxable amounts, the streamlining of the approval procedures, the opening up of more Mainland markets and business areas, and so on.

It is only when the Government takes greater initiative and joins hands with the sector in creating a favourable business environment for SMEs that greater wealth and more employment opportunities can be created for Hong Kong, so that the goals of improving public living and promoting sustainable economic development can be attained.

President, I so submit.

PRESIDENT (in Cantonese): When Dr LAM Tai-fai spoke earlier, he talked about the motion that he had originally intended to propose. I disallowed Dr LAM to propose the motion because I ruled that according to the stipulations of the Rules of Procedure, the motion was not in order, not because he was a humble Member, as Dr LAM described himself. I have never regarded Dr LAM Tai-fai or any other Member as a "humble Member".

MR ALBERT CHAN (in Cantonese): President, just now when I listened to Dr LAM Tai-fai's speech, I took a closer look to make sure that he is really Dr LAM Tai-fai as I was thinking why his words were not quite like what the pro-government camp would say.

President, I do not know if this is because Henry TANG is going to run for the Chief Executive and so, he has to "clear his records" or whatever. If Dr LAM is so dissatisfied with the Secretaries of Departments and Directors of Bureaux, and if his "buddy" is going to become the Chief Executive, I hope that he would consider taking up the office of a Director of Bureau and by then, it would be us chiding him, not him chiding the Secretaries of Departments and Directors of Bureaux here. This will always happen. Even though his "buddy" has hold the post — His "buddy" was once the Secretary for Commerce and Industry yes, it should be Secretary for Commerce and Industry, and he had been the Financial Secretary and now, he is the Chief Secretary for Administration — Since his "buddy" has failed to command departments to promote the development of small and medium enterprises (SMEs) even though he is the Chief Secretary for Administration, how can he be the Chief Executive? The Chief Secretary for Administration is charged with the duty of co-ordinating the work of various Policy Bureaux and although he, being the Chief Secretary for Administration, has powers, status, resources and experiences, as well as such a brilliant consultant as Dr LAM Tai-fai giving him advice, he still cannot do something for the SMEs in Hong Kong, so how can we expect him to achieve anything when he becomes the Chief Executive in future? President, this is outside the scope of the topic. Well, I have told Dr LAM Tai-fai many times that he should cease to be a Member of this Council in future, and it is better for him to take up the office of a Director of Bureau or a Secretary of Department, so that he can do more for Hong Kong people practically at the policy/administrative level. This is better than frittering away his youthful years in this Legislative Council which engages merely in "empty talk".

President, the key point of my amendment is to call on the Government to buy back The Link REIT. The reason is simple. SMEs can then have room for survival, not to mention development. To allow SMEs the opportunity to survive, rental is most important factor, because many SMEs have wound up or are on the brink of winding up or perishing, or are even driven into extinction for reasons that have to do with the rent. Therefore, so long as the rent is

manipulated by developer hegemony, there will be no room for the survival of SMEs, still less for their development.

Let me read out some figures to Members and they will know how horrible The Link Management Limited (The Link) is. I have drawn up a table to show a simple analysis of the changes in the profit and market value of The Link over the five years of 2006, 2007, 2008, 2009, and 2010 to 2011. I will only read out the figures of 2006 and 2011 to draw a comparison. In 2006, the average monthly unit rent for shops under The Link was \$25.4 per sq ft, whereas this year's is \$35.3 per sq ft, showing an increase of 39%. The rental adjustment rate of its shops was 2% in 2006, followed by 11%, 24%, 28%, 23% and 30% respectively in the subsequent years, showing a hike of over 20% annually. As regards revenue, it was \$1.354 billion in 2006 but in 2011, The Link has recorded a revenue of \$5.355 billion, representing a three-fold increase. In respect of distributable income, it was \$467 million in 2006 and the figure in 2011 is very horrible as it has reached as much as \$2.458 billion, representing an increase of 46% or 4.6 folds and that is, an increase of more than four folds. The net asset value was \$23.7 billion in 2006 and in 2011, the value of its assets has hit \$54.9 billion, showing a 1.3-fold increase. Its market value has also increased substantially from \$600 million in 2006 to \$1.5 billion in 2011.

From the above figures, we can see that the reason for their substantial increases is very simple. It is all because of a substantial increase in rent. The rent has increased substantially because of what the unscrupulous landlord has done. After The Link took over, many shops that had operated for two or three decades, such as some pharmacies and local bistro cafés, were all driven out of business. As Dr LAM Tai-fai has just said, many shopping malls have been manipulated by chain stores, or chain stores under major consortiums. As a result, SMEs run by members of the ordinary public have gradually disappeared in the shopping malls of The Link.

Yesterday, some organizations published findings about expensive prices of goods sold in markets in new towns, and we have criticized this in this Council for more than a decade. This is especially the case in Tin Shui Wai. Let us not talk about The Link now, and even in markets formerly managed by the Housing Department, the single tender approach was adopted for contractors to bid for the markets and consequently, the market rent had caused the prices of goods in the markets to rise substantially. These are definitely interrelated. I remember that

in 2003 to 2004, the shops in some markets in Tin Shui Wai measuring 10 ft by 8 ft and selling vegetables have to pay rents as much as \$20,000 to \$30,000 a month. It is most outrageous that a shop which was even smaller in size and selling tofu paid a monthly rent of over \$10,000. That was the rental level six to seven years ago. Think about this: How much is a piece of tofu? The tenancy agreement stipulated that the shop can sell tofu only and that neither soya milk nor stuffed tofu can be sold because stuffed tofu is manufactured food and it is against the legislation on hygiene to sell it. So, tofu shops are generally in breach of the regulation because they sell tofu as well as soya milk or other products. Given the expensive rent for running a business, prices are set to be expensive.

With regard to the survey conducted by some organizations — I talked to a market stall operator on phone today — He severely criticized that these surveys are distorted and not comprehensive. He said that in certain markets, while vegetables are expensive, some other goods are cheap. Markets are commercially viable because some goods are expensive and some goods are cheap, so that the prices can even out to attract different customers. For instance, in the market in Yat Tung Estate, Tung Chung, the prices of some vegetables are more expensive than those in Wan Chai but bread is very cheap in the market of Yat Tung Estate, as a bun is sold at only a dollar or two whereas the same costs \$5 to \$6 in some other districts. Moreover, seafood products are particularly cheap in Yat Tung Estate's market. Such being the case, in mentioning only the expensive goods but not the less expensive goods, these surveys have led to a drop of at least 30% in the business of the entire market and so, they are very unfavourable to the shop tenants.

I, therefore, appeal to these organizations to take into account the plights of the shop tenants in conducting similar surveys in future, apart from wishing to make a name for themselves and attract coverage by the press. These organizations look awesome when their names are reported but this has caused shops to face a drop of 30% to 40% in business and the possibility of having to wind up. Therefore, sometimes when these surveys concerning public affairs are conducted, the interest of the disadvantaged groups must be taken into consideration, just as what we do when criticizing The Link. While we will certainly spare no effort to criticize it, we will, alongside our criticisms, do our best to provide safeguards to shops that are operating in difficulties under The Link.

President, when it comes to safeguarding the development of SMEs, the Government does have a role to play. Over the years, I have said many times in this Council that the Government should provide support in terms of the overall industrial policy. Under the industrial policy, the development of small and medium manufacturing industries is also very important, as they are the most labour-intensive industries employing the largest number of workers. In Hong Kong, the manufacturing or production industries can have a lot of room for development. Food production is an example. The production of food can be increased, and many people from the market in our great Motherland will buy these products, including medicines, and this can benefit our compatriots in the Mainland too. Other examples are the watch and clock industry, jewellery, fashion — what I mean is the manufacturing industries, not the retail industry or industries investing and setting up factories in the Mainland while running their offices in Hong Kong — Hong Kong can play an important role in respect of high value-added products. If the Government can conduct studies in this respect and promote the market and in particular, provide as much assistance as possible in respect of land, high value-added industries (many of which are SMEs) in Hong Kong can have the opportunity to develop and survive. Most importantly, Hong Kong people can be employed to take up these jobs, and since these are high value-added industries, employees would be remunerated at a reasonable level.

Therefore, the Government has a crucial role to play in this respect. I believe the Government will be harping on an old tune. Dr LAM Tai-fai, I hope that next year, if your "buddy" can become the Chief Executive and you will become a Director of Bureau or a Secretary of Department, we would not have to criticize you with what you said today in criticizing other people. I hope that after a change in the leadership of the Government, the SMEs in Hong Kong can achieve some development and see the first light of dawn, so that we would not have to raise this issue any more after repeating it over and over again for a decade.

MR RONNY TONG (in Cantonese): President, in conducting any public discussion, we must take a fair attitude and argue strongly according to the facts. Lopsided arguments are often hardly convincing, however pleasing to the ears. President, I think it is all the more necessary for Members to have this virtue. However, during the debate on minimum wage — sorry, not minimum wage; I

have been thinking about minimum wage even in my dreams — during the debate on the competition law, regrettably, I have the feeling that a number of colleagues have neglected this essential virtue that I have just spoken of.

President, why do I say so? During the past year, many arguments and even this motion today can hardly convince us that the small and medium enterprises (SMEs) are being suppressed or targeted. President, in the 120-odd countries all over the world, many different experts have told us during their visit to Hong Kong that the SMEs in other countries very much welcome and support a competition law. The existing Telecommunications Ordinance in Hong Kong has actually provided a framework for fair competition and its provisions have come into force for years, but there has not been — President, there has been no prosecution instituted against the SMEs.

Sometimes, the reports in newspapers are laughable indeed. For instance, it was reported last week that at the meetings of some chambers of commerce, some representatives of SMEs had vociferously demanded legislation against monopoly and said that they wanted no competition law. President, if you read the provisions more carefully, you will find that these comments are indeed incomprehensible. If these remarks were made by people who do not know very well the clauses of the Bill, we may still understand and accept it, but if these remarks were made by Members, frankly speaking, I must say that I beg to differ.

President, why do I say so? The Bill actually targets only two conducts. The first is abuse of market dominance. This is obviously targeting monopolistic conduct, so what is it if it is not an anti-monopoly law? The second is collusive practices to prevent competition. President, judging from the definition, SMEs certainly are not considered a monopolistic entity and so, their individual behaviour does not constitute monopolistic conduct. It does not belong to the second conduct that I have just mentioned and hence falls outside the scope of regulation. If this Bill is said to be persecuting the SMEs, it is indeed beyond my imagination.

But in the meantime, what we cannot neglect is that although SMEs have made significant contribution to the economy of Hong Kong, they should respect the overall interests of society. If all SMEs collude with each other and come together, they are no longer SMEs but a major economic entity monopolizing the market. Their alliance or collusion will change the nature of the economy. If

this conduct is the first conduct that the Bill seeks to tackle, it is not individual SMEs that are being targeted, but the economic powers to monopolize the market of the SMEs after their alliance or collusion.

Based on what I have said above, firstly, this legislation is obviously an anti-monopoly law; secondly, it does not target at individual SMEs. Such being the case, why are many representatives of the business sector still vociferously complaining in this Council that SMEs in Hong Kong are being driven to the wall? I have even read in newspapers the remarks that Hong Kong people would never be able to do business any more and that all chambers of commerce should dissolve because we can no longer do business. President, such lopsided slogans can hardly be convincing.

President, I have given a simple and clear explanation on the basis of the Bill. The Bill itself cannot possibly affect the operation of SMEs because by definition, the relevant conduct is regulated by the law when it is obstructing or preventing competition. Individual SMEs that run as an individual entity will not be brought under the regulation of this legislation. However, if they operate their business with the mindset of an alliance, a union or collusion, well, sorry, they would have become an economic power monopolizing the market and therefore, the Bill will apply, and they have not put forward any argument which can convince us why they should not be brought under regulation.

President, I have heard many times the view that private enforcement will enable major consortia to invoke this legislation to persecute SMEs. President, let me make it clear that after I was elected in 2004, I already noticed this problem in the first report published, and I suggested that in future legislation, the provisions on private enforcement should not be included then but I admitted at the same time that this is necessary in logic. The reason is that since someone is in breach of the law, why should individual persons, consumers or SMEs not be allowed to invoke the legislation to demand compensation? This can hardly hold water in logic. However, in this society which is skewed to the commercial sector, especially as the commercial sector has such strong political powers, the inclusion of provisions on private enforcement will, as I already envisaged in 2004, open a can of worms. Most unfortunately, President, facts have testified to the judgment that I made in 2004, and to the Government, this is a hard nut to crack.

