

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

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

#### MOTION

**PRESIDENT** (in Cantonese): Motions. Proposed Resolution under the Protection of Wages on Insolvency Ordinance

#### PROPOSED RESOLUTION UNDER THE PROTECTION OF WAGES ON INSOLVENCY ORDINANCE

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, I move the motion standing in my name on the Agenda.

The resolution seeks to raise the limit of *ex gratia* payment in respect of severance payment payable from the Protection of Wages on Insolvency Fund (the Fund).

The Protection of Wages on Insolvency Ordinance (the Ordinance) which came into effect in 1985 stipulates that employees who are owed any arrears of wages, wages in lieu of notice or severance payment they are entitled to under the Employment Ordinance (Cap. 57) by their insolvent employers may apply for *ex gratia* payments from the Fund. The ceilings for *ex gratia* payments are set out in the relevant provisions of the Ordinance.

Under section 3 of the Ordinance, the Protection of Wages on Insolvency Fund Board (the PWIF Board) has been formed to administer the Fund. The Ordinance also authorizes the Commissioner for Labour to make *ex gratia* payments from the Fund to those employees affected by their insolvent employers. The PWIF Board comprises a chairman, three representatives each from employers and employees and three public officers. Regular reviews on the payment limits are conducted to ensure that the amount of *ex gratia* payments can provide reasonable protection for employees. The most recent adjustment was made in February 1996.

We have recently conducted a review on the coverage of the Fund. We found that in 1997-98, over 93% and 97% of the applicants for payments of arrears of wages and wages in lieu of notice respectively could recover their full entitlements. However, in 1997-98, only about 74% of the applicants for severance payment could recover their entitlements in full.

As the vast majority of applicants have been able to recover their full entitlements to arrears of wages and wages in lieu of notice, the Administration considers that the existing levels of protection for these two items are adequate and there is no need to revise their payment limits. Nevertheless, we consider that there is a need to provide better financial relief to employees who are owed severance payment by their insolvent employers. This is particularly important under the present economic climate, because these employees may need more time to secure a new job. A higher sum of *ex gratia* payment of severance payment will enable them to tide over the unemployment period without having to resort to the Comprehensive Social Security Assistance.

We now propose to increase the limit of *ex gratia* payment for severance payment, from the existing \$36,000 plus 50% of any excess entitlement, to \$50,000 plus 50% of any excess entitlement. This proposal, if implemented, will enable more applicants to get the full amount of their entitled severance payment. Even though some will still be unable to recover their full entitlements, they will get a higher level of severance payment from the Fund. Based on our estimation, about 84% of the applicants will be able to get their entitled severance payment in full after the passage of this proposal.

It is estimated that implementation of the proposed severance payment limit will cost an additional \$19 million annually in pay-outs. Although the Fund has recorded an operating deficit of over \$100 million for the period April to December 1998, the financial position of the Fund is still healthy. As at the end of December 1998, the total accumulated fund stood at \$747.5 million which should be able to cope with the additional pay-outs. Therefore, the proposal is unlikely to increase the levy to be paid by employers.

The Labour Department has consulted and received support from the Labour Advisory Board and the PWIF Board. The Legislative Council Panel on Manpower has also given their support to the

Subject to the passage of the resolution by this Council, we recommend that the revised limit of *ex gratia* payment of severance payment should become effective on the day of its publication in the Gazette (that is, 5 February 1999).

Madam President, I beg to move and hope that Honourable Members can support this resolution.

**The Secretary for Education and Manpower moved the following motion:**

“That -

- (1) with effect from 5 February 1999 (“the effective date”), section 16(2)(f)(i) of the Protection of Wages on Insolvency Ordinance be amended, by repealing “\$36,000” where it twice appears and substituting “\$50,000”;
- (2) the Ordinance as amended by this Resolution shall not apply in respect of a severance payment the liability for payment of which arose before the effective date; and
- (3) the Ordinance as in force immediately before the effective date shall apply to a severance payment the liability for payment of which arose before that date as if this Resolution had not been made and passed.”

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the motion moved by the Secretary for Education and Manpower as printed on the Agenda be passed. Does any Member wish to speak?

**MR LAU CHIN-SHEK** (in Cantonese): Madam President, the Hong Kong Confederation of Trade Unions (CTU) supports the resolution to increase the *ex gratia* payment payable from the Protection of Wages on Insolvency Fund (the Fund). However, I wish to add two points.

