

# **OFFICIAL RECORD OF PROCEEDINGS**

**Wednesday, 14 July 2010**

**The Council met at Eleven 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 CHAN KAM-LAM, S.B.S., J.P.

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

THE HONOURABLE LEUNG YIU-CHUNG

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

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

THE HONOURABLE LAU KONG-WAH, J.P.

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

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

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

THE HONOURABLE ANDREW CHENG KAR-FOO

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

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

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

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

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

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

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

THE HONOURABLE WONG KWOK-HING, M.H.

THE HONOURABLE LEE WING-TAT

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

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

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

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

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

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

THE HONOURABLE CHIM PUI-CHUNG

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

THE HONOURABLE KAM NAI-WAI, M.H.

THE HONOURABLE CYD HO SAU-LAN

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

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

THE HONOURABLE CHAN HAK-KAN

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

THE HONOURABLE CHAN KIN-POR, J.P.

DR THE HONOURABLE PRISCILLA LEUNG MEI-FUN

DR THE HONOURABLE LEUNG KA-LAU

THE HONOURABLE CHEUNG KWOK-CHE

THE HONOURABLE WONG SING-CHI

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

THE HONOURABLE IP WAI-MING, M.H.

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

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

DR THE HONOURABLE PAN PEY-CHYOU

THE HONOURABLE PAUL TSE WAI-CHUN

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

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

THE HONOURABLE LEUNG KWOK-HUNG

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

**PUBLIC OFFICERS ATTENDING:**

THE HONOURABLE WONG YAN-LUNG, S.C., J.P.

THE SECRETARY FOR JUSTICE

THE HONOURABLE STEPHEN LAM SUI-LUNG, G.B.S., J.P.

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS

THE HONOURABLE AMBROSE LEE SIU-KWONG, G.B.S., I.D.S.M., J.P.

SECRETARY FOR SECURITY

MS FLORENCE HUI HIU-FAI, J.P.

SECRETARY FOR HOME AFFAIRS

THE HONOURABLE MATTHEW CHEUNG KIN-CHUNG, G.B.S., J.P.

SECRETARY FOR LABOUR AND WELFARE

PROF THE HONOURABLE K C CHAN, S.B.S., J.P.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY

THE HONOURABLE EVA CHENG, J.P.

SECRETARY FOR TRANSPORT AND HOUSING

THE HONOURABLE MRS RITA LAU NG WAI-LAN, J.P.

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT

**CLERKS IN ATTENDANCE:**

MS PAULINE NG MAN-WAH, SECRETARY GENERAL

MRS CONSTANCE LI TSOI YEUK-LIN, ASSISTANT SECRETARY  
GENERAL

MRS VIVIAN KAM NG LAI-MAN, ASSISTANT SECRETARY GENERAL

MRS JUSTINA LAM CHENG BO-LING, ASSISTANT SECRETARY  
GENERAL

**TABLING OF PAPERS**

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

Subsidiary Legislation/Instruments	<i>L.N. No.</i>
Genetically Modified Organisms (Documentation for Import and Export) Regulation .....	96/2010
Intercountry Adoption (Contracting States) Order 2010 ...	97/2010
Port Control (Public Cargo Working Area) Order 2010....	98/2010
Employees Retraining Ordinance (Amendment of Schedule 2) (No. 3) Notice 2010 .....	99/2010
Smoking (Public Health) (Designation of No Smoking Areas) (Amendment) Notice 2010.....	100/2010

**Other Papers**

- No. 110 — Report by the Commissioner of Correctional Services on the administration of the Prisoners' Welfare Fund together with the Director of Audit's report and audited financial statement for the year ended 31 March 2010
- No. 111 — Office of the Privacy Commissioner for Personal Data, Hong Kong Annual Report 2009-10
- No. 112 — Sir Robert Black Trust Fund  
Signed and audited financial statements together with the Auditor's report and report of the Trustee on the Administration of the Fund for the year ended 31 March 2010
- No. 113 — Hong Kong Deposit Protection Board Annual Report 2009-2010

- No. 114 — J.E. Joseph Trust Fund  
Report of the Trustee and the signed and audited financial statements together with the Report of the Director of Audit for the period from 1 April 2009 to 31 March 2010
- No. 115 — Kadoorie Agricultural Aid Loan Fund  
Report of the Kadoorie Agricultural Aid Loan Fund Committee and the signed and audited financial statements together with the Report of the Director of Audit for the period from 1 April 2009 to 31 March 2010
- No. 116 — Sir David Trench Fund for Recreation Trustee's Report 2009-2010
- No. 117 — Report of the Public Accounts Committee on Report No. 54 of the Director of Audit on the Results of Value for Money Audits  
(July 2010 — P.A.C. Report No. 54)

Report No. 17/09-10 of the House Committee on Consideration of Subsidiary Legislation and Other Instruments

Report of the Bills Committee on Minimum Wage Bill

Report of the Bills Committee on Stamp Duty (Amendment) Bill 2010

Report of the Panel on Commerce and Industry 2009-2010

Report of the Panel on Public Service 2009-2010

Report of the Panel on Transport 2009-2010

Report of the Panel on Housing 2009-2010

Report of the Panel on Information Technology and Broadcasting 2009-2010

Report of the Panel on Economic Development 2009-2010

Report of the Panel on Health Services 2009-2010

Report of the Panel on Environmental Affairs 2009-2010

Committee on Rules of Procedure of the Legislative Council of the Hong Kong Special Administrative Region — Progress Report for the period July 2009 to June 2010

**ADDRESSES**

**PRESIDENT** (in Cantonese): Addresses. Dr Philip WONG will address the Council on the Public Accounts Committee's Report No. 54.

**Report of the Public Accounts Committee on Report No. 54 of the Director of Audit on the Results of Value for Money Audits (July 2010 — P.A.C. Report No. 54)**

**DR PHILIP WONG** (in Cantonese): President, on behalf of the Public Accounts Committee (PAC), I now table the PAC Report No. 54 (the Report). The Report corresponds with the Report No. 54 of the Director of Audit on the Results of Value for Money Audits (the Audit Report).

The PAC has, in line with past practice, selected for detailed examination only those chapters in the Audit Report which, in our view, contained more serious allegations of irregularities or shortcomings. The Report tabled today covers the results of the PAC's deliberations on the two chapters selected.

I now succinctly report the conclusions made by the PAC.

Regarding the chapter "Hong Kong Chinese Orchestra Limited", the PAC affirms the efforts made by the Hong Kong Chinese Orchestra Limited (HKCO) in promoting and developing Chinese music in Hong Kong. We also understand that the audit review conducted by the Audit Commission was focused on the governance and management issues of the HKCO and did not in any way reflect on the artistic performance of the HKCO's work.

The PAC points out in the Report that sound governance and management are essential to the success of the HKCO as a performing arts group (PAG) and

the achievement of its artistic vision. We disagree with the HKCO's view that sound governance and management are not the driver to artistic development and achievement and would only facilitate the latter.

As regards the criteria for evaluating subvented PAGs, the PAC is concerned that the Home Affairs Bureau may not have the necessary expertise in arts administration and therefore has failed to establish a set of qualitative and quantitative criteria for evaluating the proper needs of subvented PAGs (such as the HKCO). In the absence of such criteria, the Home Affairs Bureau appears to have allocated the regular subventions as a matter of routine. The Audit Commission was only able to evaluate the HKCO on the basis of cost-effectiveness. However, it may not be entirely satisfactory to evaluate a PAG without reference to its artistic needs.

When the Home Affairs Bureau took over the funding responsibilities for major PAGs from the Leisure and Cultural Services Department (LCSD) in 2007, it inherited the LCSD's Funding and Services Agreement (FSA) with PAGs, including the requirement for an auditor's opinions on all the provisions of the FSA. The PAC is concerned that as some provisions touch on non-financial matters (for example, the HKCO's artistic mission), they are practically not auditable.

Besides, even though the LCSD and the Home Affairs Bureau were aware that the audited financial reports submitted by the HKCO in four years were not in strict compliance with the audit requirements stipulated in the FSA, they failed to take action to address the non-compliance concerned. It was only after the matter had been raised by the Audit Commission in March this year that the Home Affairs Bureau dealt with the abovementioned problem by simply reducing the audit scope required under the 2010-2011 FSA, rather than improving the audit requirements in the FSA. This has given rise to the concern about whether or not the amended FSA can fulfil its purpose of ensuring that the government funding allocated to the HKCO has been properly managed and controlled.

President, as perceived by the Audit Commission and the HKCO, the PAC also considers this audit review a health check on the HKCO and expects that its efficiency can be further enhanced. The PAC would like to call on other subvented PAGs to actively study the Audit Report and the Report, draw experience from them and take the initiative to make self-evaluations, with a view to enhancing their standards of governance and management.

The PAC understands that the Government will put in substantial resources in the future to promote the development of culture and arts in Hong Kong, such as by funding the development of the West Kowloon Cultural District. Therefore, the PAC urges the Secretary for Home Affairs to acquire the necessary expertise in arts administration, so as to establish a set of qualitative and quantitative criteria for evaluating the proper needs of subvented PAGs and promptly improve the monitoring mechanism for PAGs.

The PAC notes that in May this year, the Efficiency Unit of the Government issued the Guide to Corporate Governance for Subvented Organizations (the Guide) which sets out the principles and best practices relating to corporate governance, advises on matters of concern and provides checklists, thereby helping subvented organizations assess their current performance and decide whether or not any changes need to be made and how changes are to be made. The PAC expects the Home Affairs Bureau and various subvented PAGs to make reference to the Guide and establish suitable arrangements for individual PAGs according to their own circumstances.

Another chapter examined by the PAC is "Development of EcoPark".

The PAC considers that the spate of problems that have cropped up from the announcement of the EcoPark project in 2001 to its Phase I development have reflected that the Environment Bureau and the Environmental Protection Department (EPD) had failed to exercise due diligence and had demonstrated a lack of commitment in handling the EcoPark project. As a result, the project experienced serious delays and it was only until 2005 that a viable financial arrangement and contract option was finally settled on. Besides, due to the failure to prudently assess market demand before tendering, the progress in awarding tenancies was slow after the EcoPark had come into operation. Despite these problems, the EcoPark Advisory Committee was only set up as late as in December 2006 to advise on the EcoPark's development and operation. The PAC is seriously concerned about the above situation and finds it unacceptable.

Besides, the PAC notes that progress in the development of the EcoPark has become notable only after the completion of the audit review conducted by the Audit Commission at the end of February 2010. This further demonstrates

that the Environment Bureau and the EPD had not accorded sufficient attention to the EcoPark project before the audit review was conducted.

The Environment Bureau and the EPD did not find it necessary to consult the Legislative Council on the proposed financial arrangement for the EcoPark (that is, implementing and managing the EcoPark as a public project with the Government taking on all financial risks, rather than as a self-financing project). The PAC is seriously concerned about this situation and finds it unacceptable.

Furthermore, the PAC is also concerned and finds it unacceptable that there were delays in the development of Phases I and II of the EcoPark. According to the 2005-2006 policy address, Phase I of the EcoPark was originally planned to come into operation in or before 2006. However, as at February 2010, Phase I had not yet commenced recycling operation and Phase II of the EcoPark also failed to be made available for leasing by the end of 2009 as originally planned.

The PAC notes that there were problems in the design of the management contract for operating the EcoPark. Although the EPD was well aware that the EcoPark project was to be implemented in two phases and its planning had already experienced delays between 2001 and 2005 with possible further slippage, it had not tried to negotiate any adjustments to the front-loaded pricing strategy submitted by the operator in its tender before awarding the management contract. Consequently, although Phase I had not yet commenced operation and the services required of the operator had been substantially lower than expected, up to December 2009, the EPD had paid the operator operation fees of \$32 million. The PAC expresses dissatisfaction with this situation and finds it unacceptable.

The PAC expresses dismay that in administering the management contract, the Director of Environmental Protection had failed to exercise sufficient vigilance and prudence.

President, as always, the PAC has made its conclusion and recommendations in the Report, with the aim of ensuring the achievement of value for money in the delivery of public services by the Administration.

Lastly, I wish to register my appreciation for the active participation of and the contribution made by members of the PAC. Our gratitude also goes to the

representatives of the Administration and the HKCO for attending the hearings held by the PAC. We are also grateful to the Director of Audit and his colleagues, as well as the staff of the Legislative Council Secretariat, for their unfailing support.

Thank you, President.

**PRESIDENT** (in Cantonese): Mr Vincent FANG will address the Council on the "Report of the Panel on Commerce and Industry 2009-2010".

### **Report of the Panel on Commerce and Industry 2009-2010**

**MR VINCENT FANG** (in Cantonese): President, in my capacity as Chairman of the Panel on Commerce and Industry, I submit the report on the work of the Panel for the current Session and briefly highlight several major items of our work.

The Panel has noted that although Hong Kong economy has recovered from the global financial crisis in the year, small and medium enterprises (SMEs) are still in difficulty. To enhance the support for SMEs, members urged the Administration to extend the application period for the Special Loan Guarantee Scheme (SpGS). The Administration has accepted our suggestion by extending the application period for the SpGS for six months until the end of 2010. The Panel welcomes such an arrangement.

The Panel has discussed in detail issues of trade and industries under the Framework Agreement on Hong Kong/Guangdong Co-operation (the Framework Agreement) and the latest Supplement to CEPA. Members urged the Administration to maintain communication with relevant stakeholders on implementation of the relevant measures under the Framework Agreement. Members also hoped that CEPA would take Mainland/Hong Kong co-operation to a new level and provide more opportunities for Hong Kong businesses to gain greater access to the Mainland market. Members urged the Administration to facilitate local enterprises in operating on the Mainland by improving and streamlining the relevant rules and procedures.

Regarding the promotion of inward investment, given that our neighbouring economies' competitive advantages have gradually caught up with that of Hong Kong, the Panel urged the Administration to conduct a study on the inward investment promotion strategies of Hong Kong's competitors and suggested that the Administration co-operate with overseas investment consultancies in promoting Hong Kong to overseas companies.

The Panel supported the development of testing and certification industry proposed by the Government and hoped that more employment opportunities could be created. In view of the Mainland's strong demand for testing and certification service, members urged the Administration to formulate interim measures and a long-term plan for grooming of talents for the testing and certification industry so as to help local enterprises tap the Mainland domestic market and strive for the recognition of the testing reports from Hong Kong's accredited laboratories by the Mainland.

The Panel has all along been following up the development of Hong Kong's convention and exhibition industry. It has also received views from the trade and concern groups on the role and functions of the Hong Kong Trade Development Council (HKTDC) and phase 3 expansion of the Hong Kong Exhibition and Convention Centre (HKCEC). Some members opined that in order for Hong Kong to stay competitive in the exhibition and convention industry, it was necessary for the Government to tackle the competition between the HKCEC and the Asia World-Expo (AWE) which was not fully utilized. At the Panel's request, the HKTDC agreed to step up communication and co-operation with the AWE and fair organizers in the private sector with a view to exploring the possibility of organizing more trade shows at the AWE.

Regarding the R&D Cash Rebate Scheme, the development plan for Science Park Phase 3 and the relevant financing arrangements proposed by the Government, the Panel expressed support and urged the Administration to adopt measures to encourage the commercialization of R&D deliverables in Hong Kong, formulate a manpower plan for the R&D industry, increase R&D expenditure, organize more activities to stimulate youngsters' interest in R&D and develop long-term co-operation in R&D with Guangdong Province.

Concerning the Administration's refined proposals to strengthen copyright protection in the digital environment, some members opined that over-regulation

might stifle creativity and innovation. On the contrary, the Administration should liaise with the Mainland and overseas authorities with a view to developing possible co-operative mechanism in combating online copyright piracy. The Panel also received views from copyright owners association and copyright users. Given their divergent views, members called on the Administration to further engage the relevant stakeholders so as to strike a balance between the interests of various parties.

Finally, I would like to take this opportunity to thank members for their support to the work of the Panel and thank the Secretariat for the assistance rendered.

President, I so submit

**PRESIDENT** (in Cantonese): Mr LEE Cheuk-yan will address the Council on the "Report of the Panel on Public Service 2009-2010".

### **Report of the Panel on Public Service 2009-2010**

**MR LEE CHEUK-YAN** (in Cantonese): President, in my capacity as Chairman of the Panel on Public Service, I submit the report on the work of the Panel for the current Session and briefly highlight several major items of work.

In this Session, the Panel has actively followed up three review reports on the directorate grades, disciplined services and selected non-directorate civilian grades. Although the Panel concurred with the Administration's acceptance of the recommendations relating to salary and increment as contained in the reports, members called on the Administration to continue to follow up the unresolved requests from the disciplined services grades, including standardizing the pay and grade structures across the disciplined services, reducing the conditioned hours of work, extending the "through scale arrangement", and so on. The Administration undertook that it would continue to discuss with staff associations so as to address their concerns.

The Panel noted that the Administration had not acceded to the requests of some non-directorate civilian grades for the conduct of Grade Structure Review

(GSR). To follow up their concern, the Panel requested an explanation on the criteria for conducting GSRs with previous examples on conducting GSRs for follow-up actions and discussion.

The Panel has all along been holding the view that the "3+3" entry system was too harsh and unfair to new recruits. Members were pleased to learn that the Administration had decided in April 2010 to remove the relevant requirement so that from a specified date, a new recruit would normally be considered for appointment on permanent terms upon satisfactory completion of the three-year probation period. In response to the Panel's request, the implementation of the revision was advanced to 1 July 2010.

The Panel has also been closely following up the employment of Non-Civil Service Contract (NCSC) staff. Members have time and again urged the Administration to convert the existing NCSC staff to civil servants and suggested that NCSC staff with relevant experience should be given priority for consideration in filling the civil service vacancies.

The Panel was highly concerned about the use of agency workers by government departments. Members noted that there were some 2 400 agency workers working in the Government. These workers were generally underpaid and most of them enjoyed no fringe benefits. Members were highly concerned about abuses and middle-man exploitation. In response to the Panel's concern, the Administration decided to draw up guidelines for reference by bureaux and departments and adopt improvement measures so as to strengthen monitoring of the arrangement and safeguard the wage level of agency workers.

Given that a requirement of Chinese language proficiency has been imposed for appointments to civil service posts and some local ethnic minority residents could not meet the relevant appointment requirement, the Panel expressed concern and had detailed discussions with representatives from relevant deputations, the Equal Opportunities Commission and the Administration. In response to the Panel's concerns, the Administration undertook that Heads of Departments/Heads of Grade would be reminded to be more sensitive about the difficulties encountered by ethnic minorities in applying for civil service posts and guidelines would be issued to Heads of Departments.

Concerning civil service pay, the Panel has discussed the 2009 Starting Salaries Survey findings and the 2010-2011 Civil Service Pay Adjustment. Members have expressed concerns and views on the relevant recommendations. Besides, the Panel has also followed up the progress of implementation of the improvement measures for provision of medical and dental benefits to civil servants and eligible persons. The Panel requested that Chinese medicine be covered by the scope of civil service medical benefits.

President, the work of the Panel has been detailed in the written report. I so submit. Finally, I would also like to thank members and the Secretariat for their support. Thank you, President.

**PRESIDENT** (in Cantonese): Mr CHEUNG Hok-ming will address the Council on the "Report of the Panel on Transport 2009-2010".

### **Report of the Panel on Transport 2009-2010**

**MR CHEUNG HOK-MING** (in Cantonese): President, in my capacity as Chairman of the Panel on Transport, I submit the report on the work of the Panel for the current Session and briefly highlight several major items of work of the Panel.

In the current Session, the Panel has continued to pay close attention to public transport fares, which are affecting people's livelihood. The Panel was particularly concerned about the adjustment to MTR fares. Members suggested that the Government consider setting up a fare stabilization fund and urged the MTR Corporation Limited to provide more fare concessions so as to mitigate the impacts of the fare adjustment. Regarding bus fares, members strongly requested franchised bus operators to offer fare concessions to persons with disabilities in order to help them integrate into society.

The safety of public light bus (PLB) operations remained a major concern of the Panel. The Panel supported the Transport Department (TD)'s proposal to make speed limiter a basic equipment of PLBs and include "blackbox" as a basic equipment of newly registered PLBs. Furthermore, the Panel urged the Administration to seriously review the pay systems and working hours of PLB

drivers. The Administration agreed to further study the views of the Panel by making reference to overseas experience.

The Panel was also very concerned about the safety of franchised bus operation and has particularly discussed the training and monitoring mechanism regarding the bus captains' driving skills as well as measures to enhance safety of franchised bus operation with the Administration and the franchised bus operators. The Panel urged the TD to ensure that the working schedules of bus drivers were reasonable and to review the relevant guidelines to ensure that bus captains had adequate rest time. The TD indicated that it would pursue improvements to the working hour and rest time arrangements for bus captains.

The Panel held two joint meetings with the Panel on Environmental Affairs to discuss how bus resources could be better utilized to help reduce the number of bus trips so as to provide some relief to traffic congestion and improve air quality. Members urged the Administration to encourage bus companies to offer interchange discounts and implement sectional fares as far as possible so as to garner public support for bus rationalization efforts.

The Panel was also concerned about the chain effect of toll increases on transport fares and the added burden on drivers. The Panel was very concerned about the application for toll increases by Tate's Cairn Tunnel Company Limited (TCTC) in 2010 and expressed a number of concerns. The TCTC subsequently submitted a revised application, in which the TCTC proposed not to increase the toll for PLBs and offered promotional discount for taxis.

In the current Session, the Panel has also discussed some other proposals by the Administration, including the review on ferry services for outlying islands and proposed options, the assessment results on the provision of hillside escalator links and elevator systems, and improvement measures to cycling facilities. The Panel has raised a number of concerns and views on the proposal.

A Subcommittee on Matters Relating to Railways (the Subcommittee) was also formed in the current Session to closely oversee various railway projects. In the current Session, the Subcommittee has discussed the planning, design and implementation of the West Island Line, Hong Kong Section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link, South Island Line (East) and Kwun Tong Line Extension, and the financial arrangements of the projects

concerned. The Subcommittee has also held several meetings to receive views from the public, including the affected residents' concerns and views on these railway projects.

In respect of railway operation, the Subcommittee has all along been closely monitoring the performance of the MTR system. The Subcommittee has held two meetings, in which railway incidents in recent days were discussed. Furthermore, the Subcommittee has also expressed its views on the proposed amendments to the Mass Transit Railway Bylaws and the Mass Transit Railway (North-West Railway) Bylaw.

President, other work of the Panel has been detailed in the written report. I so submit.

**PRESIDENT** (in Cantonese): Mr WONG Kwok-hing will address the Council on the "Report of the Panel on Housing 2009-2010".

### **Report of the Panel on Housing 2009-2010**

**MR WONG KWOK-HING** (in Cantonese): President, in my capacity as Chairman of the Panel on Housing, I submit the report on the work of the Panel in the 2009-2010 Session and briefly highlight several major items of work of the Panel.

In view of the continued rise of property prices, the Panel has deliberated the re-launching of Home Ownership Scheme (HOS) and revitalization of HOS Secondary Market so as to stabilize the property market and provision of assistance to low-income families for achieving home ownership. The Panel noted that the Administration would tackle the home ownership problem faced by the public by increasing the supply of small and medium-sized flats, putting up for sale the remaining Sandwich Class Housing Scheme (SCHS) units and all the surplus HOS flats, and exploring measures to revitalize the HOS Secondary Market. Some members pointed out that the sales of surplus HOS and SCHS flats in one go would not solve the problem given their limited supply and the Government needed to provide more land for housing development. However, some members stressed the importance of preventing land hoarding by developers

for development of luxurious flats which were beyond the affordability of low and middle income-families.

Under the new rent adjustment mechanism which came into operation on 1 January 2008, a review of public rental housing (PRH) rent will be conducted once every two years. The PRH rent will be either adjusted upward or downward according to changes in the income index for the first and second periods of the review. The Panel noted that households were selected on the basis of household size distribution. Some members queried the reliability of the income index if this was computed without making reference to the income levels of different districts which might vary. Other members however supported the use of household size distribution in computing the income index, but requested that consideration should be given to working out two income indices, one for households with one or two persons and the other for households with three or more persons. Some members also expressed concern about the exclusion of "non-representative" households, such as well-off tenants and Comprehensive Social Security Assistance households, from computation as this might have pushed up the mean monthly household income.

The Panel had been closely following up the management of divested retail and car-parking facilities. The Panel expressed concern about the high average rental increase of 7.3% over the past three years despite the dwindling traffic flow in the divested retail facilities. This was at variance with The Link's undertaking at the time of listing that it would not increase the rents if the patronage traffic and sales revenue had not increased correspondingly. Some members pointed out that the high rents had forced many commercial tenants to move out and driven up the retail prices of goods, the cost of which would eventually be transferred to consumers who were mainly residents of PRH estates.

The Panel has considered the need of reviewing the Landlord and Tenant (Consolidation) Ordinance. Members pointed out that with the removal of rent control, tenants were having a hard time finding affordable accommodation in view of the significant increase in rents. Many tenants were forced to move out of their flats as they were unable to renew their tenancies after the removal of security of tenure. Hence, members urged the Administration to review the Ordinance and consider relaxing the eligibility criteria for PRH so that sandwiched class families which could not afford the high rents of private accommodation but were not eligible for PRH could apply for PRH. To prevent

a longer waiting time as a result of the increase in the number of PRH applicants, more housing resources should be provided to meet the demand.

The Panel was also concerned about a potential property bubble due to a continuous surge in private property prices. The Administration has proposed to introduce nine enhancement measures, or the so-called "nine proposals, 12 requirements", to strengthen the regulation of the sales of first-hand private residential properties. Members noted that these measures would be implemented through guidelines issued by The Real Estate Developers Association of Hong Kong (REDA) and the Consent Scheme of the Lands Department. The majority of members expressed concern about the possible conflict of interest on the part of REDA in enforcing the guidelines, and the lack of monitoring on the compliance of developers who were not members of REDA. These members held the view that the Administration should consider imposing legislative control on property sales.

Other major items of work of the Panel has been detailed in the report. President, I would like to take this opportunity to thank members for their support over the past year and thank the Secretariat for their utmost diligence. Thank you.

**PRESIDENT** (in Cantonese): Dr Samson TAM will address the Council on the "Report of the Panel on Information Technology and Broadcasting 2009-2010".

### **Report of the Panel on Information Technology and Broadcasting 2009-2010**

**DR SAMSON TAM** (in Cantonese): President, in my capacity as Chairman of the Panel on Information Technology and Broadcasting, I submit the report on the work of the Panel for the current Session and briefly highlight several major items of work of the Panel.

The Panel has discussed the regulation of person-to-person (P2P) telemarketing calls. Some members opined that P2P telemarketing calls, which caused inconvenience and nuisance to recipients and were also an abuse of personal data and privacy, should be regulated by way of legislation. However, some other members expressed reservation about the regulation of telemarketing

calls by legislation on the ground that legislative control might curtail free flow of information and freedom of speech. They supported that the problem be first tackled by voluntary compliance with the Code of Practice and urged the industry to strengthen the unsubscribe mechanism and put in place proper controls.

Regarding the billing disputes in connection with chargeable mobile content services provided through Short Messaging Services, the Panel has followed up the action taken by the Administration to address the issue. Members noted that the Communications Association of Hong Kong had promulgated a voluntary industry Code of Practice to improve the transparency of charging arrangements. Some members urged the Administration to consider regulating the relevant service for consumer protection by way of legislation.

The Panel has discussed the future operation of Radio Television Hong Kong (RTHK) and received reviews from the public and the media. Concerning the proposed establishment of a Board of Advisors (the Board) to enhance corporate governance and accountability of RTHK, some members cast doubts on the need for setting up the Board for advising the Director of Broadcasting on matters pertaining to editorial principles, programming standards, and quality of RTHK programming, given that RTHK, as a government department, had been operating well. Some members urged the Administration to remove such power of the Board from the Charter and provide specifically for RTHK's editorial independence in the Charter to safeguard against any political interference by the Administration and the Board. However, some other members supported the establishment of the Board as a check and balance mechanism to enhance RTHK's accountability to the public and to ensure that RTHK would uphold professional standard of journalism and the principle of objectivity.

On the development of digital audio broadcasting, some members urged the Administration to consider bringing in more competition. Given that digitization would free up spectrum resources that could then be redeployed for community broadcasting, these members called on the Administration to open up the airwaves to the public.

The Panel has followed up the review on administration of Internet domain names in Hong Kong and discussed with the Administration the appointment of the Consultative and Advisory Panel of the Registration Corporation concerned and the draft Memorandum of Understanding documentation. In the light of

members' comments, the Government and the Registration Corporation concerned have revised the documents subsequently.

On the progress in implementing digital inclusion initiatives, the Panel urged the Administration to allocate more resources and formulate relevant strategies and tailor-made measures so as to help integrate people with disabilities and the elderly in the digital society.

The Panel urged the Administration to draw up benchmarking target on the economic and social benefits to be brought about by creative industries against which to evaluate the effectiveness of the various initiatives. Members also called on the Administration to implement more measures such as government policy and legislative support so as to assist start-ups and drive the development of creative industries, apart from financial assistance to the industries.

Members commended the Administration for the successful implementation of the Film Development Fund (FDF) and its proposed measures to improve the operation of the FDF in response to the needs of the film industry with a view to assisting the nurturing of new directors and producers, and film production by small-to-medium companies.

I would like to take this opportunity to thank members for their support for the work of the Panel and thank the Secretariat for the assistance rendered.

President, I so submit.

**PRESIDENT** (in Cantonese): Mr Jeffrey LAM will address the Council on the "Report of the Panel on Economic Development 2009-2010".

### **Report of the Panel on Economic Development 2009-2010**

**MR JEFFREY LAM** (in Cantonese): President, in my capacity as Chairman of the Panel on Economic Development, I submit the report on the work of the Panel for the current Session and briefly highlight several major items of work in the report.

The Panel has been very concerned about the development of tourism in Hong Kong. The Hong Kong Tourism Board, when briefing the Panel on its work plan for 2010-2011, advised that it would resume investment in the long-haul markets and continue to target marketing efforts at the short-haul markets, such as the Mainland and Taiwan. In receiving an update on the operation of Hong Kong Disneyland (HKD), the Panel urged HKD to strengthen its marketing strategies by directing more promotional efforts to the Mainland market, in particular Guangdong Province. Members also noted that although the Hongkong International Theme Parks Limited (HKITP) recorded a loss in the 2009 financial performance, the park management was confident that the financial performance of the HKITP would improve in the near future.

Regarding the development of the cruise terminal, members expressed support for the advanced completion of the cruise terminal building to tie in with the opening of the first berth around mid-2013. They requested the Administration to provide catering service, sufficient car park facilities and barrier-free access in order to meet the needs of cruise passengers as well as elderly and persons with disabilities.

The Panel was also very concerned about the operation of the Travel Industry Council of Hong Kong (TIC). According to the Administration, self-regulation for the travel industry will remain unchanged and the TIC has implemented improvement measures since July 2009, including rationalization of its committee structures and membership, increasing meeting transparency, appointment of an independent director to reflect front-line employees' interests, conducting a value-for-money audit, formulating clearer guidelines on TIC elections and enhancing monitoring by the Tourism Commission.

Concerning the Competition Bill submitted by the Administration today, members considered that specific criteria should be set out to determine which statutory bodies should be subject to the application of the Bill and suggested that the Competition Commission should be entrusted to make these decisions to enhance credibility. Some members also suggested that the Administration should take the opportunity to extend the merger rule to some other sectors.

In respect of protecting consumer interests, members supported the broad direction adopted by the Administration such as the proposals to expand the coverage of the Trade Descriptions Ordinance (Cap. 362) to include indications in respect of services in consumer transactions and tackle other unfair trade

practices. Some members were concerned about enforcement, the application of cooling-off arrangements, difficulties in providing sufficient evidence to prove that the traders had accepted payment "without the intention to supply the contracted goods or services" and the exclusion of financial services products and property from the proposed amendments.

In respect of the energy market, members were most concerned that increases in electricity and gas tariffs would bring enormous inflation pressure to small and medium enterprises and the general public. Members expressed much concern about the increase of tariffs by the CLP Power Hong Kong Limited and the Hong Kong and China Gas Company Limited (Towngas) in 2010. Although the Hongkong Electric Company Limited would freeze its tariff in 2010, members expressed concern that there would be an increase in its overall fuel cost in 2010. Regarding members' concern about the need to subject Towngas to price and profit regulation by the Government, the Administration advised that the Panel would be consulted when the current Information and Consultation Agreement entered into by the Towngas was due for extension.

Members were pleased to note that in the final report of a safety oversight audit of the civil aviation system of Hong Kong issued by the International Civil Aviation Organization (ICAO) in November 2009, the aviation safety oversight system in Hong Kong had achieved an overall score of 94.47% in the effective implementation of a safety oversight system, representing the fifth highest amongst the aviation authorities of 190 ICAO Contracting States audited thus far, including the United States, the Mainland and the United Kingdom. The Panel noted that the ICAO's recommendations for follow-up actions covered legislation, staffing, training and safety inspection aspects.

For the other major items of work of the Panel, there is already a detailed account in the report. President, I would also like to take this opportunity to thank members for their support over the past year and thank the Secretariat for their assistance rendered.

President, I so submit.

**PRESIDENT** (in Cantonese): Dr Joseph LEE will address the Council on the "Report of the Panel on Health Services 2009-2010".

**Report of the Panel on Health Services 2009-2010**

**DR JOSEPH LEE** (in Cantonese): President, in my capacity as Chairman of the Panel on Health Services (the Panel), I submit the report on the work of the Panel in the 2009-2010 Session and briefly highlight the deliberations of the Panel in respect of health services.

On 14 December 2009, the Administration briefed the Panel on the launching of an Expression of Interest (EOI) exercise to solicit market interests and ideas towards development of private hospitals at Wong Chuk Hang, Tseung Kwan O, Tai Po and Lantau and/or possible public-private partnership models for the development of private hospital at the Lantau site.