Having said that, President, I hope that SMEs can read the provisions rationally and carefully and ask their conscience why this problem does not exist in the 120-odd countries worldwide but is unique to Hong Kong? Can it be that the major enterprises in Hong Kong are more vicious and unreasonable than those in other countries, or our court fares worse than other countries in bringing out the truth and seeing how justice can be done and so, they are in fear? President, I do not believe this fear is supported by facts.

Another point that I must make clear is that if we read the provisions in detail, we will find that many of them are intended to guard against abuse. President, let me cite an example to explain this. I do not know whether or not colleagues have read the provisions very carefully. I understand that this Bill is very long indeed. But I still hope that they, being Members, can read the whole of it because there are provisions stipulating that this legislation cannot be invoked in ordinary judicial procedures. This is very important. Put it in other words, no one can file a case in court without good reasons. But if this legislation has to be invoked, a case should be filed with the Competition Tribunal (the Tribunal) as far as possible. This is the first safeguard.

The second safeguard is that if judicial proceedings are initiated, the Tribunal can apply for intervention to end the proceedings. It means that in the event of abuse of the provisions, the Tribunal, being the enforcement agency, can intervene in any proceedings to prevent abuse.

President, these two provisions have provided sufficient safeguards against the risk of abuse by the so-called major consortia. In theory, I think this is not going to happen, and it is also absolutely rare for this to happen elsewhere in the world.

President, I have recently invited Prof WHISH to give a speech in Hong Kong but regrettably, although I did send invitations to Members of the Legislative Council, Members did not have the time to come. Prof WHISH cited a very useful case law. He said that in the United States, there was a case of a major consortium attempting to abuse this law by taking a SME to court and as a result, the Court ruled that the consortium had abused its dominance in the market. It means that initiating legal proceedings is already a breach of the law for which the consortium is subject to sanction of the law.

President, I have spoken at length to give an explanation which is tedious and technical to many people in order to make clear just one point and that is, I hope that everyone who is concerned about this issue will read in detail the clauses of the Bill and take a fair attitude to understand it and to try to think about whether this legislation is as evil as described by many people. President, it is because eventually, many SMEs actually do not have the chance to consider the details of the Bill and they will only listen to the explanation given by Members.

Thank you, President.

MR WONG YUK-MAN (in Cantonese): President, the topic of my speech today is "SMEs operate in hardship, Major consortiums grab what they want in unscrupulous ways".

Many operators of SMEs in Hong Kong belong to the grassroots. Their plights are attributed to two problems. One is anti-competition conduct, and the other is developer hegemony. Incidentally, both problems are related to plutocrats, because land resources and the market access are monopolized by the plutocrats.

Anti-competition conduct has found its niche in each and every part of the daily living in Hong Kong. Three agents monopolize the import of fresh meat; several oil companies collude with each other to fix prices; the leading supermarkets offer fake bargain prices with the real intention to reap profits; the free television market is dominated by one television broadcaster Examples have abounded indeed. The general public are made to bear the brunt while the SMEs cannot be spared and remain unaffected. Supermarkets can charge suppliers a "shelf fee" or put pressure on the suppliers in order to restrict the supply of goods to their competitors; television broadcasters charge their clients a high deposit for putting up an advertisement on television and yet, there is no guarantee that the advertisements will be shown during the time with better viewership. All these business practices have indeed made it difficult for SMEs to compete in the market.

Dr LAM Tai-fai originally wished to state his opposition to the Competition Bill but such a motion certainly would not be approved because the legislative exercise is still in progress. In spite of this, Members can still seize

the opportunity to voice their other views, including expressing support for the legislative exercise on the Competition Bill, like Mr Ronny TONG who seems to have become a spokesman for Secretary Gregory SO in stating in detail the reasons why he is in support of the Competition Bill.

In fact, anti-competition conduct is a cause of the plights faced by SMEs in Hong Kong. In this connection, I would like to tell Dr LAM Tai-fai that he is duty-bound to fight for the rights and interests of SMEs. Perhaps his company is larger than SMEs in scale, and I am not sure about it. But we must understand that anti-competition conduct will indeed restrict the room for the survival of SMEs and seriously jeopardize the business environment in Hong Kong.

There is another problem that should not need any detailed explanation by me as Members will certainly understand it and that is, the expensive rent. A noodle shop that I know very well rented a shop premise in Mong Kok between 2005 and 2010. I asked the operator of the noodle shop how much profit he had made and he told me that he had paid \$10 million for the rent in five years. But is it possible to make a profit of \$10 million in five years? I do not know, but I heard that this is quite unlikely, and it may be impossible even to make a profit of \$1 million or \$2 million. The operator is already in luck for not suffering a loss.

A shop selling noodles which is very small in size has paid \$10 million for the rent in five years. It is just selling noodles. Do you think that it is selling "white powder (meaning heroin)"? Perhaps it is still impossible to make such a profit even by selling heroin, or it is still impossible to break even. We can all see how the SMEs have suffered from the astonishingly high rent of shops. That the rent of shops and offices has remained on the high side is inextricably linked to the policy direction of the SAR Government.

The Government is primarily a major property developer. When the Government and major property developers come together, the right to control land is all in their hands, and the proceeds of land sale constitute the largest share of the Government's revenue. Some people said that the Government will take out part of the land sale proceeds to meet the many items of expenditure of the Government. This is the case in theory. Some people said that the tax rates are very low in Hong Kong and many of the grassroots do not have to pay tax. But regarding the expensive electricity tariffs, expensive transport fares and expensive rent, are these not taxes?

The Complaints Division of the Legislative Council received a case two days ago, and there are really tears in every single word of it. A group of kaifongs who live in partitioned rooms, "coffin-sized units", caged homes and bedspaces came to us and lodged their complaints in tears. What were they complaining? They complained against the increase in rent because of the absence of rent control.

I do not remember whether it was last year or the year before last that I saw in Sham Shui Po that a bedspace there was rented at \$1,100 per month. Now, the rent for these bedspaces has increased to \$1,200 to \$1,300. It is because of the lack of rent control that the rent can be increased frantically.

A question raised yesterday mentioned "coffin-sized units", and the Secretary said that no evidence was obtained after inspection. This is indeed infuriating. Just open the doors of those rooms and they will know. The people there refused to let officers from the Bureau to open the doors of the rooms and so, they just casually looked around and of course, no evidence could be obtained after inspection. It is indeed unimaginable that even "coffin-sized units" can be found in Hong Kong. In an affluent society and a developed region with a per capita income exceeding US\$30,000 yearly, there are even people who have to live in "coffin-sized units" and bedspaces. Can this not be related to the rent? Second, we hope that more public rental housing estates can be developed but the Government said that it would take only three years for an applicant on the waiting list to be allocated a public rental flat and so, there would be no problem. But then, how can this solve the problem?

Recently I have been working on a paper on the housing policy because it seems that the Government will soon resume the production of Home Ownership Scheme (HOS) flats, but as different people have expressed different views on the resumption of the HOS, I, therefore, plan to write a paper on the housing policy. While I was re-reading some old books, I learned that this year is the centenary of Xinhai Revolution. As I give a speech on "Xinhai Revolution and Hong Kong" in secondary schools once every other week, I took out the Three Principles of the People and read it in passing. I read that when SUN Yat-sen advocated the principle of people's livelihood 100 years ago, he proposed equalization of land ownership and regulation of capital. In respect of equalization of land ownership, he mentioned several specific policies, which are "returning any increase in value to the people; levying a tax proportionate to the price of the

land; and buying back the land according to its price". Are these policies not very suitable for us? Mr WONG Kwok-kin, your Federation of Trade Unions may as well make reference to it. Don't refuse to read it just because it was advocated by SUN Yat-sen. Equalization of land ownership means making a reasonable distribution of land resources and of course, this is a very "socialist" ideology but we can make reference to it in many ways. For instance, can the practices of "returning any increase in value to the people, levying a tax proportionate to the price of the land and buying back the land according to its price" be applied to the HOS policy? It turns out that SUN Yat-sen already proposed a land value increment tax 100 years ago.

President, you may think that I have digressed a little, but developer hegemony and the high land price policy have resulted in the rental level remaining on the high side, making it difficult for SMEs to run their business. Even if small operators can afford the expenditure on rent, the owners do not want them to stay. Just look at The Link Management. Even if shop operators say, "Alright, I am willing to pay a higher rent, so please renew the tenancy agreement with me", it is still useless because the purpose of The Link Management is to drive out those small operators.

We have often cited the prime land lots in Nathan Road or Mong Kok as examples. I always take a microphone with me and shout in Sai Yeung Choi Street, Mong Kok, making as many noises as possible as I protest raucously, because to the ordinary men in the street, it is impossible to rent the shops on both sides of the street to do business. All the shops there are owned by major consortiums. The electrical appliance shops there are all run by major consortiums, such as Gome, Fortress and Broadway. It is impossible for the ordinary public to open a shop there. How can they afford to pay a rent in hundreds of thousand dollars? The shops that we can find on both sides of Nathan Road are either Chow Tai Fook, Luk Fook, Chow Sang Sang, or Bonjour and Sasa, and these shops are paying \$600,000 to \$700,000 or \$700,000 to \$800,000 for the rent. In order to afford this level of rent payment, the companies certainly have to refrain from increasing the salary of their employees, right? So, the entire economic situation is reflected by this kind of distorted market, and a vicious cycle will simply run on and on.

However, it turns out that the grassroots and the poor now go shopping in the same shopping malls where the middle class and the rich go for shopping.

The rich can choose to go to the Festival Walk, APM or Pacific Place because there are many shops of prestigious brands, but there is a shortage of lower-end shopping malls for the grassroots. The poor people also have to go to the Festival Walk and APM, while the middle class also goes there for shopping too. Is there any shopping mall where people earning below \$10,000 a month can go for shopping? President, there is none. Basically, it is impossible for SMEs to survive under the present circumstances. The rental level alone is already depriving them of all the room for survival. Tell me, is Hong Kong not being distorted?

Not that I always wish to mention Taiwan, but in Taiwan, there are already nine night bazaars in Taipei city alone. Apart from selling food, daily necessities such as clothing, jeans, sneakers and household products are also available for sale in these markets and the people can shop these products in the night bazaars. Shop operators in these night bazaars only have to pay a low rent, and their shops are even provided with management services. While the shop operators can make ends meet, people in the lower middle class can also have a place to go for spending and entertainment, but such places are lacking in Hong Kong.

How much does it take to shop in Festival Walk? My wife and I always go to the cinema in Festival Walk and a ticket already costs some \$50 to \$60. If we also take a meal there, it costs at least around \$100 each person even in a most frugal way of spending. Let me tell Members this: If we take a \$1,000 banknote with us and hang around there for a night, we really will not have too much money left by the end of play. Such being the case, where should the lower-class people go for spending? When the room for survival of the SMEs is restricted, it will actually affect the general public as the room for their living will also be restricted too. But there is not much that we can do. Frankly speaking, insofar as anti-competition conduct is concerned, I personally support the Competition Bill but I do hope that the Government can carefully listen to the views of the SMEs, so as not to create panic among them.

Moreover, there is also the problem of developer hegemony, but I think this problem will not be resolved even on the day that I die. Thank you, President.

MR FRED LI (in Cantonese): President, just now as I listened to Dr LAM Tai-fai's speech here, I knew that he did not mention the Competition Bill in his original motion, and all that he had mentioned was cross-sector regulatory legislation. I think he was crying up wine but selling vinegar, but I do not wish to pigeonhole myself into it and so, I think I might as well propose an amendment to the motion. In the Bills Committee on the Competition Bill, Dr LAM Tai-fai and other Members representing the industrial and commercial sectors have kept on querying that this Bill would not be of any help and would even plunge the small and medium enterprises (SMEs) into dire straits and cause panic among them.

However, we are not debating this legislation today and yet, it seems that this legislation has been tabled in this motion debate for us to debate it in advance. With regard to completely exempting SMEs from regulation, the Democratic Party cannot accept it, and I do not see why SMEs should be completely exempted from any regulatory legislation. This is why I proposed that consideration should be given to SMEs' difficulties, we should find out how the Government can help them and how this Council can speak up for them. This is absolutely what should be done. Having said that, it should not be the case that whenever SMEs are in difficulties, they have to be granted exemption to spare them from regulation, and that they have to be exempted from regulation even if there are problems with them because their operation will otherwise become even more difficult and so, exemption has to be granted to them. My amendment mainly concerns this part, and it is actually very simple.