First, since the purpose of the Fund is to protect employees, there should not be any ceiling on the *ex gratia* payment, as this would make it impossible for employees to obtain reasonable compensation and compensation in full. The Fund derives its income from levy on registered companies and may be

considered as a kind of collective insurance. Its purpose is to enable employees to apply for *ex gratia* payment from the Fund to meet their immediate needs, in the event that a company fails to pay wages, wages in lieu of notice and severance payment due to bankruptcy. Therefore, I do not think that there should be a ceiling on the *ex gratia* payment in principle, since this would prevent employees from obtaining their entitlements in full.

Under the existing legislation, there is a ceiling on *ex gratia* payment for default on the payment of wages, wages in lieu of notice and severance payment. This resolution merely raises the ceiling on compensation for severance payment. Despite this, over 10% of employees affected by the closure of their companies will still not be able to obtain their entitlements in full. This is extremely unfair to them. Actually, the Fund still has a healthy balance. While the drain on the Fund may increase in this period, the closure of companies will in my view have a greater impact on employees as well due to the poor economy. If the Fund does not provide compensation in full, I believe that employees will find it hard to recover compensation from the employer after the winding-up of the company. As a result, they would be exploited of their wages, wages in lieu of notice and severance payment. This would be a “double blow” to employees who are facing unemployment.

Therefore, the Government should no longer just act as the occasion demands. Rather, it must study again the possibility of lifting the ceiling on *ex gratia* payment or at least consider raising the ceiling to a reasonable level. Otherwise, Members from the CTU will propose a resolution again to fight for the reasonable rights of employees.

Madam President, another point which I would like to make is about how to protect employees laid off after their wages have been reduced. The Government has said that it would introduce a bill to amend the Protection of Wages on Insolvency Ordinance in the near future, stipulating that compensation for severance payment paid from the Fund will be calculated on the basis of the employee’s wages before introducing the reduction, if the employer has made an undertaking in writing before wage reduction. However, as I have pointed out repeatedly, it is unreasonable that an undertaking in writing made by the employer is required before the compensation for severance payment payable from the Fund will be calculated on the basis of the employee’s wages before reduction. I urge the Government again to table the relevant bill in this Council as soon as possible. I will also consider introducing an amendment to abolish the requirement for a

written undertaking. In other words, compensation payable from the Fund must be calculated on the basis of the wages before reduction under all circumstances, so that employees would not suffer from a “double blow”.

Madam President, I so submit. Thank you.

**MR ERIC LI** (in Cantonese): Madam President, I speak in support of this motion. In view of the extremely poor economy, the drastic increase in the number of companies going bankrupt and the rapid rise in the number of the unemployed, I feel that this motion is quite timely.

Seeing the drastic increase in the number of bankruptcy applicants and companies going bankrupt, I was extremely worried that the Protection of Wages on Insolvency Fund (the Fund) might run into financial difficulty due to such an increase. However, after talking to the Secretary, Mr Joseph WONG, and getting the information, I think that he has convinced me. He told me not to worry for the moment and that the Fund was still financially very sound.

However, I wish to take this opportunity to point out that increasing the Fund’s compensation pay-out will only bring about a temporary relief to the whole economic problem. It can only provide some relief to the hardship of the unemployed. Ultimately, apart from awaiting an economic upturn, the Government must see if it can adopt some measures to save some companies on the verge of bankruptcy from going bankrupt, in view of the Fund’s finances and the unemployment rate. Does the Government have more positive measures to save people from unemployment?

There is indeed something that the Government can do. At the meeting of the Panel on Financial Affairs on Monday, several colleagues and I discussed a corporate rescue scheme submitted by the Law Reform Commission. Similar schemes have been in force overseas for years and the Hong Kong Government has been studying it for two years. I very much hope that the Government will take a clearer stand with regard to this scheme, because the Government appeared to be not knowing which way to go when the consultation paper was published. Under these circumstances, seeing that the Fund is being depleted of its valuable resources, colleagues from different parties representing employers and employees respectively hope to work together for a common cause. At this moment in Hong Kong, is there not a particular need for a scheme to rescue the

enterprises and reduce the number of the unemployed? Some companies fail due to some rash and wrong decisions, even though they may be quite simple mistakes. Other companies are caught in financial straits temporarily due to the sudden financial turmoil. Should they follow the existing law? If so, they would let the banks recover their debts and let the employees make a bankruptcy petition against them after they have repaid the interest and lost all their assets. Is this the best system? Mr LAU Chin-shek has also raised some points. The Fund, founded on its original concept, is unable to cope with such serious economic problems. Under these circumstances, should we not consider the matter at greater depths and conduct a review in order to devise a more comprehensive scheme, rather than simply raising the compensation ceiling to provide some temporary relief and leaving it at that?