Some members were concerned that the Administration might be using private hospital development to reduce its funding to public healthcare system to ease the imbalance between the public and private healthcare sectors. Concern was also raised as to whether there were adequate local healthcare professionals to underpin the development of private hospitals at the four reserved sites. The Panel passed a motion requesting the Administration, after receiving EOI from applicants, to consult members of the public and the Panel first before deciding on the modes and means of public-private-partnership for the development of private hospitals. The Panel would continue to closely monitor the development of private hospitals to ensure that such development would truly benefit the general public on the one hand and address the imbalance between the public and private healthcare sectors on the other.

The Panel discussed the human swine influenza (HSI) vaccination programme with the Administration on two occasions on 14 December 2009 and on 11 January 2010. Members were of the view that the Administration should provide adequate support to people developing serious complications, such as permanent disability, following HSI vaccination, despite the fact that these persons had signed a consent form for receiving the vaccination. Some members also urged the Administration to consider extending the HSI vaccination programme to people outside the target groups, such as primary school students, for a specified time period, say, one week or one month to prevent the three million doses of HSI vaccines purchased by the Administration from going to waste.

The Administration responded that it would decide whether or not to extend the HSI vaccination programme to include people not belonging to the target groups upon the arrival of the remaining 2.5 million doses of HSI vaccines in mid-January 2010. In the meantime, efforts would continue to be made to apprise members of the public of the benefits, possible side effects and risks of receiving HSI vaccination.

The Administration advised the Panel on 11 May 2010 that as at 25 April 2010, a total of about 190 000 doses of HSI vaccines had been administered to the target groups. The stock of unused vaccines kept by the Government was about 2.7 million.

Arising from a number of incidents concerning pharmaceutical products which occurred in Hong Kong in early 2009 and which had caused wide public concern on drug safety, the Food and Health Bureau set up the Review Committee on the Regulation of Pharmaceutical Products in Hong Kong (Review Committee) on 24 March 2009 to conduct a comprehensive review on the existing regime for the regulation of pharmaceutical products, including whether there was a need for legislative amendments. On 11 January 2010, the Administration briefed the Panel on the outcome of the review on the regulation of pharmaceutical products in Hong Kong.

The Panel urged the Administration to expeditiously implement the 75 recommendations put forward by the Review Committee so as to enhance the regulatory regime of pharmaceutical products in Hong Kong. The Administration advised that the Pharmaceutical Service of Department of Health (DH) would need to increase staff strength from around 160 to 350 to implement all the recommendations of the Review Committee in full. The Administration would liaise with the University Grants Committee with a view to offering more places in the pharmacy programmes of universities, taking into account the supply of pharmacy graduates from overseas. Furthermore, some of the recommendations would be implemented subject to the passing of the relevant legislative amendments and might require a longer timeframe for implementation. The target time for introducing the necessary legislative amendments was 2011.

The Panel was also very concerned about the support for persons with mental health problems. Members passed a motion at the meeting on 11 May

2010 urging the Administration to set up an independent committee to investigate the causes of the incident in Kwai Shing East Estate which left two dead and three seriously injured so as to prevent similar incidents from recurring.

The Administration advised members on 4 June 2010 that in the light of the incident and the concerns of members and the community, the Hospital Authority had set up a committee to review its management and follow-up of mental patients, including the liaison with other service providers with reference to the incident in Kwai Shing East Estate. The membership of the committee comprised professionals and service providers from the medical and welfare sectors, including representatives from two non-governmental organizations. The committee would make suggestions on improvements to community support services for mental patients and invite views from patient groups on how to improve the services to mental patients. The committee would not, however, look into the cause of the incident to avoid overlapping with the investigation and legal proceedings connected with the case. The committee had commenced its work on 1 June 2010 and expected to complete the review in two months.

Regarding the improvements to the mechanism for handling medical incidents in public and private hospitals, some members urged the Administration to review the Hospitals, Nursing Homes and Maternity Homes Registration Ordinance (Cap. 165) to increase the deterrent effect against non-compliance with the Ordinance. Apart from requiring private hospitals to report sentinel events within 24 hours, the DH should also require private hospitals to make public all sentinel events without compromising the privacy of the patients concerned. They also suggested that an independent statutory office of the health service ombudsman be set up to ensure impartiality of the investigation and better protect the interest of patients.

Finally, I, on behalf of the Panel, would like to thank the Secretariat for their professional support rendered over the past year. President, I so submit.

**PRESIDENT** (in Cantonese): Ms Audrey EU will address the Council on the report of the Panel on Environmental Affairs 2009-2010.

**Report of the Panel on Environmental Affairs 2009-2010**

**MS AUDREY EU** (in Cantonese): President, in my capacity as Chairman of the Panel on Environmental Affairs (the Panel), I submit the report on the work of the Panel for the year 2009-2010 and give a brief account of several major items of work contained therein.

Problems arising from climate change had all along been a topic of concern. The Panel noted that as part of the Chinese delegation, the Secretary for the Environment and five other government officials attended the United Nations Climate Change Conference 2009 (the Conference) held in Copenhagen, Denmark, in December 2009. While the Conference was not able to reach a legally binding agreement, it had taken note of the legally non-binding Copenhagen Accord, which aimed to limit the increase in surface temperature of the earth to below two degree Celsius and raise finance to kick-start action in the developing world to deal with climate change. As China was a non-Annex I Party to the United Nations Framework Convention on Climate Change, Hong Kong was not obliged to contribute to the Fund to be established in the future. However, the Panel considered that Hong Kong had the responsibility and ability to make contributions to the Fund for protecting the environment. Given that electricity generation accounted for over 60% of Hong Kong's greenhouse gas emissions, some members opined that there was an imminent need for the authorities to raise the proportion of natural gas in the fuel mix and give consideration to opening up the electricity market, so that Hong Kong could make use of the surplus nuclear energy from the Mainland to reduce local carbon emissions.

To further reduce vehicular emissions, the authorities proposed to tighten the specifications of motor vehicle diesel and unleaded petrol to the Euro V standards. The Panel supported the use of cleaner fuels but some members emphasized that the Administration needed to consult the views of the trade to ensure that switching to Euro V fuels would not have any impact on the performance of existing vehicles. The authorities should also take measures to avoid profiteering by oil companies through increasing the price of Euro V petrol to safeguard consumers' interests.

On promoting green transport policies (including the rationalization of bus routes, extension of the coverage of green transport systems, encouraging the use

of electric vehicles, the wider adoption of biofuels, and so on), the Panel felt disappointed with the progress of the Administration. In order to encourage the transport industry to introduce more innovative green transport technologies, the Financial Secretary announced that a \$300 million Pilot Green Transport Fund (PGTF) would be set up. To ensure the feasibility of the relevant technologies in Hong Kong, members opined that the Administration should consider establishing a committee and inviting experts to assist in vetting applications for the PGTF. The authorities should work out clear guidelines for the PGTF to avoid overlapping with other vehicle replacement schemes.

Regarding waste management, with the implementation of the first producer responsibility scheme (PRS) (that is, the Environmental Levy Scheme on Plastic Shopping Bags) since 7 July 2009, the Chief Executive announced in the 2009-2010 policy address that a mandatory PRS on waste electrical and electronic equipment would be introduced, and a three-month public consultation on the scheme in question commenced in January 2010. While supporting the need to properly handle waste electrical and electronic equipment, the Panel was concerned about the lack of incentives and government participation in the PRS on waste electrical and electronic equipment. Members considered that the Administration should take a more proactive role by providing land for building treatment plants for waste electrical and electronic equipment and sharing the treatment cost. Besides, the authorities should provide more details on the operation of the scheme concerned and its impacts on stakeholders (including consumers, importers, distributors, retailers and second-hand dealers).

The problems caused by fly-tipping and land filling activities had all along been a cause for concern to the Panel. In order to prevent the occurrence of possible environmental problems and other problems that might arise from illegal depositing activities, the authorities proposed to amend the relevant legislation, which would require any person who intended to carry out depositing activity on land held under private ownership to obtain prior written permission of all landowners of the land concerned and carry such written permission during the depositing activity for inspection at the request of the control authority. Although the Panel agreed that the proposed amendment represented a step forward, some members expressed concern that landowners could circumvent the new notification requirement by claiming that the construction and demolition materials deposited on their land were for storage purposes. To plug this loophole, the authorities should consider reviewing the definition of waste under

the Waste Disposal Ordinance and increasing the penalties for illegal depositing activities to enhance the deterrent effect.

In order to take forward the implementation of the Outline of the Plan for the Reform and Development of the Pearl River Delta promulgated by the National Development and Reform Commission, the Chief Executive and the Governor of Guangdong Province signed the Framework Agreement on Hong Kong/Guangdong Co-operation (the Framework Agreement). Key areas of co-operation relating to the environmental aspect under the Framework Agreement include concerted actions to tackle air pollution, enhance cleaner production in the region, promote the wider use of electric vehicles, co-operation in the protection of marine water quality, promote the development of circular economy, and co-operation in ecology and marine resource conservation. Some members expressed concern that the Government had not consulted the public before signing the Framework Agreement. Therefore, the Panel decided that deputations should be invited to express their views on public participation. In view of the growing momentum on the use of electric vehicles on the Mainland, members urged the Government to formulate a comprehensive plan to concurrently promote the wider use of such vehicles in Hong Kong. Members also hoped that both the Hong Kong Government and the Guangdong Provincial Government could jointly request the Central People's Government to tighten the fuel standards to the National V standards, with a view to further improving the regional air quality.

The Subcommittee on Improving Air Quality and the Subcommittee on Combating Fly-tipping under the Panel will submit their reports to the Panel after completing their work.

Other major items of work undertaken by the Panel are set out in the report. President, I wish to take this opportunity to thank members of the Panel for their support over the past year, particularly the Legislative Council Secretariat for its full support and professional services. Thank you, President.

**PRESIDENT** (in Cantonese): Mr TAM Yiu-chung will address the Council on the "Progress Report of the Committee on Rules of Procedure for the period July 2009 to June 2010".

**Committee on Rules of Procedure of the Legislative Council of the Hong Kong Special Administrative Region — Progress Report for the period July 2009 to June 2010**

**MR TAM YIU-CHUNG** (in Cantonese): President, in my capacity as Chairman of the Committee on Rules of Procedure (the Committee), I submit the Progress Report of the Committee on Rules of Procedure of the Legislative Council of the Hong Kong Special Administrative Region for the period July 2009 to June 2010.

The Report highlights the proposed procedural arrangements for the implementation of Article 73(9) of the Basic Law on impeachment of the Chief Executive (CE) and the studies to review the procedures of the Council and its committees in the past year.

First of all, regarding the proposed procedural arrangements for the impeachment of the CE, after reviewing the initial proposal of the Committee of the Third Legislative Council and taking into account the views of Members and the Administration, the Committee proposed a more streamlined procedure in consultation with Members of various political parties or groupings and the Administration. Members generally agreed to the proposed procedure and the Administration had put forward its concerns about the procedure for notifying CE. The matters were discussed by the Committee and members' views had been referred to the Administration for its further discussion. The Committee will continue its deliberations when the Administration's reply is received.

With regard to the review of procedural arrangements relating to Council meetings, the Committee noted that following the resignation of five Members which took effect in January this year, there was widespread concern about whether the quorum for the meeting of the Legislative Council should be reduced in tandem with reduced membership.

The Committee had examined the issue. In consideration of Article 75 of the Basic Law (BL), which provides that the quorum of the Council shall be "not less than one half of all its Members", the Committee considered that the quorum of the Council should be maintained at 30 Members, as 30 Members is "not less than one half of all its members" irrespective of whether "all its members" should be taken to mean 60 or less than 60.

In the course of its study, the Committee made reference to the relevant practices of a number of legislatures, including the United Kingdom, the United States, Australia, Canada, Singapore, Japan, Scotland and South Africa, and so on. Among these legislatures, the House of Representatives of the United States is the only legislature which adopts the practice of reducing its quorum as a result of vacancies in its membership. All other legislatures do not have the quorum reduced by vacancies in their membership. The Committee also referred to the advice given to the President by the Legal Adviser of the Secretariat and that given by an outside counsel, Mr Anthony Francis Neoh, SC. The Administration was also invited to provide its views on the matter. As the views of the Committee on the matter were in line with the decision of the President and the views of the Administration, the Committee considered that there was no need to study the matter any further.

President, the Committee has, since last session, commenced a study on the procedure for holding debates in Council on subsidiary legislation and other instruments tabled in Council to which no amendment has been proposed. After making reference to the practices of the Senate of the Australian Parliament, the Committee proposed that there should be a standing arrangement to enable Members to speak on subsidiary legislation or other instruments tabled in Council to which no amendment has been proposed and a procedure for holding such debates should be provided in the Rules of Procedure. After detailed deliberations, the Committee moved amendments to the Rules of Procedure at the Council meeting held on 2 December 2009, proposing that the Chairman of the House Committee should present a report on the subsidiary legislation and other instruments to the Council at its meeting. Under the proposed arrangement, a Member who wished to speak at a debate in Council on any item of subsidiary legislation or instrument included in a House Committee Report should notify the House Committee of his intention to do so. Then the Chairman of the House Committee would move a motion to take note of the House Committee Report in relation to that subsidiary legislation or instrument. If Members intended to speak on more than one items of subsidiary legislation or instrument, it would be for the House Committee to decide if the debate on the motion should be divided into separate sessions. The amendments to the Rules of Procedure were approved by the Council.

Moreover, the Committee had discussed whether the Rules of Procedure should be amended or other actions should be taken to address situations of Members refusing to comply with the President's withdrawal orders. After

drawing reference to the relevant rules and practices of other legislatures, the Committee considered that under the existing practice, if the situation so warranted, the President might suspend the meeting to allow the Clerk to the Legislative Council to persuade the Member who refused to comply with withdrawal orders to leave the Chamber. The Committee had requested the Secretariat to collate more information on the relevant rules and practices of other legislatures to serve as a reference by members.

The Committee had also examined the issue relating to the display of signs and messages by Members during Council meetings. The Committee understood that it was the practice of the Council that if the display of placards by Members disturbed the proceedings of meetings or obstructed other Members or public officers attending the meetings, the President would ask the Members concerned to put away the placards. After discussion, the Committee decided that given the controversial nature of the issue, the views of all Members should be sought, and the Committee would continue its deliberations when the outcome of the consultation was available.

With regard to the review of the procedures of committees of the Council, the Committee had discussed matters relating to members of the public displaying placards at meetings of committees of the Council. The Committee noted that some deputations, who attended a meeting at the invitation of a Panel, continued to display placards on their desks after completing their oral presentation to the Panel at the meeting. The Committee noted that under Rule 87 of the Rules of Procedure, the President, Chairman of a committee of the whole Council or chairman of a committee or subcommittee may order the removal from a meeting of any member of the press or member of the public who behaves, or who appears likely to behave, in a disorderly manner. Representatives of deputations should be regarded as members of the public. As there were rules to enable the chairmen of committees to handle situations of this kind, the Committee considered that there was no need to follow up the issue.

Furthermore, the Committee had also studied the method of indicating the choice of nominee in the election of the chairman and deputy chairman of a committee of the Council. After studying the issue, the Committee proposed that the choice of nominee should be indicated by marking on a ballot paper using a chop with a "✓" on the ballot paper. The House Committee supported the Committee's proposal and the relevant House Rules were amended to this effect.

The Committee had also studied issues relating to notices and agendas of committee meetings. The practices and proposed arrangements agreed by the Committee have been included in the relevant handbooks as well as the relevant manuals for reference by Members and clerks to such committees.

The Committee had also discussed the need for establishing a procedure to deal with matters in relation to reports published by committees which have been dissolved, such as the ways to deal with circumstances which call for the amendment of such reports. The Secretariat was requested to conduct a study of the issues and collate relevant information to facilitate consideration of the matter by the Committee in the next session.

In addition, the Committee had also studied issues relating to curtailing of debate in committee proceedings. The Committee will also discuss the subject when the Secretariat has studied and collated the relevant information.

Finally, I would like to take this opportunity to thank Members for their support to the work of the Committee and their valuable views.

Thank you, President.

## ORAL ANSWERS TO QUESTIONS

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

### Prosecution Policy

1. **DR MARGARET NG** (in Cantonese): *President, it has been reported that on 19 December last year, a physically disabled hawker holding a valid Itinerant Hawker Licence (Frozen Confectionery) (commonly known as "ice cream vendor") was alleged to have caused obstruction when hawking in the vicinity of the Star Ferry Pier in Tsim Sha Tsui as well as engaged in selling candies named "lollipop", and he was subsequently charged with causing street obstruction and hawking a commodity not specified in the licence. The prosecutor withdrew the*

*charge of causing street obstruction before the trial, while retaining the second charge. The magistrate stated clearly in court that the case was of a minor nature and prosecution was unnecessary. He questioned the enforcement standards of the law enforcement officers as well as the prosecution principles of the prosecutor, and imposed a light penalty of a fine of \$100 on the defendant. It has also been reported that some members of the public were dissatisfied with the authorities indiscriminately enforcing the law and instituting prosecution. In this connection, will the Government inform this Council:*

- (a) given that under the current prosecution policy, in deciding whether a prosecution should be instituted, the Department of Justice (DoJ) must consider if there is sufficient evidence and if the public interest requires a prosecution to be pursued, whether this policy has changed; in respect of the aforesaid case, of the public interest grounds based on which DoJ decided to institute prosecution;*
- (b) whether the prosecutor in the aforesaid case withdrew the charge of causing street obstruction because of insufficient evidence; if so, whether DoJ has considered if continuing with the prosecution against the hawker for hawking a commodity not specified in the licence would give the public the impression that "if you want to condemn somebody, you can always trump up a charge", resulting in their loss of confidence in the administration of justice; and*
- (c) whether DoJ will conduct a comprehensive review in the light of the case, with a view to improving the current prosecution policy?*

**SECRETARY FOR JUSTICE** (in Cantonese): President, the DoJ is responsible for discharging the prosecution function. It is the established prosecution policy that the decision to prosecute would be based on a consideration of two matters. Firstly whether there is sufficient evidence to justify the institution or continuation of proceedings. If there is sufficient evidence then secondly whether the public interest requires a prosecution to be pursued. A determination of this second matter involves the prosecutor considering whether there is present some matter which would indicate that a prosecution is not in the public interest. These principles are enshrined in DoJ's Statement of Prosecution

Policy and Practice and have not been changed. While the DoJ conducts the majority of prosecutions, enforcement of some of the summary regulatory offences is vested with a number of Government Departments and the relevant prosecutions are conducted by the departmental prosecutors. When conducting prosecutions, departmental prosecutors are expected to apply the provisions of The Statement of Prosecution Policy and Practice. Where there are uncertainties or legal issues that require clarification, the advice of DoJ is sought.

Departments responsible for the enforcement of minor regulatory offences have discretion as to how to secure compliance with the law by the persons with whom they are dealing. Since the offences involved are generally minor in nature, it may not be in the public interest to too readily prosecute them. Hence the departments will explore other means of securing compliance with the law. This may involve educating such persons as to what the law requires of them, alerting them to the fact that certain conduct may constitute an offence for which they could be prosecuted and warning them that they have committed an offence and should stop from doing so, both now and in future. The goal is always to secure compliance with the law and if that can be achieved without prosecution then the public interest is much better served. But if all these measures fail and the person ignores repeated warnings and persistently breaks the law then prosecution will be necessary and will be in the public interest.

In relation to the specific case referred to in the question, the charges were made under the Hawker Regulation (Cap. 132AI) and the enforcement and prosecution actions were undertaken by the Food and Environmental Hygiene Department (FEHD). Before issuing the summonses, the FEHD sought legal advice and it was pursuant to that legal advice that the defendant was summoned for the offences of obstructing a pedestrian area and selling unauthorized items. DoJ's advice was in line with the prosecution policy set out above. Prior to the trial, the FEHD decided not to proceed with the offence of obstruction. We understand from the FEHD that the decision was taken after considering that the hawker was a new licensee and had probably not fully apprehended the contents of the FEHD's administrative guidelines although those guidelines had been issued to all existing licensed ice-cream vendors and also uploaded on FEHD's website for the trade's information. Although the FEHD did not seek DoJ's further advice before making that decision, in executing the prosecutorial decision the FEHD had acted responsibly and with sensitivity.

The summons in respect of selling of unauthorized item was heard before the magistrate on 25 May 2010. Different considerations applied to the offence of selling unauthorized items. Minor though this offence was, we understand that the FEHD had made every effort to inform the defendant that he was breaking the law and to encourage him to desist from so doing but the repeated warnings were ignored. The items that the vendor was authorized to hawk were clearly stated in his licence and there is no question of uncertainty or misunderstanding. Having considered the circumstances of the case, the FEHD decided to proceed with the prosecution. I trust that upon knowing the relevant circumstances of the case, the public will not lose confidence in the administration of justice.

President, DoJ will of course continue to make use of the meetings with and training for departments that are responsible for the enforcement of minor regulatory offences to disseminate to them the latest developments and trends in respect of prosecution policies.

**DR MARGARET NG** (in Cantonese): *President, the power of prosecution is a very important executive power. In fact, not only the defendant will be punished upon conviction, even during the prosecution period, the defendant has to endure a lot of pressure. He will also suffer losses when attending trials. Therefore, as far as public confidence is concerned, if the authorities are regarded to be abusing their power of prosecution and bullying the disadvantaged, it will deal a severe blow to the authorities.*

*President, I would like to follow up the third paragraph of the Secretary for Justice's main reply. Even though he had made a detailed explanation, the result was the same: the FEHD charged a disabled hawker, who was a new licensee trying his best to become self-reliant, with a rather minor offence. One of the charges was withdrawn after the FEHD had issued the summons but shortly before the trial, and the Secretary pointed out that the FEHD had sought DoJ's legal advice. Would he please clarify whether the above scenario implies that DoJ regards both charges to be legally justified and that the prosecution is made in the interest of the public? Does it mean that even one of the charges is withdrawn and the other remains, it is still in the public interest to institute the prosecution? It is pointed out in the main reply that the FEHD did not seek DoJ's further advice before making that decision. Should the Secretary request the enforcement authorities to, under those circumstances, discuss with him once*

*again to see if prosecuting the defendant for a minor offence is still in the public interest?*

**SECRETARY FOR JUSTICE** (in Cantonese): I would like to thank Dr Margaret NG for raising her further question. I absolutely agree that any prosecution would bring about considerable pressure on the defendant, so when we consider whether a prosecution should be instituted, many factors should be taken into consideration. The second important principle that I have mentioned just now is whether it is in the public interest to institute a prosecution. The relevant matters that should be considered are set out in the Statement of Prosecution Policy and Practice. As I have explained just now, initially, the defendant was summoned for two charges, namely, obstructing a pedestrian area and hawking a commodity not specified in the licence.

As set out in the main reply, before instituting the prosecution, the FEHD had sought DoJ's advice in this regard and considered that there was sufficient evidence to institute the prosecution. However, as pointed out in the main reply, after the provision of statements and further information to FEHD's staff and prior to the trial, they decided to withdraw the charge of obstructing a pedestrian area by not offering evidence for that offence in consideration of the relevant factors. As mentioned in the main reply, the FEHD decided to withdraw the charge after considering that the hawker was a new licensee and had probably not fully apprehended the relevant offences (including the offence of obstructing a pedestrian area). In respect of the decision of withdrawing the above charge but retaining the other one, the FEHD did not seek further advice from DoJ. As the FEHD has previously sought our advice, in principle, it might seek our further advice as to whether it was appropriate to proceed with the case. We will continue to remind the relevant staff to keep in touch with us. In particular, if there are any changes prior to seeking advice, they may seek our further advice.

However, in consideration of the relevant information, especially under the circumstances where the offence of obstructing a pedestrian area was withdrawn and the other offence was retained, as I have already explained, it involves a number of considerations. I would like to emphasize that the FEHD had given verbal warnings two days ago for the selling of "lollipop". As far as I understand, the FEHD has issued four verbal warnings to the defendant. In this case, as I explained earlier, this offence is different from the offence of

obstructing a pedestrian area in that all authorized items are in fact clearly set out in the licence. This is therefore different from the circumstances I mentioned earlier, that is, the defendant might not fully apprehend the offence of obstructing a pedestrian area. Furthermore, we have made every effort to ensure compliance with the law without prosecution. Prosecution was instituted only after all such efforts came to no avail. This is the situation I learn from the information provided by the FEHD, and I also believe that there is no violation of the prosecution policy.

Finally, I would like to add that, although the defendant was summoned for a minor charge, that is, selling unauthorized items, it is still an offence under the law, so it has to be enforced. Therefore, the relevant law enforcement officers have their responsibilities in this regard.

**MR TOMMY CHEUNG** (in Cantonese): *Originally, I hope Secretary Dr York CHOW would show up, so that I can ask him if he understands the hardship of ice cream vendors who have to hawk on the streets under any inclement weather conditions. However, Secretary Dr CHOW did not show up, instead, the Secretary has come. I do not want to raise this issue to the Secretary, because he certainly has the personal experience. On the contrary, I do not have such experience.*

*The Secretary had just mentioned the violation of licensing conditions. In fact, there are many abnormalities in food licensing. For example, the sale of French fries was not allowed under the licences for selling light refreshment. While this was restricted for decades, the relevant legislation was amended recently. For that reason, if someone had sold French fries in the past under the licences concerned, he would have been prosecuted.*

*I wish to tell the Secretary that, first of all, the damage mentioned by Dr Margaret NG just now was in fact more than \$100, although it was not a small amount to these people. Secondly, if they are convicted, their licences may be suspended. Therefore, I consider that prosecution should not be instituted lightly, as a balance should be struck in the light of public interest. How much money has the relevant department spent on instituting the prosecution in exchange for this \$100? In addition, I believe the court time thus spent was not*

*proportional to this \$100. So I think after weighing the pros and cons of the entire matter, it should not be done in that way. However, may I ask the Secretary .....*

**PRESIDENT** (in Cantonese): Mr CHEUNG, please raise your supplementary directly.

**MR TOMMY CHEUNG** (in Cantonese): ..... *I am about to raise my supplementary question, President. Does the Secretary consider that someone should be held responsible? As a Member of the Legislative Council, I will raise the issue at relevant Panel meetings. However, I also wish to ask him whether he will discuss with the FEHD because the item being sold was only ice cream, not Ketamine. What makes the Secretary refuse to allow more room for the survival of the industry and let them sell more commodities? In order to keep abreast with the times, will he propose amendments to the relevant legislation by including children's favourite light refreshment in the list of commodities in the licences concerned, as this would significantly reduce the manpower required in prosecuting these ice cream vendors?*

**SECRETARY FOR JUSTICE** (in Cantonese): President, one needs not have first-hand experience to understand the difficulties of hawkers doing business in Hong Kong. We do understand their situations.

Regarding sanctions against breach of the law, I have also emphasized just now that we hope to ensure compliance with the law without prosecution. Therefore, we will start from such aspects as education, communication and warnings, and so on. However, as to individual cases, if all means have been exhausted, it is also not in the public interest if we do not enforce the law at all. I hope Members understand that we do not resort to prosecution indiscriminately.

As to the ways to enforce the law, manage the licensing regime and take appropriate legal actions, these are issues of paramount importance. Obviously, if some people have to apply for another licence to sell certain commodities, and

some others are allowed to sell these commodities without authorization, the situation will be confusing and unfair.

Just now Members have mentioned the possibility of relaxing the licensing conditions so that saleable items may be added in accordance with the prevailing situation. I believe the FEHD colleagues will consider such details in a holistic manner. As this involves policy issues, I cannot further elaborate on it. Nevertheless, I hope Members will understand that, from legal and regulatory points of view, there is actually such a need. Therefore, the relevant prosecution is about section 5(2) of the Hawker Regulation, which provides that no licensee may hawk any commodity or service that is not specified in his licence. I hope Members will understand that it is necessary in terms of the law, but as to how to make adjustments within the framework, that can be considered from the policy aspect.

**MR ALAN LEONG** (in Cantonese): *I believe the Secretary also agrees that if it involves a breach of the law, criminal prosecution will definitely be instituted. In that case, the power of prosecution is not discretionary. President, this actually involves discretion, and in the course of exercising discretion, the rule of law should of course be observed. Considerations should also be given to such factors as urgency, priority and proportionality.*

*Will the doubts raised by the magistrate on the case, and the criticism and public outcry consequential to media reports on the case, make the Secretary think twice about the criteria for exercising discretion in instituting criminal prosecution? The DoJ and law enforcement departments need to improve their communication and refine such criteria and principles, so as to resolve the public confidence problem caused by the incident of prosecuting the ice cream vendor concerned?*

**SECRETARY FOR JUSTICE** (in Cantonese): I would like to thank Mr LEONG for raising this supplementary question. Just now I have said that even someone has violated the provisions, we will not institute prosecution indiscriminately. We will consider whether there are other ways to ensure compliance with the law. I have emphasized earlier that we are consistent in

this regard. This is the principle we wish to achieve, which is also in the public interest. However, on the exercise of discretion, the Statement of Prosecution Policy and Practice has already set out a number of considerations. I absolutely agree that we must deal with them cautiously, and we also have an immense responsibility.

Secondly, to my understanding, when the magistrate handled the case, he actually did ask whether the case could be handled without prosecution. I believe that he has probably mentioned the possibility of issuing warnings or other means instead of instituting prosecution immediately. However, I am not sure — as I said just now — whether the information we have right now, including the information about four verbal warnings having been given in two days, was available at that time. However, based on this background, I do not think that this approach has violated our prosecution policy. I hope Members will understand this, and I have spent some time to explain to Members just now. I would like to tell Members today that this is the background, and we have done our best to handle the case without prosecution, but the effect of ensuring compliance with the law cannot be achieved. Therefore, prosecution had to be initiated in the end.

We must understand that although the magistrate had raised a question, the defendant eventually pleaded guilty, and the magistrate had also sentenced him to a fine of \$100. If the magistrate considered that the prosecution should not be made, in fact, he might, on various grounds, grant an absolute discharge or make other arrangements. I hope Members can see that in the end, the magistrate also held that laws should be observed.

Therefore, I would like to make a clarification here. I hope Members will not become biased and misunderstand the administration of law and justice as a result of an incomplete report of the case. Of course, I have also mentioned in the main reply that we will continue to communicate with the relevant departments, so that when we deal with these issues (of course, they include the issues I mentioned just now), even for minor offences, so long as the livelihood of the people are concerned, we handle all cases in the public interest.

**PRESIDENT** (in Cantonese): This Council has spent 21 minutes and 30 seconds on this question. Second question.

### **Promoting Street Arts Performance**

2. **MR ALAN LEONG** (in Cantonese): *President, it has been reported that at present, quite a number of people stage performances in the streets to entertain the public, and such performances have been well received. Yet in recent years, the authorities have invoked the Summary Offences Ordinance to prosecute these performers, giving rise to worries that the Government tries to limit their room to perform through law enforcement. In this connection, will the Government inform this Council:*

- (a) *whether the authorities had, in the past three years, exercised discretion in enforcing the relevant legislation, and gave advice and guidance to street performers, and prosecuted them only when repeated advice was ineffective; if discretion had been exercised, of the details; if not, the reasons for that;*
- (b) *given that members of the public have relayed that the majority of street performers stage performances in public space at present, and frontline law enforcement officers, who are often unable to distinguish their performances from begging activities, had decided to institute prosecutions merely based on subjective judgment, whether the authorities will review the existing legislation to define street performance activities clearly, so as to avoid street performers from being prosecuted for begging when they are providing entertainment to members of the public; if they will not, of the reasons for that; and*
- (c) *given that under the "Open Stage" Pilot Scheme (the Pilot Scheme) launched by the Leisure and Cultural Services Department from July to December this year, participating performers are not allowed to collect money rewards, yet many performers have indicated that the stipulation may impede the development of street art and culture, whether the authorities will review the stipulation so that performers*

*have more room to promote street art and culture on a sustainable basis; if they will not, of the reasons for that?*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): President, it is our policy to bring the arts and culture to the public and encourage public participation in the process so that the arts can integrate with the community. Apart from organizing various arts and cultural activities in the districts, without compromising public safety or causing any nuisance or inconvenience to the public, we welcome street arts performance to enrich the cultural life of the community and the arts scene in our city.

- (a) Our law does not prohibit street performances. In general, the public (including street performers) must observe the laws of Hong Kong, including, among others, the prohibitions on nuisance, annoyance or obstruction in any public place to people and/or traffic; the prohibitions on noise nuisance; and the prohibitions on objectionable performances of an indecent, obscene, revolting or offensive nature. The relevant legal provisions are set out principally in the Summary Offences Ordinance (Cap. 228), the Noise Control Ordinance (Cap. 400) and the Control of Obscene and Indecent Articles Ordinance (Cap. 390), and so on. Should any street performance breach any statutory provisions, having regard to the specific circumstances of each case, the police may give advice or verbal warning to the persons concerned, and may request the persons concerned to stop the performance or institute prosecution in accordance with the relevant Ordinance.
- (b) Hong Kong is densely populated with limited land. Should street performances be held at crowded places, inconvenience or even nuisance may be caused to the pedestrians, nearby residents and shops. To accommodate performers and to minimize inconvenience to the public, we propose to designate specific zones in suitable locations as places to promote street arts performances.
- (c) Having consulted the relevant committees of the District Councils concerned, the Home Affairs Bureau has launched the Pilot Scheme

this month under which specific zones in three locations (namely the Hong Kong Cultural Centre piazza, the Sha Tin Town Hall plaza and the Kwai Tsing Theatre plaza) with a relatively high pedestrian flow and an enabling setting will be designated as places for public performances by individuals or organizations. The Scheme is implemented on a trial basis for six months and will be subject to review on its effectiveness before we map out the way forward.