I do not wish to merely talk about the competition law. I will speak on several other pieces of legislation of my utmost concern. For instance, the amendment of the Trade Descriptions Ordinance. I hope that the Secretary can propose the amendments expeditiously. In respect of pyramid selling, we are going to hold a meeting tomorrow, which has been long awaited by us. The relevant Bill should be able to get through very soon. There should not be any big problem.

Concerning the amendment of the Trade Descriptions Ordinance, it will actually deal a blow at many SMEs too. With regard to beauty care and slimming companies which are often the targets of complaints, some are, of course, run by major consortia but not all of them are operated by large enterprises or consortia as there are also SMEs in the industry. This legislation

seeks to make them do better and set out rules and regulations. The amendment of the Trade Descriptions Ordinance aims to incorporate the service industries into the scope of regulation, so that these companies will not always deceive consumers. On this point, no exemption will be given to SMEs. Members of the Federation of Beauty Industry or the Cosmetic and Perfumery Association of Hong Kong are not all large-scale companies, as many of them have employed less than 50 employees only. To meet the definition of SMEs, a company has to take on 100 employees in the manufacturing industry and 50 employees in the service industries. So, many of their members are actually SMEs. Now, amendments will be proposed to this Ordinance to incorporate these companies into the scope of regulation, but it has not been said that SMEs will be given exemption. Nor have I heard of SMEs requesting for exemption. On the contrary, they are saying that they want to do better and combat the black sheep in the industry because if they do not do well, the entire industry, including the SMEs, will be implicated.

Therefore, with regard to the motion proposed by Dr LAM Tai-fai, many proposals in it are actually fine and I very much support them. But when I find the words "completely exempt", I think this is a "broad-brush" approach, and the Democratic Party cannot accept it. We are really sorry, and this is so regrettable. Our view is that we do appreciate that SMEs have their difficulties, especially in the face of the competition law, but I absolutely cannot see why they should be completely exempted. The competition law which is intended to protect SMEs in places all around the world is nevertheless turned into an "assassin" of SMEs in Hong Kong for making the operation of SMEs extremely difficult. We in the Democratic Party have been discussing and exchanging views with the Government. We are more than willing to make further concessions, and we are more than willing to have a more lax legislation for SMEs, such as temporarily suspending the consideration of litigation at this stage. We are willing to do this. In fact, insofar as a fair competition law is concerned, and from the many years of consultation conducted in the past, it has been mentioned that in many countries, anti-competition conduct or monopoly is a criminal offence liable to imprisonment. We are already not going this far, as only a fine will be imposed and yet, some people have said that a fine of 10% is too much, suggesting how the amount should be reduced or what should be done in order not to cause great anxieties. In fact, compared with many countries, our competition law is nonetheless becoming weaker and weaker.

I would like to express some other views. To put it plainly, if SMEs come together For example, I recall that a few years ago, a laundry association put up an advertisement on newspapers, asking members of the trade — which are SMEs, as many laundry companies are SMEs and not necessarily operated by major consortia as in the case of Clean Living operated by the Hang Lung Group, and most of them are, in fact, SMEs — they asked all members of the trade to effect a 20% increase together. I still consider it unacceptable even for SMEs to take such action. We cannot say that SMEs should be allowed to do it. So, for the purpose of their practical business operation, must they act in unison to increase the prices by so much? Is it that SMEs should be allowed to do so? Is that the case? I absolutely cannot support this. We must look at the underlying reason of any act. Why do they have to impose such a price hike? We criticized the oil companies, questioning why their retail price of unleaded petrol was all pitched at \$16.19 per litre; and in less than 24 hours after our criticism, they could still collectively increase or reduce their prices. Why SMEs can call on their counterparts to act in unison in increasing or reducing their prices? Based on the same logic and the same principle, this simply should not be allowed. We simply should not do this. Competition is essential to business. They cannot say that they must act collectively to increase their prices to facilitate their business because they are SMEs. On this point, I am sorry that I am really unconvinced as to why when it comes to SMEs, these problems can be tolerated and exemption can be granted to them to spare them from regulation.

Moreover, what is the market share or market power of SMEs? Market share and merger are always talked about in overseas countries. The Government now basically gives a free hand to merger in many respects but this is not the case in overseas countries as they look at cases of merger very stringently. In fact, if we look at many pieces of legislation, such as that on pyramid selling that we are going to discuss tomorrow as well as the amendments to be proposed to the Trade Descriptions Ordinance in future as I have just mentioned, the purpose is to protect consumers, strike a balance, and impose regulation on unscrupulous operators, thereby reducing the unscrupulous elements in the industry as well as the commercial sector, and also among the SMEs. I think it is correct to impose such regulation, rather than granting exemption to them from regulation. They should be brought under regulation. As to how they should be regulated, we can always discuss it. As to how we can move towards a good, healthy regulatory system, we can always discuss it, but we cannot say that they should be exempted from regulation.

This is the very simple amendment proposed by me today. I will also use this principle as a benchmark for gauging the other amendments. If the proposal on granting exemption is not deleted in the amendments proposed by other colleagues, we cannot accept these amendments. Disregarding how good their amendments are, so long as they have retained the proposal to "completely exempt" SMEs from regulation in the original motion, the Democratic Party will, based on the above benchmark, abstain in the vote on these amendments. We will abstain in the vote on some amendments and vote against some others. Dr LAM Tai-fai, we can support many proposals that you have made but insofar as this point is concerned, the Democratic Party cannot accept it.

I so submit.

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): President, I thank Dr LAM Tai-fai for moving this motion.

There are over 290 000 small and medium enterprises (SMEs) in Hong Kong, accounting for over 98% of the total number of local enterprises, and the number of employees hired by them also accounts for close to 50% of the total number of employees in the private sector. Therefore, as Dr LAM Tai-fai has said, SMEs are an important pillar of our economy. Members can also note that the Administration has attached great importance to the sustainable development of SMEs and is striving to create a business environment favourable to them.

The Administration has all along been providing various kinds of support to SMEs through different government departments and quasi-government institutions, such as the Hong Kong Trade Development Council and the Hong Kong Productivity Council, so as to enhance the competitiveness of enterprises. The Government also has various schemes in place to support SMEs, including the SME Loan Guarantee Scheme, the SME Export Marketing Fund, various funds for innovation and technology, as well as support schemes for research and development.

In a free and open economy like Hong Kong, enterprises are vulnerable to changes in the external economic environment. Although the worst moment of the financial tsunami is over, the rather slow recovery of the European and American economies, as well as the recent serious earthquake in Japan may have

brought about uncertainties to SMEs in Hong Kong. For this reason, the Government has all along been closely monitoring the situation and, taking into account the economic changes, would provide appropriate support to SMEs. Insofar as the recent earthquake in Japan is concerned, to assist the affected manufacturing industries, the Administration has conveyed to the Japanese Government the industries' request for more information on the supply situation in Japan. Information provided by the Japanese Government has been disseminated to the affected industries in the first instance.

In response to the concerns expressed by sectors affected by the earthquake in Japan, the Hong Kong Mortgage Corporation, in consultation with the Commerce and Economic Development Bureau and the Trade and Industry Department, has introduced a special arrangement under the SME Financing Guarantee Scheme to provide eligible enterprises a waiver of part of the guarantee fee between 1 June 2011 and 31 December 2011, so as to help local enterprises which are being adversely affected by the earthquake in Japan to tide over this difficult period.

Members have earlier put forward various proposals on how to support SMEs, such as assisting SMEs in product development and brand building, buying back The Link Real Estate Investment Trust to lower the rents of public housing shopping arcades, improving commercial land supply, and so on. Earlier, a Member also mentioned in his speech that when enacting cross-sector regulatory legislation, the Government should give special consideration to the situation of SMEs. Many Members also cited the example of the Competition Bill just now. I will listen to Members' views, including their views on the Competition Bill, before giving further responses.

SMEs are an important component of Hong Kong society and the major participants in many economic activities. It is inevitable that laws and regulations drawn up under public policies of a cross-industry or cross-sector nature will cover SMEs and their employees in Hong Kong. If all SMEs are exempted across the board from the cross-sector legislation being formulated at present, this means that 98% of all local companies will no longer be subject to the regulation of the legislation. This measure is not in line with Hong Kong's overall public interest and will also make it difficult to implement many important public policies effectively, so we do not agree with this proposal to exempt SMEs altogether.

We believe that a practicable approach is to adopt, as far as possible, measures to address the concerns of various stakeholders, including SMEs. Such measures include specifying an appropriate transitional period, so that the stakeholders can have sufficient time to understand the regulatory details of the new legislation and make preparations, and giving reasonable and appropriate exemptions to specific areas or stakeholders. The authorities will strive to strike a balance between the demands of various stakeholders and the overall public interest.

President, the Government has all along maintained close contacts with SMEs and the Legislative Council, so as to tie in with and assist the development of SMEs. When Policy Bureaux formulate various policies and introduce legislative proposals, they will also consider the concerns of various sectors of society, including SMEs. I wish to listen to Members' views first before giving a more detailed response.

Thank you, President.

MS MIRIAM LAU (in Cantonese): President, small and medium enterprises (SMEs) are one of the keys to Hong Kong's success. Their importance lies not only in the fact that SMEs account for 98% of Hong Kong companies, but also in the great opportunities they provide to entrepreneurs and 1.2 million employees. Moreover, SMEs are flexible, energetic and creative, and a driving force for Hong Kong's economic development.

Unfortunately, ever since the financial tsunami, the economic environment of SMEs has continued to be difficult. SMEs are worried that while the economic recovery in Europe and the United States is still shaky, the European debt crisis has deepened again. In addition, several Asian regions and the Mainland have further tightened the money supply. The increased geopolitical risk in the Middle East and North Africa and Japan's earthquake and nuclear accident have also added to the uncertainty of the business prospects of SMEs.

As for SMEs based mainly in Hong Kong, they also have to cope with the pressure of rising prices of raw materials, wages and rents. Take the restaurant business and retail industry as an example. Even though the consumer market is thriving, when landlords raise the rent and when the wages and prices of raw

materials soar, they may offset the small profit that they gain from hard work. If they cannot break even, they might even have to close down.

President, in spite of the difficult business environment, SMEs can still find room to develop as long as the Government can maintain a free and liberal business climate. However, in recent years, as the Government kept introducing new regulatory legislation, the past freedom in the business environment has been gradually restricted. This is what SMEs frequently complain to the Liberal Party about.

Let me cite the recent case of the minimum wage implemented last month, which restricts the room for the free negotiation of wages. Before the legislation was implemented, some trade unions suddenly changed the rules of the game and demanded the inclusion of pay for meal time and rest days in the minimum wage. This took small companies by surprise, while those who failed to follow suit were unfairly accused of being unscrupulous employers.

This situation lasted until 17 April, when the Liberal Party held a minimum wage grievance meeting, at which employers and employees of SMEs aired their grievances. Only then did we have some idea of what was happening. Later, accompanied by the Liberal Party, representatives of SMEs held talks with the secretary — the Secretary for Labour and Welfare. As a result, he was forced to belatedly clarify that the pay for meal time and rest days was employees' benefits and not included in the minimum wage. However, many SMEs already went through a hard time. Actually, after taking into account the pay for meal time and rest days, the actual hourly wage is definitely more than \$28. As a result, even security and cleaning staff would be earning more than \$10,000. How would this not increase the operating costs and make the operation of SMEs even more difficult?

At present, this Council is deliberating on a competition law. Just now, Mr Ronny TONG seemed to have become the incarnation of the Director of Bureau and tried his best to promote the competition law. Recently, the Government has also been selling the advantages of the competition law in the media. The competition law sounds great, raising expectations that once this law is implemented, the market will become very fair and more competition will be introduced. When the competition law was under consideration, the Government already raised this idea. While some SMEs support it, other SMEs

are against it. Those SMEs that support it expect the monopolies to disappear in Hong Kong after the competition law is implemented. After the "big tigers" are brought down, the big corporations will have to share the market with SMEs. This is a good thing. This has already happened in the telecommunications market. After the monopoly in the telecommunications market was broken up, the market was opened to everyone's benefit. The question is, the present competition law fails to achieve this effect. If we look closer, we will find that it may not be as it seems.