I hope that the Government will take a clearer, more positive and bolder stand. I also hope that colleagues in this Council will give greater support to schemes to rescue companies from bankruptcy and reduce unemployment. Thank you, Madam President.

**MR LEUNG YIU-CHUNG** (in Cantonese): Madam President, it is of course good news for some workers when the Administration revises the ceiling on severance payment under the Protection of Wages on Insolvency Fund (the Fund). This is because there is an increasing number of people who need to apply for compensation recently from the Fund due to the large number of companies or organizations which fail to effect severance payment.

The last amendment was made in February 1996, which was more than three years from ago, and today we have this amendment. Indeed during these three years many organizations have folded and many workers laid off. Many among the laid-off workers have not obtained their entitled compensation because the ceiling has not been yet revised. So, I think it is rather unfair to those workers who were laid off during these three years.

On the other hand, the Government estimates that after the amendment about 84% of the applicants who are dismissed will be able to obtain full compensation. Although the figure is 10% higher than the 75% in 1997, we must not forget the base number at present, which in terms of bankrupt companies, is much larger than before. The increase in terms of percentage points is not a good thing for with an increased base and the same percentage points, the number

of people who cannot enjoy the benefit of obtaining their full entitlements is large. Therefore, as a colleague said just now, in the long run we must remove the ceiling; otherwise it would be unfair to the workers. Why? Because on the one hand the law prescribes the severance payment entitlements of workers, and yet on the other the Administration cannot give them full compensation. This is unfair to the workers. I do hope the Secretary for Education and Manpower can consider how some improvement can be made in future. I reckon the Secretary would normally say: The present ratio is high enough and 81% is a large number. What can you expect? He may say the Fund was not set up to solve all problems and it only plays a supplementary role. But I think the aim of the Administration in setting up the Fund should be to solve all the problems. If that cannot be done, I do not see any point in setting it up at all.

In addition, there is one more problem. In terms of wages in arrears, the Fund cannot provide full compensation to workers. Just as the Secretary said, over 90% of the workers could now get compensation in full for wages in arrears. However, I could not help wondering why the Administration could not benefit the rest, bearing in mind over 90% of the workers can get full compensation? The amount of money required for this should not be too large and the Fund would not be unduly burdened. Since the Fund has accumulated as much as \$700 million, I believe even if the Administration raises the amount of compensation for wages in arrears, it can still well afford it.

So, in this respect, I would urge the Secretary to conduct a review again on the ceilings for wages in arrears and severance pay so that in the event of a mishap workers may get all their entitlements. In fact, Madam President, at the moment when workers become jobless or are dismissed, they would fail to secure employment for a long period. How do they support themselves during this period? They usually live on the so-called severance payment. They would then have to worry less. Nor would they need to rely on Comprehensive Social Security Assistance, which is described as a culprit for “nurturing lazy bones”. Indeed the compensation is a reserve. What can workers do if they cannot even obtain the reserve in full? In tackling the problem, we cannot just look at the percentages. We should look at the matter in terms of the actual rights. Since the law confers on the workers their full rights, we should not deprive them of their fair share of the compensation.

Madam President, although I support the amendment as tabled before this Council, I still hope the Secretary can make further improvements. Thank you, Madam President.

**MR ANDREW CHENG** (in Cantonese): Madam President, I rise to speak on behalf of the Democratic Party to support the resolution. But as many of the Members of the Democratic Party said just now, we have two points to say on the rationale or spirit behind the resolution. We hope the Secretary for Education and Manpower can work harder on these.

First, it is the ceiling on severance payment mentioned by our colleagues. We think the Government's proposal to set a ceiling on the payment is unfair. We hope the Government can let us know the rationale behind this proposal as soon as possible so that we can be convinced. Second, it is the issue of double standards. We have repeatedly indicated to the Government that the so-called guidelines on wage reductions are not legally binding, and under the current tide of wage reductions and retrenchments, employees are not in a position to bargain. The Government just says as a rule that it hopes both labour and management can try their best to co-ordinate and negotiate and indicates that it would certainly not amend the Employment Ordinance for the matter. In other words, only guidelines would be issued. But later we found in government documents that the Government intended to stipulate in the Protection of Wages on Insolvency Ordinance the calculation method for severance payment in the event of a closure or winding-up of a business after wage reduction. In the circumstances, I think the Government is using double standards. I believe due to a need for a clear calculation method for the Fund, the Government is compelled to propose a relevant amendment.