The registration system under the Pilot Scheme will operate on a first-come-first-served basis. No hire charges will be payable. To ensure a certain level of artistic standards, the applicants have to go through an audition conducted by a panel comprising representatives from the venue operator, the cultural sector and the District Council concerned.

We have been liaising with the arts community and understand their concerns about collection of donations, which also carries the meaning of cultural consumption. Hence we are revising the details of the Pilot Scheme to allow performers to collect donations at the designated places.

We hope that the Pilot Scheme will provide more room for arts enthusiasts to showcase their creativity and performing talents, enhance public access to the arts and further enrich our city's cultural characteristics.

**MR ALAN LEONG** (in Cantonese): *President, this question touches upon a policy area that is relevant to the Secretary for Justice's reply given to the first question just now. As I mentioned in the main question, some street performers have been prosecuted for begging by frontline law enforcement officers. President, as you know, street performers attract audiences by their professional performance. They are very different from beggars who only wish to appeal to the sympathy of the passers-by. Hence, these street performers feel insulted for being viewed as beggars. Just now the Secretary has heard the Secretary for Justice's reply regarding the yardsticks used by frontline law enforcement officers. As with the enforcement, do the authorities obtain guidelines from the*

*Secretary for Justice or do they have adequate understanding of what yardsticks should be used? If the understanding is inadequate, will the Secretary pursue further communication with the Secretary for Justice in order to avoid the recurrence of prosecution incidents that make street performers feel insulted?*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): President, as I mentioned in the main reply, the relevant legal provisions do not prohibit street arts performances. Insofar as the relevant legal provisions are concerned, if a street performance is considered to be in breach of legal provisions by law enforcement officers, the major reasons are as follows: it has caused nuisance, annoyance or obstruction in any public place to people and/or traffic; or has caused noise nuisance and has made objectionable performances of an indecent, obscene, revolting or offensive nature. The relevant legal provisions include the Summary Offences Ordinance, the Noise Control Ordinance and the Control of Obscene and Indecent Articles Ordinance. When handling the cases, frontline police officers will give advice or verbal warning to the persons concerned first, and may request the persons concerned to stop the performance. Currently, these legal actions are being enforced clearly.

**MR ALAN LEONG** (in Cantonese): *President, I do not know if my understanding is correct, perhaps the Secretary can correct me. Does she mean that the current practice is effective already, so they do not need to do anything? I would like to know if this is her answer.*

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

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): President, I have nothing particular to add.

**MR ALAN LEONG** (in Cantonese): *That means a "yes".*

**MISS TANYA CHAN** (in Cantonese): *President, I am sorry. Having read the Secretary's reply (as you all know, I participate in stage performance), I feel annoyed, why? I do not know if those responsible for arts and cultural work in the Home Affairs Bureau understand what arts and culture are about. Of course, artists have no intention to cause inconvenience to the pedestrians. But some forms of arts such as installation arts or some arts performances need interactions with the environment. Apart from the performance by the performers, the surrounding environment contributes to the whole artistic expression, and it is also their stage. I understand that some District Councils are facing thorny problems. I can see that part (c) of the main reply mentioned the Pilot Scheme. To a certain extent, those who want to test out their talents and those with professional standards will be given the room to stage their performance. Under this arrangement, they can have access to a near-formal venue, so this may be an interesting start. Insofar as this interesting start is concerned, when will the debut performance under the Pilot Scheme be staged?*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): *President, regarding the Pilot Scheme, we have received over 20 applications so far. Upon screening by a dedicated panel to ensure that they have attained a certain level of artistic standards, we will, in the near future, stage the first performance within the month of July.*

**MS MIRIAM LAU** (in Cantonese): *President, personally, I am very fond of street performances, as I think they can promote arts and culture and can entertain the public as well. When going on overseas trips, I am often attracted to their street performances. Nevertheless, in her main reply, the Secretary mentioned that it is difficult to promote these activities as Hong Kong is densely populated with limited land. If it is difficult to promote street performance in a crowded city, it is indeed meaningless to promote street performance in somewhere sparsely populated, for who will watch the shows?*

*Just now Miss Tanya CHAN praised that the current "Open Stage" Pilot Scheme was a good start. If we intend to promote street performances, I think this arrangement is definitely infeasible as the performers will be confined to some venues outside instead of inside the existing facilities for cultural performances. This is totally unattractive to the audiences. For example, how many tourists will visit the plazas outside the Sha Tin Town Hall and the Kwai*

*Tsing Theatre? If the Government intends to promote the arts and culture of street performance, can it consider some places with higher pedestrian or tourist flow such as Causeway Bay? While the streets in Causeway Bay may be relatively crowded, the performances can be staged in the Victoria Park with a view to attracting the tourists or local people shopping in Causeway Bay to watch the performances in the Victoria Park nearby. Other similar venues such as the Centenary Garden and Promenade in Tsim Sha Tsui East are also places frequented by tourists. Will the Government consider promoting street performance at these places instead of somewhere outside the theatres? I think the objective of promoting street arts can only be genuinely achieved in this way.*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): President, regarding the Pilot Scheme, please allow me to explain the objectives of the scheme: First, we hope to provide a stage as a performance venue to arts enthusiasts; second, to enable appreciation of the arts by members of the public at close range; and third, to enrich the street scenes and ambience of the city. In fact, our selection of venues for the Pilot Scheme has been based on four considerations: First, pedestrian flow, as pedestrian flow is essential to arts performers; second, transport accessibility; third, whether the venue is spacious enough to accommodate the performers and the audiences; and fourth, whether it will cause any nuisance to the passers-by who do not watch the show or to local residents or shops? Having considered these four factors, we have chosen three venues for the Pilot Scheme. In the coming six months, we hope to gain experience from the operation at these three venues before we decide the next step forward.

As for some locations ..... Ms LAU may be particularly concerned about the tourists. Take the Hong Kong Cultural Centre piazza as an example, it is conveniently connected with the Avenue of Stars indeed. In future, when this place is better developed, we have confidence that there will be a certain level of pedestrian flow and even the tourists can join in and appreciate the street performances in Hong Kong.

**MISS TANYA CHAN** (in Cantonese): *President, I would like to clarify that just now Ms Miriam LAU said I have mentioned "a good start", yet what I said is not "a good start" but "an interesting start".*

**MR ABRAHAM SHEK** (in Cantonese): *President, I very much support street performance. I think this proposal is a good start, but this is insufficient. Street performers should have the discretion to choose a compatible and safe venue for the performance. Why can the authorities not tolerate these activities?*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): President, as I mentioned in the reply just now, insofar as street performance is concerned, we have to balance the expectations of various stakeholders: First, the performers; second, the audiences; third, the passers-by or even local residents and shops. Given that various stakeholders have different expectations, their acceptability of street performance also varies. Hence, we have selected these three venues for the Pilot Scheme. We firmly believe that in future, these three venues for the Pilot Scheme can develop further on the current basis.

**PRESIDENT** (in Cantonese): Mr IP Kwok-him ..... Mr Abraham SHEK, what is your question?

**MR ABRAHAM SHEK** (in Cantonese): *President, I .....*

**PRESIDENT** (in Cantonese): Mr Abraham SHEK, you can only .....

**MR ABRAHAM SHEK** (in Cantonese): *I know, but I want to point out that she has not .....*

**PRESIDENT** (in Cantonese): Has your supplementary question not been answered?

**MR ABRAHAM SHEK** (in Cantonese): *She has not answered the following question: If a performer chooses a particular location from his perspective of*

*arts, and he does not cause any safety problem, why is he not allowed to stage the performance?*

**PRESIDENT** (in Cantonese): Mr Abraham SHEK, I think the Secretary has replied to that. She has considered the performers' perspectives, but you may have different views as to the other considerations mentioned by the Secretary.

**MR IP KWOK-HIM** (in Cantonese): *President, we greatly support street performance, and this is worth promoting. I recall that Mr LEE Wing-tat and I have urged the Government to do something on this issue on many occasions, and the Government has rolled out a pilot scheme. I would like to know, how will the authorities extend this scheme to other places after it has been implemented on a trial basis for six months? In this connection, what specific measures can the District Councils put forth during the process?*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): President, upon the completion of the Pilot Scheme, we will review its effectiveness, popularity and the areas requiring improvement. As for whether the Pilot Scheme will be extended to other districts, we want to stress that even in foreign countries, not all locations in the city can accommodate street performances. It is essential that the place is spacious enough to accommodate an assembly of people without causing any nuisance, and this will facilitate the sound development of that place. Therefore, we focus on quality and intend to deepen the implementation of the scheme at the current locations. This is the first point.

The second point is, should individual District Councils identify certain suitable venues in their districts, we are happy to discuss with the relevant District Councils. In respect of the participation of District Council members, a dedicated panel will conduct an audition. Hence, performers interested in the Pilot Scheme can participate in the audition before this panel. Members of the panel include representatives from the respective venue, the cultural sector and District Councils.

**MR LEUNG YIU-CHUNG** (in Cantonese): *President, according to the reply given by the Secretary just now, there is no legislation prohibiting street performance or street busking at present, which means street performance does not breach the law unless it involves, among others, the behaviours that cause nuisance, annoyance or obstruction in any public place to people and/or traffic.*

*President, I would like the Secretary to make it clear, if the performers themselves do not cause any nuisance, annoyance or obstruction to traffic, but the audiences cause nuisance, annoyance or obstruction to traffic, why should the performers be prosecuted but not the pedestrians or audiences? The performers themselves occupy not much space, and do not cause any obstruction. I do not understand. On one hand, the Secretary said that certain people are allowed to perform on the street. One is considered to be causing obstruction only if he takes with him a lot of paraphernalia such as musical instruments. If, in that case, the authorities prosecute him, that is still reasonable. But this is not the case in the provisions. Why do the authorities prosecute the performers for begging? Even if some people give the performers money, the performers have not begged for such money. Why do the authorities charge them for begging? I hope that the Secretary can give a clear explanation.*

*Moreover, as mentioned by the Secretary in her reply to the previous question, before regulated venues are available to street performers, should the authorities be more lenient and considerate?*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): *President, the Pilot Scheme soon to be rolled out this month will provide a designated venue for street performance enthusiasts. Regarding the other question raised by Mr LEUNG Yiu-chung, in fact there are interactions between the performers and the audiences. We will handle each individual case in the light of the specific circumstances under which nuisance is caused.*

**PRESIDENT** (in Cantonese): *Has your supplementary question not been answered?*

**MR LEUNG YIU-CHUNG** (in Cantonese): *She has not answered why the authorities do not adopt a lenient approach before a regulatory mechanism is put in place. On the contrary, the authorities have resorted to prosecuting these performers.*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): President, as far as I know, the overall approach is rather lenient at present. The police will give verbal warning only after complaints have been received, and further follow-up actions will be taken only when verbal warning is futile.

**MR PAUL TSE** (in Cantonese): *President, this question is quite similar to the question on ice-cream vendors raised just now in that they both involve the exercise of discretion by frontline law enforcement officers. Nevertheless, in respect of the criteria mentioned in part (a) of the main reply, including noise nuisance and performances of revolting and offensive nature, if the Legislative Council is a public place, I believe that our performance would also give people such a feeling. Even PAVAROTTI singing in the street might as well create nuisance as the definition for nuisance is very vague and abstract. If we admit that the Hong Kong people accept and welcome street performance, and it can also benefit the tourism industry, the current problem is that things are not well-balanced enough — they are too tight.*

*On the so-called pilot scheme initiated by the authorities, the scheme itself will never be effective and efficient, as a scheme is a scheme, and the requirement of staging the performances in the Sha Tin Town Hall and Kwai Tsing Theatre is meaningless. Just now I said to my colleagues, the authorities should really give performers the discretion to choose the venues for performance where they can have interactions with the audiences, and the venues should not be designated by the authorities. I would like to raise a query: At present, do the authorities find their system too stringent? In addition, this scheme should be relaxed and reviewed expeditiously so as not to stifle the development of these street performance which is a quality asset to Hong Kong's tourism industry.*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): President, we very much agree that the interaction between the performers and the audiences is essential to street performance. Hence, pedestrian flow has been one of our key

considerations as we mulled over the venues for the Pilot Scheme. Also, we will allow a certain degree of flexibility under the scheme and conduct reviews upon the completion of the scheme in order to identify more suitable venues to enable the continual development of street performance.

As for the question raised by Mr Paul TSE just now from the perspective of tourism, we will be happy to consider any venue that meets the four considerations I mentioned just now, namely, adequate space, accessibility, pedestrian flow and minimal nuisance.

**PRESIDENT** (in Cantonese): This Council has spent more than 21 minutes and 30 seconds on this question. Third question.

### **Consultation Paper on Long-term Social Welfare Planning in Hong Kong**

3. **MR CHEUNG KWOK-CHE** (in Cantonese): *President, the Social Welfare Advisory Committee (SWAC) released in April this year a consultation paper on Long-term Social Welfare Planning in Hong Kong to launch the second stage of consultation for the study on social welfare planning, and the deadline for submissions is 31st of this month. In this connection, will the Government inform this Council:*

- (a) *given that many organizations, members of the social welfare sector and service users have complained that they did not know when the first stage of consultation had been conducted, of the starting and closing dates of that stage of consultation conducted by the SWAC, as well as what consultation activities were held, together with a breakdown of the numbers of participants of the various consultation activities by the category of participants (for example, frontline management and staff of social welfare organizations, service users, academics and other community members); whether it has assessed if it is appropriate for the present second stage consultation period to last for only three months or so; whether it will request the SWAC to extend the consultation period in response to the sector's views;*

- (b) *why the SWAC arranged to hold four consultation sessions in May this year on weekdays during office hours from 3:30 pm to 5:00 pm, instead of at a time convenient for participation by the sector and service users; whether the authorities will, in response to the sector's views, request the SWAC to hold additional consultation sessions at other time slots before the end of the consultation period, consult the 18 District Councils as well as collaborate with them to consult members of the public in various districts; and*
- (c) *why the consultation paper on Long-term Social Welfare Planning in Hong Kong was not compiled by a government department; whether the authorities will implement and follow up the recommendations in the consultation paper; if they will, how the recommendations will be implemented and followed up; if not, of the reasons for that; whether the authorities will reinstate the Five-Year Plan mechanism and compile the White Papers on social welfare as well as set specific targets for social welfare services?*

**SECRETARY FOR LABOUR AND WELFARE** (in Cantonese): President, my reply to the three parts of the question as raised by Mr CHEUNG Kwok-che is as follows:

- (a) and (b)

In view of the rapid social and economic changes, the authorities have entrusted the SWAC to study the long-term development of social welfare in Hong Kong in order to provide timely response to the ever-changing welfare needs of our society.

To kickoff the study, the SWAC, in April 2008, invited over 400 local non-governmental organizations (NGOs) and relevant bodies (including subvented and non-subvented welfare organizations, self-help groups and service user groups, as well as social work related professional bodies) to offer their views on a number of key issues pertinent to the long-term social welfare development in Hong Kong. In response to the request made by the sector, the

consultation period was extended from the initial four months to six months (that is, until the end of September 2008). A total of 26 submissions were received by the SWAC in the first round of consultation. Given the diverse views received, the SWAC has set up a Task Group on Welfare Planning (Task Group) to take forward the study.

The Task Group held seven meetings to analyse a considerable amount of information and data pertinent to the population structure and change, social development and provision of welfare services in Hong Kong. As an important step of the study, and with the assistance of the Task Group, the SWAC prepared a consultation paper to serve as the basis of discussion for a new round of more in-depth consultation.

The SWAC released the consultation paper I mentioned just now in mid-April this year and invited the sector and stakeholders to offer views on important subjects as set out in the consultation paper, that is, the major issues and factors affecting the provision of social welfare, the mission and values of social welfare, the guiding principles for social welfare planning, and the strategic directions for planning and provision of welfare services, and so on. Apart from the 400 or so organizations which the SWAC invited to offer views in the first round of consultation, copies of the consultation paper were also sent to respective local universities and relevant faculties, business chambers/professional bodies, and private foundations and charities related to social welfare, and so on. The SWAC has invited them to offer views before the end of July this year and attend the consultation sessions.

To ensure that members of the public and other parties could participate in the consultation, the SWAC issued a press release and uploaded the consultation paper and details of the consultation sessions onto the internet. To gauge directly the views of different sectors, the SWAC welcomed relevant stakeholders and the general public to join the four consultation sessions held in May. Separately, the SWAC will hold two additional consultation sessions on the evening of 19 July (next Monday) and on the morning of 24

July (Saturday). The SWAC has already issued a press release and written to relevant organizations inviting them to attend the additional consultation sessions. In addition, the SWAC has also actively participated in the consultation meetings organized by relevant bodies/agencies (including the Legislative Council Panel on Welfare Services, the Hong Kong Council on Social Service and the Hong Kong Social Workers Association, and so on). On the question of extending the consultation period, the SWAC will discuss the proposal later and would like to hear more views in this regard before making a decision.

A breakdown of the number of NGOs invited by the SWAC to offer views in the first and second rounds of consultation is at the Annex.

- (c) Established in 1947, the SWAC is one of the government advisory bodies with a long history. Over the years, the SWAC has been responsible for keeping social welfare services in Hong Kong under review and advising the authorities on policies on social welfare development from a macro perspective. The SWAC is currently headed by a non-official Chairman and comprises 21 non-official members from different background, including social welfare, education, business, professional and community sectors, and so on.

In entrusting the SWAC with the task of studying the long-term social welfare planning in Hong Kong, the authorities believe that, through the diverse background of its members, the SWAC is well placed to analyse and study the issues affecting the provision of welfare services in Hong Kong at different levels and from various perspectives, and provide objective and unbiased views on the long-term social welfare development in Hong Kong. Upon completion of the consultation exercise, the SWAC will thoroughly study and analyse the views and comments received and prepare a report for consideration by the Government. The authorities will then analyse the SWAC's recommendations in depth, consider how to follow up and consult the Legislative Council in due course.

## Annex

## Breakdown of the Consultee Organizations

NGOs invited to offer views in the first round of consultation

<i>Nature of NGOs</i>	<i>Number</i>
Subvented welfare NGOs	173
Non-subvented welfare NGOs	93
Self-help groups and service user groups	136
Social work profession related organizations	11
Total	413

NGOs invited to offer views in the second round of consultation

<i>Nature of NGOs</i> <sup>Note</sup>	<i>Number of NGOs invited in April 2010</i>	<i>Number of NGOs invited in June 2010</i>
Subvented welfare NGOs	171	171
Non-subvented welfare NGOs	93	218
Self-help groups and service user groups	136	142
Social Work profession related organizations	11	14
Universities and relevant faculties	21	21
Business chambers/professional bodies	49	60
Welfare-related charities/foundations	15	33
Others (such as district organizations)	-	57
Total	496	716

Note:

With reference to the list of organizations attending the consultation sessions, the SWAC has added 220 organizations/bodies to the consultation list when sending out invitation letters inviting them to join the two additional consultation sessions to be held in July 2010. Hence, for the second round of consultation, the SWAC has sent letters to a total of 716 organizations.

**MR CHEUNG KWOK-CHE** (in Cantonese): *President, I would like to tell the Secretary that a civil organization has recently joined hands with many civil*

*groups in organizing a consultation session on the afternoon of the 24<sup>th</sup> in order to facilitate the attendance of all SWAC members, but members of the SWAC did not attend this consultation session, which was organized by 200 people on their own initiative. In informing the Secretary of the above, I would like to point out that the SWAC is not that proactive. This consultation paper on long-term social welfare planning affects the grassroots, but this is undertaken by an advisory body that is not too proactive. We request the SWAC to consult the 18 District Councils on this important document that affects the grassroots. However, it has only organized consultation sessions for voluntary participation by the sector. This reflects that the SWAC is not proactive enough.*

*I regret this practice of the SWAC. This consultation document merely embarks on a concept, with no mention of any planning mechanism. I would like to put this question to the Secretary: After he has read this document, will he formulate a long-term social welfare planning mechanism and put this into action, just like the practice of issuing White Papers in the past where planning was done yearly in accordance with the White Paper mechanism on an ongoing basis, instead of the current practice of pursuing a piecemeal approach? And if he will formulate a mechanism, what is the timetable for that?*

**SECRETARY FOR LABOUR AND WELFARE** (in Cantonese): President, thanks to Mr CHEUNG for his supplementary question and opinions. I would like to address the issue concerning civil organizations first. The organization concerned has requested the SWAC to contact it, and the SWAC is actually very pleased to do so. As I have mentioned earlier, we will hold two additional consultation sessions on the evening of next Monday and on Saturday morning for other organizations and members of the public to join. We welcome them to attend these two sessions, and they can also offer their views in writing. As such, firstly, the SWAC is fully sincere in conducting the consultation.

Second, the Member has just now raised the question regarding general principles, about which I have stated very clearly in the main reply earlier as well as at a meeting of the Panel on Welfare Services and a public hearing, and the Chairman of the SWAC has also explained in person. This time, our study focuses on some macro principles rather than micro ones. We are not going to look into a certain aspect, the number of residential places, quotas, and so on,

which involves specific planning and falls into a different scope. For example, elderly services are under the charge of the Elderly Commission. This study is to take a macro and comprehensive point of view. It jumps out of a framework to look into the guiding principles as well as the belief, mission and service direction of welfare planning. These are important and strategic matters. We will place sufficient focus on future social welfare development and our socio-economic restructuring. We need new mindsets and new planning. We think that the SWAC can be called a think tank, a think tank on welfare matters, because it comprises members from the welfare, academic and business sectors, as well as civil and district organizations, enabling it to draw on collective wisdom. I have high expectations on and attach great importance to its study. Therefore, as regards the proposals it raises, I will spend time to do some careful analysis and identify the ones that can be adopted, with a view to achieving better welfare planning together.

**PRESIDENT** (in Cantonese): Has your supplementary question not been answered?

**MR CHEUNG KWOK-CHE** (in Cantonese): *President, as this consultation document does not mention any planning mechanism, my question to the Secretary just now was: Will the Secretary formulate any planning mechanism after a report on this document is submitted?*

**SECRETARY FOR LABOUR AND WELFARE** (in Cantonese): President, it depends on what concrete proposals are to be included in the report. Of course, in inviting it to conduct the study, we want it to offer a pathway for long-term planning, such that we know our way forward. As I have mentioned earlier, there is planning for different scopes of work at present, such as services for the elderly which I have mentioned, and those for the disabled. For instance, as regards rehabilitation, rehabilitation schemes and plans are already in place, about which Members know very well; as regards elderly care, we also have very clear planning. We have also given an account of other areas of work, and a lot of work has been done with regard to the provision of hostels. However, in inviting the SWAC to conduct the study, we hope to take a more macro and

comprehensive perspective, particularly in such most essential aspects as belief, mission, guiding principles, and so on. We also hope to collect more views from the public. This is what we aim at.

**MR LEUNG KWOK-HUNG** (in Cantonese): *President, the Secretary said in part (c) of the main reply that "Established in 1947, the SWAC is one of the government advisory bodies with a long history. Over the years, the SWAC has been responsible for keeping social welfare services in Hong Kong under review and advising the authorities on policies on social welfare development from a macro perspective." President, that was 1947, but what year is it now? Even if it were 2007, there would have been 60 years in between. When it came to the concept of social welfare in 1947, it was under the charge of the then Secretary for Chinese Affairs, but not the Home Affairs Department nor the Home Affairs Bureau. It is obvious that all these things are outdated, right? May I ask the Secretary whether the SWAC has offered views on the Lump Sum Grant (LSG) subvention system for welfare organizations, the Old Age Allowance or universal retirement protection? If it has, this shows that it is ineffective, as all Hong Kong people are against these government policies. May I ask the Secretary, and I will now put a very specific question to him .....*

**PRESIDENT** (in Cantonese): You have raised three questions.

**MR LEUNG KWOK-HUNG** (in Cantonese): *I am not asking him about these.*

**PRESIDENT** (in Cantonese): So, what is your supplementary question?

**MR LEUNG KWOK-HUNG** (in Cantonese): *I am only guiding him to think.*

**PRESIDENT** (in Cantonese): What is your supplementary question?

**MR LEUNG KWOK-HUNG** (in Cantonese): *That is, as regards the 21 members of the SWAC, have the authorities strictly complied with the "6-6 Rules" of the Government? Do Members know what the "6-6 Rules" are? It is not that six times six equals to 36. It refers to the principle that one can neither sit on more than six advisory bodies nor serve in any one capacity for more than six years. Does the Secretary have such information? The SWAC has been established since 1947, and the Secretary is aware of the history. Can the Secretary tell me: Is the composition of the SWAC in line with this principle?*

**PRESIDENT** (in Cantonese): Mr LEUNG, your supplementary question has been very clear. Please sit down.

**MR LEUNG KWOK-HUNG** (in Cantonese): *How clear has it been? Can you repeat my question? I think that you are not clear about my supplementary question.*

**PRESIDENT** (in Cantonese): You are putting this question to the Secretary: Is the composition of SWAC members in line with the "6-6 Rules"?

**MR LEUNG KWOK-HUNG** (in Cantonese): *Yes, ..... No, he can also answer my first three questions. I welcome him to answer them.*

**PRESIDENT** (in Cantonese): But you can only .....

**MR LEUNG KWOK-HUNG** (in Cantonese): *Let him choose which question he will answer.*

**PRESIDENT** (in Cantonese): There can only be one supplementary question. You have raised your supplementary question. Please sit down.

**MR LEUNG KWOK-HUNG** (in Cantonese): *Do you hear that I have raised four questions? It is better for the Secretary to answer .....*

**PRESIDENT** (in Cantonese): Mr LEUNG, I am very clear about your supplementary question. You have said that the Secretary did not need to answer the first three questions. He may only make a reply regarding the "6-6 Rules". I believe that the Secretary is very clear about the "6-6 Rules". You do not need to explain further.

**MR LEUNG KWOK-HUNG** (in Cantonese): *Six times six equals to 36. Is the composition of the SWAC in line with this principle? President, if it is not, he has to answer another question.*

**PRESIDENT** (in Cantonese): Mr LEUNG, you are taking up the time for other Members to raise questions.

**MR LEUNG KWOK-HUNG** (in Cantonese): *Understood.*

**PRESIDENT** (in Cantonese): There are six Members waiting for their turns to raise supplementary questions.

**MR LEUNG KWOK-HUNG** (in Cantonese): *You do not need to be irritated.*

**PRESIDENT** (in Cantonese): Your supplementary question has been very clear. Please sit down, so that the Secretary can make a reply.

**MR LEUNG KWOK-HUNG** (in Cantonese): *If he cannot answer the fourth question, he may answer the first three questions.*

**PRESIDENT** (in Cantonese): Please sit down.

**MR LEUNG KWOK-HUNG** (in Cantonese): *I am afraid he may say later that no information is available, buddy.*

**SECRETARY FOR LABOUR AND WELFARE** (in Cantonese): President, I would like to reply to the supplementary question of Mr LEUNG. First, we have strictly adhered to the "6-6 Rules", but please allow me to do some clarification. The SWAC was established in 1947, but it does not mean that the committee is antiquated. Instead, it is long-established and credible. Although it was established in 1947, no members have been serving on it since 1947. I want to clarify that this is by no means the case.

**MR LEUNG KWOK-HUNG** (in Cantonese): *President, the Secretary has really not made any reply. I asked him .....*

**PRESIDENT** (in Cantonese): Mr LEUNG, the Secretary has made a reply. You asked him about the "6-6 Rules", and the Secretary replied that they had been adhered to. Please sit down.

**MR LEUNG KWOK-HUNG** (in Cantonese): *No, I would like him to explain whether those 21 persons ..... President .....*

**PRESIDENT** (in Cantonese): Mr LEUNG, the question session is not a session for debate. If you think that the reply of the Secretary is inaccurate, you may follow it up on other occasions.

**MR LEUNG KWOK-HUNG** (in Cantonese): *President, I only wish to make one point: If he lies today, he has to be held accountable. If I find any non-compliance with the "6-6 Rules" among those 21 persons, may heaven and earth witness .....*

**PRESIDENT** (in Cantonese): Mr LEUNG, you should not make any further statements. Please sit down.

**MR LEUNG KWOK-HUNG** (in Cantonese): *I have not stated any view. If he finds nothing, I will do the investigation.*

**MR ALAN LEONG** (in Cantonese): *President, in part (c) of his main question, Mr CHEUNG Kwok-che asked "whether the authorities will reinstate the Five-Year Plan mechanism and compile the White Papers on social welfare." The written reply of the Secretary of course does not give any answer to it. President, as regards the oral reply, I have also listened to it earlier, and no answer has been given either. President, I would like to give the Secretary an opportunity to clarify. My impression is that after the LSG and through ..... President, the consultation document states at the outset that a Five-Year Plan was unnecessary. May I ask the Secretary if my impression is correct? The Government has put an end to the White Paper and the Five-Year Plan, as well as to ..... With the introduction of the LSG, the Government actually intends to cap its commitment in respect of social welfare. Is the above a fact?*

**SECRETARY FOR LABOUR AND WELFARE** (in Cantonese): President, I would like to clarify one point. The Government in no way intends to cap its commitment through this consultation. This is by no means our starting point. We really hope that through the role of the SWAC as a think tank, we can draw on collective wisdom to give us some macro, objective and new indicators, as well as new and insightful way of thinking, such that we know our way forward. Under this general principle, our objective is to analyse the matter from different perspectives. Therefore, this is a strategic review, instead of one which takes a micro perspective to look into the number of residential places.

I would like to reiterate the commitment of the Government in respect of social welfare. The resources we put on social welfare has increased by 48 times from \$800 million in 1980 to \$39.7 billion today. If the Government had

no commitment, it would not have put in so many resources. Members know clearly that at present, subvented organizations are funded mainly by public funds. Regarding the advice to be offered by the SWAC, I would like to reiterate that we keep an open mind. Therefore, I do not wish to say at this stage what will be done and what will not, but we will keep an open mind.

The Member just now asked about the White Paper and the Five-Year Plan, to which we had put an end in 1999. At that time, we learnt clearly that the practice was not able to keep abreast of the times nor allowed enough flexibility, thus leading to the advent of the LSG. We found that this funding system was elastic and flexible, and could respond to the needs of society. We have all along been taking this direction of development, hoping that Members can adopt a more objective view on our general direction. This is our objective at present.

**MR WONG SING-CHI** (in Cantonese): *President, I think that the current arrangement by the Secretary — not by the Secretary — that the SWAC was instructed by the Chief Executive to compile the consultation paper on Long-term Social Welfare Planning in Hong Kong, is actually an irresponsible act, as most SWAC members are volunteers, with only one to three persons being appointed by the Policy Bureau concerned to perform secretarial duties. Such an important document was compiled by this voluntary organization under a situation where neither resources nor any concrete arrangements were available. I think that the Government is irresponsible.*

*Will the Secretary take up the responsibility for long-term planning again? In the past, I did not come across any occasion where a report was compiled by an advisory body for discussion. It seems more proper for the Government to draw up a consultation document for comment by an advisory body. Or opinions are sought from an advisory body when it comes to operational details. However, the practice has been reversed this time. May I ask the Secretary if he will take up the responsibility again to compile afresh a proper consultation document on our long-term welfare planning, following the departmental practices in the past?*

**SECRETARY FOR LABOUR AND WELFARE** (in Cantonese): Thanks to Mr WONG Sing-chi for his opinions and question, but please forgive me for not agreeing to his earlier remark that the Government is shirking its responsibility and is being irresponsible. This is by no means the case. First, as regards the background of the SWAC, it has been entrusted the task by the Government. As I have mentioned earlier, our starting point is to draw on the collective wisdom of the SWAC which comprises members from different sectors. It can be described as a think tank comprising members from the social welfare sector as well as such stakeholders as members from the academic and business sectors and those in the local community. They can really assume an advisory role. Second, during the consultation, information was provided to the secretariat by the Labour and Welfare Bureau. Our colleagues were involved to offer assistance. It neither fought a lonely battle, nor dug into its pocket. Everything involved in the study was paid by the Government. Therefore, Members need not worry that the SWAC had to resort to its own resources.

Nevertheless, I do appreciate that all members have devoted their own time. This is precisely a demonstration of the spirits of collective wisdom and the collaboration between the Government and the community. This is a tripartite partnership among the Government, the business sector and the community. Let me reiterate that I will attach great importance to its findings and make full use of its suggestions to see how our long-term planning can be done better.

**MR LEE CHEUK-YAN** (in Cantonese): *The Secretary just now said that long-term social welfare planning is a holistic concept and is not to be done in a piecemeal manner. However, pursuing it with a concept alone makes me feel more scared, as I am worried that it will turn out to be a long-term shirking of the responsibility for social welfare, instead of long-term social welfare planning. President, one of the terms, that is, the term "user pays", is fatal. Secretary, if social welfare planning is to run on the premises of "user pays", does the SWAC intend to charge a fee for providing social services in future? Fees have already been charged for some services at present. Of course, the majority of them are still subsidized. "User pays" means that a full fee is charged, that is, 100% of the fee is to be paid by the user. If social welfare is to be paid for by users themselves, does it amount to a shirking of the responsibility? Secretary, why is the perception of the SWAC so strange that users have to bear their own costs, and that the entire responsibility for social welfare is shirked all the way to the effect that members of the public have to purchase services? If members of the*

*public are able to purchase services, why is it necessary for the Government to provide social welfare? This is not social welfare .....*

**PRESIDENT** (in Cantonese): Mr LEE, I think that you have already raised your supplementary question.

**MR LEE CHEUK-YAN** (in Cantonese): *Fine.*

**SECRETARY FOR LABOUR AND WELFARE** (in Cantonese): President, thanks to Mr LEE for his question. I think that there is some misunderstanding here. Although the term "user pays" is used in the document, its concept or spirit is actually "those who can afford should pay", that is, members of the public who have the means actually have the obligation. The question currently facing social welfare services is: Why do members of the public who can afford not share part of the fees? This is actually understandable and accepted by all. I think that Members also accept it, right? We are talking about "those who can afford should pay". Members should not have the misconception that the Government is saying "user pays".