Why is this so? It is not that Members have not looked at the content of the law carefully. I am sure that our colleagues in the Bills Committee are studying the bill very closely. However, how come they still do not understand it and how come there are still all kinds of loopholes that you can imagine? Very often, the owners of SMEs are well educated too. But even they cannot understand the bill and have misunderstandings about it. How come this bill has caused such concern among SMEs? I think the Government needs to answer this question.

According to the Administration, the competition law can increase competition in the market, making it fairer and preventing monopolies from forming again. But is this really true? In my view, even if the present competition is passed, it cannot take down the "big tigers". The oil companies will still have a monopoly, and so will supermarkets. I hope that in future meetings of the Bills Committee, the Government can prove to us that it can really achieve the effect of breaking up monopolies. Recently, the Administration has announced some guidelines, which have caused even more concern in the industries. This is because the guidelines are even more ambiguous than the original law, which is very confusing. We want to ask the Government again why it is causing such worries among the SMEs.

President, the original motion proposes that SMEs should be completely exempted from the scope of regulation when cross-sector regulatory legislation is enacted. I understand the good intention of Dr LAM Tai-fai — he is not in the chamber now. Actually, SMEs are very concerned about the so-called cross-sector competition law. However, even if SMEs have overly high expectations in this respect, the Government should exempt them as far as possible, in order not to punish the wrong people. It is not that SMEs want special treatment. It is just that they have too little power. That is why they

hope the Government can give them a more liberal environment, so that they can operate in a free and fair business environment.

SMEs have a decisive role to play in Hong Kong's economy. Therefore, not only should the Administration not target them arbitrarily with legislation, it should try its best to assist their operation.

President, these are my remarks.

MR TOMMY CHEUNG (in Cantonese): President, this Monday, the Census and Statistics Department published the latest Consumer Price Index. The inflation rate in May was as high as 5.2%, which would add to the burden of many people, especially the grass-roots population. However, for small and medium enterprises (SMEs), the subject of our debate today, the rise in operating costs, especially rents, raw materials and salaries, is certainly more than 5.2%. Instead, it is 20% or 30%, or even 100%. That is why the Liberal Party agrees with what the motion says. SMEs already have a hard time dealing with an uncertain external economic environment and soaring internal costs. We hope that the Government will not arbitrarily introduce new legislation that SMEs have to work strenuously to comply with, and that will make their operation even more difficult.

Just now, Ms Miriam LAU has already given the Liberal Party's views on the original motion. Hence, I will focus on responding to the amendments below.

As the representative of the catering industry, I feel the strong impact of the soaring prices of foodstuffs and rents. I also know that some members of the industry, such as the stall owners in wet markets selling fish, chicken, goose, duck and roast meat, would think that the competition law can place restrictions on the supermarkets, so that they can earn their livelihood. Actually, it is hard for us to explain to them that the competition law cannot help them in this respect. In the present environment of escalating rents, you have to pay high rents no matter where your restaurant is. Many shops have already closed down because they cannot afford the high rents. Of course, compared to rents, the rise of foodstuffs prices is even steeper — especially since the Hong Kong dollar is pegged to the US dollar, which is very weak now. The prices of foodstuffs are

rising almost every day and every month. Whether they are from the Mainland (due to the rise of Renminbi) or from South America, and as long as they are not from the United States the prices of rice, cooking oil, salt, vegetables, flour, eggs and meat have increased due to the exchange rate. All in all, foodstuffs prices have at least risen by 30% to 50%, and some with geometrical progression. The biggest problem is that there is still no sign that the increase in foodstuffs price is abating. According to newspaper reports, under the pressures of rising foodstuffs prices and rents, four restaurants are planning to close down in recent weeks because they cannot afford the exorbitant rents. I believe there are more restaurant closures that we do not know about.

President, since Hong Kong relies on imported foods, there is not much the Government can do about the rising foodstuffs prices. The continuous rise of commercial rents not only threatens the existence of SMEs, but also undermines Hong Kong's overall competitiveness. The SAR Government which is in control of our land resources must not sit by and do nothing. Therefore, we also agree with the approach proposed by Mr WONG Yuk-man's amendment. The Government should review the land policy and try to increase the supply of land for commercial use. It should also adopt the suggestions in the motion I moved earlier on behalf of the Liberal Party to expeditiously move government departments from business districts to the New Territories so as to release more land for commercial use in the urban areas, in order to increase the supply of such land in the market and reduce the rate of rent increase.

As the big property owner of shop spaces in housing estates, the Link Real Estate Investment Trust (The Link REIT) should understand that it should not just regard its shop spaces as cash cows and milk its tenants dry. Instead, it should bear in mind that shops in housing estates are also public facilities and it has a responsibility to take care of the needs of the grass-roots population. Thus, when renewing leases, it should exercise restraint in raising the rents. Unfortunately, the "market price" surveys published by two organizations yesterday unanimously pointed out that due to the monopoly of The Link REIT markets, residents from low income districts like Tin Shui Wai and Tung Chung are forced to buy expensive foods. The reason behind this is The Link REIT's ongoing rent increases, which have driven out the small tenants and driven up the prices of goods in the markets.

Hence, the Liberal Party will also support Mr Albert CHAN's amendment urging the Government to strive to improve the business environment of SMEs by, for example, considering buying back The Link REIT to lower the rents of public housing shopping arcades to reasonable levels. At the same time, the Administration should consider building public markets to provide shop spaces to small tenants in districts where The Link REIT has a monopoly over the markets, such as Tin Shui Wai. This will allow them to compete with The Link REIT markets, so that residents no longer have to buy expensive foods.

President, the amendment moved by Mr WONG Ting-kwong today put forward various suggestions to support SMEs, which coincide with the suggestions that the Liberal Party made in the past. That is why the Liberal Party will support it. On the other hand, the Liberal Party thinks that a deregulated and free business environment will provide the right soil for the growth of SMEs. Thus, when enacting cross-sector regulatory legislation, the Administration should comprehensively study and consider the difficulties and worries of SMEs, so that their development will not be unnecessarily inhibited. That is why the Liberal Party will also support Mr Fred LI's amendment.

However, the Liberal Party cannot support the amendment proposed by Mr Ronny TONG. This is because Mr Ronny TONG has changed the original motion beyond recognition, literally turning it into a request for the Government to expeditiously implement the competition law. But as Ms Miriam LAU already mentioned in her speech, the present competition bill is full of loopholes and traps, causing much concern among SMEs. In a relevant discussion held by the Liberal Party, they have reiterated their very real concerns. They are not listening to "rumours", as Mr TONG's amendment suggests. In light of the concern of SMEs, the Liberal Party thinks that the relevant legislation work should be done at a slow rather than fast pace. We should carefully study the pros and cons and try to dispel the doubts of SMEs.

President, I so submit.

MR CHAN KIN-POR (in Cantonese): President, small and medium enterprises (SMEs) are the mainstay of Hong Kong's economy. At present, there are more than 280 000 SMEs in Hong Kong, accounting for 90% of its businesses and employing more than 1 million employees. The adaptable SMEs deserve credit

for Hong Kong's ability to stay competitive in the international market. However, as an important foundation of Hong Kong's economy, SMEs have been operating under more and more difficult circumstances in recent years.

As mentioned in the original motion, after the financial tsunami, the global economic environment has changed drastically. Since market purchasing power has yet to revive, the orders received by SMEs have been greatly affected. Moreover, they have suffered greatly under the linked exchange rate. On the one hand, Hong Kong is unable to curb inflation by manipulating its monetary policy and the exchange rate system. As a result, raw materials prices and rents have been further driven up. On the other hand, the Hong Kong dollar is undervalued, especially against Renminbi. According to a recent survey by the Chinese Manufacturers' Association of Hong Kong, more than 90% of Hong Kong businessmen in the Pearl River Delta Region interviewed said that average production costs have risen by nearly 20% compared with last year. The main reasons are the appreciation of Renminbi, rising labour costs and raw materials prices.

Apart from all sorts of external problems, SMEs are also plagued by endless internal troubles. While they were ready for the minimum wage mechanism implemented recently, the issues of meal break pay and rest day pay that suddenly came up took many SMEs by surprise. While their expenditure has suddenly increased substantially, the business environment has further deteriorated. In addition, the Government has recently decided to raise the upper salary limit for Mandatory Provident Fund contributions and wages have further risen. All this has added to the burden of SMEs. Since SMEs are an important pillar of Hong Kong's economy, the Hong Kong Government has a duty to help them and ease the pressure on their operation. At least, it should not add to their troubles.

The recent Competition Bill (competition law) tabled by the Government has been very controversial. In particular, it has aroused the concerns of SMEs. They believe that it contains lots of grey areas and are worried that they will fall into legal traps. Various chambers of commerce are concerned that the business environment will be greatly affected after the law is passed. Actually, the conduct rules of the bill list 12 kinds of "anti-competition" conduct. SMEs may easily fall into legal traps like concerted practices of buying and selling goods, sharing price information, sharing information other than prices, and setting

technical or design standards. Actually, to survive in the market, Hong Kong's SME often have to share information, including information on market conditions, and adjust their marketing strategies accordingly, which would also involve pricing. These flexible business strategies are the key to SMEs' success. Thus, the relevant law has not taken into consideration the way SMEs do business.

We must also note that SMEs have far less influence on the market than the large enterprises, and the chance of their reaching an agreement to fix prices is slim. That is why it is inappropriate to apply the same rules to SMEs that are applied to the large enterprises. Moreover, for the same kind of products in the market, the prices set by SMEs are often lower than those set by large enterprises. As some recent price surveys show, the same kinds of goods sold in small and medium shops are often cheaper than in large chain stores. This shows that the selling prices of SMEs are often advantageous to consumers.

Worried that they might inadvertently fall into legal traps, many SMEs are forced to hire lawyers to oversee business conduct related to the competition law. This is very costly and might eventually cause the SMEs to close down. The biggest worry of SMEs is that large enterprises might use the competition law to accuse them of exchanging information on prices, in order to stop them from setting their prices too low. If such things happen, it would not only be detrimental to the SMEs, it would be even more detrimental to consumers. It would also totally contravene the original intent of the competition law.

Thus, we should really carefully study the proposal in the original motion that when enacting cross-sector regulatory legislation, the Government should completely exempt SMEs from the scope of regulation, so as to effectively safeguard consumer interests as well as SMEs' room for development. In addition, I believe it would be fairer for the Government to implement anti-trust legislation first to break the monopolies of large corporations, and then consider introducing the competition law after achieving certain results and gaining some experience.

These are my remarks.

DR PRISCILLA LEUNG (in Cantonese): President, small and medium enterprises (SMEs) have made a significant contribution to Hong Kong's development and are vital to Hong Kong's success.

Since the founding of Hong Kong as a port, SMEs have played a key role in the city's economic development. We used to have a cottage industry, plastic flower factories, electronics factories, and so on. Most of the 10 richest people now started off by operating SMEs. Then they probably built their fortune after seizing the right opportunities or were made by the times.

Today, our subject is SMEs. Since I come from a family that used to run an SME, I have some personal feelings about them. My father ran an SME. What are SME owners like? When we saw how hard our parents worked to run an SME, we as children would not want to manage an SME, but would rather be employees. How come? As I said, first, many SME owners do not like to be employees and would rather work on their own. They also have entrepreneurship. However, these SME owners have to work as hard as workers, sometimes even harder — I am speaking from my own experience. Very often, after deducting the wages and the payments for the goods ordered, the money left may even be less than a worker's wage.

So, how should we see SMEs? I think the definition may be very wide. What kind of SMEs could join forces to exert great influence, as Mr Ronny TONG suggested? There may indeed be such SMEs. Thus, the definition of SMEs can be very broad. Some SMEs may have only a few workers, while others can have an annual turnover of tens of millions.