But for those employees whose employers have not been wound-up, who have to suffer repeated wage reductions and who need to face possible layoffs in future, the Government is asking them to try their best to negotiate with their employers. I think in so doing the Government is oblivious to the fact that employees may not have the ability to negotiate given the present economic situation. Therefore, I hope the Government can avoid using double standards. If the Government does propose a relevant amendment to the Protection of Wages on Insolvency Ordinance, I very much hope it can simultaneously propose a relevant amendment to the Employment Ordinance in those parts concerning calculation of severance payment and long service payment, including the situation in which an employee's wages have been reduced repeatedly within a period of one to two years.

In addition, as the Honourable LAU Chin-shek said, the amendment would give rise to a loophole if the Government can only confirm an agreement in writing between labour and management. Another loophole is that the Government would take the last agreement on wages for calculation. In other words, if an employee's wages have been reduced repeatedly in the last 12 months, the calculation of the *ex gratia* payment of severance payment will be made on basis of the last agreed wages. I do not think this is fair either. Obviously, if wages have been reduced repeatedly, the last one which is also the most recent one must be the lowest. Why does the Government want to take the last one but not the first one? Therefore, I hope the Government will make suitable amendments to the Protection of Wages on Insolvency Ordinance when it tables a bill for the matter before this Council. Such amendments should have incorporated the opinions of Members, be appropriate amendments about the written undertaking and the last written undertaking mentioned by the Government, rather than "half-baked" amendments. Thank you, Madam President.

**MISS CHAN YUEN-HAN** (in Cantonese): Madam President, the Hong Kong Federation of Trade Unions (FTU) supports the resolution tabled by the Government today. We have been holding the view that the Government should raise the relevant amount of payment and that is why we support the resolution. But we are also a little bit disappointed. Perhaps the resolution was the result of discussions held quite a while ago, without taking into consideration the recent developments which therefore seem not to have been reflected in the resolution. For instance, just now several colleagues in this Chamber mentioned about wage reduction events in the year and some new problems have arisen. We are now telling the Government we expect some of the companies which have been cutting wages and welfare benefits for their staff in the past year will probably close after the Chinese New Year. How is the Government going to cope with this situation?

Why am I stressing this point? Because in dealing with numerous cases of such nature, I asked the Secretary for Education and Manpower and other officials: When that situation arises, what would be used as the base for calculating the wages on insolvency? After some repeated follow-up efforts by us, the Government now says written undertakings would have legal effect. But I must tell the Government that in all the labour dispute cases that I have handled, the most difficult are those relating to reductions in wages and welfare benefits.

In labour disputes of such nature, very often the cause is poor business, leading to massive reductions in wage and welfare benefits and hence labour disputes. Under such circumstances, it is futile to ask workers to demand their employers to put everything down in black and white. Employers will simply refuse to do so. Take the example of a case I handled recently, involving the Kwoon Chung Motors Company Limited, a non-franchised bus company. The whole process lasted over half a month. During that time, I was saddened and felt helpless. Saddened because I witnessed the dichotomy faced by workers who needed to keep their jobs and fight for their interests at the same time. Only when the Government puts itself into our shoes will it understand the dichotomy. It is difficult, even very difficult, for workers to force their employers to state in black and white the original wages and to agree to compensate them on basis of the original wages in the event of a dismissal.

Many workers were afraid that they would either be dismissed at once or regarded as having refused the terms proposed to them as soon as they made such requests. In the past year, there have been numerous incidents of wage reductions. What I would like the Government to face squarely are the following issues. To begin with, it is the issue of compensation for wages on insolvency. How can we provide protection for our workers? Workers who have black and white contracts will of course receive protection. But if they do not have them, what can they do? I am of the view that the Government must think about this issue now. It should not wait until after the Chinese New Year when the problems arise.

Madam President, given the present economic climate, workers are helpless. The Government must lay down more laws, including the setting up of an advance payment fund on insolvency, to protect them. I hope that after today's resolution, the Government will put forward another resolution, in the light of the reductions in wages and welfare benefits in the past year to suitably amend the Protection of Wages on Insolvency Ordinance. Failing this, I am worried that problems will arise when workers go in large numbers to apply for *ex gratia* payments when companies close down after reducing the wages of their workers. Even if the ceiling is raised to \$50,000, problems will still arise when the Government effects payments on basis of their reduced wages. I hope the Secretary will understand the position and I also hope the Government will draft the next amendment without delay and table it for discussion.