In fact, at a public hearing of the Panel on Welfare Services, the SWAC has clarified that this is not its starting point, and that Members may have misunderstood the case. The position of the Government is not one of shirking the responsibility, because as regards welfare, Members are aware that our subvention ..... At present, self-financing hostels are coming on stream to allow members of the public who have the means to be admitted to self-financing hostels. Members are aware that as regards those who do not have the means, the Government must have commitment. However, we should have a clear idea that resources for social welfare have to be used appropriately. Should members of the public who have the means share part of the fees? Members should have no dispute about it. I think that there may be a need to be more skilful in the use of language. Using the expression "those who can afford should pay" can dispel the worries of Members.

**PRESIDENT** (in Cantonese): This Council has spent more than 24 minutes on this question. Fourth question.

**Supply of Group B Rental Estate Units of Hong Kong Housing Society**

4. **MR CHAN HAK-KAN** (in Cantonese): *President, It has been reported that the Chairman of the Hong Kong Housing Society (HS) indicated earlier that the HS was studying the reintroduction of Group B rental estate units (Group B units), which are commonly known as "public housing for the middle-class", so as to relieve the housing pressure on the sandwich class, but due to difficulties in finding suitable land, the HS would have to use its own land resources to build such units, for example, changing the land use of the sites concerned from redeveloping Group A rental estate units (Group A units) for low-income people to building Group B units instead, but it would have to apply to the authorities for lease modification and pay land premium first. In this connection, will the Government inform this Council:*

- (a) whether it knows the respective numbers of applications for Group A and B units received by the HS, the average waiting time and the natural turnover rates, in the past three years;*
- (b) whether it knows the redevelopment plans of the HS for Group A units in the next five years, the estates and existing number of units involved, and the number of units available after redevelopment; whether the Government has so far received any application from the HS for changing the land use of sites from the construction of Group A units to that of Group B units; if it has, of the details; and*
- (c) whether it will conduct a detailed study on the impact of the HS using the sites for Group A units to build Group B units on the applicants for these two types of units and the waiting time of applicants for public rental housing (PRH) under the Hong Kong Housing Authority (HA); if it will, of the details; if not, the reasons for that?*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): President, over the past year or so, in view of the rising flat prices, the property market has become one of the focuses of discussion in society. The public and various sectors in the community have expressed a lot of different views through

various channels on how to assist the public on home ownership and on other housing related issues.

Recently, there have been views arising from discussions in the community that the provision of rental housing to the middle class can enable them to save up the amount required for purchasing a flat in the private residential market in future. There are also other views that the Government should adhere to its policy all along of providing subsidized rental housing for low income families with housing needs.

My reply to the three-part question is as follows:

- (a) Currently, the HS provides two types of rental estate units, namely Group A units and Group B units. According to the HS's policy, Group A units are for low income families with housing needs, while Group B units target families of relatively higher income as compared to the HS Group A estates. At present, there are a total of 31 754 Group A units and a total of 1 363 Group B units.

The HS's Group A units are mainly allocated to applicants of the Waiting List (WL) of the HA. When there are a certain number of vacant flats, the HS will inform the Housing Department (HD), and the HD will inform eligible applicants on the WL by letters. The HS will then follow up by sending letters to eligible applicants to invite them to apply for Group A units. In 2007 to 2009, about 750 tenants moved out from Group A estates. The reasons for moving out include: the tenants passed away; the tenants purchased Home Ownership Scheme (HOS) flats or Sandwich Class Housing Scheme (SCHS) flats and moved out from their units, or the tenants purchased flats in the private market. The HS has re-allocated these units to eligible applicants and successful eligible households/individuals have since moved in. The HA has not compiled any statistics on the average waiting time for cases allocated with Group A units.

Those who are interested in living in the HS's Group B units have to apply directly to the HS. According to the HS, all Group B rental units are currently rented out. Over the past three years, there were

94 Group B units reallocated to eligible applicants by the HS when the tenants moved out. According to the information provided by the HS, the waiting time for applicants of Group B units was about three to five years on average.

- (b) We understand that the HS is considering redeveloping individual Group A estates in the coming five years, but the details are still being studied. According to our understanding, the preliminary redevelopment proposal does not involve conversion of Group A units into Group B units. We consider that redeveloping old estates is a good idea, as the living environment of the tenants will be improved after redevelopment. However, it requires very careful consideration if Group A units are to be converted into Group B units because the HS's Group A units are a very important source of rental housing of lower rent. The Government's existing housing policy is to assist people who cannot afford private rental accommodation by providing them with PRH, and we believe this is also one of the main objectives of the HS.
- (c) The Government's existing housing policy is to assist people who cannot afford private rental accommodation by providing them with PRH. At present, there are about 130 000 applications on the WL of the HA, and an average of 3 000 plus new applications each month. As sites for the development of public housing are limited, it remains a challenge to maintain the average waiting time at three years.

As I mentioned above, the HS's Group A units are mainly allocated to applicants of the WL of the HA. These units are one of the important sources of rental housing of lower rent. We have to consider very carefully the suggestion of converting Group A units into Group B units in order to avoid affecting the applicants on the WL.

**MR CHAN HAK-KAN** (in Cantonese): *President, I have a table here which sets out some information on HS estates, of which nine estates are over 30 years old, and the oldest is Yue Kwong Chuen in Aberdeen, which is already 48 years old.*

*Besides, Chun Seen Mei Chuen in Kowloon City is 45 years old, and Kwun Lung Lau is 42 years old. Some of these estate blocks are 10-storey buildings.*

*President, I do not advocate the demolition of all Group A units for constructing Group B units for the middle class. But I think if the building density can be slightly relaxed insofar as the redevelopment is concerned, we can not only make more effective use of the land resources, but may also rehouse the residents in-situ, and solve the housing needs of the young people and the sandwich class.*

*If the Government can adjust its housing policy to allow HS more room for manoeuvre, I believe it can assist the young people and the sandwich class in solving their housing needs. Can the Government, in terms of its policy, allow the HS more room for manoeuvre?*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): President, as I have said earlier on, the HS is conducting a study on its redevelopment plans, and its broad direction is similar to what Mr CHAN Hak-kan has just said. Actually, the existing space of some older estates may not be fully utilized, and the prerequisite is that the HS has to maintain the existing number of Group A units. As for Group B units, I believe the HS will consider the composition when it examines the details of its redevelopment plans.

As we all know, the HS is highly committed to providing elderly housing. I believe if space is available in individual estates, the HS will consider the needs of those groups which are in need of assistance, and even the provision of housing for the elderly, during the implementation of the redevelopment plan. So, insofar as individual suggestions are concerned, we will collaborate earnestly with the HS, and we have in place a good communication mechanism. We will try our best to assist the HS in launching its redevelopment plan and provide housing to the needy in a more effective manner.

**MR LEE WING-TAT** (in Cantonese): *President, when I first joined the HA, that was around 1996 or 1997, the target at that time was to maintain the waiting time of PRH applicants at three years. The target has been largely achieved over the*

*past 10 years. I have told the local residents that a waiting time of three years, though long, is in fact considered not bad, and they can move into public housing flats in just more than two years. The Secretary has to know that the incomes of some people are just a few hundred dollars or \$1,000 higher than the income ceiling for application of public housing and they do not have many choices.*

*I therefore hope the Secretary will consider that the HS has been actually playing a role to implement some pioneering plans. The Government should provide more land to the HS for constructing rental housing, that is, alternative rental housing, for middle-income people, so that those whose incomes are higher than the income ceiling for PRH applicants on HA's WL can apply. Of course, the Government may think that these people, once having moved in, will refuse to move out. The number of years of residence in these housing units can be discussed. Nonetheless, if we can let these people live in peace and content in housing units of lower rent, voices of discontent in society may be abated. Will the Secretary consider this suggestion?*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): We have actually received different suggestions concerning the relevant policies and measures during the current consultation period — as Members have just said — whether projects similar to middle-class public housing units will be launched. We have also heard some relevant views during the consultation period, but different in terms of expression. Some requested that a "rental housing fund" be set up. So, we are now listening carefully to various views. That said, we have a few major considerations with regard to the policies and measures, and one of the very important factors for consideration is land resources. Land in Hong Kong is scarce. Say for example, if we have to provide a certain type of units for some specific groups, will this affect other groups? We and the HA are most concerned with achieving the target of maintaining the waiting time of PRH applicants at three years on average. We think that this is of paramount importance as these people are most in need of assistance and whose needs warrant our priority consideration.

However, if we use such land resource for other purposes, will this put pressure on the overall land resources? Will this cause fluctuations in the property market which we expect to have stable and healthy development? The

lead time required is also a factor for consideration, as it may take as long as five to seven years from contemplation to implementation of a measure.

Another factor for careful consideration is its sustainability. We do not want to create any counter-cyclical effect by introducing plans for a certain period.

So, up to the present stage, we have been listening to various views. Yet, the factors for consideration, such as resources, time and sustainability, as I have just said, are not to be ignored.

**MR LEUNG KWOK-HUNG** (in Cantonese): *President, actually the existing problem is that many people are beset by the WL regime. Yet, Mr LEE Wing-tat said that a waiting time of three years was considered not bad. I think the Government has two responsibilities: first, it has to maintain this target, that is, to have no more delay in the three-year waiting time; second, it has to enhance the target by shortening the three-year waiting time insofar as possible. Many Members in this Council have asked why the HS is not allowed to build more public housing units for the middle class. This is a false proposition. What we have to solve first is not the housing problem of the middle class who needs to buy their own homes.*

*Here is my supplementary question. While the Secretary said in the main reply that there is some pressure on the Government to maintain the waiting time of PRH applicants at three years, on what basis did she say that? On what basis did she draw such inference? Is it that she feels the pressure because of the population profile or the marriage age structure? I very much hope she can reply whether it indicates that the waiting time of three years may be too long as well? If so, we cannot allow the HS to do it. Does she understand?*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): President, we have already put in place a sound mechanism for long-term planning, particularly the provision of public housing units. We have a rolling plan for the next five years, depending on the estimates of the land available for the construction of public housing, the construction period, and so on. Up to now, judging from the projects in progress and projects planned from this year

until the end of the next five years, we will be able to meet the target of maintaining the waiting time for PRH at three years. However, we said that there are pressure and challenges because with regard to the planning of each project, there are concerns over the space, microclimatic conditions, lighting, screen-like buildings, and so on. We also have to give consideration to the issues of building density and height. Besides, we have to balance different voices in each district, such as whether the provision of public housing will create pressure on other community facilities. Despite the fact that we are able to achieve our policy pledge, we are not doing it with ease, so much so that we have surplus land for other purposes, such as launching projects similar to middle-class public housing as suggested in this question. Many people even suggest the provision of subsidies for home ownership. As such, we have made it very clear at the outset that land for public housing must be used for the construction of public housing units, or else there will be pressure on the target of maintaining the waiting time of PRH applicants at three years.

Regarding the issue of maintaining and enhancing the above target as raised by Members, it is in fact already provided in the mechanism, for example there is a separate waiting order for the elderly, who have priority in PRH allocation. Besides, we have arrangements to deal with cases referred by the Social Welfare Department (SWD) on compassionate grounds. We also have the Express Flat Allocation Scheme for needy households. If we consider that the waiting time of three years is too long, we have in place an alternative waiting arrangement for express flat allocation. So to speak, we have mechanism to take care of the needs of different groups and individuals.

**PRESIDENT** (in Cantonese): Mr LEUNG, what question do you have?

**MR LEUNG KWOK-HUNG** (in Cantonese): *She has not answered my supplementary question.*

**PRESIDENT** (in Cantonese): Mr LEUNG, I consider that the Secretary has clearly answered your question. If you are still not satisfied, you may follow this up through other channels.

**MR LEUNG KWOK-HUNG** (in Cantonese): *Why do you not allow me to speak? I just want her to provide some information. She has just said .....*

**PRESIDENT** (in Cantonese): Mr LEUNG, I have listened very clearly to your supplementary question, and the Secretary's reply .....

**MR LEUNG KWOK-HUNG** (in Cantonese): *No, not that. She .....*

**PRESIDENT** (in Cantonese): If you are not satisfied with the Secretary's reply, you may follow this up on other occasions.

**MR LEUNG KWOK-HUNG** (in Cantonese): *Could you have a little confidence in me?*

**PRESIDENT** (in Cantonese): I hope you will reserve some time for .....

**MR LEUNG KWOK-HUNG** (in Cantonese): *No, not that. My question can be finished in 30 seconds. She said some people have access to special waiting arrangement. So I just want her to provide figures in this regard to see how many people have been benefited. You don't have to assume that I am stalling for time .....*

**PRESIDENT** (in Cantonese): Please sit down.

**MR LEUNG KWOK-HUNG** (in Cantonese): *Could I ask you, your goodself, to request her to provide these figures?*

**PRESIDENT** (in Cantonese): Please sit down.

**MR LEUNG KWOK-HUNG** (in Cantonese): *Could you ask her to provide the figures in these three aspects.*

**PRESIDENT** (in Cantonese): Please sit down. Secretary, can you provide the relevant information?

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): President, can he state clearly which three aspects?

**MR LEUNG KWOK-HUNG** (in Cantonese): *You said there are three other ways of waiting for PRH, that is a waiting list for those with special needs, a list for the elderly, and the cases referred by the SWD. Can you please provide the relevant figures?*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): President, my understanding is that they include the elderly, the compassionate cases and the express allocation. We can provide the figures in these aspects.

**MR LEUNG KWOK-HUNG** (in Cantonese): *So, that is it.*

**MR ABRAHAM SHEK** (in Cantonese): *President, if the HS is to convert Group A units into Group B units, land premium has to be paid. Will the Secretary consider waiving the land premium to encourage the HS to convert Group A units into Group B units in the future? President, currently the Development Bureau also waives land premium payment by the Urban Renewal Authority.*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): President, according to my understanding, as regards Group A units and Group B units, no land premium is required to be paid as they are subsidized rental housing.

**MR WONG KWOK-HING** (in Cantonese): *May I ask the Secretary through you whether the authorities have plans to consider further fostering the role of the HS in providing Group A units, Group B units and elderly housing in the next five years to achieve the synergy effect with both the HS and the HA working together to increase the land resources?*

*My supplementary question is: does the Government have plans to achieve the synergy effect to increase the land supply for the HS in the next five years, so that new land resources are available for the development of public housing, be they Group A units, Group B units or elderly housing units.*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): President, the HS is currently conducting a study on its estates, and some of which have been included in the redevelopment plan. As Members have said earlier on, this is an important source, whether they are Group A units for low-income groups or Group B units for people with higher income, and the details are still being studied. In answering Mr CHAN Hak-kan's question, I said earlier on that we will collaborate earnestly with the HS, as we are of the view that these plans are worth our support.

**PRESIDENT** (in Cantonese): Has your supplementary question not been answered?

**MR WONG KWOK-HING** (in Cantonese): *No. I have listened very clearly, and the Secretary has not answered my question. I asked about new supply of land, and the reply she gave just now only touches on redevelopment, but not new supply of land.*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): President, we are now discussing some new projects with the HS, one is an elderly housing project at Tanner Hill in North Point, and the other is in Tin Shui Wai, also a project targeted mainly at the elderly. We have no other new projects that are under discussion at the present stage.

**MR LEE WING-TAT** (in Cantonese): *President, I have heard the Chief Executive and the Secretary said more than once on different occasions (including the Commission on Strategic Development) that there was not enough land in Hong Kong. I think this is a pseudo issue, and I hope the Secretary will not say it again. When I was still in the HA, the Lands Department would cooperate with the HA in conducting land search with the aid of maps. Of course, land is not something that one can get it tomorrow by making a request today. President, the five-year rolling plan for land supply does not exist any more. So, the Secretary said there is no land. It is because she simply has not planned for the supply of land five years from now.*

*Has the Secretary talked with Secretary Carrie LAM on whether there is currently any land supply planning on a relatively large scale which is suitable for the construction of HOS flats or public housing flats? Even though you cannot tell the amount of new supply for the coming year or the year after, can the Secretary inform this Council of the amount of new land supply after five, six or seven years? Does the Government have any plan to revitalize the rolling plan for land supply? Do not say there is no land every time she comes here. President, such saying is wrong.*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): President, we have a five-year rolling plan for land supply for public housing, including site formation and change of land use, and so on. Sometimes, it is necessary to cut mountains to form a large platform to make available new land supply, for example the site at Shui Chuen O in Sha Tin, which has been planned for quite some time, and which will be used for the construction of a new public housing estate with consensus being reached at district level.

Apart from public housing, the Development Bureau will work on land supply, for example, the consultation exercise recently conducted for the planning of a new site at Anderson Road. I wish to tell Members that we have in place long-term planning for land supply, site formation and change of land use for public housing projects, so as to continuously achieve the target of maintaining the waiting time of PRH applicants at three years on average.

**MR LEE WING-TAT** (in Cantonese): *President, the supplementary question I just asked is very clear, which is not about land for public housing, for which I know there is land supply. The question I asked is: do we have a five-year*

*rolling plan for land supply for various types of housing in Hong Kong? If the Secretary cannot answer my question now, she may give me a reply in writing after consulting Secretary Carrie Lam regarding the plan after five years. Can she do that?*

**PRESIDENT** (in Cantonese): Your follow-up question is very clear.

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): President, I can reflect Members' views to the Development Bureau.

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

### **Follow-up Work to Passage of Motions to Amend Methods for Selection of Chief Executive and for Forming Legislative Council in 2012**

5. **MR LEE WING-TAT** (in Cantonese): *President, regarding the follow-up work to the passage of the motions by this Council at the meeting of 23 June this year which were moved by the Government to amend the methods for selecting the Chief Executive and for forming the Legislative Council in 2012, will the Government inform this Council:*

- (a) *whether it will recommend to the next term of the SAR Government to adopt the approach of enacting the legislation in one go but implementing it by phases to enable the elections of the Chief Executive in 2017 and the Legislative Council in 2020 to be conducted by genuine universal suffrage; if it will, of the details; if not, the reasons for that;*

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

- (b) *whether it will suggest the next term of the SAR Government to abolish the split voting system of the Legislative Council in 2016,*

*and how to lower the nomination threshold for the Chief Executive election in 2017 and how to abolish all functional constituency (FC) seats of the Legislative Council, so that in 2020 the entire Legislative Council will be returned by universal suffrage which fully conforms with the "universal and equal" principle stipulated in the International Covenant on Civil and Political Rights (the Covenant); if it will, of the details; if not, the reasons for that; and*

- (c) *given that the Government has undertaken to put forth expeditiously upon the passage of the aforesaid motions proposals at the local legislation level, to address the issue of abolishing appointed District Council seats, whether it will completely abolish such seats in 2011; if it will, of the details; if not, the reasons for that?*

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): Deputy President, my reply to the question raised by Mr LEE Wing-tat is as follows:

- (a) In accordance with the decision adopted by the Standing Committee of the National People's Congress (NPCSC) in 2007, the Chief Executive shall make a report to the NPCSC at an appropriate time prior to the selection of the Chief Executive and the election of all the members of the Legislative Council by universal suffrage as regards the issue of amending the two electoral methods in accordance with the relevant provisions of the Basic Law, including the principles of gradual and orderly progress and being appropriate to the actual situation in the SAR, and the NPCSC Interpretation of April 2004; a determination thereon shall be made by the NPCSC.

The next-term Chief Executive returned in 2012 should deal with the universal suffrage model for the Chief Executive in 2017. As for the universal suffrage model for the Legislative Council in 2020, it would be appropriate for the fifth-term Chief Executive returned by universal suffrage in 2017 to deal with it. This Chief Executive, returned by universal suffrage, will have broad public support to lead the Hong Kong community to resolve this controversial issue.

- (b) Hong Kong will attain universal suffrage because of the Basic Law, and not the Covenant. The SAR Government has made it clear that the future universal suffrage models should comply with the Basic Law and the principles of universality and equality.

Although the current-term SAR Government has only been authorized by the NPCSC to deal with the arrangements for the two elections in 2012, we have consolidated the views as to how the two electoral methods should be amended after 2012 received during the public consultation on the electoral methods for selecting the Chief Executive and for forming the Legislative Council in 2012, and would recommend the next-term Government to follow up actively and consider the relevant proposals seriously.

- (c) The HKSAR Government will put forth local legislative proposals regarding the abolition of the District Council Appointment System after the Legislative Council resumes business in the autumn of this year. We will first listen to the views of the Legislative Council and the community before making a decision.

**MR LEE WING-TAT** (in Cantonese): *Deputy President, the Secretary's main reply is really unhelpful. I hope the Secretary would ponder over one point: He should learn a lesson from the passage of the constitutional reform package this time. This lesson is about the public's expectations and the "five-step mechanism" of the Central Government. It is also infeasible to restrict that each term of the Government can only handle the constitutional reform package of that term.*

*I think the Secretary should definitely consider whether the SAR Government should reflect to the Central Authorities that, if each term of the Government can only handle the constitutional reform package of that term, the appeal of the general public for democracy, and the request for the ultimate achievement of full universal suffrage after one or two terms, would not be met. If this straitjacket imposed upon us by the Central Authorities is not relaxed, people may not necessarily support the Government in the next consultation exercise. Although the Secretary has said that he cannot do so within this term of office, should he at least reflect to the Central Government the wish of the*

*general public for relaxing the above straitjacket so that each term of the Government can handle the issue that straddles more than one terms, with a view to solving the problem in a more effective manner?*

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): Deputy President, I have explained the constitutional arrangements to Honourable Members and I have just elaborated some constitutional principles. My reply to Mr LEE Wing-tat's supplementary question comprises three points:

First, the Central Government and the SAR Government understand very well that the Hong Kong community and people want to have a clear plan for universal suffrage. We have already obtained a timetable for universal suffrage in 2007, stipulating that the Chief Executive can be elected by universal suffrage in 2017 and the Legislative Council can be formed by universal suffrage in 2020.

Second, though each term of the Chief Executive and the SAR Government have to handle matters relating to the election of the Legislative Council and Chief Executive of the next term, the views of the Hong Kong community, including political parties and groupings, the legislature, different groups and members of the public, will certainly be extensively absorbed. In spite of the fact that the next term of the Government will mainly handle matters relating to the Legislative Council election in 2016 and the election of the Chief Executive by universal suffrage in 2017, Deputy President, any views expressed during that period on the election of all members of the Legislative Council by universal suffrage in 2020 will certainly be consolidated by the next-term Government which will put forward proposals for consideration by the term of Government after the next-term Government.

Third, as we now have a universal suffrage timetable, and obvious progress has been made insofar as constitutional development in 2012 is concerned, there are two outstanding issues left to be tackled: first, the nominating committee and nomination procedures when election of the Chief Executive by universal suffrage is implemented; second, the arrangements for the election of all members of the Legislative Council by universal suffrage in 2020. It would be appropriate to handle these two crucial matters step by step.

**DEPUTY PRESIDENT** (in Cantonese): Which part of your supplementary question has not been answered?

**MR LEE WING-TAT** (in Cantonese): *Which part of my supplementary question has not been answered? It is the part about allowing the next-term Government to handle the constitutional reform work of not just that term but also one or two terms later. I am talking about handling the work rather than collecting views as the Secretary has said. Instead, the Government should be authorized by the NPCSC or the Central Government to handle the legislative and relevant work in one go in such a way that substantive legislative effects can be achieved. So, he has not answered the question as he has said that he is going to collect views.*

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

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): Deputy President, I would like to give some additional remarks. Actually, when we implement the universal suffrage arrangements, we should comply with certain principles under the Basic Law. We already have a universal suffrage timetable, and it has been specified in the 2007 NPCSC Decision that the Chief Executive shall make a report to the NPCSC at an appropriate time prior to the selection of the Chief Executive and the election of all the members of the Legislative Council by universal suffrage and initiate the "five-step mechanism". One of the important factors for consideration is: whenever we make decisions on constitutional reform, we need to comply with the principles under the Basic Law, that is, in the light of the actual situation and in accordance with the principle of gradual and orderly progress. Insofar as the "actual situation" is concerned, if the Chief Executive is to be elected by universal suffrage in 2017, we can only make a judgment on the "actual situation" within a short period of time nearer 2017. The "five-step mechanism" may then be initiated.

**MS EMILY LAU** (in Cantonese): *Deputy President, the Secretary has indicated in his main reply that Hong Kong will attain universal suffrage because of the Basic Law, and not the Covenant, but the future universal suffrage models must*

*comply with the Basic Law and the principles of universality and equality. Deputy President, the Secretary is now drafting a report for submission to the United Nations Human Rights Committee to explain how the SAR Government has been implementing the Covenant. I do not bother about whether Hong Kong will attain universal suffrage because of the Basic Law or the Covenant; however, the Secretary must tell us that universal and equal elections should not contravene the Covenant. That is the first point. Certainly, he would say that the Basic Law should be complied with. However, does it comply with the Covenant? Besides, the principles of universality and equality include people's rights to vote, nominate and stand for elections. Thus, the election of five FC seats by more than 3 million people as currently created is not universal suffrage that complies with the principles of universality and equality because there are restrictions on the rights to nominate and stand for elections. Will the Secretary make it clear to the United Nations that while the Basic Law has been complied with, the election of all the members of the Legislative Council and the Chief Executive by universal suffrage can be regarded as universal suffrage only when people have equal rights to nominate, stand for elections and vote.*

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): Deputy President, we conducted public consultation on the Green Paper on Constitutional Development in 2007 and we submitted a report to Beijing and the NPCSC in December 2007. The SAR Government took the initiative to make it clear that the future election of the Chief Executive and all the members of the Legislative Council by universal suffrage should comply with the Basic Law, and the principles of universality and equality. So, in the past few years, we should have a very clear idea of the position of the SAR Government. As Honourable Members have noticed, when Deputy Secretary-General QIAO Xiaoyang delivered a speech in Beijing on 7 June, he reiterated that the future universal suffrage models should comply with the principles of universality and equality, and reasonable restrictions can be imposed according to the law. The principles of universality and equality, and the imposition of reasonable restrictions according to the law, are consistent with the international provisions and criteria relating to the implementation of universal suffrage. As regards the election of the Chief Executive by universal suffrage in 2017, as Honourable Members may recall, the 2007 NPCSC Decision has made it clear that the nominating committee may be formed according to the Basic Law, and that the nominating committee shall nominate a certain number of candidates for the office of the Chief Executive, who is to be elected through "one person,

one vote" by all registered electors. Hence, this will surely comply with the principles of universality and equality. As far as the Legislative Council is concerned, we still need to jointly explore in the future how the proposed election of all the members of the Legislative Council by universal suffrage in 2020 should be implemented according to the principles of universality and equality. The issue of FCs will also be an important topic for discussion.

**DEPUTY PRESIDENT** (in Cantonese): Which part of your supplementary question has not been answered?

**MS EMILY LAU** (in Cantonese): *If universal and equal election of the Chief Executive or all the members of the Legislative Council is implemented in the future, the relevant arrangements may comply with the Basic Law but not the Covenant; we may not be able to comply with the provisions of the Covenant.*

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

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): Deputy President, I have actually stated very clearly in my main reply that Hong Kong will attain the election of the Chief Executive or all the members of the Legislative Council by universal suffrage because of the Basic Law, and not the Covenant. However, at present, everyone agrees that the future universal suffrage models should comply with the Basic Law and the principles of universality and equality, and that reasonable restrictions can be imposed according to the law. This is possible. I would like to reiterate that the principles of universality and equality and the imposition of reasonable restrictions are internationally recognized criteria.

**MR CHAN KAM-LAM** (in Cantonese): *Deputy President, all of us hope that there will be a moderate and rational epoch after the passage of the 2012 constitutional reform package. Yet, after the passage of this constitutional reform package, I would like to know if the Government has considered what "genuine" or "fake" universal suffrage is. What is its real meaning? I have noticed from the Secretary's main reply that our constitutional development*

*should comply with the principles of gradual and orderly progress and be appropriate to the actual situation in the SAR. Under what circumstances is universal suffrage "genuine"; and under what circumstances is universal suffrage "fake"? I do not want to see endless arguments over this issue in the future.*

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): Deputy President, I believe that different political parties and groupings, organizations and people are very concerned about how the election of the Chief Executive and all the members of the Legislative Council by universal suffrage would be implemented in Hong Kong in the next seven to 10 years. Today, we understand the relevant basic principles very clearly, that is, the future universal suffrage models should comply with the Basic Law and the principles of universality and equality.

Nonetheless, as I have noticed, different parties and groupings describe the electoral system that may be adopted in the future as "genuine" or "fake" universal suffrage while the priority task for the SAR Government right now is to implement the methods for selecting the Chief Executive and for forming the Legislative Council in 2012. We have already brought the two electoral methods to a midway stop, and the next-term Government should carefully discuss and consider how the nominating committee should be established. I certainly hope that the 1 200-strong Election Committee can be smoothly transformed into the nominating committee, and that Honourable Members would reach a consensus about nominating the candidates for the office of the Chief Executive through democratic procedures.

The Chief Executive elected by universal suffrage in 2017 will have broad public support, and he has to co-operate with the Legislative Council to be formed in 2016 in achieving the election of all the members of the Legislative Council by universal suffrage in 2020. The next seven years, as well as the last three years in the coming decade, will be crucial. Nonetheless, Deputy President, the labelling of an electoral system as "genuine" or "fake" universal suffrage by any political party or grouping or individual is not the root of the problem. The root of the problem is that we must act according to the Basic Law. We need to have discussions both within and outside this Council, and we should interactively forge a consensus to facilitate the implementation of universal suffrage in Hong Kong in accordance with the Basic Law.

**MR LEE WING-TAT** (in Cantonese): *Deputy President, concerning part (c) of the main reply ..... excuse me, it should be parts (a) and (b) of the main reply about split voting system. Deputy President, as you know, I am referring to the restriction imposed by the NPCSC in its last Decision. Many members of the public are dissatisfied with the current approach under which a proposal supported by 44 LegCo Members can be voted down by 15 FC Members.*

*May I ask the Secretary: when he reflects the Government's views to the Central Authorities, will he mention such an unequal and unreasonable practice, so that the practice will be abolished in 2016 to ensure the passage of proposals supported by the absolute majority of LegCo Members who represent public opinion, instead of subjecting majority views to the control of minority views?*

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): Deputy President, according to my understanding, during the drafting process of the Basic Law between 1985 and 1990, there were very thorough discussions about the system to be adopted by the legislature, including the voting mechanism. A very important principle is that the composition of the legislature should reflect the principle of balanced participation. Why should the motions proposed by LegCo Members be passed under the split voting system? It is to ensure that the Members' motions passed by the Legislative Council are broadly representative, reflecting the principle of balanced participation. Moreover, a motion must be supported respectively by representatives returned from geographical constituencies and FCs before it can be passed.

Deputy President, apart from the split voting system, the SAR Government has actually taken the views expressed in the Legislative Council very seriously since the reunification. The SAR Government usually adopts the amendments proposed by bills committees. Although some amendments may not be passed after voting under the split voting system, but after such proposals have been adopted by the Government, they can usually be passed. The views expressed by Honourable Members at meetings of bills committees and Panels are valuable, and they affect the formulation of legislative and public policies in Hong Kong.

**MR JAMES TO** (in Cantonese): *Deputy President, it is mentioned in part (b) of the Government's main reply that "the SAR Government has made it clear that the*

*future universal suffrage models should comply with the Basic Law and the principles of universality and equality".*

*Deputy President, my question is: as the first sentence in the same paragraph reads that Hong Kong will attain universal suffrage because of the Basic Law, and not the Covenant, does it mean that the future universal suffrage models should comply with the Basic Law and the principles of universality and equality, rather than the provisions of the Covenant applicable to Hong Kong? Deputy President, this is a very serious matter. The Basic Law may have weakened or reduced the protection originally given to Hong Kong people under the Covenant. I am not sure if the Secretary has intentionally contrasted the two sentences. Does it mean that future universal suffrage models may not comply with the Covenant? Is it the Government's position?*

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): Deputy President, all freedoms and human rights have actually been fully protected under the Basic Law since the reunification. This is perfectly obvious and everyone is working together to protect the rule of law and human rights in Hong Kong both within and outside this Chamber.

Our attitude towards the electoral system as mentioned by the Member is actually very clear. Although the implementation of universal suffrage originates from the Basic Law, and Article 25(b) of the Covenant is not applicable to Hong Kong, we have already clarified the most important principle within the past few years, that is, universal suffrage models should comply with the Basic Law and the principles of universality and equality. The principles of universality and equality are internationally recognized indicators.

**MR JAMES TO** (in Cantonese): *Deputy President .....*

**DEPUTY PRESIDENT** (in Cantonese): Which part of your supplementary question has not been answered?

**MR JAMES TO** (in Cantonese): *The Secretary has not answered my question about whether the principles of universality and equality are the same as the principles of universality and equality mentioned in the Covenant, instead of the abstract terms of universality and equality. The definitions may differ; in other words, the models may comply with the principles of universality and equality as interpreted by the Government ..... but not with the principles of the Covenant .....*

**DEPUTY PRESIDENT** (in Cantonese): Okay, please sit down. Secretary, do you have anything to add?

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): Deputy President, let me give some additional remarks briefly. How to comply with the principles of universality and equality? How to achieve the election of the Chief Executive by universal suffrage in 2017, and the election of all the members of the Legislative Council by universal suffrage in 2020 in accordance with the Basic Law? All these should not be determined solely by the SAR Government. By that time, the SAR Government shall make a proposal to be voted upon by the Legislative Council, and the "five-step mechanism" should be gone through according to the Basic Law. In that case, the universal suffrage package thus passed would comply with the Basic Law and the principles of universality and equality.