Recently, I frequently talked to people running SMEs about the minimum wage problem. Some of them are in the jewellery business. But they are SMEs rather than big brands. They said: "It's very simple, Priscilla. If you run an SME, you literally have to stay afloat. No matter what crises arise, you have to stay afloat. We have gone through the financial tsunami and the Asian financial crisis, and we have managed to stay afloat. We are down-to-earth workers." They say the situation is different now and they are hit by one tidal wave after another. The first tidal wave is the minimum wage. Let me state clearly that I am personally in favour of the minimum wage. However, after the minimum wage came into effect, some problems have emerged that we did not foresee during the legislative process. For instance, it turns out that the owners'

corporation of a tenement building is also an employer. Our district work has multiplied because we have to advise the owners' corporations. Many owners and small owners do not want to pay higher management fees, but they have to comply with the minimum wage. So they are not sure whether they should fire the security guard. This is a practical problem. Many District Board members, especially those who serve the old districts, are dealing with the problems of owners' corporations daily. I think it is because we did not foresee this problem. It is not just the big employers that we must consider when legislating for minimum wage — I was never worried about them, because whether it is about the standard working hours, minimum wage or competition law, they have loads of money to litigate. However, SMEs only have some marginal benefits, which might be the income that their owners use to support their families. I was on the Bills Committee during the legislative process of the minimum wage. I said to the Government representatives that we must make things clear and not leave them to the Court's interpretation. At the time, I said that it would be unfair if we leave things to the Court to decide, it would increase the chance of disputes. I also pointed out that we must assume that both sides of a dispute could not afford the litigation fees. That is why we have to consider the definition carefully if we are to deliberate on the competition law.

Actually, today's motion is about SMEs. I remember that Mr Paul TSE moved earlier to postpone the implementation of the minimum wage. At the time, I said it should not be postponed. However, once it was implemented, we should consider helping those who might be adversely affected, including workers and small enterprises. The Government needs to consider this, or the second tidal wave will hit the SMEs. My SME friends said frankly that they also understood that there should be fair competition in principle. But if one tidal wave comes after another, they cannot handle it or stay afloat. They have managed to stay afloat for years, but now they are afraid that the Legislative Council — since I support the minimum wage myself — will inadvertently send tidal waves after them and destroy them.

These words stabbed me like a knife. That is why I wonder if we need to think and calculate carefully when enacting the competition law. According to the data submitted by the Secretariat, in some countries such as the United Kingdom, enterprises with an annual turnover — not profit — under \$50 million enjoy certain exemptions. The United States and Singapore also give exemptions to those having less than 30% or 20% of the market share. Has the

Government studied this carefully? How do we define what kind of SMEs we need to crack down on or regulate? The Bills Committee must come up with a clear definition.

Thus, I am more inclined to support Mr WONG Ting-kwong's amendment. However, he refers to "appropriate exemptions". I have to ask him to define "appropriate". I do not want to hear people say that we are sending a tidal wave after them after we have laid down something. I think this is quite a vivid description.

President, I so submit.

MR CHIM PUI-CHUNG (in Cantonese): President, the motion topic today is "Safeguarding the room for business and development of small and medium enterprises".

Perhaps even the Government does not clearly understand that small and medium enterprises (SMEs) are not confined to the commercial and industrial sectors. Basically, SMEs are found in every sector, including professionals and law firms. These SMEs may have only one or two employees, a lawyer handling everything on his own can be regarded as a SME. President, today, I am going to talk about how to safeguard the SMEs in the financial industry.

We understand that since the merger of four former stock exchanges into the Hong Kong Exchanges and Clearing Limited (HKEx) in 1986, the HKEx has been operating with a franchise granted by the Government. President, I certainly hope that the Government will listen to any voices made by me. I do not expect the Secretary will relate what I have said. However, we expect other government departments to listen to our voices and respect our conclusion.

President, as I pointed out just now, since the merger of four former stock exchanges in 1986, the HKEx has been operating with a franchise granted by the Government. In fact, many brokers in the financial industry today have survived in the industry since the merger of the four stock exchanges back then.

I would like to say a few words on how to safeguard their rights to survival and their rights and interest. As the Hong Kong Government seeks to take forward the globalization of the HKEx, it naturally hopes that major international

financial institutions and broker's firms would come to Hong Kong to participate in the business of the HKEx, so that such business can move towards internationalization. But unfortunately, the Government has still not learnt a lesson from the Lehman Brothers incident which occurred two years ago.

The HKEx has recently indicated that the trading hours have to be adjusted in order for Hong Kong to converge and compete with the rest of the world, especially the Mainland, so as to facilitate the better development of both places. Despite some objections, we have eventually accepted the new trading hours with the mindset of adapting to the environment or restraining our grief in accepting the changes.

The HKEx has also made a special statement that readjustment will be made next year, that is, one year after the implementation of the new trading hours. Personally, I hope that the HKEx, given its franchise, can address the room for survival of the small and medium broker's firms in Hong Kong as well as their practitioners.

The second point I wish to mention concerns the extension of the trading hours of the Hong Kong Futures Exchange Limited (HKFE) to 11 pm. According to our understanding, President, the current trading hours, which follow the operating hours of banks to end at 4 pm or 4.30 pm, have been implemented in Hong Kong for a long time and proven effective. Insofar as practitioners in general are concerned, extending the trading hours to 11 pm inevitably necessitates the hiring of another group of employees, especially brokers. This is the situation of our futures market that we must come to understand.

Let me say a few more words about the trading of gold futures. There are four channels of trading gold futures in Hong Kong. The first channel is definitely the HKFE under the HKEx; the second channel is the Chinese Gold and Silver Exchange Society; the third channel is the so-called London gold; and the fourth channel is the newly established Commodity Exchange.

I dare to say that basically, gold trading, though also called gold futures trading, is mostly trading between gold traders, also commonly called "gambling". Hence, the trading hours of gold futures do not have a substantial impact on members of the HKEx.

The last point is index futures trading. As Members are aware, if everything is delayed until 11 pm, small broker's firms have only few practitioners at all times and they cannot afford so many practitioners to work according to these trading hours, not to mention the fact that the volatility of the index futures market is considerably high before and after the closing of the market. If the HKEx still wants to extend its trading hours, will it give people the opportunities and conditions to rig the market? Under such circumstances, how can the rights and interests of the practitioners of the small and medium financial enterprises be safeguarded?

President, recently, the HKEx has even contemplated reinstating the trading hours before the closing of the market. We know that the HKEx was severely criticized and censured by the industry when the trading hours were implemented last time, because the trading hours provided a stark opportunity for market rigging. Such an opportunity can give those powerful major brokers' firms and funds around the world a chance to rig the market. So, how can the interests of SMEs and their investors be safeguarded?

President, the last point I wish to raise is that, in the near future, apart from the government protection for the franchise of the HKEx, a transaction surcharge will be levied by the Securities and Futures Commission. We ought to understand that these levies are actually the hard earned results of the investors and practitioners of the industry.

In fact, the HKEx was founded by its brokers, who are also the practitioners of SMEs. However, 11 years ago, the Government distributed part of the stocks to their employers and handed over their rights and interests to shareholders — not the nation — this has led to an unfair phenomenon. We hope I have my reasons to take this opportunity of speaking on this motion today to defend the SMEs in the financial industry.

I hope the Government can take the existence of SMEs into account when enacting law and developing Hong Kong into a financial centre.

President, I so submit.

MR LEUNG KWOK-HUNG (in Cantonese): President, this is the practice of the SAR Government — it will make a little effort to bluff its way out whenever a question is raised. Like what I said on the last occasion, the Government has even offered us some pig bones and dog bones. The Competition Bill is no exception. While the Government cannot avoid enacting legislation, it will face enormous pressure once it attempts to do so. In respect of this Bill, I have pointed out repeatedly that it is simply incomprehensible for the Government to delete the provisions benefiting consumers in the end and claim that there is no need to spell this out expressly because of the presence of such requirements in the legislation.

Furthermore, according to the relevant draft, at least one representative from small and medium enterprises (SMEs) should sit on the Commission, but there is none at the moment. Naturally, the persons concerned do not understand why. There is really something wrong with the Government. While it seeks to copy the overseas competition or anti-cartel law to make it applicable to Hong Kong, it disregards the ultimate goal of benefiting the public at large. Its ultimate goal is to offer some sort of protection, or else abuses might really be possible because corporations may collaborate or cheat by making arrangements benefiting consumers initially and then preying on consumers freely after monopolizing the market. That will be terrible. In this regard, I will stop here and wait until the legislation is enacted. Secretary Gregory SO, you need not be afraid. I will not hurl anything at you, for you have not done anything bad. I will sort you out should you do anything bad in the future. For the time being, Mr Stephen LAM will bear everything on your behalf.

The same happened to the recent electoral arrangement. With an intention to monopolize powers, the Government has allowed Mr Barnabas FUNG to say such things as regulating Internet radio and television stations. You are not operating SMEs, are you? Those websites serve as the last fortress defending our freedom of speech (someone gave a hint) I know, this is precisely what I am just about to point out now it has to be withdrawn, isn't it? This is none of your business, and this is simply unnecessary.

There are several baffling questions about the competition law. First of all, it is unable to do anything about the phenomenon of monopolization, which has already existed and is known to everyone. Finance and real estate are like two big mountains. Another mountain is the public utilities which include

statutory bodies. These three big mountains put pressure on Hong Kong people. Can you do anything about them? It is impossible to do anything about the statutory bodies as they have been exempted. Some of them are like operating business. All their profits have been shared among their CEOs, so that there will be a pay rise for everyone. Property developers and the financial sector are also out of your reach. The only watchdog in the sector, the Real Estate Developers Association of Hong Kong (REDA), is basically regulating its own members. But in the end, it is found that there is no way to regulate the sector. Even the REDA has explicitly told the Government that they cannot regulate the sector. Yet, the Government still claims that it relies on the REDA to regulate the industry. I have once requested for its membership list, and its chairman was also present at that time. When I made this request in one of its committees, they agreed to do so but later said that they had heard me wrong. Is that the way you are dealing with things? I am not talking about you. You have no role to play. Does Ms Eva CHENG have the gut to act in this way?

In the financial area, Legislative Council Members have been tricked into giving you a blank cheque. We were really stupid at that time to believe the claim that a framework should be provided before doing something about the content. As a result, we are even unable to handle the Lehman Brothers incident now. This has happened time and again. The only thing the Government does is to benefit these two sectors. Actually, the financial and real estate industries are destined to be successful with one party lending money to another party to purchase plots of land, whereas the other may also lend money to small property owners to pay mortgages. Can the Government do anything about them? There is simply no way for the Government to do anything about these three big mountains and regulate public utilities, including the gas company, electricity suppliers and public transport operators. What is more, a mega organization has come into being with the merger of the Kowloon-Canton Railway Corporation and the Mass Transit Railway Corporation. After the merger, a small fraction of shares were sold to outsiders to enable the MTR Corporation Limited, like a vampire, to use the market as the pretext to continue to raise fares and shirk its responsibility.

Hence, the problem is actually very simple. Why are SMEs suffering today? They are suffering because the three big mountains, as I said just now, are right on their top. There is no way for SMEs to vent their grievances; either they commit suicide by hanging themselves or they suppress their own

employees. This explains why they find the hourly minimum wage of \$28 too high.

May I seek your advice how this problem can be solved? I am not asking you; nor am I referring to legislation. You don't have to look at me. I am directing these questions, which are known to Hong Kong people, to this Government. As the Government dares not deal with these questions, it has come up with this piece of legislation. What sort of a government is it? Buddy, when I said that there was something wrong with a water pipe, Secretary Gregory SO promised to fix it but then he connected it with a soil pipe. What is more, the two pipes were not well connected to each other. Naturally, that would give rise to flooding. Moreover, people originally flooded by water would find themselves trapped by dung and water.

Although it is very likely for me to vote in support of the competition law proposed by you, you must really think carefully. Do you think it is all right for you to formulate this competition law to fulfil your own wish and honour the pledge made by Donald TSANG to "get his job done"? What we need now is not a piece of legislation; we want you to do something about those issues. We are asking you to "catch the ghost" for us, not reciting prayers or spells. But now you are seeking to cheat people's money by reciting prayers or spells here. Secretary Gregory SO, there is no need for you to give me a reply, as I am actually condemning the Government. You are just one of its screws.

If I am to scold you, I must scold Stephen LAM as well. Nowadays, he is the most popular target for condemnation. Unless he is out of my sight, I will definitely curse him before the public. I have nothing more to say. That's all.