Madam President, on behalf of the FTU and the Democratic Alliance for the Betterment of Hong Kong, I support the resolution tabled today. Thank you.

**MR LEE CHEUK-YAN** (in Cantonese): Thank you, Madam President. Our Chairman, the Chairman of the Hong Kong Confederation of Trade Unions, said a short while ago he supported the resolution. So, I am not going to say too much.

However I must tell the Secretary for Education and Manpower that I consider this resolution rather rare. In July, I requested that the ceiling on the severance payment be increased to \$44,000. For the first time, and the Government seldom does something like this, the amount finally agreed upon by the Government exceeded that which I requested. This was a good start and I hope more similar cases in future may turn out like this. I hope the Government can be more aggressive than I so that I will look more moderate or even conservative. This is really a good start and I hope Secretary WONG can do it again in future.

Despite the higher-than-expected severance payment ceiling proposed by the Government, I still find the situation in respect of wages in arrears and wages in lieu of notice disappointing. I cannot understand why the Government does not amend the amounts which have been in force for two years. In fact, there are still many cases, up to 6% of the cases, in which workers fail to get back their wages in arrears. This is utterly unreasonable. This is unfair to workers because workers labour for wages but in the end they cannot get them. This does not stand to reason. So, I hope the Secretary for Education and Manpower can refrain from holding a conservative perspective; he should be more aggressive than I am. I suggest a ceiling of \$44,000 for the payments and the Government can propose a ceiling higher than that. I hope the Secretary can make amendments as quickly as possible in this connection. On the other hand, I do not want the Government to make it a habit to require us to make demands every one or two years. I hope instead the Government can take the initiative to make proposals for raising the ceilings of the severance payment one year later.

As regards the second issue, I am glad that the Director of Administration is also here. I have spoken to two relevant departments about some unresolved cases and I hope they can be resolved as soon as possible. These are cases in which applicants applied for compensation from the Protection of Wages on Insolvency Fund (the Fund). In doing so, they had to go through the Legal Aid Department but they could not satisfy the means test of the Department. As a result, they could not obtain payment from the Fund. I do not think this makes sense at all because it is just unreasonable to ask people who wanted to recover

\$30,000 to \$40,000 or even \$100,000 to pay \$40,000 in legal aid costs just to achieve the recovery. The workers were recovering their own wages but they were required to pay the Legal Aid Department for the recovery. The Department, having been paid, would probably not proceed with the matter as it thought the proceedings would not be profitable. It would not apply to wind up a company for a small net gain. As a result, a number of cases are held up at the Department. Administratively speaking, the cases have been labelled pending cases but I think the most effective way of dealing with the cases is to ask the Labour Department to handle the cases directly so that payment is made by the Fund, to obviate the need of having to go through the Legal Aid Department and satisfying the means test. I trust this is the most radical way of solving the problem in order to save workers the trouble of having to scurry between several departments. Thank you, Madam President.

**MR HO SAI-CHU** (in Cantonese): I have listened to what several other colleagues have said about adjustments in the amount of compensation payable from the Protection of Wages on Insolvency Fund (the Fund). They all supported the adjustment in severance payment. We in the Liberal Party also support the adjustment, but at the same time we hold some views similar to those mentioned by the Honourable Eric LI a while ago.

Firstly, we are concerned about the upward adjustment of the compensation paid out of the Fund. If the trend continues, will there be sufficient money to pay? We must understand there is now over \$700 million in the Fund. But if workers fully recover all the three categories of compensation: wages in arrears, wages in lieu of notice and severance payment, each will get a maximum of \$200,000. The total amount in the Fund can only support 3 500 workers if they are to get the maximum of \$200,000 each. Members have spoken on the large number of companies which may go bankrupt in future and many workers may apply for compensation from the Fund. So, if we increase the amount of Fund compensation too quickly, this may not be fair to those workers who apply for compensation from the Fund at a later stage. We must understand that a major reason for setting up the Fund is to help those workers with their livelihood in the short term during which they cannot find new jobs as a result of their companies going bankrupt. The Fund is not meant to pay workers their full entitlements. The spirit of the Fund is to make *ex gratia* payments, not full compensation on behalf of the insolvent company, to workers.