**DEPUTY PRESIDENT** (in Cantonese): On this question, this Council has spent .....

**MR JAMES TO** (in Cantonese): *Deputy President, he has not answered my follow-up question. He said that apart from the SAR Government, there were also the Legislative Council and the Central Authorities. My question is: Is the SAR Government obligated to comply with the principles of international covenants .....*

**DEPUTY PRESIDENT** (in Cantonese): Mr TO, the Secretary's reply may not be what you desired, but he has already answered the question in his own way. Please sit down.

**MR JAMES TO** (in Cantonese): *That is really unhelpful.*

**DEPUTY PRESIDENT** (in Cantonese): Perhaps you can follow up the issue through other channels. Even if you ask him to give additional remarks, he will only give you the same answer.

This Council has spent 22 minutes on this question. Last oral question.

### **Housing Assistance for Sandwich Class**

6. **MR WONG KWOK-KIN** (in Cantonese): *Deputy President, it has been reported that recently property prices are soaring continuously, and have become out of tune with the affordability of the general public, and that difficulty in purchasing a home has become a major problem in the community of Hong Kong. The Secretary for Transport and Housing indicated earlier that the responsibility of the Government at present was only to enable members of the public to "have a place to live". In this connection, will the Government inform this Council:*

- (a) *whether it knows the respective current numbers of sandwich class families whose monthly incomes exceed the limit for applying for public rental housing (PRH) but are below the following amounts: \$20,000, \$30,000, \$40,000, the "average monthly household income" and the "median monthly household income" for the first quarter of 2010, together with breakdowns by the number of family members (that is, one member, two members, three members, four members, five members, six or more members);*
- (b) *whether measures are in place to enable the aforesaid sandwich class families, which are not eligible to apply for PRH but may not be able to afford a private property, to "have a place to live"; if so, of the details; if not, the reasons for that; and*
- (c) *given that the Government is conducting a five-month Public Consultation on Subsidizing Home Ownership, how the authorities collect the views of such sandwich class families, and whether they will conduct a detailed statistical survey and study on the housing*

*problems and housing situations of such sandwich class families, with a view to bringing up such issues for focused discussion by the community during the consultation period?*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): Deputy President,

- (a) For the reply to part (a), according to the Census and Statistics Department (C&SD), owing to the limited sample size of the General Household Survey (GHS), the average monthly income is easily affected by a few extreme values in the sample and the sampling error of the "average monthly household income" compiled from the GHS may be quite large. From a statistical point of view, the use of average income data is not appropriate in this context. As requested, we now provide the numbers of households with income higher than the Waiting List income limits (WLILs), but lower than the amounts as specified in the question and lower than the "median monthly household income".

According to the findings of the GHS, in the first quarter of 2010, there were about 400 000 non-owner occupied households living in private housing. Among them, the number of one-person households with a monthly household income higher than the WLIL but lower than \$20,000, \$30,000 and \$40,000 were 28 500, 38 900 and 46 600 respectively. The WLIL for one-person applicants was higher than the "median monthly household income" for all one-person families in Hong Kong.

For two-person families, the number of households with monthly income higher than the WLIL but lower than \$20,000, \$30,000, \$40,000 and below the "median monthly household income" for all two-person families in Hong Kong were 14 800, 34 200, 45 700 and 2 000 respectively.

For three-person families, the number of households with monthly income higher than the WLIL but lower than \$20,000, \$30,000, \$40,000 and below the "median monthly household income" for all

three-person families in Hong Kong were 10 800, 23 700, 36 000 and 9 300 respectively. For four-person families, the figures concerned were 3 900, 16 300, 24 700 and 9 200 respectively.

As the WLIL for five-person applicants was very close to \$20,000, no five-person households with household income higher than WLIL but lower than \$20,000 were found in the sample of the GHS conducted in the first quarter of 2010. The number of households with monthly income higher than the WLIL but lower than \$30,000, \$40,000 and below the "median monthly household income" for all five-person families in Hong Kong were 3 100, 7 200 and 3 200 respectively.

The WLILs for households with six persons or above exceed \$20,000. The number of households with monthly income higher than the corresponding WLIL but lower than \$30,000, \$40,000 and below the "median monthly household income" for families with six persons or above in Hong Kong were 800, 2 600 and 2 100 respectively.

(b) and (c)

The Government is committed to the provision of PRH for low-income families in need and this commitment will continue. This, however, does not mean that the Government disregards the home ownership needs of the general public. The Government's policy regarding residential property market is to respond to market demand through the supply of land, with the Application List System as the main axle supplemented by flexible improvement measures and land auctions from time to time so as to increase the land supply. It is the policy objective of the Government to ensure a healthy and stable development of the property market.

For those who aspire for home ownership, there is still a certain amount of supply of small and medium-sized flats. In recent years, transactions valued below \$2 million accounted for roughly around 50% of the overall transactions. The Government will continue to keep a close watch on the property market.

To increase the supply of small and medium-sized residential flats, the Government will liaise with the MTR Corporation and the Urban Renewal Authority to increase the supply of small and medium-sized residential flats in the West Rail property development projects and urban renewal projects respectively. The Government is also prepared to sell by open tender a site near the West Rail Long Ping Station in Yuen Long for private residential purpose, and will increase the supply of small and medium-sized flats by specifying in the land sale conditions requirements in terms of the minimum number of flats and the range of the size of those units.

Besides, second hand home ownership scheme (HOS) units are also an important source of supply of small and medium-sized flats. 70% of these HOS flats are located in Urban and Extended Urban areas and most of the recent transactions involving second hand HOS flats were around \$2 million. We have come up with possible measures to revitalize the HOS Secondary Market. The proposals include extension of the mortgage default guarantee period by the Hong Kong Housing Authority (HA), provision of a loan guarantee scheme by the Hong Kong Mortgage Corporation to facilitate owners' premium payment by installment, as well as streamlining administrative arrangements and enhancing publicity. We will continue to further discuss with the HA on the detailed arrangements.

The Government recognizes that the subject of using public resources to subsidize home ownership is being debated in the community. On this important subject, the Government will listen to the views of members of the public to try to identify a consensus on a way forward. An extensive consultation exercise on this issue is being undertaken by the Transport and Housing Bureau to engage the public and stakeholders through a variety of channels, including consultation forums, focus group meetings, and an E-engagement platform. We also have open forums for any interested persons to attend.

A series of focus group meetings will be conducted to solicit views through in-depth discussions with a mix of respondents. Target

respondents will include persons from different housing status and of different age, including owners or tenants of private housing, tenants of PRH and owners of subsidized sale flats, and so on.

In addition, members of the public are invited to send in their views/suggestions through designated channels by email, fax or mail. They are also welcome to browse the webpage and express their views through the e-forum or the dedicated Facebook page. The consultation exercise will last until 17 September 2010 and the results will be submitted to the Chief Executive for his consideration.

**MR WONG KWOK-KIN** (in Cantonese): *Deputy President, part (b) of my main question asked whether measures are in place to help families which cannot apply for PRH because their incomes have exceeded the limit but are unable to afford a private property because of their limited incomes. As the rents payable by these families, which are now living in rental housing, account for more than half of the family incomes, the overall living standard of these families have been seriously affected. Has the Government put in place measures to help these people? However, the Government has not answered this part in its main reply. While the Government is not obligated to subsidize members of the public to purchase a home, their housing problems must be addressed. I find the answer given by the Government quite irrelevant, as parts (b) and (c) of the Government's main reply have merely focused on the issue of subsidizing home ownership and the supply of flats for first-time home buyers.*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): Deputy President, regarding the group of people mentioned in the question, we must consider their affordability carefully. Home ownership is, of course, one of their options. The present mortgage payment ratio, which stands at approximately 40% at present, is low compared to the average percentage recorded over the past years. However, we understand that there is bound to be pressure as both rentals and property prices have increased considerably. Therefore, we hope to solicit the views of these people through the Consultation on Subsidizing Home Ownership. Furthermore, the recent sale of the surplus HOS flats and the

relaxation of the income limits have, to a certain extent, responded to the views of the community in this regard.

Another equally important point is revitalization of the HOS Secondary Market. As mentioned in my main reply, second hand HOS units are also an important source of supply of residential flats. So, HOS flats can provide these people with appropriate residential units. Moreover, 70% of these HOS flats are located in Urban and Extended Urban areas. A series of measures are launched in the hope of stepping up efforts to boost the turnover and supply of flats.

**MR FRED LI** (in Cantonese): *Deputy President, the recent sale of the surplus HOS flats Phase 6 by the HA was oversubscribed 11 times, with more than 80% of the subscribers being White Form applicants. According to the information provided by the Government, there are more than 100 000 households which do not own private residential flats and whose incomes exceed the income limit for applying for PRH but are within the income limit for applying for HOS flats. At present, 30 000 of these 100 000 households, which have relatively handsome incomes, have applied for HOS flats under the current phase. May I ask the Secretary, as such a high ratio of White Form applicants for HOS flats under the current phase, which translates into 30 000-odd applications, should be seen as a booster for expediting the resumption of the construction of HOS flats, whether the Government will draw reference from it and decide to resume the construction of HOS flats?*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): Deputy President, we have said that we must consider carefully a series of fundamental factors, including the impact on land resources and the lead time, as explained in my earlier reply to another oral question, in contemplating any measures. When property prices go up, we have to consider carefully whether the measures to be implemented are sustainable. Will such measures merely produce counter-cyclical effects?

As mentioned by the Member just now, the sale of 3 200 HOS flats Phase 6 was oversubscribed 11 times, with 39 000 applications received. However, it must be borne in mind that when these 3 200 HOS flats were put on sale during

the financial tsunami, only 60% had been sold. Hence, members of the public definitely have certain expectations for home ownership at all times. However, such expectations, to a certain extent, will be affected by the economic and property market cycles. We hope the policy and measures launched after the consultation are sustainable and can achieve something more than counter-cyclical effects. In fact, during our previous discussions on measures to be taken, such as the proposal of resuming the construction of HOS flats, Members agreed that these measures may not help curb property prices, and neither could they achieve counter-cyclical effects. Therefore, we must consider this matter very carefully.

**MR FREDERICK FUNG** (in Cantonese): *Deputy President, the Government has carried out two detailed reviews on housing problems, including the first Long Term Housing Strategy in the 1980s and the second Long Term Housing Strategy in the 1990s. The two Housing Strategies have proposed many considerations and objectives as housing construction principles. One of the principles raised in the first Long Term Housing Strategy, that is, balancing the distribution of social strata, has not been mentioned at all by the Government in the current review. Under this principle, it is hoped that there will be a mix of private buildings for rent and for sale, PRH and HOS flats, and even luxury flats, in each and every community to make them more balanced, so that our communities will not be differentiated into luxurious districts and slum areas. In the second Long Term Housing Strategy, it is mentioned that housing plays a key role in achieving social stability. However, these two points are not mentioned at all in this review. Instead, it is suggested that we must pay attention to issues concerning the market, administration, land supply and the counter-cyclical problem. So, does the Government consider that it is no longer necessary to pay attention and give consideration to the aforesaid two principles, which have been applied to housing construction over the past three decades, and that they are not longer needed?*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): Deputy President, in the area of community planning, the Planning Department, which is under the Development Bureau, has its major considerations in planning each and every community. I believe the Planning Department, in the course of planning, will strive to achieve balance rather than merely focusing on a certain type of development. All buildings, be they PRH buildings or buildings in other

categories, are meant to achieve different social objectives, including many objectives that we are striving to achieve, such as providing space, greening, and so on. A certain degree of balance must be achieved in planning.

We have also received a lot of views concerning the role played by housing in achieving social stability. Therefore, relevant questions have been raised during the consultation: If public resources are to be used to provide a certain form of home ownership subsidy, it must be supported by sound policy justifications, and achieving social stability is possibly one of our key considerations. We will continue to listen to views put forward by all sides. We did hear the views reiterated by the Member just now, that is, the Government's policy should be supported by these considerations.

**DEPUTY PRESIDENT** (in Cantonese): Mr FUNG, which part of your supplementary question has not been answered?

**MR FREDERICK FUNG** (in Cantonese): *Deputy President, given that the present consultation has merely mentioned issues concerning the market, the counter-cyclical measures and administration, whether it is the case that the Government has not considered these two factors at all — not that she starts considering these two factors because she has just heard them — whether she has considered these two factors when publishing this document?*

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

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): Just now, I mentioned that we must have sound policy justifications to support us in continuing to use a substantial amount of public resources for this purpose. Of course, the proposal raised by the Member just now is also one of our policy justifications. However, our key consideration is that different groups and stakeholders must agree that it is fair to do so. We will pay particular attention to this in the course of seeking and reaching consensus.

**MR LEE WING-TAT** (in Cantonese): *Deputy President, at the meeting held last week by the Commission on Strategic Development, if my arithmetic was right, even people in the business sector supported the resumption of construction of HOS flats. I really do not understand why the Government should still insist on opposing the construction of HOS flats. The views of members of the public are very clear. The findings of our survey show that 80% of the respondents support the resumption of construction of HOS flats. Even some members of the business sector, who are considered by me to be conservative, agree that members of the Commission on Strategic Development greatly support this proposal, whereas only four or five members of the Commission have expressed opposition or reservations. As the public opinion is so clear, and even the Government's allies have clearly indicated their support, what other considerations does the Government have? The only reason put forward by Donald TSANG is that there is no land. However, this has been refuted by members of the Commission on Strategic Development, who said that it is not their responsibility to look for land. Instead, it is the Government's duty to look for land. Now, you are telling me that there is no land, but why did the Government not say that there was no land five years ago? Is it because government officials are now being lazy or ineffective, or is it because Mrs Carrie LAM, your good friend, is ineffective? According to the Secretary, the problem is attributed to a lack of land, but this problem is a pseudo issue. It is only that the Government is making excuses for failing to do anything.*

*Hence, may I ask the Government: Under what circumstances will it consider resuming the construction of HOS flats? Must the people take strong action to press the Government, like what opponents of the Express Rail Link or people engaging in other social movements did, until the Government surrenders? Otherwise, the Government will continue to refuse to adopt a more peaceful and rational approach to heed the people's views to enable the problem to be resolved.*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): Deputy President, consultation on this subject is now underway. The Chief Executive has also made it clear that an account will be given in the policy address.

Of course, all members of the public hope that property prices can be maintained at a reasonable and affordable level by whatever measures such as resuming the construction of HOS flats. We acknowledge this point and we must start from the basics by working on the issue of supply. If it is found that there is a need to subsidize home ownership, we must examine the justifications and how far we should go. These are the targets of our current consultation.

I would like to tell Members that resumption of construction of HOS flats is, of course, one of the proposals. However, we have also received many different opinions. Many people have told us that, given the increasingly short economic cycle and great fluctuations, they have encountered difficulty in saving up the downpayment required for purchasing homes. There are also some proposals pinpointing this. Some people have also indicated that their incomes have not increased as quickly as they did a decade or two decades ago. Even if they have tried very hard in saving up for a period of time, they might still not be able to afford the downpayment. Therefore, this is not an isolated issue. What I mean is that the problem will not be resolved instantly with the implementation of certain measures. We must study the matter from various aspects and angles, with a view to identifying a sustainable solution to deal with the problem properly. First of all, we must conduct the consultation properly. We will adopt a pragmatic approach to listen to views expressed by all sides and put forward sound proposals to the Chief Executive.

**MR LEE WING-TAT** (in Cantonese): *The Secretary has not answered my supplementary question.*

**DEPUTY PRESIDENT** (in Cantonese): Which part of your supplementary question has not been answered?

**MR LEE WING-TAT** (in Cantonese): *Regarding the question raised by me earlier concerning public opinion, the Secretary has merely replied that some people have put forward diverse views. Instead of conducting its own survey, the Government keeps repeating the dissenting views put forward in two emails .....*

**DEPUTY PRESIDENT** (in Cantonese): Mr LEE, the Secretary has already answered the question in her own way.

**MR LEE WING-TAT** (in Cantonese): *She should not repeatedly say in this Council that some people do not support the resumption of construction of HOS flats by casually citing two examples .....*

**DEPUTY PRESIDENT** (in Cantonese): Mr LEE, which part of your supplementary question has not been answered?

**MR LEE WING-TAT** (in Cantonese): *She has not answered the part concerning public opinion, for the resumption of construction of HOS flats is supported by many members in the Commission on Strategic Development. Without conducting any surveys, the Secretary has often used two emails to illustrate that her views are supported by many people. So, can the Secretary inform this Council of the number of people supporting her acting in this manner?*

**DEPUTY PRESIDENT** (in Cantonese): I think the Secretary has answered the question in her own way. Secretary, do you have anything to add?

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): Deputy President, we will collect views through different channels. This is spelt out clearly in my main reply.

**MR WONG KWOK-KIN** (in Cantonese): *Deputy President, the Secretary mentioned just now that consultation is now underway, but we have no confidence in the consultation because it seems to us that the consultation has a presumption, or a pre-determined outcome. We see that the consultation being*

*conducted by the Government is unlike other normal consultation exercises which have more extensive publicity. Frankly speaking, many people are unaware that a consultation on home ownership is being conducted because the Government has merely held some forums, briefings, and so on, within some advisory structures. Has the Government done enough? Can the Government collect the genuine views of the public through these channels? Can the Government step up its efforts in this regard during the remaining months of the consultation period?*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): Deputy President, our consultation channels include engaging members of the public in open discussions held in community halls and organizing public forums jointly with District Councils, which include forums held with various think tanks, academics, professional bodies, and our key partner — the Hong Kong Housing Society. An E-forum set up by us is also quite popular with members of the public and has received thousands of messages. More than 1 000 registered respondents have also expressed their views to us. The entire consultation exercise will last until mid-September. As the consultation has only just begun, we encourage members of the public to express their views to us and will step up publicity.

Another key task we will accomplish this time is to set up focus groups. We have commissioned a university to undertake the relevant work. Whether through sampling surveys or different combinations, we hope to listen to views of different stakeholders from a variety of angles, including PRH residents, owners of HOS flats or Sandwich Class Housing, tenants and owners of private buildings, and so on. We will seek their views on this issue under different groups. I undertake that the Government will continue to step up publicity and engage more people throughout the consultation.

**DEPUTY PRESIDENT** (in Cantonese): We have spent more than 21 minutes on this question. Oral questions end here.

**WRITTEN ANSWERS TO QUESTIONS****ICAC's Prosecution Policy and Establishment in Relation to Prosecution**

7. **MR WONG YUK-MAN** (in Chinese): *President, it was reported that an Amenities Assistant III of the Leisure and Cultural Services Department borrowed \$200 from his subordinate because he was in financial difficulties, and was later prosecuted by the Independent Commission Against Corruption (ICAC) for borrowing money without the general or special permission of the Chief Executive. The assistant concerned admitted that he had committed an offence of soliciting advantages in the capacity of a prescribed officer and the magistrate made a rare order that he be discharged absolutely. Regarding ICAC's prosecution policy and its establishment in relation to prosecution, will the Government inform this Council:*

- (a) whether the authorities have assessed if the aforesaid case will have impact on the credibility of the Department of Justice (DoJ) and ICAC; if an assessment has been conducted, of the outcome; if not, the reasons for that;*
- (b) of the measures and guidelines put in place at present to avoid DoJ and ICAC from overdoing in rectification when making decisions to institute prosecutions; and*
- (c) whether the authorities have assessed the appropriateness of ICAC's establishment in relation to prosecution work; if an assessment has been conducted, of the outcome; if not, the reasons for that?*

**CHIEF SECRETARY FOR ADMINISTRATION** (in Chinese): President, as the question relates to the prosecution of a corruption case, I set out below a consolidated reply from the ICAC and the DoJ.

- (a) The statutory duty of ICAC is to investigate corruption and related offences. As to whether or not a case is to be prosecuted, the decision is made by DoJ. In reaching a decision in any case as to whether or not to prosecute and if so, what offences, DoJ will fully consider all the evidence and the surrounding circumstances to see,

firstly, whether there is a reasonable prospect of conviction and secondly, whether it is in the public interest to prosecute. In the case referred to in the question, the offence was prosecuted under section 3 of the Prevention of Bribery Ordinance (Cap. 201).

In order to ensure prosecution is made under section 3 only when appropriate, DoJ prosecutors are obliged to exercise due care and to consider the role the section plays in protecting the civil service from the suspicion of corruption and in resisting those who would provide advantages as part of the insidious process of softening up or compromising public servants.

In deciding whether to prosecute under section 3, prosecutors are expected to examine the duties of the civil servant, the contact he has with the donor of the advantage and the intention of that donor in offering the advantage. Prosecutors should consider whether the evidence, viewed objectively, reveals that a civil servant has solicited or accepted an advantage in a situation where he must know he is compromising himself in his capacity as a civil servant. This would be the case in a conflict of interest situation or where the civil servant suspect is dealing with staff over whom he has supervisory responsibility. Such situations are ones where it may be appropriate to make prosecution under section 3, subject always to the overriding principle that a prosecution is in the public interest.

- (b) ICAC investigates all corruption-related reports without favour or prejudice in accordance with the statutory power conferred upon the Commission. It would seek legal advice or consult the Operations Review Committee on important issues and operational matters. As for the DoJ, while it would not be appropriate to go into the detailed considerations leading to the decision to prosecute in a particular case, the advice to prosecute was made taking into consideration the factors set out in the reply to part (a) above and in accordance with the prosecution guidelines.
- (c) ICAC follows prescribed government policies, regulations and procedures in conducting periodic reviews on the establishment of the Commission. In preparing the 2009 Draft Estimates, ICAC's

review indicates that the establishment of ICAC, including its Operations Department, for 2010-2011 should remain unchanged. That said, ICAC would continue to monitor its manpower position.

### Operation of Hong Kong Girl Guides Association

8. **MR LEUNG KWOK-HUNG** (in Chinese): *President, I have received complaints from quite a number of parents and kindergarten teachers that since the incumbent Chief Commissioner (CC) of the Hong Kong Girl Guides Association (the Association) assumed the office, the Association has made use of government funds or donations to organize many activities which served no practical purposes or were not related to the training and mission of the Girl Guides. Those parents and teachers have also pointed out that one of the Association's schemes even recruits male children as members. In this connection, will the Government inform this Council:*

- (a) *whether it knows the appointment method and tenure of CC, as well as the requirements on the training received and years of work experience;*
- (b) *whether it knows if the Unit Guiders in Hong Kong have the nomination and voting rights to elect CC; if they have, of the number of votes received by the incumbent CC and the percentage of that number in the total number of Unit Guiders in Hong Kong; whether any mechanism is in place for the dismissal of CC; if not, whether it has assessed if the appointment of CC was made in a black box;*
- (c) *of the amounts of government funds, donations and proceeds of charity lottery tickets received by the Association in each of the past five years (set out in the table below);*

Year	Amount of government funds	Amount of donations	Amount of proceeds of charity lottery tickets
2005			
2006			
2007			
2008			
2009			

- (d) *how the Government regulates how the Association uses the donations or government funds received (including the amount of charitable donations and government funds spent respectively on the anniversary function held in a hotel in Tsim Sha Tsui on 3 November 2009 and the anti-drug related performance activity held in the Hong Kong Coliseum on 25 April 2010, in which CC and 1 000 girl guides participated); and*
- (e) *whether it knows the year in which the Association started to recruit male children as members of the "Uniform Subsidy Scheme for Happy Bee"; given that apart from that scheme, no other scheme or branch of the Association accepts male children/adults as members, whether the Government has assessed if this situation is a breach of the Sex Discrimination Ordinance (Cap. 480); if the assessment result is in the affirmative, when the Government will refer the aforesaid case to the Equal Opportunities Commission for follow-up?*

**SECRETARY FOR HOME AFFAIRS** (in Chinese): President, the Association was established in 1916 with a view to providing girls and young women with the opportunity for self-training in the development of character, responsible citizenship and service to the community. My reply to the questions of Mr LEUNG Kwok-hung is as follows:

- (a) The CC is appointed by the Council of the Association. The initial term of appointment of the CC shall be three years, and may be further appointed for a further three-year term at the end of this period. But there must be a break of three years before the same person can be appointed as CC after two consecutive terms. There is no particular requirement on the training received and years of work experience for CC. From record, all CCs had been Deputy CC and held other positions in the Association before their appointment as CC.
- (b) CC, Deputy CCs, Assistant CCs, International Commissioner, Division Commissioners, Assistant Division Commissioners and the District Commissioners are all ex-officio members of the Council having the nomination and voting rights to elect the CC. The

incumbent CC was appointed in the election in October 2007, and the number of votes received by the CC in the said election represented 88% of the total number of votes casted. Pursuant to the constitution of the Association, the Council may resolve to remove the CC at an Extraordinary General Meeting.

- (c) The amounts of government funds, donations and proceeds of charity lottery tickets received by the Association in each of the past five years are set out in the table below:

<i>Year</i>	<i>Amount of government funds (\$)</i>	<i>Amount of donations (\$)</i>	<i>Amount of proceeds of charity lottery tickets (\$)</i>
2005-2006	10,682,000	9,085,000	4,607,000
2006-2007	10,284,000	1,033,000	4,770,000
2007-2008	10,207,000	13,864,000	4,160,000
2008-2009	10,877,000	5,386,000	4,163,000
2009-2010*	10,950,000	2,785,000	4,188,000

Note:

\* to be confirmed by audited report

- (d) In 2006, the Government issued an internal control guideline to all subvented uniformed groups including the Association, and requested them to comply with the guideline to ensure that they would have prudent financial management. In June 2010, the Government also issued the "Guide to Corporate Governance for Subvented Organizations" produced by the Efficiency Unit to them. The Association submits audited financial accounts to the Home Affairs Bureau every year. According to the information provided by the Association, expenses of the anniversary function held on 3 November 2009 were borne by different sponsors of the activities and no charitable donations or Government subvention were involved. Regarding the Association's "Beat-Drug Grand Musical" held on 25 April 2010, in addition to the amount borne by different sponsors, it was also one of the events in an anti-drug project, which had received funding from the Beat Drugs Fund in 2009; other activities include seminars and visits. The said application was

supported by the Action Committee Against Narcotics, and was provided with grants up to \$272,800 from the Beat Drugs Fund. The project was started in September 2009 and would last for one year. It was a funding requirement that applicants shall submit half-yearly reports to the Secretariat of the Beat Drugs Fund; all vouchers shall also be submitted after the completion of individual events for verification before the grant would be issued. Applicants are also required to submit a final report upon two months after the completion of the entire project to account for the financial accounts and programme results. Since the project is still being conducted, the actual sum of grant can only be ascertained later this year.

- (e) The Association recruits members by district. In 2000, the Association started accepting kindergartens in all districts of Hong Kong to establish their "Happy Bees" teams. Boys and girls aged four to six in kindergartens may join a "Happy Bees" team to become a member of the Association. Both male and female members in the "Happy Bees" units may apply to various schemes applicable to their teams. A provision in the Association's constitution provides that one of the aims of the Association is to provide girls and young women with the opportunity for self-training in different areas. Given that the Association is a tax-exempt charity under section 88 of the Inland Revenue Ordinance, pursuant to section 49 of the Sex Discrimination Ordinance (Cap. 480) where a provision contained in a charitable instrument for conferring benefits on persons of one sex only, relevant parts in the Sex Discrimination Ordinance shall not render unlawful an act which is done in order to give effect to such a provision.

### **Sewage Treatment in Villages**

9. **MR ALBERT CHAN** (in Chinese): *President, recently, I have received complaints from quite a number of villagers, who have pointed out that for years the Government have not provided public sewers in some villages, leaving the sewage from such villages not properly treated. Moreover, in some of the villages where public sewers are provided, since sewers are not directly connected to the sewerage facilities of the villagers' residences, the villagers had*

*to spend a substantial amount of money to connect such facilities to public sewers, which had significantly increased the burden on their livelihood. In this connection, will the Government inform this Council:*

- (a) of the number of villages which at present are still not provided with public sewers, and the names and locations of such villages; whether the authorities have planned to provide public sewers to such villages; if they have, of the details of the plans and when the works will commence; if not, the reasons for that;*
- (b) in those villages which are provided with public sewers, the percentage of the number of households for which the sewerage facilities of their residences are not connected to public sewers in the total number of households in such villages; whether the Government has planned to assist the households in connecting such facilities to public sewers; if it has, of the details; if not, the reasons for that; and*
- (c) whether it will connect the sewerage facilities in the villagers' residences to public sewers directly when providing new public sewers and implementing sewerage projects in villages; if it will, of the details; if not, the reasons for that?*

**SECRETARY FOR THE ENVIRONMENT** (in Chinese): President,

- (a) Village sewerage is part of the Government's sewerage provision programme to improve the village environs and sanitary conditions of unsewered areas and reduce pollution to our rivers and coastal waters. There are about 980 villages in the rural New Territories. As at end April 2010, we have provided public sewerage to about 130 villages and village sewerage works for about 55 villages are in progress. In addition, about 275 villages covered by the village sewerage programme are at the planning stage. The names of these villages by areas are at Annex 1. Construction of the village sewerage will commence after the pre-construction works, such as design and consultation, are completed. We shall progressively roll

out the village sewerage programme to cover more unsewered villages and areas.

- (b) The rate of sewer connection of village houses in Sha Tin, Tai Po, Sai Kung, Tsuen Wan, Islands, North and Yuen Long districts upon provision of the public village sewerage, as at end April 2010, is shown at Annex 2. The sewer connection rates of village houses vary and depend on a number of technical factors. Based on past experience, the main reasons for those unable to be connected include limited space, inadequate hydraulic gradient, costly pumping requirement, obstruction from underground utilities, land resumption issues and encroachment on other's private land, and so on. Such unconnected village houses may continue to use their private treatment facilities including septic tanks.
- (c) It has been our aim to extend the sewerage network to all village houses within a sewerage area and provide the branch sewer up to the lot boundary of a village house where feasible to facilitate as far as possible the house owner to make sewer connection to the public sewerage. According to the current legislation and policy, all sewer connection works within a lot boundary and associated maintenance are private works that are the responsibility of the house owner. This policy has been applied to all property owners in Hong Kong on equal basis for years. In Hong Kong, all private buildings and village houses that were already connected to the public sewerage had completed the sewer connection works at their own cost. Currently, there are building related grant and loan schemes provided by the Government and other organization to assist those eligible house owners in need for carrying out the sewer connection works, such as the "Building Maintenance Grant Scheme for Elderly Owners" and "Home Renovation Loan Scheme" operated by the Hong Kong Housing Society and the "Comprehensive Building Safety Improvement Loan Scheme" operated by the Buildings Department. Owners in need may contact the Hong Kong Housing Society and Buildings Department for details accordingly. Also, the Environmental Protection Department and the Drainage Services Department can provide the relevant information and referral assistance.