MR PAUL TSE (in Cantonese): President, the motion discussed today seems a bit contradictory with the content of the motion raised by Dr LAM Tai-fai. I understand that the President has to do so in accordance with the arrangement of the Rules of Procedure, but many of our Members always like to mix it up with the Competition Bill when they speak. The whole issue seems to have turned into an unauthorized building works, with the primary objective and the secondary objective being mixed up. Anyhow, I will try my best to speak on behalf of small and medium enterprises (SMEs). I think there are appropriate channels and venues for further detailed discussion of the Competition Bill. The

legislation itself not only causes great anxieties to SMEs, but also affects business environment. I think we will bring up the issue in due course.

President, I would like to talk about two points as time is tight. First, from the perspective at a higher level, free business environment is the greatest concern of SMEs. However, the recent social trend is that people request government regulation and legislation in all matters so as to safeguard the market. In fact, the best business environment for SMEs is a free environment. We have currently formulated many seemingly well-intended regulations, such as the recently enacted statutory minimum wage, or the standard working hours we have discussed today. We think that these regulations are conducive to the market and the general public, employers or employees alike; yet, they have done tangible and intangible harm to the business environment of SMEs. These legislations often give rise to bigger monopoly, developer hegemony and big businessmen which our Members always claim that they are fighting against.

As a matter of fact, these legislations will only worsen the business environment of SMEs, making them more difficult to survive. The shopping arcades will end up with increasing number of chain stores. What I treasure very much is — I remember not very long ago — the many small stores and food shops in Macao can still survive, but after the large scale introduction of gambling licences, although it seems that Macao has become more prosperous, the business environment is actually deteriorating and many SMEs are unable to survive. Today in Hong Kong, I am afraid that the only places where SMEs can still survive are the streets in Western District where there are shops selling salted dried fish, or the lanes intersecting Shanghai Street where you can see local flavoured shops. The rest of Hong Kong and all shopping arcades are being monopolized by large consortia.

President, besides free business environment, I would also like to talk about tourism industry. Most operators in tourism industry are SMEs, especially travel agencies. I have to admit that I am actually perplexed in this respect. On the one hand, I do not quite agree to over regulation, but the competition law may indirectly hedge against hegemony in tourism industry. Who are the parties involved? For the time being, they are the local airlines. They have indeed made travel agencies, which are running as SMEs, operating in great agony. It is very unfair to SMEs. Take the air traffic rights as an example. Theoretically, this right is one of the assets owned by the people of Hong Kong.

On behalf of the people of Hong Kong, the Government discusses with other countries for mutual exchange of air traffic rights. However, Hong Kong people cannot enjoy the air traffic right attained, because this right has been abused by the largest airlines in Hong Kong in order to maximize their profits. Comparatively speaking, it would be easier for people in other countries (such as Middle Eastern countries and India) to book air tickets for North America or other places through Hong Kong than for Hong Kong people to book air tickets via local travel agencies to the same places. In other words, Hong Kong people can only enjoy 10% to 15% of their air traffic right, with a major portion of the flights for North America via Hong Kong given to Middle Eastern countries and India. This is really an unfair practice, allowing the air traffic right that Hong Kong possesses to fall into the hands of other regions. We will follow up on this issue in a more proactive manner with a view to rectifying the extremely unfair hegemony. Subsequent to the enactment of the Competition Bill, such practice may be disputable.

Let me give you another example. Recently, a very popular Hong Kong travel agency was taken over by a Chinese-funded consortium. This travel agency used to get tickets from a local airline, but after the acquisition, all the seats reserved have all been cancelled, perhaps due to the reason of competition. Even if this travel agency wants to reserve seats of local airlines through other travel agencies, it is still being boycotted. The situation is even worse than a local television station monopolizing the television industry in Hong Kong. I will follow up the issue if necessary, and in particular, the issue will be dealt with after the enactment of the competition law.

There is another point I would like to raise in particular. Many travel agencies in Hong Kong often have no choice but to join such organizations as the Travel Industry Council, which is Hong Kong-based, or the IATA, which is an international body. To a certain extent, it is extremely unfair to SMEs because the business environment will be very difficult for them once they are forced to accept certain terms and conditions. Like the earlier "same day void", the existing penalty for "flight change request" and the "bills and charges" arrangement, all these have to do with monopoly, conspiracy and abuse of power. To a certain extent, I anticipate that the legislation enacted can resolve these problems. However, I am also worried whether a balance can be struck in addressing these problems on the one hand and safeguarding the free business environment for SMEs on the other.

Owing to the time constraint, my speech today ends here. Thank you, President.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): Dr LAM Tai-fai, you may now speak on the five amendments.

DR LAM TAI-FAI (in Cantonese): President, first of all, I would like to thank Honourable colleagues for their enthusiastic speeches and the amendments proposed.

Mr WONG Ting-kwong, who is a representative of the business sector, has amended my original motion by deleting my proposal that small and medium enterprises (SMEs) be completely exempted from the scope of regulation of the competition law and substituting it by providing SMEs with appropriate exemptions. Sorry, Mr IP Kwok-him, I think your party is irresolute and indecisive. What is "appropriate"? "Appropriate" is a very abstract, vague and non-binding term. Moreover, in the absence of a uniform standard, it is difficult to implement either. Perhaps because the Government has done him a great favour, Mr WONG has deliberately let Secretary Gregory SO off, like GUAN Yunchang who let CAO Cao off at Huarongdao in the Three Kingdoms period.

I believe SMEs cannot survive once the competition law has been enacted. I hope that Members, particularly those representing the business sector, will sincerely support SMEs and the 1.3 million employees employed by them. Regardless of whether they have spoken or not, they must think thrice and do not be soft-hearted as the competition law will deal a severe blow to the survival of SMEs in the future and affect the livelihood of 1.3 million employees. As a saying goes, "every injustice has its perpetrator and every debt its debtor". They will have a hard time to be accountable to SMEs.

I have some reservations about Mr Albert CHAN's amendment in which the Government is requested to buy back The Link Real Estate Investment Trust. It is a fact that the rents of shopping arcades under The Link Management Limited have kept rising. The rent hike is unreasonable but it is also a fact that the shopping environment has been greatly improved. The request of buying it back by the Government will lead to the question of whether the Government has good management ability so that the shopping arcades can stay buoyant. I am seriously doubtful about that.

Mr Ronny TONG has urged the Government to expeditiously promote a competition culture with every effort, and explain to SMEs that they should not believe any rumours. Mr WONG Yuk-man, who has run a business, is certainly aware of the hardships experienced by SMEs. Mr TONG, as a barrister, does not understand the plights faced by SMEs. I fully understand this, as I do not understand the impact of the environmental impact assessment report on the Hong Kong-Zhuhai-Macao Bridge project. In fact, many people have always mixed up facts and rumours because they have different interests. The clauses of the Bill under scrutiny are equivocal and there is a lack of regulatory details. It is a fact. Consequently, SMEs may inadvertently contravene the law and this is definitely not a rumour. If SMEs are not fully exempted and the Bill is passed, the biggest victim will certainly be SMEs and the greatest beneficiary must be lawyers who make money in lawsuits. These are iron-clad facts.

President, sometimes the damage of judicial hegemony is not in any way smaller than developer hegemony. So, I very much hope that Members who support SMEs should have a clear grasp of the situation and distinguish what are facts and what are rumours. President, as you have profound knowledge in both Chinese and Western cultures, have seen much of life and have strong analytical power, I would like to ask you a question: Is there developer hegemony in Hong Kong? Of course, owing to the Rules of Procedure, it may not be convenient for you to answer the question. If I ask Mr Albert CHAN and Mr LEE Wing-tat this question, both of them will certainly give me a positive answer loudly. But if I ask Mr Abraham SHEK the same question, the answer may be different.

President, in a free economy where there are buyers and sellers getting involved in transactions of purchase and sale, it is very natural that smart people will earn more money. We should not feel jealous or envious of that. My wish is that the Government can introduce some regulatory measures on property

developers so that developer hegemony will not occur and estate developers will not get involved in every business, thereby monopolizing all businesses, big or small. Consequently, SMEs will be driven out of business, the disadvantaged will suffer and the people's interests will be jeopardized.

President, I would like to make a final appeal to all parties and groupings, and to all Honourable colleagues with or without political affiliation, and in particular, to Members representing the business sector, I urge for their support for my proposal that SMEs be fully exempted from the regulatory regime of the Competition Bill for the survival of SMEs, the job opportunities of 1.3 million employees and their votes.

President, I so submit.

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): President, I wish to thank the large number of Members for the valuable advice they have given on the motion today. I will respond to their views.

As I have said in my first speech, the small and medium enterprises (SMEs) are an important constituent in our society and economy. It is therefore impracticable to adopt an across-the-board approach and exempt SMEs from the cross-sector regulatory legislation being enacted, because in so doing, the relevant policies and laws cannot be implemented effectively. About this point, I am glad to see that many Members have indicated that they support this view. A more practical approach is to propose some specific measures to address the concerns of the stakeholders, including SMEs, and to strike a balance between the interests of various stakeholders and the public.

Many Members have focused their speeches on the Competition Bill presently being deliberated in the Council. They think the Bill will have an adverse impact on the business environment, especially that for SMEs. I hope to respond to this issue first.

The policy objective of the Competition Bill is to impose control on anti-competitive conducts that may appear in various trades and sectors. It aims

at promoting sustainable and fair competition, raising the economic efficiency of the market and thereby achieving a win-win situation between the business sector and the consumers. Mr LEUNG Kwok-hung is not in the Chamber now. I have said many times that the Competition Bill can also benefit the consumers. The issue of a competition law has been discussed in our society for many years. In 2006 and 2008 we conducted two rounds of consultation. Public opinion is generally in favour of the introduction of a cross-sector competition law. The Competition Bill is a response made to the ardent aspirations of society for the protection of a fair environment for competition. After we introduced the Bill to the Legislative Council last July, we have kept in touch with the sectors across the community, including the business sector and SMEs. We have listened to their views on the Bill.

The Competition Bill aims at combating anti-competitive conducts which clearly produce an adverse impact on competition in the market. Apart from certain serious anti-competitive practices such as collusive pricing, market division, production quotas and bid-rigging, the normal commercial acts of SMEs which do not have any substantial market power would in general not cause any problem in competition.

We understand that the introduction of a competition law may lead to the concerns of stakeholders in the business sector that the business environment of Hong Kong would become more complicated and that the operating costs for enterprises, especially SMEs, would increase. As Hong Kong is an external-oriented economy and converges with the world, it is vital and inevitable for our business sector to understand and comply with the principles of competition since our major trading partners, such as European and American countries and the Mainland have all formulated their own competition law.

In the view of some Members, while the Competition Bill fails to effectively control the monopolistic practices of giant consortia, it will curb or even stifle the room of survival of SMEs. As Mr CHAN Kin-por has asked, would this law really drive the SMEs out of business? I do not think so. The prohibition provisions of the Bill cover two major types of anti-competitive conduct. The first type covers anti-competitive agreements between undertakings in the trades and sectors. The second type covers the abuse of undertakings with a substantial degree of market power in a market. These two general provisions are adopted by all mainstream jurisdictions which have

formulated a competition law. The two prohibition provisions aim at combating various kinds of anti-competitive conduct that created artificial barriers. The existence of a fairer competitive environment will help SMEs make good use of pricing, quality and innovation to compete in the market and survive. Overseas experience all indicate that SMEs often benefit from the competition law. Hence, a competition law will not strafe the room for survival of SMEs; rather under an effective legal framework, SMEs can have a greater room for survival. I have also mentioned to Mr LEUNG Kwok-hung many times that this cross-sector competition law will not only benefit consumers, certain specific trades and the business as a whole will also be benefited.

We also notice that some SMEs worry that the Competition Bill allows rights of private action and this may be used by large enterprises to suppress SMEs. The use of private action as a self-help remedy for traders and consumers affected by anti-competitive conduct is a measure provided by many regulatory frameworks on competition. To prevent abuse of the framework, we have incorporated the safeguard provisions in the Competition Bill. The Competition Commission and the Competition Tribunal are tasked with the gate-keeping role and groundless complaints and cases are filtered. However, we are willing to listen to views from all sectors across the community on the rights of private action.

It is the concern of many Members that the provisions in the Competition Bill do not clearly define the meaning of anti-competitive conduct. The general and prohibitive mode as found in the Competition Bill is widely used in other economies and it is not unique to Hong Kong. This practice takes into account the ever-changing nature of the market and the uniqueness of each and every commercial act. The aim is to enable the authorities in competitive affairs to arrive at an objective analysis of the effects of each case on competition, taking into account the practical circumstances and the prevailing market situation.