Second, I would like to let everyone know there is an issue which we have been discussing for a number of years and about which we have to be careful. If workers can get full compensation through the Fund once a company becomes insolvent, there is a danger that workers may conspire with a company on the verge of bankruptcy so that the employer can take away all the money before declaring itself insolvent. Then the Fund will have to pay in full what the insolvent employer has to pay. This is a very important point. If there is a difference between the amount owed and the amount payable, workers may at least exercise some vigilance against their employers to make sure that they do not cheat in this manner. Of course, some may say people do not in fact cheat in this way, but that is another issue. We must take the possibility into our consideration.

Third, although some may say we are being unfair to workers, which may be true from a certain viewpoint, I can tell everyone with confidence it is even more unfair to some employers. This is because the Fund is now financed by successful businessmen. Those employers who fail in their business cannot make any contributions but it is the Fund that compensates the workers for the failed employers, whose failures are thus being covered by other companies. Therefore, I hope everyone can understand it is not always possible to be 100% fair to all parties. Most of the time, we need to find a balance when we lay down the rules.

Thank you, Madam President.

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, I am very grateful to Honourable Members for speaking in support of this motion. I hope that Members of the Legislative Council will keep up this fine tradition and continue to support the motions or legislation proposed by the Education and Manpower Bureau in future.

Just now, Mr LEE Cheuk-yan was particularly appreciative of the fact that the present proposal of the Government is an improvement on the former proposal. Actually, it shows the Government's understanding for employees who fail to obtain sufficient severance payment due to bankruptcy of the company and that it has taken the recent economic situation into account. However, this does not mean that the my bureau's proposals could coincide with Mr LEE Cheuk-yan's suggestions every time or be better than his suggestions. Since our present

proposal is more desirable than Mr LEE's proposal, we hope that he would still support us in future even if our proposals are less favourable than his.

Members have raised several questions, which I would like to respond to briefly. The first point is about the ceiling on the *ex gratia* payment payable under the Protection of Wages on Insolvency Ordinance (the Ordinance). Several Members suggested that there should not be any ceiling. I believe that it is a question of principle and that we need more time to discuss it. Just now, Mr HO Sai-chu pointed out that the spirit of the Protection of Wages on Insolvency Fund (the Fund) was embodied in the *ex gratia* payment. He also said that the employers who paid the levy were not the bankrupt employers. In other words, employers who are not bankrupt pay the levy to ensure that the Fund can make *ex gratia* payment to employees whose employers have gone bankrupt.

Another point is in my view also worthy of note. In my earlier speech, I pointed out that the Fund had a deficit of over \$100 million from April to December 1998. In the long term, there will be deficits in this financial year and the next two financial years, with each year's deficit being over \$100 million. Therefore, we have to prudently supervise the operation of the Fund. Otherwise, if the Fund goes broke, it would be disastrous indeed.

Another point is the corporate rescue scheme proposed by Mr Eric LI. I have heard his view. However, I think that we could discuss this proposal at an appropriate time.

One point has a greater bearing on the Ordinance and that is, how the Government should amend the Ordinance to ensure that severance payment in the event of the bankruptcy of a company will be calculated on the basis of the wages before wage reduction, if its employees had to accept such reduction before bankruptcy, and the employer undertook that any severance payment would be calculated on the basis of the wages before reduction. The crux of the matter seems to be a question asked by Members: Why is that a written guarantee or written agreement is made the basis for the current amendment to the Ordinance? With regard to this, we have to refer to the guidelines on the protection of wages on insolvency. The guidelines mention that the Government expects employers to make a written undertaking if they agree to this arrangement. Actually, the guidelines are meant to protect the employees, because in many cases, a dispute between employer and employee could be avoided if there is a written agreement. Moreover, if the matter is taken to the court, it would be easier for the court to

make a judgment. Although strictly speaking, oral agreements are also legally recognized, many disputes will still arise if there is not a written one. However, this has little direct bearing on today's motion. Therefore, I do not intend to talk about it at length. We will no doubt have a chance to discuss it later. Members of the Legislative Council will not let us off so easily. We will certainly have a chance to discuss this issue.

Lastly, I thank Members for supporting this motion.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the motion moved by the Secretary for Education and Manpower, as set out on the Agenda, 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)

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

#### **MEMBERS' MOTION**

**PRESIDENT** (in Cantonese): Members' motion. Motion with no legal effect. In accordance with Rule 36(5) of the Rules of Procedure, each Member will have up to 15 minutes for his/her speech.

Today we will continue to try out the electronic queuing system for speaking in respect of debates on motion without legal effect. Members who wish to speak in the debate on the motion need, in addition to raising their hands, indicate the wish by pressing the "Request to speak" buttons.