## Village Sewerage Under Planning

## Sha Tin District

<i>Village Name</i>
Kau To
Ma Niu
Kwai Tei New Village
Tin Liu
Shatin Heights
Sha Tin Fisherman's New Village
Siu Lek Yuen
Tsok Pok Hong
Sha Tin Tau New Village
Chek Nai Ping
Cheung Kang

## Tai Po District

<i>Village Name</i>
Kau Liu Ha
Hang Ha Po
San Uk Pai
Fong Ma Po
San Uk Tsai
Chung Uk Tsuen
Tong Min Tsuen
She Shan Tsuen
Lam Tsuen San Tsuen
San Tong
Pak Tin Kong
Tai Mong Che
Ma Po Mei
Shui Wo
Pak Ngau Shek Ha Tsuen

<i>Village Name</i>
Pak Ngau Shek Sheung Tsuen
Ng Tung Chai
Chai Kek
Wo Liu
Ping Long
Tai Om
Lung A Pai
Ko Tin Hom
Tin Liu Ha
Cheun Shui Tseng
Wo Tong Pui
Sha Pa
Ngau Kwu Leng (Duke of Edinburg)
Tai Hang Group
Tai Wo
Nam Wa Po
Kau Lung Hang San Wai
Kau Lung Hang Lo Wai
Yuen Leng
Wai Tau Tsuen
Lin Au
Tai Po Tau
Fung Yuen
Ha Wun Yiu
Ma Wo
Shan Tong New Village
Ha Wong Yi Au
CARE Village
Shuen Wan Chan Uk
Wong Nai Fai
Cheung Shue Tan
Tai Po Mei
Cheung Muk Tau
Sai O
Nai Chung
Kwun Hang
Che Ha

<i>Village Name</i>
Ma Kwu Lam
Tai Tung
Tseng Tau
Nga Yiu Tau
Tai Tung Wo Liu
Sai Keng
Kei Ling Ha San Wai
Kei Ling Ha Lo Wai

## Sai Kung District

<i>Village Name</i>
Shui Bin Village
Ming Oi New Village
Tseung Kwan O Upper Old Village
Mau Wu Tsai Village
Hang Hau Lower Old Village
Ma Yau Tong Village
Tai Shui Tseng
Mau Ping New Village
Wong Chuk Shan San Tsuen
Pak Kong Au
Ho Chung
Kap Pin Long (old)
Kau Sai San Tsuen
Luk Mei Tsuen
Lung Wo Tsuen
Nam Shan
Pak Kong
Pak Sha Wan
Pak Wai
Pik Shui San Tseun
Tai Po Tsai
Wo Tong Kong
Wong Chuk Wan
Nam Wai

<i>Village Name</i>
Mok Tse Che
O Long
Pak Shek Wo San Tsuen
Pak Shek Wo
Sam Long
Ta Ho Tun Sheung Wai
Ta Ho Tun Ha Wai
Tai Chung Hau
Tseng Lan Shue
Wo Mei
Tan Shan
Boon Kin Village
Sun Tei Village
Au Tau Village

## Tsuen Wan and Kwai Tsing Districts

<i>Village Name</i>
Lo Wai
Chuen Lung Village
Kau Wa Keng Old Village

## Islands District

<i>Village Name</i>
Tung Wan Village 1 (bounded by Tung Wan, Peng Chau Chi Yan School)
Central Peng Chau
Tai Lung Tsuen
Yuen Ling Tsai
Shan Ting Tsuen
Wai Tsai Tseng San Tsuen
Tai Yat San Tsuen
Nam Wan Shan Ting Tsuen
Nam Wan San Tsuen
Wang Tong

<i>Village Name</i>
Sea Crest Villa
Yung Shue Long New Village
Yung Shue Long Old Village
Tai Peng
Tai Shan West
Tai Shan Central
Tai Shan East
Tai Yuen Village
Tai Wan Kau Tsuen
Tai Wan San Tsuen
Wang Long
O Tsai
Hung Shing Ye
Lung Tsai
Tai Wan To
Chi Ma Hang extension
Tai Tsoi Yuen Kui Extension
Shek Tsai Po
Wang Hang Village
Hang Mei
Fan Kwai Tong
Nam Chung Tsuen
Leung Uk Tsuen
San Tsuen
Mui Wo Kau Tsuen
Tsoi Yuen Tsuen
Shui Hau
Tong Fuk
Cheung Sha Sheung Tsuen
Chung Sha Ha Tsuen
San Shek Wan
Pui O
Ham Tin
Lo Uk Tsuen

## North and Yuen Long Districts

<i>Village Name</i>
Ping Kong
Fu Tei Pai
Kan Tau Tsuen
Wo Hop Shek San Tsuen
Tong Hang
Sheung Shui Heung Group
Fan Leng Nam Wai
Fan Leng Pak Wai
Fan Leng Ching Wai
Ling Shan Tsuen
Shung Him Tong
Kwan Tei
Ko Po
Tan Chuk Hang Lo Wai
Leng Pei Tsuen
Shan Tsui
Kong Ha
Sheung Tam Shui Hang
Ha Tam Shui Hang
Muk Min Tau
Tong To
Nga Yiu Tau
San Tsuen
Wu Shek Kok
Tsiu Hang
Yim Tso Ha
Muk Wu
Hung Leng Remainder
Kam Tsin
Ho Sheung Heung
Tsung Yuen
Ma Tso Lung Tsuen
Ma Tso Lung Lutheran Village
Tsiu Keng Pang Uk
Tsiu Keng San Wai
Tsiu Keng Lo Wai

<i>Village Name</i>
Chan Uk Po
Liu Pok
Lin Ma Hang
Nam Chung Lei Uk
Nam Chung Cheung Uk
Nam Chung Lo Uk
Nam Chung Yeung Uk
Nam Chung Cheng Uk
Luk Keng Wong Uk
Luk Keng Chan Uk
Ta Shek Wu
Ta Shek Wu Shek Tong
Hang Tau Tsuen
Hung Shui Kiu
San Lee Uk Tsuen
Ha Tsuen San Wai
Sheung Cheung Wai
Tai Tao Tsuen
Tan Kwai Tsuen
Tung Tau Tsuen
Wo Ping San Tsuen
Fui Sha Wai
Ha Yau Tin Tsuen
Hung Uk Tsuen
Kiu Tau Wai
Nam Pin Wai
Sai Pin Wai
San Sang Tsuen
Shan Ha Tsuen
Shan Pui Tsuen
Sheung Yau Tin Tsuen
Shui Pin Tsuen
Shui Pin Wai
Small Traders New Village
Tai Kiu
Tai Tong Tsuen
Tai Wai Tsuen
Tin Sam Tsuen

<i>Village Name</i>
Tsoi Uk Tsuen
Wong Uk Tsuen
Yeung Uk Tsuen (South of Yuen Long)
Ying Lung Wai
Yuen Long Kau Hui

## Tuen Mun District

<i>Village Name</i>
Tuen Tze Wai
Tsing Chuen Wai
Lam Tei
Kei Lun Wai
Yeung Siu Hang
Tsz Tin Tsuen
Po Tong Ha
Siu Hang Tsuen
Fuk Hang Tsuen
Fu Tei Ha Tsuen
Pak Long
Nam Long
Sha Po Kong
Lung Tsai
Ka Loon Tsuen
Nai Wai
Sun Fung Wai
San Hing Tsuen
Tuen Mun San Tsuen
To Yuen Wai
So Kwun Wat Tsuen
So Kwun Wat San Tsuen
Wu Uk
Wong Uk
Luen On San Tsuen
Tai Lam Chung Tsuen
Ku Yuen Tung
Sai Hang Mei

<i>Village Name</i>
Tsoi Yuen Tsuen
Lo Fu Hang Tsuen
Leung Tin Tsuen
So Kwun Tan
Kar Wo Lei
Siu Sau
Siu Sau San Tsuen
Siu Lam Tsuen
Siu Lam San Tsuen

## Annex 2

Village Houses Sewerage Connection Rate  
(Figures as at end April 2010)

<i>Area</i>	<i>Number of existing village houses</i>	<i>Number of village houses already connected</i>	<i>Number of village house not connected<sup>(2)</sup></i>	<i>Number of village house not connected due to technical problem</i>	<i>Connection rate (%)<sup>(3)</sup></i>
Sha Tin	2 328	1 934	394	394	100
Tai Po	2 035	1 568	467	460	99.5
Sai Kung	1 078	950	128	96	97
Tsuen Wan <sup>(1)</sup>	209	77	132	6	38
Islands <sup>(1)</sup>	364	286	78	12	81
North and Yuen Long <sup>(1)</sup>	1 886	1 230	656	387	82
Total	7 900	6 045	1 855	1 355	92

Notes:

- (1) Sewer connection work is still ongoing.
- (2) These village houses were not connected to the public sewerage due to technical reasons such as limited space, inadequate hydraulic gradient, costly pumping requirement, obstruction from underground utilities, land resumption issues and encroachment on other's private land, and so on. We would continue to liaise with village owners on the sewer connection issues.
- (3) Excluding those could not be connected due to technical reasons.

**Requiring Seat Belts be Retrofitted to All Seats of Public Light Buses**

10. **MR RONNY TONG** (in Chinese): *President, in a serious traffic accident which occurred in Sha Tin on 17 May this year, a public light bus (PLB) collided with a taxi, resulting in one death and six injuries, and the deceased and two of the injured persons were passengers of the PLB. It was reported that as the passenger seats of the PLB concerned were not fitted with seat belts, the three passengers were either killed or seriously injured, while the PLB driver who wore a seat belt had only sustained a minor injury. In this connection, will the Government inform this Council:*

- (a) *of the number of PLBs not fitted with seat belts on their passenger seats in Hong Kong at present, and the percentage of such number in the total number of PLBs;*
- (b) *given that it is stipulated under the Road Traffic (Safety Equipment) Regulations (Cap. 374F) that all rear seats of PLBs registered on or after 1 August 2004 are required to be fitted with seat belts, and passengers must wear the seat belts fitted on their seats, failing which they are liable to prosecution, of the respective numbers of prosecution instituted, since the legislation has come into operation, against PLB owners who failed to have their vehicles fitted with seat belts as required and passengers who failed to wear seat belts as required;*
- (c) *whether the Government will make it a mandatory requirement for all seats of PLBs to be retrofitted with seat belts, and whether financial assistance will be provided to owners of PLBs registered before 1 August 2004 and not yet fitted with seat belts; if so, of the details; if not, the reasons for that; and*
- (d) *whether the authorities will step up law enforcement against PLB passengers' failure to wear a seat belt and increase the penalty for the offence, so as to alert them of the requirement of wearing a seat belt?*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Chinese): President,

- (a) Under regulation 6C of the Road Traffic (Safety Equipment) Regulations (Cap. 374F), every PLB registered on or after 1 August 2004 shall be provided with a seat belt for each of its passenger seats. As at 30 June 2010, there were 2 382 PLBs (55% of all PLBs) fitted with passenger seat belts in Hong Kong. There were 1 967 PLBs which were first registered before 1 August 2004 (45% of all PLBs) and were not fitted with passenger seat belts.
- (b) Between August 2004 and June 2010, the police instituted a total of 11 090 prosecutions against PLB drivers and passengers for failing to wear seat belts (the police do not have a breakdown on the number of prosecutions against drivers and passengers). The number of prosecutions by year is as follows:

<i>Year</i>	<i>Number of prosecutions (Drivers and passengers)</i>
2004 (August to December)	233
2005	1 522
2006	2 078
2007	1 919
2008	2 211
2009	1 848
2010 (January to June)	1 279
Total	11 090

No PLB owners have been prosecuted for non-compliance with the requirement of fitting seat belts in their vehicles.

- (c) We do not intend to make it a mandatory requirement for all PLBs first registered before 1 August 2004 to be retrofitted with passenger seat belts or provide financial assistance for such purpose. Retrofitting passenger seat belts in a PLB affects its body structure, and PLBs of older age or models cannot cope with the reinforcement work required for retrofitting of passenger seat belts. Therefore, when considering the relevant legislative amendments in 2000, we proposed to require only newly registered PLBs to be fitted with

passenger seat belts. Such an arrangement took into account the practicality of retrofitting work and struck a balance between the views of the PLB trade and the views of the different quarters of the community. Subsequently, the legislative amendments requiring newly registered PLBs to be fitted with passenger seat belts were enacted in November 2002 and implemented on 1 August 2004.

The Government's policy is that PLB owners should be responsible for any equipment, including retrofitting passenger seat belts, in their vehicles. To encourage more PLBs to be retrofitted with passenger seat belts, the Transport Department (TD) issued in September 2006 the relevant specifications and drawings as guidelines for retrofitting approved passenger seat belts in PLBs first registered before 1 August 2004.

In addition, since 1 August 2004, the Government has introduced two incentive schemes to provide the PLB trade with financial assistance for encouraging PLB owners to replace their old PLBs with greener and newer models. A third incentive scheme will be introduced later this year. With old PLBs being gradually replaced with new models, the percentage of PLBs fitted with passenger seat belts will continue to rise.

- (d) Under the Road Traffic (Safety Equipment) Regulations (Cap. 374F), passengers failing to wear seat belts are liable to a fine of \$5,000 and imprisonment for three months. We consider the existing penalty appropriate and will review the relevant legislation when necessary.

Apart from routine enforcement patrols, the police will stage territory-wide operations regularly on education, publicity and enforcement fronts to raise the awareness of wearing seat belts among passengers and drivers. Furthermore, the Road Safety Council, TD and police will remind passengers and drivers of the requirement of wearing seat belts and the penalty of non-compliance by such means as announcements in the public interest on television and radio, publicity leaflets and posters.

## **Reinstatement of Original Fixtures and Facilities by Tenants Moving out of Public Rental Housing Flats**

11. **MR WONG KWOK-HING** (in Chinese): *President, at present, the Housing Department (HD) requires all public rental housing (PRH) tenants, when moving out of their flats, to reinstate the original fixtures and facilities provided by the HD at their own cost. I have received complaints from quite a number of PRH tenants that when they move out, they are required to remove basic fixtures altered by them such as flooring, ceiling cornices, window grilles, metal gatesets and custom-made built-in furniture, thereby generating a large quantity of waste. In this connection, will the Government inform this Council:*

- (a) *of the number of PRH tenants who, when moving out of their flats, had left the works to reinstate the original fixtures of the flats to the HD, and whether it knows the number of PRH tenants who had undertaken such works at their own cost, in each of the past five years, as well as the costs involved;*
- (b) *whether the authorities have assessed the quantity of waste generated as a result of the aforesaid requirement imposed by the HD for reinstating the original fixtures; if so, of the total weight of the waste generated in the past five years and the average weight of the waste generated in each of such cases; whether the authorities have separated the waste concerned prior to its disposal; if so, of a list, by type of waste involved, of the ways of disposal adopted by HD; if not, the reasons for that;*
- (c) *whether the HD had, in the past three years, recycled and reused those usable items acquired upon recovering PRH flats such as furniture, fixtures and electrical appliances, and so on, or donated them to organizations and persons in need; if so, of the details and the number of such items; if not, the reasons for that; and*
- (d) *given that there have been comments that the arrangement for reinstating PRH flats to their original state has caused wastage, whether the authorities will review such requirement, so as to reduce the quantity of the waste generated in that regard?*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Chinese): President, my reply to the question is as follows:

(a), (c) and (d)

Pursuant to the tenancy agreements entered into between PRH tenants and the Hong Kong Housing Authority (HA), PRH tenants who carry out any decoration or fixture works in their flats should, upon vacation of their flats, reinstate the original fixtures and facilities or remove the additional fixtures and installations before surrendering their flats to the HA upon termination of the tenancies concerned. Tenants may arrange the removal works by themselves or by paying a reinstatement charge to the HA to request the HD to carry out the reinstatement works.

Nevertheless, with a view to reducing redecoration debris, the HD would under normal circumstances allow the reservation of fixtures and installations installed by the outgoing tenants such as marble/Corian sink bench, wall-mounted kitchen cabinet, water closet pan with flushing cistern, security gates and wall or floor finishes which are reusable and in good condition for the incoming tenants. Such arrangements would provide the incoming tenants with safe fixtures and installations for use, and at the same time reduce the quantity of construction waste, thereby protecting the environment. As for fixtures and installations such as furniture, electrical installations and appliances which the HD could not ascertain whether they are conforming to the relevant statutory/safety requirements, the HD would require the outgoing tenants to remove these fixtures and installations when moving out of PRH flats for safety reasons. Generally, the outgoing tenants would arrange for the removal of those dilapidated or poorly maintained fixtures and installations by themselves before moving out of PRH flats. Only minimal reinstatement works would be undertaken by the HD upon tenants' request. We have not kept separate records on cost involved by tenants for such works. As the existing arrangement is working smoothly, the HD has no plans to review the reinstatement requirements.

- (b) Solid waste arising from flat reinstatement works would be handled together with other construction waste. Therefore, we have not kept separate records on solid waste generated from flat reinstatement works. Nevertheless, our District Term Maintenance works contractors are required to implement good practices in waste management to reduce the possible adverse impact on the environment. For construction waste such as metal, paper and plastic which are recyclable in nature, we would require our contractors to sort them out for recycling purpose. As for construction waste which is commonly known as public fill such as concrete, cement and rubble, they could be used for land formation. Only construction wastes that could not be recycled would be disposed of at landfills.

### **Reciprocal Notification Mechanism**

12. **MR ALBERT HO** (in Chinese): *President, under the reciprocal notification mechanism implemented since January 2001, the Mainland public security authorities will notify the Hong Kong Police of the unnatural deaths of Hong Kong residents on the Mainland, as well as the imposition of criminal compulsory measures on Hong Kong residents by the Mainland authorities. Similarly, the Hong Kong Police will notify the Mainland authorities of the criminal prosecutions instituted by the Hong Kong Police Force, Customs and Excise Department and Immigration Department against Mainland residents, as well as the unnatural deaths of Mainland residents in Hong Kong. In this connection, will the Government inform this Council:*

- (a) *of the respective numbers of notifications made by the enforcement agencies of both sides in each of the past five years; the number of Mainland and Hong Kong residents involved; among them, the respective numbers of those on whom criminal compulsory measures were imposed and those who died an unnatural death, as well as the criminal charges involved;*
- (b) *whether the Hong Kong Police, upon receipt of notifications from the Mainland authorities, takes the initiative to assist the Hong Kong*

*people in distress and their families; if so, of the form of assistance and the details; and*

- (c) *whether it has conducted reviews regularly to ensure that the Government renders the support needed by the Hong Kong people in distress and their families through the reciprocal notification mechanism; if so, of the details?*

**SECRETARY FOR SECURITY** (in Chinese): President, our response to Mr Albert HO's question is as follows:

- (a) The statistics of the reciprocal notification mechanism in the past five years (from 2005 to 2009) and from January to May of 2010 are at Annex.
- (b) The notification mechanism aims to facilitate the prompt notification to family members of the subject involved. Hence, the Hong Kong police will immediately seek to contact the family members of the subject after receiving notification from the Mainland authorities. The family members, if they wish, may seek assistance from the Assistance to Hong Kong Residents Unit of the Immigration Department or the offices of the Government of the Hong Kong Special Administrative Region (SAR) in the Mainland which will endeavor to provide assistance as far as practicable. Based on past experience, the assistance to be provided include relaying to the relevant Mainland authorities the specific requests of the family members, for example, paying visit to subject, and providing information on the hiring of Mainland lawyers.
- (c) In general, the notification mechanism has been operating smoothly since its implementation in 2001, achieving the objective of prompt notification to family members. Based on the experience in handling cases, the SAR Government and the Mainland authorities exchange views from time to time to further optimize the operation of the mechanism. For instance, the scope of the notification has been extended since June 2003 from cases of Public Security Ministry and the Customs to cover also cases of the Supreme People's Procuratorate and Ministry of State Security.

## Annex

## Statistics on Notification

The yearly figures regarding the law enforcing agencies of both SAR and Mainland reciprocally notify each other on unnatural deaths and cases<sup>(1)</sup> of criminal prosecution/compulsory measures are set out below:

## Notifications from Hong Kong to Mainland

<i>Year</i>	<i>Number of Notifications</i>	
	<i>Unnatural Deaths</i>	<i>Criminal Prosecution (number of persons involved)</i>
2005	2	3 355 (3 514)
2006	2	2 302 (2 464)
2007	5	1 422 (1 500)
2008	5	1 402 (1 425)
2009	9	1 366 (1 435)
2010 (January to May)	4	407 (421)

## Notifications from Mainland to Hong Kong

<i>Year</i>	<i>Number of Notifications</i>	
	<i>Unnatural Deaths</i>	<i>Criminal compulsory measures<sup>(2)</sup> (number of persons involved)</i>
2005	45	801 (571)
2006	35	762 (524)
2007	19	723 (481)
2008	27	755 (529)
2009	25	725 (515)
2010 (January to May)	6	276 (210)

Notes:

- (1) The offences relating to cases mainly include theft, deception, smuggling and dangerous drugs, and so on.
- (2) Criminal compulsory measures include summons for questioning, putting on bail, residence under surveillance, detention and arrest. A new notification will be made for any change of criminal compulsory measure towards the same person.

**Removal of Abandoned Signboards**

13. **MR CHEUNG HOK-MING** (in Chinese): *President, it has been reported that in recent months, there have been incidents of abandoned signboards in urban areas falling and injuring passers-by. Regarding the removal of dangerous and abandoned signboards, will the Government inform this Council:*

- (a) whether it knows the total number of signboards in Hong Kong at present; among them, of the number of abandoned signboards which have been illegally erected and whose owners cannot be identified;*
- (b) of the number of incidents involving signboards which occurred in the past two years, as well as the resultant casualties;*
- (c) given that the authorities had allocated \$18 million for launching an operation to remove 5 000 dangerous signboards in Hong Kong, when the operation had been completed, and of the details of the continuous efforts made by the authorities to remove dangerous signboards since the completion of the operation; and*
- (d) of the estimated time required to complete the clearance of all illegally erected signboards in Hong Kong, as well as the expenditure involved?*

**SECRETARY FOR DEVELOPMENT** (in Chinese): President, the Buildings Department (BD) attaches great importance to the safety of buildings in Hong Kong, including safety of signboards. Staff of the BD have been carrying out inspections in each district of Hong Kong. Upon discovery of dangerous or abandoned signboards, follow-up actions will be taken. Regarding signboards having imminent danger, the BD will remove them immediately in order to protect the safety of the public.

The reply to the four-part question is as follows:

- (a) The BD has not compiled statistics of signboards in Hong Kong but roughly estimates that there are currently about 190 000 signboards. The Department has no statistics on unauthorized signboards and abandoned signboards of which the owners cannot be identified.

- (b) During the period from 1 July 2008 to 30 June 2010, the BD received a total of 168 emergency reports regarding signboards, amongst which one person was injured in an incident.
- (c) The BD has been taking enforcement action against abandoned or dangerous signboards to eliminate the potential danger these signboards might pose to the public. The Department sets a target every year for removal of abandoned or dangerous signboards. The original removal target set for 2009 was 1 600 signboards. However, the Department launched a 12-month special operation in March of that year with an aim to removing, on top of the original target, 5 000 additional abandoned or dangerous signboards in the territory. The special operation was completed in March 2010, with about 5 770 abandoned or dangerous signboards in total removed. In 2010, the BD will continue to remove abandoned and dangerous signboards and adjust upward the removal target of the regular operation to 2 400 signboards.
- (d) The BD has been adopting a multi-pronged approach to ensure the safety of signboards. Regarding new signboards, under the minor works control system to be implemented within this year, construction and removal works of small-scale signboards are specified as minor work items. The new system enables those who intend to erect small-scale signboards to adopt a simple, expeditious and lawful procedure (which does not require, *inter alia*, prior approval of plans and consent to commencement of works by the Building Authority), and appoint prescribed registered contractors (if the works belong to Class I minor works, prescribed building professionals should be separately engaged to undertake the design and supervision of the works) to erect lawful signboards. This convenient system would significantly reduce the emergence of new unauthorized signboards. In addition, signboard is one of the inspection items under the proposed mandatory building inspection scheme. The relevant inspectors also have to report to the BD unauthorized signboards identified during inspections of buildings to facilitate the BD's consideration of enforcement actions. The above measures all help enhance the safety of signboards.

The Administration is comprehensively reviewing the building safety policy for Hong Kong. Removal of unauthorized building works (including unauthorized and abandoned signboards) is an item under examination. We plan to complete the review within this year and will brief the Legislative Council on the relevant arrangements.

### **Monitoring Completion of Private Residential Development Projects**

14. **MR WONG SING-CHI** (in Chinese): *President, in her reply to a question raised by a Member of this Council on 23 June this year, the Secretary for Transport and Housing indicated that as at 31 May 2010, there were 21 projects on granted sites for which construction had yet to commence (commonly known as "disposed sites"), involving about 12 000 residential units, and the Government would impose a Building Covenant (BC) date in the land leases to govern the completion dates of the projects. In this connection, will the Government inform this Council:*

- (a) of the locations of the 21 projects and the number of residential units involved in each project, as well as the content of the clause on the BC date included in the land leases (including the scheduled completion dates of the projects);*
- (b) of the penalties to be imposed on, or the follow-up procedure to be adopted in respect of, those developers who fail to complete such projects as scheduled; the procedure adopted by the authorities for vetting and approving applications for extension of completion dates, and whether the project developers concerned will be required to provide reasons for extending the completion dates and pay any fine to the authorities;*
- (c) whether applications had been submitted for extending the completion dates of those projects which were completed in the past five years; if so, of the average and the longest duration of such extensions, as well as the reasons for the extensions; and*
- (d) of the current number of projects which cannot be completed as scheduled in accordance with the BC date, together with a list, set*

*out according to lot number of such projects, of the names of the projects, of the total numbers of residential units, the scheduled and extended completion dates, the reasons for the extensions and the amounts of fines paid to the Government due to the extension of the completion dates?*

**SECRETARY FOR DEVELOPMENT** (in Chinese): President, my reply to four parts of the question is as follows:

- (a) For each development project, the developer is required to complete the construction of the minimum gross floor area (GFA) specified in the land grant documents or lease conditions and obtain an Occupation Permit from the Building Authority (BA) within the BC period imposed in the relevant documents or lease conditions. The locations of the 21 projects referred to in the question, the number of residential units involved and the BC period are attached at Annex.
- (b) Should the lot owners of individual development projects anticipate that they will not be able to complete the construction of the minimum GFA specified in the land grant documents or lease conditions and obtain the Occupation Permit from the BA within the BC period, the lot owners concerned will normally apply to the Lands Department (LandsD) for an extension of the BC period with justifications. In processing such applications, the LandsD will consider the justifications given by the lot owners and the progress of the development. When the application is approved, the applicant will be required to comply with the conditions imposed by the LandsD, including the payment of premium.
- (c) and (d)

The LandsD does not have the readily available information as requested in the question. Since the number of sites disposed of in the past five years is large and these cases are in different districts, each District Lands Office would need to deploy manpower to check the relevant case files in order to provide the information as mentioned in the question. Faced with an increasing heavy workload in land administration, the LandsD has practical difficulty

in deploying manpower to check the case files as this would affect the department's handling of other issues of public concerns. Such views are agreeable to me.

Annex

Particulars of the 21 developments referred to in part (a) of the question

	<i>Address (Lot Number)</i>	<i>BC Period</i>	<i>Estimated number of flats*</i>
1.	Tsing Fat Lane, Area 58, Siu Lam, Tuen Mun (TMTL 449)	6/2012	92
2.	Welfare Road, Aberdeen (AIL 451)	6/2013	411
3.	Cheung Sha, Lantau Island (Lot 245 in DD 331)	6/2012	10
4.	Pak Shek Kok Development Area, Phase 2, Site D1, Tai Po (TPTL 200)	6/2015	738
5.	Pak Shek Kok Development Area, Phase 2, Site D2, Tai Po (TPTL 201)	6/2015	730
6.	Tseung Kwan O Area 66B (TKOTL 76)	3/2015	880
7.	Tung Chung Area 55b, Lantau Island (TCTL 37)	12/2015	1 692
8.	Area 19, Sha Tau Kok Road (FSSTL 177)	6/2015	850
9.	38 Repulse Bay Road, Repulse Bay (RBL 380)	9/2013	3
10.	Kwun Yam Wan Road, Cheung Chau (Lot 1862 in DD Cheung Chau)	12/2010	4
11.	4 Shung Shun Street, Yau Tong (YTIL 20)	12/2013	120
12.	12 Stanley Mound Road, Stanley (RBL 242 sD ss1 sC)	Not applicable**	2
13.	Fung Yuen, Tai Po (TPTL 183)	9/2013	1 384
14.	Tai Tao Tsuen, Hung Shui Kiu, Yuen Long (Lot 419 in DD 127)	9/2013	63

	<i>Address (Lot Number)</i>	<i>BC Period</i>	<i>Estimated number of flats</i> *
15.	Tai Po Road, Kowloon (NKIL 6419)	6/2013	35
16.	Kung Um Road, Lung Tin Tsuen (Lot 4043 in DD 120)	9/2014	1 448
17.	44 Stubbs Road (IL 5749 RP)	Not applicable **	18
18.	Kwun Tong Town Centre (K7), Yuet Wah Street Site (Tower 1) (NKIL 6499)	12/2015	300
19.	146 Argyle Street (KIL 3303 sA)	9/2015	48
20.	Lok Wo Sha, Ma On Shan (STTL 502)	3/2018	2 101
21.	Lee Tung Street/McGregor Street (H15) (IL 9018)	3/2016	1 212

Notes:

\* Actual number is subject to the design of the development.

\*\* Since there were existing buildings on the concerned sites at the time of processing the application of these two small scale development, the BC was therefore not applicable.

### Transport Support Scheme

15. **MR IP WAI-MING** (in Chinese): *President, to encourage needy persons and low-income employees residing in remote districts to look for jobs and stay in employment, the Government launched on a pilot basis in 2007 the Transport Support Scheme for one year to provide time-limited transport allowance to eligible persons in some remote districts, and introduced in 2008 a number of relaxation measures. Yet, the Scheme stipulates that the total value of personal assets of applicants must not exceed \$44,000, including cash values of insurance policies. It has been learnt that quite a number of needy applicants are not eligible to apply for such allowance as a result. In this connection, will the Government inform this Council:*

- (a) *of the total number of applicants, since the launch of the Transport Support Scheme in 2007, who were ineligible for transport allowance because the total value of their personal assets had exceeded the prescribed ceiling owing to the cash values of their insurance policies; whether any applicant had been required to return the transport allowance received because of the cash values of their insurance policies, and of the relevant figures; and*
- (b) *given that cash values of insurance policies cannot be readily converted into cash to meet the immediate needs of the livelihood of policyholders, including payment of transport costs for job seeking, why the authorities have included such cash values in calculating the total value of personal assets of applicants, and whether they have plans to disregard such cash values in the calculation; if they do, of the details; if not, the reasons for that?*

**SECRETARY FOR LABOUR AND WELFARE** (in Chinese): President,

- (a) Since the launch of the Transport Support Scheme in June 2007 and up to the end of June 2010, 40 413 people have applied for the scheme. Of these, 210 applicants were refused because the total value of their personal asset exceeded the ceiling of \$44,000. We do not have the figure on the number of applicants rejected as the total value of their personal assets had exceeded the ceiling owing to the cash values of their insurance policies. On the other hand, 16 admitted applicants were required to refund the transport allowances paid as they were subsequently found to have insurance policies and the total value of their personal asset exceeded the ceiling, taking into account the cash value of their insurance policies.
- (b) Under the Transport Support Scheme, the total personal asset value of an applicant should be no more than \$44,000. Personal assets include land/property, cash, bank deposits, cash value of insurance policy, investments in stocks and shares, and other readily realizable assets. An insured may manage the cash value of his/her insurance policy according to his/her needs under the respective terms of the policy, including the withdrawal of cash from the insurance company basing on its prevailing value. As such, the cash value of

insurance policy is similar in nature to other realizable assets and should be counted as part of an applicant's personal asset. This approach is consistent with that established for other publicly-funded assistance schemes such as the Tertiary Student Finance Scheme — Publicly-funded Programmes and Comprehensive Social Security Assistance Scheme. In view of this, the Administration has no plan to disregard the cash value of insurance policies in the calculation of the value of applicants' personal asset.

### **Assistance for Persons with Different Religious Requirements on Diet**

16. **MS STARRY LEE** (in Chinese): *President, the Islamic and Hindu restrictions on diet are religious rules which their followers must observe. The food they eat and even the food handling process (including butchery) must comply with such religious rules (for example, Hinduism tries to minimize as far as possible the pain and torture suffered by livestock during butchery, while Islam also regulates how livestock is slaughtered for consumption by Muslims). Regarding the provision of food conforming to religious rules to the aforesaid religious followers by schools, hospitals and penal institutions, will the Government inform this Council:*

- (a) *of the current number of penal institutions which provide such food; the number of complaints they received in the past five years about failure to provide such food, as well as the follow-up actions and outcome;*
- (b) *whether it knows the current number of schools and hospitals which provide food to the aforesaid religious followers that conforms to their religious rules; the number of complaints they received in the past five years about failure to provide such food, as well as the follow-up actions and outcome;*
- (c) *whether the Government will consider issuing guidelines to the aforesaid institutions to remind them of the need to respect different religions and try to provide religious followers with food conforming to their religious rules as far as possible; if it will, of the details; if not, the reasons for that; and*

- (d) *whether the authorities have plans to promote the provision of food conforming to religious rules for religious followers by the aforesaid institutions, so as to create an accommodating atmosphere embracing all religions; if they have such plans, of the details; if not, the reasons for that?*

**SECRETARY FOR HOME AFFAIRS** (in Chinese): President,

- (a) All 29 correctional facilities under the Correctional Services Department (CSD) provide four main dietary scales for inmates' choice having regard to their health conditions, dietary habits and religious needs. The Dietary Scale 2 does not include pork or beef, and the lamb and chicken used are supplied and prepared by eligible contractors according to the requirements of the religions concerned. In the past five years, the CSD did not receive any complaint about the failure to provide food conforming to religious rules.
- (b) The Education Bureau does not have any statistics on the number of schools providing food that meets the dietary requirements of various religion believers.

At present, apart from ordinary meals, the 39 public hospitals under the Hospital Authority (HA) also provide patients in need with vegetarian food. In addition, 17 hospitals of the HA also provide Halal food.

According to the record, in the past five years, the Education Bureau and the HA have not received any complaints against the aforesaid institutions for failing to provide food to religious followers that conforms to their religious rules.

- (c) and (d)

The CSD respects the religious beliefs of inmates and has established guidelines on the provision of suitable meals to meet their needs as far as possible.

The Education Bureau issued an Education Bureau Circular in November 2008 reminding all education establishments of the responsibilities to make their best endeavours in supporting the teaching and learning of all their students irrespective of race, in accommodating ethnic diversity in schools, and in respecting cultural and religious differences. Also, the Education Bureau has all long worked closely with the Department of Health and the Environmental Protection Department on advising schools through circulars and guidelines to formulate policies and measures on healthy and green meals. Schools are requested to involve parents in the process of selecting lunch suppliers, including developing lunch requirements, selection criteria and marking scheme, and so on. Generally speaking, parents may take the initiative to reflect the needs of their children for special dietary arrangements, including requirements related to their religion, to the school. Schools may develop school-based lunch requirements and criteria for selecting lunch suppliers having regard to their own circumstances with a view to providing meals that meet the personal health and other needs of their students.

The HA will provide service according to patients' need as far as practicable. The HA plans to extend the provision of Halal food to all its hospitals within this year.

### **Manpower and Establishment of Dispensing Medicine in Public General Out-patient Clinics**

17. **DR PAN PEY-CHYOU** (in Chinese): *President, a pharmaceutical dispenser association has earlier pointed out that in the past few months, seven drug incidents occurred one after another in the general out-patient clinics (GOPCs) of the New Territories East and New Territories West Clusters of the Hospital Authority (HA). The association has further pointed out that since pharmacists stationed in out-patient clinics need to handle administrative work, dispensers are required to undertake pharmacists' work in addition to their own work, which has increased their workload drastically, and the risk of dispensing errors has also increased correspondingly, hence posing threats to the lives of the*

*public. Regarding the manpower and establishment of dispensing staff in public GOPCs, will the Government inform this Council whether it knows:*

- (a) the total number of drug-related medical incidents which occurred in public GOPCs in Hong Kong in each of the past five years, together with a breakdown by HA's hospital cluster;*
- (b) the existing staff (including pharmacists) establishment and the actual number of staff on duty in the dispensary of each of the day, evening and holiday GOPCs; the average number of days/nights/sessions per week during which the pharmacists therein act as the persons-in-charge of the dispensaries of the various clinics; the number of clinics stationed with only one dispenser; whether there are clinics in which dispensers act as the persons-in-charge of the dispensaries; and the number of clinics which manage to have four dispensers or pharmacists stationing there;*
- (c) the current number of dispensers qualified to act as "approved persons" or "authorized persons" among the dispensers in public GOPCs in Hong Kong, and the number of those who handle the duties of dispensing medicines in place of pharmacists at present;*
- (d) the number of new drugs available in public GOPCs in the past five years; the percentage of such number in the total number of drugs; and the number of patients referred in each of the past five years by specialist out-patient clinics (SOPCs) to GOPCs for follow-up consultation and collection of drugs; and*
- (e) the increase in the past five years in the total number of doctors in public GOPCs in Hong Kong; whether the numbers of dispensers and pharmacists have increased correspondingly; if not, of the reasons for that; and the ratio of doctors to dispensers and pharmacists in the public health care system at present?*

**SECRETARY FOR FOOD AND HEALTH** (in Chinese): President, the HA took over 59 GOPCs from the Department of Health (DH) in July 2003. Under the Dangerous Drugs Ordinance and the Pharmacy and Poisons Regulations, dispensaries of hospitals and out-patient clinics are required to have a registered pharmacist or a person approved by the Director of Health to be in possession of and to supply dangerous drugs and drugs classified as poisons. After taking over the abovementioned GOPCs, the HA has continued to adopt the system of "approved person" and recruited 45 additional pharmacists to work in the dispensaries of GOPCs. The HA lodges applications with the Director of Health on a regular basis for appointment of its staff as approved persons.