We understand perfectly the importance of clarity in law. In view of this, the Competition Bill lists examples of anti-competitive agreements or practices, and provides that the Competition Commission, which is tasked with law enforcement, must conduct consultation before it

(Mr Albert CHAN stood up)

PRESIDENT (in Cantonese): Mr CHAN, what is your question?

MR ALBERT CHAN (in Cantonese): You have mentioned earlier that when you ruled the motion which Dr LAM Tai-fai wanted to propose, you said that he could not talk about the competition law, but the response made by the Secretary is almost entirely on the competition law, just

PRESIDENT (in Cantonese): Mr CHAN, please sit down. As motions proposed by Members cannot be similar to the theme of a Bill being deliberated, I cannot allow Dr LAM Tai-fai to propose his original motion. However, the course of a debate is not subject to such strict rules. So Members may notice that when Dr LAM or other Members spoke earlier, they have also raised their views on the competition law. Of course, I understand that since we are now deliberating the relevant Bill, Members should express their views during the deliberation of the Bill or wait until the Bill is read for the Second time. I hope both Members and government officials can exercise some restraint in this respect.

Secretary, please go on.

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): Yes, President. I will try to be brief in responding to issues raised by Members earlier. I have said that we understand perfectly the importance of clarity in law. So the Competition Commission should issue regulatory guidelines on the prohibition provisions after a consultation exercise is held. It should also engage in educational efforts to foster compliance in the public and prevent enterprises from breaking the law inadvertently. More importantly, we will have a transition period after the passage of the Competition Bill so that there will be ample time for the public to understand the regulatory guidelines of the new legislation. The business sector can make use of the transition period to make the necessary adjustments to their business conduct or agreements before the prohibition provisions formally come into effect.

Dr LAM Tai-fai proposed the motion that when regulatory legislation was to be enacted, SMEs should be completely exempted from the scope of

regulation. With respect to the Competition Bill, it would be inappropriate to fully exempt SMEs. As I have said earlier, the aim of a competition law is to combat conducts which cause undesirable impacts in the course of competition. While the abuse of market power by large companies is of course a public concern, bid-rigging and collusive pricing are also acts that are detrimental to the interest of consumers. Hence the Government is obliged to address such problems. Enterprises that are involved in such serious anti-competitive conduct should be sanctioned by the law, irrespective of their size. Hence, we consider it inappropriate to fully exempt SMEs from the restrictions imposed by the Competition Bill.

However, in order to ensure that SMEs would not be subject to undue restrictions of the competition law, the major competition jurisdictions have all formulated some kind of "de minimis" arrangement. Under this arrangement, for agreement made by an enterprise with a market share or business turnover lower than a certain level, the agreement will not be regarded as having a marked impact on competition, unless serious anti-competitive conducts are involved, such as price fixing, market division, production quota or bid-rigging, and so on. Hence the enterprise concerned will not be regulated by the competition law. This idea is quite similar to the suggestions made by many Members earlier. We are open about the implementation of this "de minimis" arrangement. After consolidating the views expressed by Members today and at the meetings of the Bills Committee, the Administration will brief the Bills Committee at a later stage on some proposed implementation mode of this "de minimis" arrangement in the framework of the Bill. I believe this would alleviate the concerns of SMEs.

In addition, the Competition Bill also contains provisions empowering the Competition Commission to handle with discretion by non-litigation means non-compliance cases where the acts involved are not serious. The Competition Commission can also discuss with an undertaking on how to address the concerns of non-compliance of anti-competition rules by means of making a commitment or issuing an infringement notice. Such a multi-pronged approach should be able to balance public aspirations for combating anti-competitive conduct and take into account the interests of SMEs.

We are grateful to Members for the valuable advice they have given on the Competition Bill. The Bill is not only a set of legal rules and principles; more

importantly, it serves to promote a culture of competition in all sectors across the community. There may be a need to readjust some business practices and so understandably it has led to concerns in the business sector. We will maintain a close communication with the public and the business sector on the contents and ideas in the competition law. We will listen to views expressed by all sectors across society and take them into consideration. We will also try to improve the contents of the Bill as far as practicable, provided that the changes will not go against public expectations.

Many Members, including Mr WONG Ting-kwong, have given a lot of valuable advice on how to provide assistance to SMEs to achieve sustainable development. I would now like to make a response in general.

Hong Kong is a world-class international trading and service centre and our sustainable economic achievements will depend on a number of factors conducive to business development. These include a simple tax regime, a low tax rate, the absence of any customs duty, minimum control in foreign trade, excellent infrastructure, a seamless flow of capital and information, the rule of law, as well as the Government's determination to uphold a policy of free trade. We will continue to create a favourable business environment and promote the sustainable development of our economy.

With respect to the development of Hong Kong enterprises on the Mainland, we have all along been provided assistance to our enterprises in adapting to changes of Mainland policies on processing trade, the problem of upgrading and restructuring of enterprises, developing technological innovations and brands, opening the Mainland internal market, as well as taking action to match the overall development direction of our country. Through our close connections with the Mainland authorities, we will let them know the problems experienced by Hong Kong enterprises in opening the internal market and in the course of their upgrading and restructuring. We will also discuss with the Mainland authorities on measures to support the industries.

With respect to financial support, as I have said in the opening speech, the Government offers various kinds of financial support to SMEs, such as the SME Credit Guarantee Scheme, the Innovation and Technology Fund, and so on. These schemes can help SMEs take in marketing initiatives or use innovation and technology to obtain greater opportunities for development, stay competitive,

improve their operations and undergo restructuring. We will review the operation of the funding schemes from time to time and make adjustment as when necessary.

On the other hand, the Hong Kong Trade Development Council (TDC) and the Hong Kong Productivity Council and other support agencies will also offer support services for Hong Kong-owned enterprises in areas like technological upgrading, management improvement, brand development and market development, and so on. They will also provide them with information on the Mainland market. The TDC holds marketing activities in many cities on the Mainland to promote Hong Kong products and enhance the awareness of Mainland consumers for Hong Kong brands and products.

We will keep in close touch with the Mainland and offer our active support to the industries, including SMEs, to make good use of the concessionary measures under the Mainland/Hong Kong Closer Economic Partnership Agreement (CEPA). We will foster a dialogue with the relevant ministries and committees on the Mainland, invite them to hold functions, such as seminars in Hong Kong to promote the effective implementation of the CEPA measures.

Mr Albert CHAN has pointed out that the Government should consider repurchasing the Link REIT so as to reduce the rentals for shopping malls in the public housing estates. The Transport and Housing Bureau has made it clear many times that the major aim for the Housing Authority to split and sell its retail and car park facilities is to let the Housing Authority concentrate its efforts on the provision of public rental housing. The proposal to buy back the Link REIT does not comply with the policy objectives in housing. We will relay to the Link REIT the views and demands from the public and public rental housing tenants. We will urge the Link REIT to maintain a close dialogue with the stakeholders concerned.

With respect to land supply, our policy is to meet the needs of all sectors across the community by the steady provision of an adequate supply of land. This will promote a steady development of Hong Kong. Apart from land for housing purposes, we also supply land for various trades and concerning various areas. In order to maintain our position as a major financial centre and a regional commercial hub, we have taken proactive steps to provide business/commercial land to the industries. We have included 14 lots of business/commercial land into the land sales scheme for the year 2011-2012 and a

total floor area of about 600 000 sq m can be provided. We will take the initiative to sell six lots of business/commercial land among the total number of land lots. During the period from April to June, we put up two lots of business/commercial land situated in Kowloon Bay and Kwun Tong for tender. This move is made to tally with the restructuring and development of the industrial areas in Kowloon Bay and Kwun Tong and to increase the supply of business/commercial land. Recently, two lots of commercial land in Tui Min Hoi, Sai Kung and Hung Hom have been applied successfully from the Application List and a tender exercise will commence in the near future.

We have examined the major land use demands in the study "Hong Kong 2030: Planning Vision and Strategy" and we have recommended planning initiatives to sustain long-term economic growth. According to the recommendations made in that study, we will continue with our efforts to consolidate and enhance our existing central business district (CBD) while opening up premium office areas outside the CBD. Specific recommendations include increasing the supply of land for offices by vacating government offices that do not have to be located in the prime commercial areas and to develop clusters of office blocks outside the CBD. We think that these measures can help promote the economic development of the districts and maintain a steady supply of grade A office units. They are crucial to maintaining our position as an important financial centre and a regional commercial hub.

President, I hope to reiterate that we attach great importance to the role played by SMEs in our society and economy. We have heard the views expressed by Members on how to address the concerns of SMEs in the process of enacting laws, as well Members' views on various specific measures to support SMEs. We will continue to engage in a dialogue with the industries as well as co-operate with the Legislative Council in the hope of ensuring that the enactment of the relevant laws can balance the interests in society while SMEs can be given support and services as appropriate.

I so submit. Thank you, President.

PRESIDENT (in Cantonese): Mr WONG Ting-kwong, you may now move your amendment to the motion.

MR WONG TING-KWONG (in Cantonese): President, I move that Dr LAM Tai-fai's motion be amended.

Mr WONG Ting-kwong moved the following amendment: (Translation)

"To add "at present small and medium enterprises ('SMEs') in Hong Kong face many challenges;" after "That"; to delete "small and medium enterprises ('SMEs')" after "business environment of" and substitute with "SMEs"; and to delete "completely exempt SMEs from the scope of regulation" after "the Government should" and substitute with "provide SMEs with appropriate exemptions; at the same time, the Government should also formulate strategies and measures to comprehensively improve the business environment, and through various aspects such as taxation, financing, upgrading and transformation, manpower training, product exploration, research and development, brand development, and continuously developing the local, export and China's domestic sales markets, etc., as well as by capitalizing on the Mainland and Hong Kong Closer Economic Partnership Arrangement and the Framework Agreement on Hong Kong/Guangdong Co-operation, assist SMEs in reducing expenses on operating costs, developing markets and strengthening co-operation between enterprises in the two places"."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mr WONG Ting-kwong to Dr LAM Tai-fai's motion, be amended.

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.

(Members raised their hands)

Dr LAM Tai-fai rose to claim a division.

PRESIDENT (in Cantonese): Dr LAM Tai-fai has claimed a division. The division bell will ring for three minutes.

PRESIDENT (in Cantonese): A quorum is not present in this Chamber. Clerk, please ring the bell to summon Members back to the Chamber.

PRESIDENT (in Cantonese): I can see that some Members have adopted standard working hours at their own initiative.*(Laughter)*

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.

PRESIDENT (in Cantonese): Result of the votes cast: Among the Members returned by functional constituencies, four were in favour of the amendment, four against it and two abstained; while among the Members returned by geographical constituencies through direct elections, five were in favour of the amendment, four against it and 10 abstained. I declare that the motion

MISS TANYA CHAN (in Cantonese): President, I vote against the motion, but the voting result displayed indicated that I have abstained from voting. May I correct it?

PRESIDENT (in Cantonese): Please see if you can press the "against" button.

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(Miss Tanya CHAN pressed the button again)

MISS TANYA CHAN (in Cantonese): President, pressing the "against" button does not work.

PRESIDENT (in Cantonese): Miss Tanya CHAN votes against the amendment.

Functional Constituencies:

Ms Miriam LAU, Mr WONG Ting-kwong, Mr IP Kwok-him and Mr Paul TSE voted for the amendment.

Dr Margaret NG, Dr LAM Tai-fai, Mr CHAN Kin-por and Dr Samson TAM voted against the amendment.

Mr CHEUNG Kwok-che and Dr PAN Pey-chyou abstained.

Geographical Constituencies:

Mr LAU Kong-wah, Mr TAM Yiu-chung, Mr CHAN Hak-kan, Dr Priscilla LEUNG and Mrs Regina IP voted for the amendment.

Ms Audrey EU, Mr Ronny TONG, Miss Tanya CHAN, Mr Albert CHAN and Mr WONG Yuk-man voted against the amendment.

Mr Albert HO, Mr Fred LI, Ms Emily LAU, Mr WONG Kwok-hing, Mr LEE Wing-tat, Mr KAM Nai-wai, Ms Cyd HO, Mr WONG Sing-chi and Mr WONG Kwok-kin abstained.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 10 were present, four were in favour of the amendment, four against it and two abstained; while among the Members returned by geographical constituencies through direct elections, 20 were present, five were in favour of the amendment, five against it and nine 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.