The reply to various parts of the question is as follows:

- (a) At present, the dispensaries of GOPCs under the HA handle over 4 million prescriptions and over 14 million drug items each year. The number of drug incidents (in terms of drug items dispensed) reported by the GOPCs under the HA in the past five years is set out in the table below. As compared with the number of drug items dispensed, the percentage of drug incidents reported each year was close to zero.

<i>Year</i>	<i>2006</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>	<i>2010</i> <i>(as at 30 June)</i>
Drug incidents that did not affect the health of patients	20	24	63	66	27
Drug incidents that affected the health of patients	2	3	2	1	1

Notes:

- (1) The above data cover all drug-related incidents reported by GOPCs currently under HA.
- (2) As HA redefined in 2008 the meaning of patients' health being affected by medical incidents, the number of drug incidents reported in and after 2008 cannot be directly compared with that of previous years.

A breakdown of the above figures by clusters is set out at Annex I.

- (b) Among the 59 GOPCs taken over by the HA, 49 provide regular day-time dispensing service. Some of the dispensaries of these GOPCs also provide dispensing service at night and/or on holidays. The number and percentage of service sessions with a pharmacist on duty are set out below:

	<i>Number of service sessions of dispensaries per week</i>	<i>Number of service sessions with a pharmacist on duty</i>	<i>Percentage of service sessions with a pharmacist on duty</i>
Clinics which only provide day-time dispensing service (Monday to Friday: 9 am to 5 pm; Saturday: 9 am to 1 pm; 11 sessions per week)	539	522	97%
Clinics which also provide dispensing service at night and/or on holidays	110	98	89%

As for the other 10 GOPCs (comprising five on outlying islands, four providing non-whole-day consultation service and one mobile clinic), the operation of their dispensaries is relatively simple. These dispensaries are manned by dispensers deployed by the respective clusters to provide limited dispensing service in the capacity of "approved persons".

The staff establishment of the dispensaries of the 59 GOPCs under the HA is determined having regard to operational needs and workload. Except the dispensaries of those GOPCs located on outlying islands or providing non-whole-day consultation service or being a mobile clinic, which are manned by one "approved person", the dispensaries of the remaining 49 GOPCs generally have a staff establishment of one pharmacist and one to nine senior dispensers/dispensers. At present, there are 36 dispensaries of GOPCs under the HA being manned by four or more dispensary staff.

- (c) At present, there are a total of 59 dispensers holding the status of "approved person" working in the dispensaries of GOPCs under the HA. Of them, 10 provide dispensing service at the GOPCs located

on outlying islands or providing non-whole-day consultation service or being a mobile clinic. The remaining 49 "approved persons" are assigned to provide dispensing service in different GOPCs within their respective clusters having regard to the operational needs of the dispensaries.

- (d) Over the past five years, 10 to 60 additional drug items have been introduced to individual GOPCs to cater for the needs of patients in various clusters. These additional drug items account for 3% to 21% of all drug items in the respective dispensaries. The total number of drug items dispensed at the dispensaries of GOPCs remains more or less the same, with details as follows:

	<i>2005-2006</i>	<i>2006-2007</i>	<i>2007-2008</i>	<i>2008-2009</i>	<i>2009-2010</i>
Number of prescriptions handled each year	4 746 401	4 547 154	4 529 553	4 644 324	4 387 207
Average number of drug items per prescription	3.3	3.3	3.3	3.3	3.3

Currently, under the patient referral system in the HA, the arrangements for patient referral between GOPCs and SOPCs are two-way. The HA has no statistical data on the number of patients referred by SOPCs to GOPCs for follow-up consultation and collection of drugs.

- (e) Since March 2008, the number of doctors, pharmacists and dispensers working in GOPCs remains more or less the same. The actual number of staff is set out in the table below. As at the end of March 2010, there are 4 995 doctors, 355 pharmacists and 949 dispensers working in the HA.

	<i>At the end of March 2008</i>	<i>At the end of March 2009</i>	<i>At the end of March 2010</i>
Doctor	362	358	362
Pharmacist	60	61	61
Dispenser	221	222	222

## Annex I

## Drug Incidents Reported by the GOPCs under HA

	<i>Drug incidents that did not affect the health of patients</i>					<i>Drug incidents that affected the health of patients</i>				
	2006	2007	2008	2009	2010 (as at 30 June)	2006	2007	2008	2009	2010 (as at 30 June)
Hong Kong East Cluster	3	2	2	5	3	0	0	0	0	0
Hong Kong West Cluster	0	6	4	2	4	0	2	0	0	0
Kowloon Central Cluster	4	0	3	5	0	0	0	1	0	0
Kowloon East Cluster	4	7	39	21	8	0	0	0	0	0
Kowloon West Cluster	7	5	10	23	4	0	0	1	1	0
New Territories East Cluster	1	3	4	6	4	2	0	0	0	1
New Territories West Cluster	1	1	1	4	4	0	1	0	0	0
Total	20	24	63	66	27	2	3	2	1	1

### Foreign Domestic Helpers Engaging in Hawking Activities in Central District

18. **MR ABRAHAM SHEK:** *President, it has been reported that more than 20 foreign domestic helpers (FDHs) are often seen at Statue Square in Central engaging in hawking activities such as hair cutting and manicure, and so on, for their compatriots, which has aroused public concern about whether it is legitimate for them to take up such work and the negative impact of such activities on environmental hygiene in the public area. In this connection, will the Government inform this Council:*

- (a) *of the number of FDHs prosecuted since 2008 for violating their conditions of stay in Hong Kong because they were found engaging in illegal hawking activities and, among them, the number of those subject to a removal order as a result;*

- (b) *whether it will consider amending the legislation to impose heavier penalty on FDHs engaging in illegal hawking activities in the public area; and*
- (c) *whether it has considered taking any other measure to solve the problem of FDHs engaging in hawking activities in the public area with a view to enhancing the mobility, environmental hygiene condition and public safety in the public areas concerned; if so, of the details; if not, the reasons for that?*

**SECRETARY FOR SECURITY:** President, Statue Square in Central is a venue under the supervision of Leisure and Cultural Services Department (LCSD). According to section 20(1)(c) of the Pleasure Grounds Regulation (Cap. 132BC), no person shall in any pleasure ground sell any articles unless authorized. Those who are so convicted are liable to a fine of \$2,000 and imprisonment for 14 days. Also, according to section 83B(1) and (3) of the Public Health and Municipal Services Ordinance (Cap. 132), no person shall hawk in any streets unless in possession of a valid hawker license. Those who are so convicted are liable to a fine of \$5,000 and imprisonment for one month on first conviction, and on subsequent conviction, a fine of \$10,000 and imprisonment for six months. In fact, FDHs who take up any work outside the FDH employment contract will breach the condition of their stay. According to section 41 of the Immigration Ordinance (Cap. 115), breach of condition of stay is liable to a fine of \$50,000 and imprisonment for two years.

Our responses to the three parts of the question are as follows:

- (a) The numbers of FDHs prosecuted for breach of conditions of stay in 2008, 2009 and the first five months of 2010 (that is, January to May) are 488, 672 and 242 respectively, within which the numbers involved in taking up work outside the FDH employment contract are 110, 140 and 63 respectively. In the same period, the numbers of removal orders issued by the Immigration Department (ImmD) to FDHs who had breached their conditions of stay are 85, 81 and 11 respectively. For the above statistics, the ImmD has no breakdowns relating to illegal hawking activities.

- (b) At present, the Food and Health Bureau does not intend to amend the penalties on illegal hawking in public areas.
- (c) The LCSD has all along been inspecting the venues under their supervision to combat unlawful activities including illegal hawking. The Food and Environmental Hygiene Department has also expressed that it has all along been allocating its manpower resources to combat illegal hawking in light of the actual situation of such activities in districts and complaint figures.

### **Publishing Annual Reports in Electronic Version by Government Departments**

19. **DR DAVID LI:** *President, in recent years, the authorities have encouraged government departments and public organizations to publish their annual reports by electronic and digital means, including CD-ROMs. In this connection, will the Government inform this Council:*

- (a) *of the total number of government departments and public organizations which at present publish annual reports and, among them, the respective numbers of those which publish both electronic and paper reports, and those which publish electronic reports only;*
- (b) *of the quantity of paper saved in the 2009-2010 financial year as a result of publishing annual reports in electronic version instead of paper version when compared to the quantity of paper used for that purpose in each of the past five financial years;*
- (c) *whether the Government will implement additional measures to further reduce paper usage and make a commitment to entirely eliminate annual reports published in paper version; and*
- (d) *of the actual cost saved in the 2009-2010 financial year from publishing annual reports in electronic version instead of paper version?*

**CHIEF SECRETARY FOR ADMINISTRATION:** President, my reply to the four parts of the question is as follows:

- (a) Currently, 84 government departments and public organizations publish annual reports. Fifty-eight of them issue both electronic and paper reports while 23 of them only issue electronic reports.

(b) and (d)

The quantity of paper saved as a result of publishing annual reports in electronic, instead of paper, version in the past six years is as follows:

<i>Financial Year</i>	<i>2009-2010</i>	<i>2008-2009</i>	<i>2007-2008</i>	<i>2006-2007</i>	<i>2005-2006</i>	<i>2004-2005</i>
Quantity of paper saved (No. of sheets) <sup>Note</sup>	1 227 450	1 043 020	901 120	593 600	672 800	494 830

Note:

Government departments/public organizations started publishing annual reports in electronic version at different times over the years.

The Government does not have any statistics on the actual cost saved in 2009-2010 financial year from publishing annual reports in electronic version instead of paper version.

- (c) Protecting the environment is one of the Government's top priority policies. We have been encouraging departments to use resources more effectively particularly on reducing paper usage. While the publication of paper annual reports is still necessary at present to meet public demand and departments' operational needs, concerned departments will continue to review the need for paper annual reports and keep them to a minimum as far as possible.

**Women's Participation Rate in Advisory and Statutory Bodies**

20. **MS EMILY LAU** (in Chinese): *President, in the consultation paper "Review of the Role and Functions of Public Sector Advisory and Statutory Bodies" published in 2003, the authorities have set a minimum ratio of 25% of non-official members of either gender in advisory and statutory bodies (ASBs) and stipulated that in general, a non-official member of an ASB should neither serve for more than six years in any one capacity (six-year rule) nor as a member on more than six boards or committees at the same time (six-board rule). In this connection, will the Government inform this Council:*

- (a) *given that the information provided to this Council by the Secretary for Home Affairs indicates that as at 30 April 2009, 167 non-official members appointed by the Government (representing 3.05% of all government appointed non-officials) had served in the same capacity on the ASB concerned for more than six years, while six persons (representing 0.17% of all government appointed non-officials) were appointed by the Government to serve as non-official members on seven ASBs, of the total number of non-official members appointed by the Government who had served in the same capacity on the ASB concerned for more than six years at present; the reasons for further appointing them; the number of persons currently serving as members on more than six ASBs at the same time; and the reasons for appointing them;*
- (b) *whether it will enact legislation to ensure that various Policy Bureaux and government departments abide by the six-year and six-board rules (6-6 Rules) in appointing those members; if it will, of the details; if not, the reasons for that;*
- (c) *given that the United Nations Economic and Social Council Resolution recommended a target for various nations and regions that 30% of their leadership positions be taken up by women by 1995, whether the authorities have considered setting a deadline by which women's participation rates in various ASBs shall all reach 30%; if they have, of the details; if not, the reasons for that;*
- (d) *given that the data provided to this Council by the Secretary for Home Affairs indicate that as at 30 April, 2009, more than 40 ASBs*

*had no female government-appointed member at all, whether the authorities have any plan to give priority to such bodies so that they will reach the target on women's participation rate in part (c) as early as possible; if they have such plans, of the details; if not, the reasons for that; and*

- (e) *given that the Home Affairs Bureau has indicated that it encourages women to contribute their curriculum vitae (CVs) for inclusion in the Central Personality Index (CPI), of the concrete measures implemented by the authorities in this regard; how many women have included their CVs in the CPI so far?*

**SECRETARY FOR HOME AFFAIRS** (in Chinese): President,

- (a) As at 31 May 2010, 243 non-official members appointed by the Government (representing 4.29% of all government appointed non-officials) had served in the same capacity of the ASB concerned for more than six years. Among them, two persons served as non-official members on more than six ASBs. These two persons are however serving on six boards only as at early July.

In making appointments to ASBs, the Government aims to secure the services of the most suitable persons to meet the requirements of the board or committee concerned. In making appointments, the Government will consider a host of factors including a candidate's ability, expertise, experience, integrity and commitment to public service, the functions and nature of the board or committee concerned, and so on. For statutory bodies, the appointing authorities will also consider the relevant statutory requirements. In considering the above factors, the appointing authorities aim to achieve the objective that the composition of ASBs broadly reflects the interests and views of the community, and the principle of appointment by merit. The appointing authorities may, on occasions, consider it necessary and appropriate to make an exception to the "Six-year rule" and "Six-board rule", having regard to the circumstances of the ASBs concerned.

- (b) The "6-6 Rules" are general guidelines. By issuing notices to the relevant appointing authorities six months before the expiry of the membership of ASBs, the Home Affairs Bureau would remind appointing authorities to take active measures to ensure that appointments made by them would comply with the "6-6 Rules" as far as practicable, in order to avoid overloading the non-official members. Maintaining the "6-6 Rules" can, on the one hand, encourage appointing authorities to attract more suitable talents, and on the other hand, allow suitable flexibility for appointing authorities to formulate appointment strategies most appropriate to individual ASBs. We do not consider it necessary to enact a legislation for the "6-6 Rules".
- (c) Appointing more women to ASBs is our goal. However, for some ASBs, the majority of the practitioners in the sectors relevant to the ASBs are male. Some candidates are mainly recommended by relevant professional bodies and institutions. Also, relevant appointing authorities may only consider enhancing the women's participation in ASBs when the tenure of the current members expires. As such, it is not possible for the appointing authorities to enhance the women's participation for certain ASB within a short period of time. The Government has no plan to set a deadline for all ASBs to achieve the new 30% gender benchmark.
- (d) The Administration has issued guidelines to bureaux and departments to appeal for their attention to the women's participation in ASBs under their purview and also for making efforts in achieving the new gender benchmark (30%). We would remind appointing authorities from time to time the importance of further enhancing women's participation in ASBs, and also request them to draw the attention of all relevant organizations which are involved in candidate nominations to the Government's efforts in enhancing women's participation.
- (e) The Home Affairs Bureau does not only remind appointing authorities of the importance of further enhancing women's participation in ASBs. It also encourages bureaux and departments

to invite women who are able and willing to participate in the work of ASBs to contribute their CVs for inclusion in the CPI. To facilitate members of the public to supply their personal information for inclusion in the CPI, a CV form has been put onto the website of the Home Affairs Bureau for free download. Furthermore, the Women's Commission has recently issued letters to women's associations and professional institutions, inviting them to encourage women who are able and willing to participate in the work of ASBs to contribute CVs to the CPI maintained by Government, in order to further enhance women's participation in ASBs.

As at May 2010, 6 891 female CVs were kept in the CPI.

## **BILLS**

### **First Reading of Bills**

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

### **ADAPTATION OF LAWS (MILITARY REFERENCES) BILL 2010**

### **SECURITIES AND FUTURES AND COMPANIES LEGISLATION (STRUCTURED PRODUCTS AMENDMENT) BILL 2010**

### **COMPETITION BILL**

**CLERK** (in Cantonese): Adaptation of Laws (Military References) Bill 2010  
Securities and Futures and Companies Legislation  
(Structured Products Amendment) Bill 2010  
Competition Bill.

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

**Second Reading of Bills**

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

**ADAPTATION OF LAWS (MILITARY REFERENCES) BILL 2010**

**SECRETARY FOR SECURITY** (in Cantonese): Deputy President, I move the Second Reading of the Adaptation of Laws (Military References) Bill 2010 (the Bill).

The Bill seeks to adapt certain military references in, and other related provisions of, the laws of Hong Kong to bring them into conformity with the Basic Law and Hong Kong's status as a Special Administrative Region (SAR) of the People's Republic of China.

On 23 February 1997, the Standing Committee of the National People's Congress (NPCSC) decided that except for 14 Ordinances and subsidiary legislation, and certain provisions in 10 Ordinances and subsidiary legislation that are in contravention of the Basic Law, the laws previously in force in Hong Kong are adopted as the laws of the HKSAR in accordance with Articles 8 and 160 of the Basic Law. The decision of the NPCSC also spells out the interpretative principles for provisions relating to the rights, exemptions and obligations of military forces stationed in Hong Kong by Britain and references of "Her Majesty", "the Crown", "the British Government", "the Secretary of State", and so on.

The interpretative principles promulgated by the NPCSC have been enacted as part of the Hong Kong law by the Hong Kong Reunification Ordinance (No. 110 of 1997) and incorporated as section 2A of and Schedule 8 to the Interpretation and General Clauses Ordinance (the Ordinance) (Cap. 1).

Since 1 July 1997, military-related provisions in the laws of Hong Kong have been construed and enforced in accordance with the interpretative principles set out in the Ordinance. In the interest of legal certainty of the laws of Hong Kong, we propose to adapt these military-related provisions. In this connection, we have drawn up the Bill to adapt these military-related provisions.

Subsequent to the enactment of the Bill, unless otherwise specified, the adaptation amendments will take retrospective effect from 1 July 1997 (that is, the day on which the SAR Government was established). This arrangement is consistent with the practice of most other adaptation bills put into force after the reunification of Hong Kong.

Deputy President, I so submit. I hope Members can support the Bill to enable its early enactment.

Thank you, Deputy President.

**DEPUTY PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Adaptation of Laws (Military References) Bill 2010 be read the Second time.

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

## **SECURITIES AND FUTURES AND COMPANIES LEGISLATION (STRUCTURED PRODUCTS AMENDMENT) BILL 2010**

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): Deputy President, I move the second reading of the Securities and Futures and Companies Legislation (Structured Products Amendment) Bill 2010 (the Bill).

The objective of the Bill is to rationalize and further improve the current regulation of public offers of structured products by making amendment to the Securities and Futures Ordinance (the SFO) (Chapter 571) and the Companies Ordinance (the CO) (Chapter 32).

Investors will be subject to different risks and reward exposure when investing in various financial products. In the case of equity or debt capital-raising, the investor's exposure is to the financial performance and prospects of the company issuing the shares or debentures. As for other investment products, in addition to the issuer's creditworthiness, the investor may

also be exposed to the risks and reward of the product being affected by the performance of the reference assets.

At present there are two regimes under which the Securities and Futures Commission (SFC) authorizes offer documents and marketing materials of investment products sold to the public. These two regimes are the prospectus regime under the CO and the offers of investments regime under the SFO.

Under the existing legislative framework, the public offers of structured products, depending on their legal form, may be subject to different regimes, even though such structured products may have similar economic risk and return profiles. For example, equity-linked notes and equity-linked instruments are structured products that have similar risk and return profiles. As equity-linked notes are in the legal form of a debenture, prospectuses of equity-linked notes are regulated under the CO prospectus regime. The offer documents of some equity-linked instruments are regulated under the SFO offers of investments regime since they are in the legal form of securities.

We hold that the aforesaid legislative framework should be rationalized by transferring the regulation of public offers of structured products to the offers of investments regime under the SFO.

The legislative proposals involve disapplying the prospectus provisions in the CO with respect to structured products. In addition to authorizing advertisements, invitations and documents relating to structured products pursuant to the SFO, we also propose that the SFC be empowered to authorize structured products. The SFC authorization process will depend on whether the products concerned are compliant with the codes and guidelines for products published by the SFC pursuant to the SFO.

At present, the CO provides certain safe harbours with respect to the provision that the prospectuses of shares and debentures are required to obtain authorization from the SFC, including the one for an offer to not more than 50 persons and the one on an offer in respect of which the minimum denomination of the shares or debentures is not less than \$500,000. The objective of these two safe harbours, introduced in 2004, is to improve the prospectus regime to facilitate market development. From the perspective of investor protection and in the light of development of the structured products market in the past few

years, we do not advise offering these safe harbours to structured products. Nevertheless, the public offers of the shares and debentures issued for equity or debt capital-raising purpose will continue to be regulated under the CO and the relevant safety harbours will remain applicable to these products.

Currently, the majority of the most common structured products that are publicly offered are securities-based and already subject to the regulatory requirements on "securities" in the SFO, including the licensing or registration requirements for persons that sell securities products to the public, and the conduct requirements on these licensed or registered persons. To pre-empt the possibility of the market devising non securities-based structured products to avoid such regulatory requirements in future, the Bill proposes to add structured products the offering documents for which the SFC authorization is required to the definition of "securities", so that these structured products will be subject to the regulatory requirements on "securities".

In a nutshell, the legislative proposals can unify the public offers of structured products regime. In future, all products, irrespective of their legal form, will be regulated by the offers of investments regime in the SFO. I trust that the codes and guidelines for the relevant structured products formulated by the SFC and the practice to authorize the relevant structured products and their advertisements, invitations and documents pursuant to such codes and guidelines will enhance the transparency and flexibility of regulation. The structured products the offering documents for which the SFC authorization is required must also comply with the regulatory requirements on "securities" in the SFO. I believe that this can further improve the regulation of public offers of structured products at present.

Deputy President, I so submit.

**DEPUTY PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Securities and Futures and Companies Legislation (Structured Products Amendment) Bill 2010 be read the Second time.

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

**COMPETITION BILL**

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): Deputy President, I move the Second reading of the Competition Bill (the Bill).

The main purpose of the Bill is to establish a legal framework to regulate possible anti-competitive conduct in all sectors, and set up a Competition Commission (the Commission) and a Competition Tribunal (the Tribunal) to take charge of the actual enforcement of the law, so as to ensure that the Government's competition policy can be taken forward more effectively.

Free to compete is one of the contributing factors to the success of Hong Kong's economy. The Government's competition policy seeks to enhance economic efficiency and the free flow of trade through promoting a sustainable and fair playing field, so as to secure a win-win situation for the business sector and consumers. In June 2005, the Government established the Competition Policy Review Committee (CPRC) to examine the market competition in Hong Kong and the effectiveness of the competition policy.

The CPRC pointed out in its report published in June 2006 that whilst Hong Kong had a free and open economy with few market barriers, the small size of the local market had resulted in some sectors being dominated by a small number of big companies. The report proposed the introduction of a cross-sector competition law, so as to enable the authorities to more effectively investigate and impose sanctions on anti-competitive cases.

The Government subsequently conducted two public consultations in November 2006 and May 2008 respectively. The majority of the views received were in support of the Government to put in place a cross-sector competition law.

We immediately commenced a detailed study and analysis of the views received upon the completion of the public consultation in 2008. Having considered the feedbacks and some court judgments in 2008, we changed our original proposal of adopting a civil administrative model to a judicial enforcement model. As the revision takes time, we proposed to postpone the tabling the Bill to the 2009-2010 legislative session at the meeting of the Legislative Council Panel on Economic Development in March 2009 when we

reported on the work progress. The tabling of the Bill today is precisely in line with the above undertaking.

The Bill provides for general prohibitions on anti-competitive agreements, decisions or concerted practices between undertakings and abuse of powers by undertakings exercising a substantial degree of market power, which have the object or effect of preventing, restricting or distorting competition in Hong Kong. Any conduct engaged in places outside Hong Kong which has the object or effect of undermining competition in Hong Kong is also under regulation. To enhance the certainty and clarity of the law, the Bill has included some examples of anti-competitive conduct to supplement the general prohibitions; and the Bill also requires the Commission to draw up regulatory guidelines on the interpretation and implementation of the conduct rules after consultation with appropriate persons, so as to address the concern of the business sector on the certainty of the law.

As regards merger control, feedbacks from the two public consultations indicated that views on this issue were divided. We have also taken into consideration the proposal of the CPRC that the competition law should emphasize on prohibiting anti-competitive conduct rather than aiming at market structures through regulating monopoly and merger activities. As a result, the Bill has provided for a merger rule which maintains the existing control over mergers and acquisitions available under the Telecommunications Ordinance. However, we will consider the possibility of extending merger control to other sectors when we review the effectiveness of the Bill in a few years.

With respect to the institutional framework, as I mentioned earlier, the Bill provides for a judicial enforcement model, under which the Commission, an independent statutory body, will be responsible for investigating anti-competitive conduct and instituting proceedings. The Tribunal to be established within the Judiciary will be empowered to hear and adjudicate unlawful conduct, review the determination of the Commission, hear private actions and order remedies. Decisions of the Tribunal are, subject to leave of the Court of Appeal (CA), reviewable in appeals to the CA. The Commission, led by a chairperson, will consist of not less than five members (including the Chairperson) appointed by the Chief Executive.

The executive arm of the Commission will be headed by a Chief Executive Officer appointed by the Commission with the approval of the Chief Executive. Operational funding of the Commission are payable by the Government, subject to the approval of the Legislative Council. To ensure the impartiality of the Commission in handling cases involving competition matters and the proper use of public money, the Commission is subject to regulation under the Prevention of Bribery Ordinance, the Ombudsman Ordinance and value-for-money audit by the Director of Audit.

The Tribunal will be made up of judges of the Court of First Instance (CFI). Each of the judges shall, by virtue of his or her appointment as CFI Judge, be a member of the Tribunal. The Chief Executive will appoint one of the members of the Tribunal to be the President of the Tribunal on the recommendations of the Judicial Officers Recommendation Commission. Moreover, to address the concern of some stakeholders that litigation costs will substantially increase after introduction of the new law, the Tribunal will conduct its proceedings with as much informality as is consistent with attaining justice.

The new law will be concurrent with existing competition regulatory framework in the broadcasting and telecommunications sectors. The Bill provides that the Broadcasting Authority and the Telecommunications Authority will have concurrent jurisdiction with the Commission in respect of competition-related matters in the broadcasting and telecommunications sectors, but their existing adjudicative function will be transferred to the Tribunal.

In order to minimize the cost of investigation and litigation to society as a whole, the Commission has the power to enter into settlements for relatively minor or less serious anti-competitive cases, such as those involving small and medium enterprises (SMEs). The Bill provides for a two-tier commitment mechanism under which the Commission is empowered to accept commitments from a person allegedly contravening or having contravened a conduct rule to refrain from or correct his or her anti-competitive conduct. The Commission may also directly issue an infringement notice to the person, require him or her to pay a sum not exceeding HK\$10 million. Subject to the satisfactory address of its concerns, the Commission may cease its investigation and not to institute or continue with proceedings against the person.

When it comes to more serious anti-competitive cases, the Tribunal is empowered to apply appropriate remedies on contravention of competition rules after hearing and determining the cases.

In order to facilitate the Commission's detection of covert anti-competitive agreements and conduct, the Bill will empower the Commission to enter into leniency agreements with persons who have allegedly contravened the conduct rules in exchange for their co-operation with the Commission in assisting its investigation and its proceedings with other parties involved in the same contravention. The Commission will not institute or continue with proceedings for a pecuniary penalty in respect of contravention of the conduct rules against those with whom it has reached leniency agreements.

In addition to enforcement through exercising the Commission's power of investigation provided by the law and its power of instituting proceedings, the Bill also provides for private actions to be brought under the Tribunal by persons who have suffered loss or damage. Such private actions could either follow on from a determination of the Tribunal, the CA or the Court of Final Appeal that the conduct is a contravention of a conduct rule, or could be "stand-alone" actions seeking a judgment and remedies from the Tribunal for the conduct which has contravened the competition rules.

With respect to the applicability of exclusions and exemptions, we have made reference to practices in other overseas competition jurisdiction and introduced exclusion and exemption clauses in the Bill. The Commission is empowered to decide, in response to an application, whether or not a particular agreement or conduct should be excluded from the application of conduct rules based on specific reasons. The reasons which the Commission may consider include whether the agreement or conduct concerned can enhance overall economic efficiency, whether the agreement or conduct concerned is made to comply with a legal requirement, and whether it is a service entrusted by the Government to benefit the overall economy. Moreover, the Bill empowers the Chief Executive in Council to make orders to exempt agreements or conducts from the conduct rules if the Chief Executive is satisfied that there are exceptional and compelling reasons of public policy that the conduct rule ought not to apply or that such exemption is necessary to avoid conflict with international obligations.

On the other hand, as the activities of the public sector are almost invariably non-economic in nature falling outside the scope of the Bill, the Bill is not applicable to government and statutory bodies or their specified activities, except those statutory bodies or activities specified in regulations to be made by the Chief Executive in Council. These regulations will be submitted to the Legislative Council for negative vetting, and will only be made after the Bill comes into effect.

The arrangement of exempting government and statutory bodies has been a cause of concern. Our proposed arrangement is based on the consideration that services provided by public sectors are almost invariably related to people's livelihood and economic infrastructure, such as health care, housing, basic education, and so on. We are duty-bound to ensure that these major and essential public services will not be affected. We are thus of the view that exempting government and statutory bodies from the scope of the Bill is a sound and clear course to take. In fact, the Bill seeks to implement the competition policy more effectively. As the Government plays a leading role to take forward this policy, it was, is and will be committed to uphold the idea of fair competition and ensure that the public sector complies with the competition policy of Hong Kong.

Policy Bureaux and departments will carefully study the some 500 statutory bodies under them and decide, in the light of the criteria prescribed in the Bill, which bodies should be regulated under the Bill. Although the regulations concerned will only be formulated after the enactment of the principal Ordinance, we understand the concerns of the public and the Legislative Council on this subject. Thus, we will brief the Legislative Council once the study is completed.

Moreover, we are aware of the concerns of some members of the business sector, in particular those of SMEs, that the competition law will affect their flexibility in conducting businesses and increase the costs. They are also concerned that they may commit an offence due to inadequate understanding of the law or they will be suppressed by large corporations in the name of the law.

In order to address the concerns of the business sector, in particular those of SMEs about the new law, we have introduced relevant provisions and appropriate mechanisms during the law drafting process to allow enterprises to apply for exemption from individual agreements; we have also carried out publicity and education, as well as made arrangements for the implementation of the new law, in a bid to assisting enterprises in compliance with the law.

In order to avoid abuse of the investigation and complaint mechanism of the Commission and the judicial procedures of the Tribunal, the Bill provides that the Commission may refuse to handle a complaint which is trivial, frivolous or lacking in substance. Before exercising its investigation power, the Commission must have reasonable grounds to suspect that a competition rule has been, is being or is about to be contravened. On the other hand, as a superior court of record under the Judiciary, the Tribunal is empowered to reject private actions which are vexatious or lacking in substance.

We plan to provide a transitional period after the passage of the Bill until the commencement of the main prohibition provisions, so as to allow the public to understand the new law and the business sector to make appropriate adjustments, while the Commission will conduct publicity and education work.

Deputy President, the Bill is an important milestone in the development of the competition policy in Hong Kong. It is also a manifestation of the Government's determination in protecting a free and level playing field. We hope that the legal framework provided by the Bill can better prohibit and stop anti-competition conduct in different sectors, so as to render the free flow of market powers, and help create an equal and competitive business platform, which in turn can benefit the consumers by providing more and better options.

We understand that the public and the Legislative Council in general support the introduction of a cross-sector competition law and they anticipate progress in the drafting of the Bill on the part of the Government. I am pleased that the Government has finally introduced the Bill in this legislative session as scheduled, which is an active step to honour the pledge made by the Chief Executive in his policy address in 2009.

Deputy President, I so submit and urge for Members' support in the passage of the Bill. Thank you.

**DEPUTY PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Competition 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.

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

**DEPUTY PRESIDENT** (in Cantonese): We now resume the Second Reading debate on the Supplementary Appropriation (2009-2010) Bill.

### **SUPPLEMENTARY APPROPRIATION (2009-2010) BILL**

#### **Resumption of debate on Second Reading which was moved on 23 June 2010**

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

(No Member indicated a wish to speak)

**DEPUTY PRESIDENT** (in Cantonese): I now put the question to you and that is: That the Supplementary Appropriation (2009-2010) Bill be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Supplementary Appropriation (2009-2010) Bill.

Council went into Committee.

### **Committee Stage**

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

### **SUPPLEMENTARY APPROPRIATION (2009-2010) BILL**

**DEPUTY CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Supplementary Appropriation (2009-2010) Bill.

**CLERK** (in Cantonese): Clauses 1 and 2.

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

(No Member indicated a wish to speak)

**DEPUTY CHAIRMAN** (in Cantonese): I now put the question to you and that is: That clauses 1 and 2 stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Schedule.

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

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

Council then resumed.

**Third Reading of Bills**

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

**SUPPLEMENTARY APPROPRIATION (2009-2010) BILL**

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): Deputy President, the

Supplementary Appropriation (2009-2010) Bill

has passed through Committee without amendment. I move that this Bill be read the Third time and do pass.

**DEPUTY PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Supplementary Appropriation Bill (2009-2010) be read the Third time and do pass.

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Supplementary Appropriation (2009-2010) Bill.