MS MIRIAM LAU (in Cantonese): President, I move that in the event of further divisions being claimed in respect of the motion on "Safeguarding the room for business and development of small and medium enterprises" or any amendments thereto, this Council do proceed to each of such divisions immediately after the division bell has been rung for one minute.

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?

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

PRESIDENT (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by

functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the motion passed.

I order that in the event of further divisions being claimed in respect of the motion on "Safeguarding the room for business and development of small and medium enterprises" or any amendments thereto, this Council do proceed to each of such divisions immediately after the bell has been rung for one minute.

PRESIDENT (in Cantonese): Mr Albert CHAN, you may move your amendment.

MR ALBERT CHAN (in Cantonese): President, I move that Dr LAM Tai-fai's motion be amended.

Mr Albert CHAN moved the following amendment: (Translation)

"To add ", given that" after "That"; to add "(including the rents of public housing shopping arcades under The Link Management Limited)" after "kept rising, rents"; and to add "and strive to improve the business environment of SMEs by, for example, considering buying back The Link Real Estate Investment Trust to lower the rents of public housing shopping arcades to reasonable levels" after "scope of regulation"."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That Mr Albert CHAN's amendment to Dr LAM Tai-fai's motion be passed.

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.

(Members raised their hands)

Mr Albert CHAN rose to claim a division.

PRESIDENT (in Cantonese): Mr Albert CHAN has claimed a division. The division bell will ring for one minute.

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:

Ms Miriam LAU and Dr Samson TAM voted in favour of the amendment.

Dr Margaret NG, Mr WONG Ting-kwong, Dr LAM Tai-fai, Mr CHAN Kin-por, Mr CHEUNG Kwok-che and Mr IP Kwok-him voted against the amendment.

Dr PAN Pey-chyou and Mr Paul TSE abstained.

Geographical Constituencies:

Mrs Regina IP, Mr Albert CHAN and Mr WONG Yuk-man voted in favour of the amendment.

Mr Albert HO, Mr Fred LI, Mr LAU Kong-wah, Ms Emily LAU, Mr TAM Yiu-chung, Ms Audrey EU, Mr LEE Wing-tat, Mr Ronny TONG, Mr KAM Nai-wai, Ms Cyd HO, Ms Starry LEE, Mr CHAN Hak-kan, Mr WONG Sing-chi and Miss Tanya CHAN voted against the amendment.

Mr WONG Kwok-hing, Dr Priscilla LEUNG and Mr WONG Kwok-kin abstained.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 10 were present, two were in favour of the amendment, six against it and two abstained; while among the Members returned by geographical constituencies through direct elections, 21 were present, three were in favour of the amendment, 14 against it and three 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.

PRESIDENT (in Cantonese): Mr Ronny TONG, you may move your amendment.

MR RONNY TONG (in Cantonese): President, I move that Dr LAM Tai-fai's motion be amended.

Mr Ronny TONG moved the following amendment: (Translation)

"To add ", given that" after "That"; and to delete "; what SMEs worry more is that if regulatory legislation is enacted in the future, they may easily contravene the law inadvertently, be oppressed by large enterprises bringing private litigations against them, and they need to bear heavy compliance costs and litigation fees, thus dealing a severe blow to their business and development, and producing inestimable negative impact on the overall economic development and employment in society; in this

connection, this Council urges that when enacting cross-sector regulatory legislation, the Government should completely exempt SMEs from the scope of regulation, so as to" after "very difficult" and substitute with ", this Council urges the Government to expeditiously introduce relevant legislation to protect SMEs' competitiveness and safeguard the rights and interests of consumers; regarding SMEs' worries about regulatory legislation, this Council urges the Government to expeditiously promote a competition culture with every effort and explain to SMEs that they should not believe any rumours, so as to allay their concern about regulatory legislation, and"."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mr Ronny TONG to Dr LAM Tai-fai's motion, be passed.

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.

(Members raised their hands)

Mr Ronny TONG rose to claim a division.

PRESIDENT (in Cantonese): Mr Ronny TONG has claimed a division. The division bell will ring for one minute.

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 Kwok-che voted for the amendment.

Ms Miriam LAU, 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 Kwok-him and Dr PAN Pey-chyou abstained.

Geographical Constituencies:

Mr Albert HO, Mr Fred LI, Ms Emily LAU, Ms Audrey EU, Mr LEE Wing-tat, Mr Ronny TONG, Mr KAM Nai-wai, Ms Cyd HO, Mr WONG Sing-chi and Miss Tanya CHAN voted for the amendment.

Dr Priscilla LEUNG and Mrs Regina IP voted against the amendment.

Mr LAU Kong-wah, Mr TAM Yiu-chung, Mr WONG Kwok-hing, Ms Starry LEE, Mr CHAN Hak-kan, Mr WONG Kwok-kin, Mr Albert CHAN and Mr WONG Yuk-man abstained.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 10 were present, two were in favour of the amendment, five against it and three abstained; while among the Members returned by geographical constituencies through direct elections, 21 were present, 10 were in

favour of the amendment, two against it and eight 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 negated.

PRESIDENT (in Cantonese): Mr WONG Yuk-man, you may move your amendment.

MR WONG YUK-MAN (in Cantonese): President, I move that Dr LAM Tai-fai's motion be amended.

Mr WONG Yuk-man moved the following amendment: (Translation)

"To delete "rents and" after "kept rising,"; to add "and under rampant 'developer hegemony', rents have even been increasing endlessly," after "continued to soar,"; to delete "completely" after "the Government should" and substitute with "reasonably and appropriately"; and to delete ", so as to effectively safeguard consumer interests as well as SMEs' room for development and sustainable competitiveness" immediately before the full stop and substitute with "; at the same time, the Government should reform its land policy to prevent people from driving up the rents of offices or shops, so as to give back reasonable room for survival and development to SMEs"."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mr WONG Yuk-man to Dr LAM Tai-fai's motion, be passed.

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.

(Members raised their hands)

Mr WONG Yuk-man rose to claim a division.

PRESIDENT (in Cantonese): Mr WONG Yuk-man has claimed a division. The division bell will ring for one minute.

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:

Ms Miriam LAU, Mr CHAN Kin-por and Dr Samson TAM voted for the amendment.

Dr Margaret NG voted against the amendment.

Mr WONG Ting-kwong, Dr LAM Tai-fai, Mr CHEUNG Kwok-che, Mr IP Kwok-him, Dr PAN Pey-chyou and Mr Paul TSE abstained.

Geographical Constituencies:

Mr Albert CHAN and Mr WONG Yuk-man voted for the amendment.

Ms Audrey EU, Mr Ronny TONG, Dr Priscilla LEUNG and Miss Tanya CHAN voted against the amendment.

Mr Albert HO, Mr Fred LI, Mr LAU Kong-wah, Ms Emily LAU, Mr TAM Yiu-chung, Mr WONG Kwok-hing, Mr LEE Wing-tat, Mr KAM Nai-wai, Ms Cyd HO, Ms Starry LEE, Mr CHAN Hak-kan, Mr WONG Sing-chi, Mr WONG Kwok-kin and Mrs Regina IP abstained.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 10 were present, three were in favour of the amendment, one against it and six abstained; while among the Members returned by geographical constituencies through direct elections, 21 were present, two were in favour of the amendment, four against it and 14 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.

PRESIDENT (in Cantonese): Mr Fred LI, you may move your amendment.

MR FRED LI (in Cantonese): President, I move that Dr LAM Tai-fai's motion be amended.

Mr Fred LI moved the following amendment: (Translation)

"To delete "completely exempt SMEs from the scope of regulation" after "the Government should" and substitute with "comprehensively study and consider SMEs' difficulties and worries"."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mr Fred LI to Dr LAM Tai-fai's motion, be passed.

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.

(Members raised their hands)

Mr WONG Yuk-man rose to claim a division.

PRESIDENT (in Cantonese): Mr WONG Yuk-man has claimed a division. The division bell will ring for one minute.

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, Ms Miriam LAU, Mr WONG Ting-kwong, Mr CHEUNG Kwok-che, Mr IP Kwok-him, Mr Paul TSE and Dr Samson TAM voted for the amendment.

Mr CHAN Kin-por voted against the amendment.

Dr LAM Tai-fai and Dr PAN Pey-chyou abstained.

Geographical Constituencies:

Mr Albert HO, Mr Fred LI, Mr LAU Kong-wah, Ms Emily LAU, Mr TAM Yiu-chung, Ms Audrey EU, Mr LEE Wing-tat, Mr Ronny TONG, Mr KAM Nai-wai, Ms Cyd HO, Ms Starry LEE, Mr CHAN Hak-kan, Dr Priscilla LEUNG, Mr WONG Sing-chi, Mrs Regina IP and Miss Tanya CHAN voted for the amendment.

Mr WONG Kwok-hing, Mr WONG Kwok-kin, Mr Albert CHAN and Mr WONG Yuk-man abstained.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 10 were present, seven were in favour of the amendment, one against it and two abstained; while among the Members returned by geographical constituencies through direct elections, 21 were present, 16 were in favour of the amendment and four abstained. Since the question was agreed by a majority of each of the two groups of Members present, he therefore declared that the amendment was passed.

PRESIDENT (in Cantonese): Dr LAM Tai-fai, you may now reply and you have two minutes 58 seconds.

DR LAM TAI-FAI (in Cantonese): President, I am sorry to have kept Members for so long that they can go home only this late. I wish to point out that I am utterly dissatisfied with that totally lifeless response given by Secretary Gregory SO earlier. *(Laughter)* Frankly speaking, even though he is promoted to be the Secretary, since he does not back up the small and medium enterprises (SMEs), the SMEs are not going to back him up. *(Laughter)* Honestly, when one Secretary — Secretary Prof K C CHAN — is like this and another Secretary is also like this, can there still be room for development of SMEs? Who will come to the rescue of SMEs? Mr LAU Kong-wah, who will come to the rescue of SMEs? Please give me an answer.

President, my heart aches today. Why? Because apart from several representatives of the industrial and commercial sectors, including myself, Mr WONG Ting-kwong, Ms Miriam LAU and Mr Tommy CHEUNG, who have spoken, many representatives of the industrial and commercial sectors have not spoken; nor have they attended this meeting. I feel very sad about it. What is going to be regulated by this competition law is actually very important to the life and death of SMEs, to the economy of Hong Kong and also to the "rice bowls" of 1.3 million people. It does warrant very serious discussion and sharing by Members.

However, Members have left an opening or a gap for the landing of this bill in future. The industry has discerning eyes, and knows clearly who have spoken for them and who have fought for them. I do not mind continuously fighting the battle on my own, just as what I do in respect of section 39E of the Inland Revenue Ordinance and the competition law which are of my concern, so as to continuously defend the interests of SMEs and safeguard the interests of the general public, because this is what this Council should do.

I would rather admire Mr Ronny TONG, although I said earlier that he had confused rumours and the facts. After all, he still always think of the interests of his sector, (*Laughter*) doing his utmost to defend the interests of his sector and to speak up for it, which is very good. He had given assurances to the industrial and commercial sectors, telling them that nothing is going to happen, in the hope that SMEs will loosen their vigilance (*Laughter*), so that they can take advantage of it. If Mr Ronny TONG will run for the seat representing the legal profession, the legal profession will certainly support him. From another angle, if he will run in the election for the office of the Chief Executive, the legal profession will also throw weight behind him, because at least he is working wholeheartedly for his sector, though I think his remarks not all true as they are rumours more than facts.

I was actually very worried that Mr WONG Ting-kwong's amendment will be passed today because the word "appropriate" will definitely be taken by the Government and major enterprises as a shield to pay no attention to SMEs. Fortunately, this amendment proposing "appropriate" exemption is negatived today. (*The buzzer sounded*)

PRESIDENT (in Cantonese): Dr LAM, your time is up.

DR LAM TAI-FAI (in Cantonese): Thank you, President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by Dr LAM Tai-fai, as amended by Mr Fred LI, be passed.

PRESIDENT (in Cantonese): 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.

NEXT MEETING

PRESIDENT (in Cantonese): I now adjourn the Council until 11 am on Wednesday 29 June 2011.

Adjourned accordingly at twenty-one minutes past Seven o'clock.