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

**DEPUTY PRESIDENT** (in Cantonese): This Council now resumes the Second Reading debate on the Minimum Wage Bill.

### **MINIMUM WAGE BILL**

#### **Resumption of debate on Second Reading which was moved on 8 July 2009**

**DEPUTY PRESIDENT** (in Cantonese): Mr TAM Yiu-chung, Chairman of the Bills Committee on the above Bill, will now address the Council on the Committee's report.

**MR TAM YIU-CHUNG** (in Cantonese): Deputy President, in my capacity as Chairman of the Bills Committee on Minimum Wage Bill (the Bills Committee), I now report in gist the deliberations of the Bills Committee.

The Minimum Wage Bill (the Bill) mainly seeks to provide for a statutory minimum wage (SMW) at an hourly rate for certain employees and establish a Minimum Wage Commission (MWC). The Bills Committee has held 30 meetings and received views from 72 deputations.

Some members take the view that the Bill should ensure that workers would be paid at a reasonable level, so as to sustain the basic living of their families. Some other members are, however, of the view that the Bill should provide a wage floor instead of combating poverty. They consider that the problem of working poverty should be addressed by other vehicles, such as social welfare measures.

According to the Administration, the main objective of the Bill is to prevent individuals from receiving excessively low wages, but without unduly jeopardizing our labour market flexibility, economic competitiveness and employment opportunities for the vulnerable workers. Given that the size and needs of different families, and in turn overall family expenses, can vary greatly, families that are in need may obtain financial assistance from the Comprehensive Social Security Assistance (CSSA) Scheme.

Under the Bill, two categories of employees are exempted from the SMW requirement, namely live-in domestic workers, as well as student interns undergoing work arranged or endorsed by a specified education institution in connection with an accredited programme for which the work is a component of the programme requirements.

Some members consider that live-in domestic workers should not be exempted from the Bill while some other members support the exemption. The Administration has advised that at present, domestic workers in Hong Kong are mainly domestic helpers. With the large number of households at stake, and having carefully considered all relevant factors and circumstances as well as the views of stakeholders, the Administration proposes to exempt all live-in domestic workers from the coverage of SMW. Mr LEE Cheuk-yan has advised that he will move Committee stage amendments (CSAs) to include live-in domestic workers under the coverage of the Bill.

Regarding the exemption for student interns, some members have suggested exempting all student interns from SMW. The Administration has advised that providing a blanket exemption for all students would be prone to abuse and exploitation. *Bona fide* jobs may be turned into internships to circumvent SMW.

(THE PRESIDENT resumed the Chair)

Some members have pointed out that there are local students who study in universities abroad and undertake internships in Hong Kong. They consider that such students should also be exempted. After consideration, the Administration

has advised that it will propose CSAs to provide additional exemptions as follows:

- (a) an intern employee who is a Hong Kong resident pursuing full-time non-local education programme at undergraduate level or above and undertaking internship in Hong Kong which forms a compulsory or elective component of the programme requirements will also be exempted from SMW; and
- (b) an intern employee who is either studying in a full-time programme in a specified education institution or a Hong Kong resident pursuing full-time non-local education programme at undergraduate level or above, irrespective of whether the internship is curriculum-related, will be exempted from SMW, subject to the conditions that the employee is below 26 years of age; the employment is for 59 calendar days or less; and the exemption from SMW is limited to once in a year for each intern employee.

Some members consider that the Administration's proposed relaxation should not be confined to those at degree level or above, but should cover all non-local education programmes at post-secondary level or above. However, some other members are concerned about the impact of such relaxation on the local labour market. The Administration has advised that such relaxation would be open to abuse, as it is difficult to verify whether or not an education programme in another place is at post secondary level when the education system is different.

A member takes the view that there should be a lower SMW rate for young people aged below 21. The member has pointed out that in the United Kingdom, there are two lower minimum wage rates which are applicable to workers aged 18 to 21 and those aged 16 to 17 respectively. The Administration has advised that the local circumstances should be the prime consideration in determining the SMW regime in Hong Kong.

Regarding the computation of hours worked, some members have expressed concern about how "hours worked" in the Bill should be computed for SMW purpose under different scenarios in different industries. Some members are concerned about the circumstances under which the travelling time of an

employee will be counted as hours worked, if the employee has to commute frequently between Hong Kong and the Mainland. Some members are concerned about the risks of small and medium enterprises (SMEs) and employers in the catering, tourism, airline and medical services industries inadvertently breaching the law.

The Administration has advised that the Bill does not seek to set out an exhaustive list of hours worked for the purpose of computing minimum wage. Apart from clause 3, the question as to whether any time or period is hours worked by an employee has to be decided by reference to the agreement or contract between the employer and the employee and to all other relevant circumstances of the case.

Some members are very concerned that employers and employees of SMEs may find it difficult to compute hours worked. The Administration has stressed that in preparing the Bill, the Labour Department has undertaken an intensive and extensive engagement and consultation process with various stakeholders and has taken into account the work patterns of employees in different trades and industries, with a view to ensuring that the SMW regime is feasible and can strike a reasonable balance among various interests. Prior to the implementation of SMW, the Labour Department will vigorously launch publicity and promotional activities, so that both employers and employees can understand the legal provisions and their respective obligations and entitlements. Mr LEE Cheuk-yan has advised that he will move CSAs on the computation of hours worked.

Some members are concerned whether waiting time, on-call and standby time should be counted as hours worked, especially for escort guides, flight attendants, cross boundary drivers, property agents and health care workers of residential care homes for the elderly. The Administration has explained that there are variations in the arrangements when an employee is on call or standby. If the employee, while on call or standby, is not in attendance at a place of employment as defined in clause 2 for the purpose of doing work or receiving training, the time is not hours worked. If the employee, while on call or standby, is in attendance at a place of employment according to the contract of employment, or with the agreement or at the direction of the employer, the on-call or standby time is hours worked. Dr LEUNG Ka-lau has advised that he will move CSAs on the definition of place of employment.

As for meal break, some members are concerned about the possible impact of clause 3(2)(a) on an employee whose monthly salary includes paid meal break. They are of the view that clause 3(2)(a) should be deleted. After consideration, the Administration has advised that it will propose CSAs to delete clause 3(2)(a). Some members are, however, of the view that with the deletion of clause 3(2)(a), disputes may arise on whether meal break is regarded as hours worked.

The Administration has stressed that the removal of clause 3(2)(a) will not change the original spirit of clause 3. Meal break falling outside clause 3(1) is not hours worked for calculating minimum wage. However, if meal break is regarded as working hours under the employment contract or agreement between the employer and the employee, it is hours worked in computing minimum wage. In view of this, members have requested the Administration to include examples in the guidelines to be drawn up for the concerned sectors and give explanation on them.

Under the Bill, employers are required to keep records of the total number of hours worked by an employee in a wage period. Some members are of the view that such requirement will incur substantive administrative work and cost on the part of employers. They have requested the Administration to consider providing an exemption clause to the effect that employers will not be required to keep record of the total number of hours worked for employees who earn more than a specified income. After consideration, the Administration has advised that it will move CSAs to exempt employers from recording the total number of hours worked of employees whose monthly wages are not less than an amount to be prescribed in a schedule to the Employment Ordinance.

Some members have suggested requiring an employer to advise an employee, such as through a salary slip, of his hours worked in a wage period. Some other members are, however, concerned that such a requirement will impose undue administrative burden on employers, especially those of SMEs. The Administration has advised that different sectors have different arrangements and practices in the recording of hours worked. The Administration considers it inappropriate for the Bill to alter such arrangements and practices. Mr LEE Cheuk-yan has advised that he will move CSAs to require an employer to inform his employee of the hours worked and particulars of wages in the wage period concerned.

As for the counting of commission, some members are concerned whether clause 5(5) can cater for the different modes of commission payment currently adopted by different industries. Some members have suggested reviewing the drafting of clause 5(5) with a view to enhancing clarity and certainty to employers and employees in reckoning commission payment. After consideration, the Administration has advised that it will move CSAs to clarify the counting of commission in a wage period when it is paid with prior agreement of the employee.

As for tips and service charges, some members are concerned whether they are to be counted as part of wages in cases where tips and service charges are paid directly by customers to the employees providing the service, such as in the catering industry and the hairdressing industry. The Administration has advised that tips and service charges within the meaning of "wages" under the Employment Ordinance will also be counted towards wages in SMW calculation.

Regarding wage period, a member has enquired how a wage period will be counted in the catering industry where wages are paid to an employee in two batches in a month. The Administration has advised that when the employer and the employee have a clear understanding that the wage period is one month, the wage period should be taken to be one month even if the employer pays wages in two batches in a wage period. Members have requested the Administration to give an explanation on this in its guidelines for different industries.

Some members are concerned that there are industries where the basic salary of an employee is paid in a current wage period while the commission is calculated and paid in the following wage period. They are concerned whether the Bill allows the employer to apportion commission in some wage periods.

The Administration has advised that there is a wide variety of commission systems in practice, depending on the terms in the contract of employment. Employers and employees are free to agree on when and how commission is payable under the contract of employment. Whether commission can be apportioned and payable in different wage periods is subject to the contract of employment.

Under the Bill, a MWC is to be established to report to the Chief Executive in Council its recommendations about the amount of the prescribed minimum hourly wage rate as well as the timing and frequency of rate reviews.

As for the composition of the MWC, some members are of the view that the non-official members of the MWC should be nominated by the respective sectors. The Administration has advised that to facilitate independent, objective and unbiased analyses and deliberations, as well as to work for the overall interest of Hong Kong in the process, it is necessary for the non-official members to be appointed on an ad personam basis, rather than being elected or nominated by the respective sectors. Mr LEE Cheuk-yan has advised that he will move CSAs to the effect that the Chief Executive shall have regard to any nomination made by major labour organizations. Mr IP Wai-ming will also move CSAs to require that members with labour background must be persons who are members of the Labour Advisory Board elected by employee unions registered under the Trade Unions Ordinance; and to replace members from a relevant academic field by members from a relevant field.

Some members have suggested providing in the Bill the minimum ratio of female or male members in the MWC. The Administration has explained that appointments to the MWC are primarily based on merits taking into account the candidate's ability, and with due regard to the existing gender balance, the operational needs of the MWC and the availability of suitable candidates. Ms Emily LAU has advised that she will move CSAs to require that in appointing members to the MWC, the Chief Executive must have regard to a participation target of at least 30% of each gender.

Some members have queried the need for appointing public officers to the MWC. The Administration has stressed that the MWC should include official members who will contribute their expertise, public administration experience and knowledge in areas relevant to SMW. Mr IP Wai-ming has advised that he will move CSAs to the effect that only the chairperson of the MWC and members who are not public officers have the voting rights. Mr LEE Cheuk-yan has also advised that he will move CSAs to the effect that public officers sitting on the MWC have no voting rights.

A member has suggested providing in the Bill that members of the MWC will not be appointed to more than six advisory and statutory bodies at the same

time and will not sit on such a body for more than six years in the same capacity. Although the Administration has stressed that it will follow the established practice, there is no need to provide for that in the Bill as it will reduce flexibility. Ms Emily LAU has advised that she will move CSAs in this regard.

Some members consider that the MWC's report to the Chief Executive in Council should be made public, and the Administration should be required under the Bill to disclose the justifications it has taken into account in making its decision on the SMW rate. The Administration has advised that it will move CSAs to provide that the Administration will make public the contents of the MWC's report. The Administration will also provide members of the public and the Legislative Council with the justifications it has taken into account in making its decision on whether to accept the recommendation of the MWC. Mr LEE Cheuk-yan has advised that he will move CSAs to the effect that the Chief Executive shall publish a copy of the report made by the MWC as soon as practicable.

Some members have suggested that the SMW rate should be set at a level higher than that of the CSSA Scheme. The Administration has advised that SMW is a wage floor rather than a living wage. Families in need can obtain assistance from the CSSA Scheme. Mr LEE Cheuk-yan has advised that he will move CSAs to set out the factors that MWC must consider when it advises on the SMW rate. Mr WONG Kwok-hing will also move CSAs to set out the factors that MWC must consider when it performs its function.

Some members are concerned that while the Legislative Council may either approve or revoke the schedule that has prescribed the minimum hourly wage rate, it is not given the power to amend the schedule. These members take the view that the Legislative Council should be given the power to amend the schedule.

According to the Administration, its proposal that the Legislative Council may approve or revoke, but not amend, the proposed SMW rate is intended solely to safeguard the evidence-based approach. The proposed SMW rate cannot take effect if the Legislative Council decides to revoke it. Ms Cyd HO has advised that she will move CSAs to provide that the Legislative Council may amend the SMW rate made under clause 15(1).

Regarding the frequency of reviews of the statutory minimum wage rate, members are of the view that the Bill should provide for an annual review of the SMW rate. After consideration, the Administration has advised that it will move CSAs to specify that a regular review interval of not less than once every two years. Mr WONG Kwok-hung and Mr LEE Cheuk-yan will also move CSAs respectively to require the MWC to submit a report on the SMW rate to the Chief Executive in Council at least once a year.

The Bill provides a special arrangement whereby persons with disabilities (PWDs) whose productivity may be impaired by their disabilities may choose to have their productivity assessed. Some members have queried the need for such special arrangement. Another member is of the view that persons with severe disabilities should be exempted from the Bill. The Administration has explained that recognizing the possible employment difficulties encountered by some PWDs upon the implementation of SMW, the Bill also provides a special arrangement for those whose productivity is impaired by their disabilities, so as to minimize any possible adverse impact of SMW on their employment opportunities.

Some members are of the view that an opportunity should be provided for a review of an assessment in the event of dispute about the assessment results, deteriorated health of a PWD, or improved productivity of a PWD as he has become familiarized with his work. The Administration takes the view that if there is a review arrangement, it may discourage some employers from employing PWDs and put a strain on the labour relations between the employer and the PWD employee, leading to, say, disputes on whether the PWD is forced by the employer to undertake a review assessment to facilitate a pay cut.

The Administration has pointed out that the Bill allows a PWD to request a fresh assessment of his productivity if his work required under the contract of employment is no longer the same even though he is working for the same employer. The right to invoke the assessment mechanism is vested in a PWD rather than the employer. Besides, a PWD is free to choose an approved assessor to conduct his assessment. The Administration has advised that it will review the special arrangement, including the need for a second assessment, in the light of operational experience within two years of the implementation of the SMW and report the results to the Panel on Manpower (the Panel). Mrs Regina

IP has advised that she will move CSAs on the assessment of degree of productivity of PWDs.

Under clause 23, an employer dismissing a person with a disability on account of the outcome of an assessment will be exempted from the Disability Discrimination Ordinance (DDO). Some members have expressed concern that such an exemption may weaken PWDs' rights under the DDO. The Administration has explained that with such an exemption, employers will not be discouraged from employing PWDs under the SMW regime. When seeking to terminate a contract of employment, the employer must comply with the Employment Ordinance, other relevant legislation in force and the relevant terms of the employment contract. Mr CHEUNG Kwok-che has advised that he will move CSAs to the effect that an employer dismissing a PWD on account of the outcome of the productivity assessment is not exempted from the DDO.

Regarding the cost for assessment of the degree of productivity of PWDs, some members are of the view that it should be borne by the Administration. The Administration has undertaken to finalize the arrangement and advise the Panel on the party responsible for bearing the cost for assessment of the degree of productivity of PWDs before the enacted Ordinance comes into operation.

Some members are concerned whether there will be transitional arrangements for PWDs who are already in employment. A member has also expressed worry about the possible adverse impact of SMW on the employment of serving PWDs with severe disabilities. The Administration has advised that it will propose CSAs to provide for a transitional arrangement, so as to minimize the impact of the SMW legislation on PWDs who are already in employment, particularly those with more severe disabilities.

It is proposed under the Bill that the Trade Boards Ordinance (TBO) should be repealed. A member takes the view that the provisions in the TBO regarding the normal number of hours of work and overtime payment should not be repealed. The Administration has advised that as the provisions of the TBO are largely obsolete and legally problematic, and are thus incapable of meeting the needs of the prevailing socio-economic situations, the TBO should be repealed. Mr LEUNG Yiu-chung has advised that he will move CSAs to the effect that the parts in the TBO relating to normal number of hours of work and overtime payment will not be repealed.

A member has expressed concern about the adequacy of manpower in the Labour Department for enforcement of the enacted Ordinance. The Administration has advised that it attaches great importance to the implementation of the enacted Ordinance and will adopt appropriate measures and strategies to ensure its effective enforcement. Resource requirements for implementing the enacted Ordinance and relevant law enforcement work will be handled according to the established resource allocation mechanism.

Some members are very concerned about the timing for commencement of the enacted Ordinance. They are of the view that there should be sufficient time for employers to prepare for the implementation of the enacted Ordinance. The Administration has advised that besides the enactment of the Bill, it has to prescribe the SMW rate by way of subsidiary legislation which will be subject to negative vetting by the Legislative Council. The Administration hopes to commence the enacted Ordinance in the first half of 2011 and has undertaken to brief the Panel on its guidelines on SMW for employers and employees before the commencement of the enacted Ordinance.

A member has suggested providing a grace period to exempt employers from criminal liability after commencement of the enacted Ordinance. The Administration has advised that prior to the implementation of the SMW regime time will be provided for the community and the business sector to gear up for it. This will thus obviate the need for a further grace period to exempt employers from criminal liability for failing to pay SMW.

I would like to take this opportunity to thank members for giving their support to the work of the Bills Committee, and to thank the Legislative Council Secretariat for providing assistance to it.

President, the following is my personal views. According to the General Household Survey conducted by the Census and Statistics Department, the poverty problem in Hong Kong has been deteriorating. Recently, 2007-2008 was one of the years during which the overall economy of Hong Kong was relatively sound. However, in the first quarter of 2008, among 2.25 million households in the territory, 185 000 households had a monthly income of less than \$4,000, representing 8.2% of the total number of households. Among these households, 140 000 people had full-time jobs. Even though they worked so hard, their income could hardly sustain their basic living.

In view of this, the poverty problem currently faced by Hong Kong is not merely resulted from incidents such as being old, weak, disabled, widowed and sick, or having accidents. In fact, it is mainly attributed to the structural change of employment opportunities that only short-term, casual and temporary jobs are offered. Wages are seriously suppressed, giving rise to the problem of working poverty among a large number of low-paid workers. This may instigate greater social contradiction, for some people live in dire straits whilst others simply care for commercial profits without paying heed to the plight of low-income earners. As a result, social opposition in Hong Kong society will only be aggravated.

The Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) supports the legislation on minimum wage, so as to prevent individuals from receiving excessively low wages by institutional means. This is a direction we must now head for in order to maintain social stability. However, the Government's existing measures to alleviate poverty are still targeted at poverty caused by specific incidents. It tackles the problem by adopting relief measures, such as increasing welfare benefits, enhancing training and assisting employment. The legislation on minimum wage will address the deficiencies in wage protection and improve the social structure to alleviate poverty. The DAB was once concerned whether a minimum wage system would turn into a "maximum wage" system for grassroots workers. However, we later realized that if we merely relied on the supply and demand in the labour market to determine the wage level, the level would constantly remain low as there was an amply supply of grassroots workers, in particular, aged workers, new arrivals and those with low competitiveness. Therefore, the DAB had, since 2004, taken the lead to support enacting legislation for those workers who had the least bargaining power and who were engaged in industries and jobs with the lowest pay. Moreover, the DAB submitted a concrete proposal on minimum wage to the Government in February 2005. We thus welcome the Government's introduction of a comprehensive legislation.

Regarding the Bill, the DAB considers that we should scrutinize it from three perspectives. First of all, can the policies and enforcement mechanism stipulated under the Bill perform the function of protecting the wage of grassroots workers? Secondly, is the specific operation feasible and smooth? Thirdly, are specific groups being reasonably treated?

Firstly, can the Bill perform the function of protecting the wage of grassroots workers? As far as the policies and enforcement mechanism are concerned, the Bill will set a standard SMW rate which is applicable to all industries. The MWC, a statutory body, will be responsible for recommending the SMW rate, which will be determined by the Government and finally endorsed by the Legislative Council.

In our view, the SMW regime should be implemented on a mandatory basis. From our past experience, relying merely on employers' voluntary participation and self-regulation failed to solve the problem of excessively low wages. At the end of April 2004, the Government issued guidelines to set a minimum wage for outsourced cleansing and guarding services. Such requirement was then extended to other public organizations. To tie in with this requirement, the Labour Department issued a standard employment contract for government service contractors in April 2005, and enforced mandatory compliance. However, quite a number of contractors simply ignored it. They concealed the true state of affairs from the Government and oppressed workers, resorting to every possible means to deduct wages from cleaning workers and security guards. Although the Government launched a Wage Protection Movement for cleansing and guarding services sectors in 2006 as a trial scheme, the result was far from satisfactory as only some 1 100 employers had participated during the two years of implementation. Through this trial scheme, we all understand that vulnerable workers can hardly be protected by relying on employers' voluntary participation. Therefore, society has forged a strong consensus that legislation should be introduced to enforce mandatory implementation.

As regards whether the introduction of a minimum wage will lead to the winding-up of some small enterprises in low-paid industries, according to the experience of the United Kingdom over the past 11 years, there is no evidence to show that these enterprises will wind up more easily even although the profit margin will be consequently lowered. Since the implementation of a minimum wage system in 1999, the winding-up rate of enterprises employing more low-paid workers is basically comparable to that of other enterprises in the United Kingdom.

The most essential element of the entire regime lies on the determination of the SMW rate. As proposed by the Government, the MWC should be responsible for recommending the SMW rate, which will be determined by the

Government and finally endorsed by the Legislative Council. The DAB considers such mechanism appropriate. The composition of the MWC includes members from the labour sector, business sector and academic field, as well as public officers. Such composition is in line with the established mode of consultation between employers and employees in Hong Kong. We hope that by vesting public officers with voting right during the discussion in the MWC, it can help conciliate conflicts among different sectors within the MWC when necessary.

Given that the MWC should strictly adhere to the basis of an evidence-based approach, and the Government has also stipulated in the Bill that the MWC, in performing its functions, should strike an appropriate balance between the objectives of forestalling excessively low wages, minimizing the loss of low-paid jobs and sustaining Hong Kong's economic growth and competitiveness, the SMW rate proposed should be highly objective. If the Legislative Council is also empowered to amend the SMW rate, this will inevitably repeat the MWC's work in the Legislative Council. What is more worrying is that the evidence-based approach can no longer be adhered to. As there are divergent views among various parties and groupings towards the SMW rate, the rate may not be determined in an effective and timely manner, causing adverse impact on the grassroots.

At what rate should the SMW be set finally? This issue has lately been repeatedly discussed in society. The SMW rate, ranging from \$24 to \$33, is advocated by different people. However, this question cannot be addressed by the Bill today. We should leave it to the MWC for making a recommendation in accordance with the criteria after thorough consultation with various sectors in society. Apart from the requirements raised by the Government in the legislation, the DAB considers that the SMW rate should somehow be in line with CSSA payment rates and the median income in Hong Kong. The establishment of the SMW regime should be able to attract CSSA recipients to rejoin the workforce, so as to cope with the actual social environment in Hong Kong. According to the report submitted by the Secretary of Labour to the United States Congress in 1998, if the SMW rate is set at 50% of the average wage, the impact on employment would be very minimal. We hope that the MWC, in making a recommendation, can give due regard to the CSSA payment rates and the median income. In fact, the DAB had raised this point in its research report as early as 2005. However, as we understand that the regime is not determined by one single factor, there is no need to stipulate it in the Bill separately.

Secondly, is the specific operation feasible and smooth? It depends on the operational details of the SMW regime. As Hong Kong has a prosperous economy with numerous trades and businesses, various industries have their own distinctive wage system. Moreover, the existing Employment Ordinance is on a monthly-rated basis, whilst the computation of SMW is on an hourly-rated basis. Some industries, such as catering, tourism, cleansing services and logistics industries, are greatly concerned about how hours worked should be computed under different scenarios; whether on-call or standby time should be counted as hours worked; as well as how commission should be calculated. For retail and financial intermediary industries with commission being a major source of income, as the basic salary of employees may not reach the level of SMW and the amount of commission payment may fluctuate, we expect that these industries will make substantial changes to their employment contracts upon the implementation of the new legislation, so as to comply with the SMW requirement through advance payment of commission. The catering industry is used to pay wages to its staff in two batches of different amounts in a month. We believe that various trades and industries have to make adjustment accordingly, so as to comply with the legislation.

The SMW regime is a completely new concept for Hong Kong. We have no such experience in the past. Therefore, mutual understanding between employers and employees is crucial. In order to prevent and reduce labour disputes upon the implementation of the legislation, the Government should expeditiously draw up clear guidelines for various trades and industries. Moreover, different tripartite committees should commence their work as soon as possible and conduct thorough discussion and consultation, so as to stipulate clearly the implementation details for employers and employees.

The DAB has all along considered that the implementation of the new regime should reduce the administrative burden on trades as far as possible. For example, the Bill originally requires companies to keep record of the total number of hours worked by employees. However, Members from the DAB advocate that a threshold should be set, so that employers will not be required to keep record of the number of hours worked by those employees with a higher income. Therefore, we welcome the Government to move CSAs to the effect that employers will not be required to keep record of the total number of hours worked for employees who earn more than a specified income.

Thirdly, are specific groups being reasonably treated? Under the current Bill, live-in domestic workers and student interns are exempted and special arrangements have been made for PWDs to avoid causing adverse impact on their employment opportunities. The DAB considers such measures reasonable.

The Government will move CSAs at the Committee stage to extend the scope of exemption to student interns who are Hong Kong residents pursuing full-time non-local education programme at undergraduate level or above, and to include a new exemption for "work experience students" on the condition that the employment is for 59 calendar days or less. We consider that the Government has responded to public opinions and has made pragmatic arrangements to meet the internship needs of young students. Therefore, we will support the CSAs.

Regarding the arrangement that PWDs' wages will be subject to the assessment results on their productivity and the CSAs to be moved in respect of the transitional arrangement for PWDs already in employment, we respect the views put forth by most of the rehabilitation organizations. However, the Government should ensure that the right to invoke the assessment mechanism is vested in PWDs rather than employers, so as to safeguard their rights and interests.

President, the DAB supports the resumption of the Second Reading debate on the Bill. During the past 10 odd years, there have been controversies over the legislation on minimum wage. The labour sector hopes that remuneration of grassroots workers can thus be improved, whilst quite a number of employers have expressed their worries. We consider it understandable for them to have such reactions. However, we do hope that various sectors in the community can show their mutual concern and understanding, so as to achieve the goal that legislating for a minimum wage can genuinely protect the labour, thereby contributing to the well-being of society and the public.

I so submit. Thank you, President.

**MR WONG KWOK-HING** (in Cantonese): President, today, I speak in this debate on the enactment of legislation on minimum wage with two feelings. On the one hand, I am happy; on the other hand, I am worried. Why am I happy?

The legislation on minimum wage that we in the labour sector as well as "wage earners" of Hong Kong have fought for over the past decade or so is finally tabled for Second and Third readings today, meaning that the legislation will be formally enacted. What am I worried about? I am worried that the various amendments proposed by Members, especially those containing reasonable and justified demands for the benefit of low-income workers of Hong Kong, will be voted down. I would like to share my feelings not only with Uncle YIM who worked as a cleaner at a public toilet nine years ago, but also with all "wage earners" earning a low income in Hong Kong as well as all trade unionists.

President, I feel happy because in fighting for the enactment of legislation on minimum wage, we have indeed gone through a very difficult and tortuous process. This has long been an issue of concern to the Federation of Trade Unions (FTU) and over the past decade or so, we have conducted a lot of studies. In 2001, we specifically conducted a study on minimum wage; in 2004, a second study was conducted; in 2008, we published a research report on the legislative proposals. In the interim, we even visited countries and regions with legislation on minimum wage, such as the United Kingdom. Our purpose was to learn from their experiences and conduct on-site surveys and then actively put forward proposals to the Government.

In the Legislative Council, we are lucky to be able to propose a motion for debate thrice since the last term. In 2004, CHAN Yuen-han proposed a motion to this effect at the beginning of the session; in 2005, the lot fell on CHAN Yuen-han for a second time and she again proposed a motion on the enactment of legislation on minimum wage; in 2006, the lot fell on me, but while the lot had fallen on us Members of the FTU thrice for proposing a motion for debate, the motion was voted down on all the three occasions. At meetings of the Legislative Council, CHAN Yuen-han, KWONG Chi-kin and I had asked questions on this subject, and the Panel on Manpower had even passed a motion proposed by me but regrettably, the motion passed by the Panel on Manpower has no binding effect.

I gave an account of what we had gone through in order to tell Members that fighting for this cause had been immensely difficult. The Government had paid no attention to us. In 2007, Mr Donald TSANG ran for re-election and approached the three Members of us in the FTU, namely, CHAN Yuen-han,

KWONG Chi-kin and myself, asking for our nominations. When he met with us, we said that we could nominate him on the condition that he must promise to really legislate on minimum wage after he assumed office. We said that if he would make this undertaking, we would put down our signatures for him. The three of us put forward this demand to the Chief Executive, Mr Donald TSANG, face to face as a condition in exchange for our nominations. He finally agreed and we therefore signed to nominate him.

We are very grateful to the Chief Executive for honouring his promise. However, he must have been somewhat pressurized, as he had first introduced the Wage Protection Movement, thus causing a delay of two years. That was introduced in 2006. Studies were made to ascertain the feasibility of implementing the Wage Protection Movement first in the cleansing and guarding services sectors. As a first step, bosses were asked to exercise self-discipline and legislation would be introduced if the Wage Protection Movement failed to yield satisfactory results. As a result, the mid-term review had turned out to be the final review. We actually all knew even before the review that it was not going to work. Finally, he had to face this iron-clad fact and had no alternative but to embark on the legislative exercise.

We welcome and commend the efforts made by the Chief Executive, Mr Donald TSANG, in honouring his promise. But it is a pity that several years had been wasted and our "wage earners" had been plunged into dire plights for several years. This, we think, is rather regrettable. President, we are glad that we can now tell Uncle YIM and many low-income workers that after a decade of efforts, we finally see the Government being willing to kick start the legislative process on the Minimum Wage Bill.

Can the enactment of legislation on minimum wage play an effective role in addressing the problem of working poverty? We have always held that in order to resolve working poverty, we cannot rely on just one single measure. That said, a minimum wage is an important institutional means to protect low-income grassroots workers who have the least bargaining power and who are the least competitive. This is a means and a policy that should be adopted in an advanced capitalistic society. In fact, many foreign capitalistic societies also have in place a minimum wage. Even many cities in Mainland China have in place a minimum wage, just that we do not have it in Hong Kong.

The enactment of legislation on minimum wage is vitally important to grassroots workers, but I am worried that today, the Government's Bill ..... During the discussion and deliberations of the Bills Committee, the labour sector had put forward many reasonable and sensible aspirations. Some of them were accepted by the Government, and the Government also agreed to make slight amendments to some other proposals after consideration. However, for many arrangements which we considered unreasonable, the Government was unwilling to take on board our views. For example, we proposed that a review should be conducted annually, representatives of employees be elected by all trade unions in Hong Kong using the method of "one person, one vote", and government representatives should have no voting rights in the Minimum Wage Commission to be appointed by the Government. The Government has not accepted our views in these respects. In this connection, Members of the FTU including myself and my colleagues are forced to propose amendments. However, I am now very worried whether these amendments can be passed.

President, I very much hope to make a last-ditch effort today and tomorrow to seek support from colleagues who are now in this Chamber as well as those who are not. I call on them to listen to the voices of "wage earners" and consider our very humble demands. President, since the reunification, working poverty has been a distinctive social problem. The wealth gap has been widening, with a growing impoverished population and an increasing number of poor households. The situation has become very serious. I have with me some figures from the Census and Statistics Department to illustrate the situation. For example, insofar as household income is concerned, there were 142 300 households with monthly earnings below \$4,000 in 1998, and the number rose to 167 400 in 2008. In 1998, there were 84 500 households with monthly earnings from \$4,000 to below \$6,000, or \$5,999, and the number rose to 127 500 in 2008. This is about household income. As regards the income of individual workers, the situation is also very bad. In 1998, 67 000 workers earned a monthly income below \$3,000 but in 2008, which is a decade later, the number increased to 128 400. There is one more figure and that is, there were 169 600 workers with monthly earnings below \$4,000, or from \$3,000 to \$3,999, in 1998, and the number rose to 266 000 in 2008. President, there were 84 900 workers with monthly earnings from \$4,000 to \$4,999, and the number was 95 600 in 2008.

President, today, when I came to the Legislative Council for this meeting, many trade unionists and grassroots workers carrying baskets of buns petitioned

us outside this building, asking us to enact legislation on minimum wage. Let them have a bun to eat. Mr LEUNG said that a bun is expensive but all they want is to have a mouthful of rice or a bun to feed themselves and yet, it is so difficult for them to do so. How come in our society, the most hardworking people who want to be self-reliant and earn their own living without having to rely on CSSA payments have to live from hand to mouth?

President, today, the case of Uncle YIM is reported in many newspapers, some even as the front-page story. Uncle YIM worked as a cleaner in a public toilet in Mong Kok nine years ago. He worked 14 hours a day at \$7 per hour, with no rest day for 364 days a year. He has not received CSSA payments and he is a man of integrity. Does our social system intend to punish hardworking people and reward the lazy ones? Why is it that in our society, these hardworking people who wish to be self-reliant cannot support their own living and even the living of just one or two more persons by taking up work? This is a disgrace of Hong Kong society, President. If our society has degenerated to such a state, what is there to speak of about harmony, stability and prosperity? Should our social systems and legislation be considered from a people-based perspective?

I am lucky to be the first Member to speak. I wish to take this opportunity to earnestly, sincerely and modestly make an appeal to Members who have not yet decided to support our amendment of conducting a review annually. I call on them to take into consideration our demand. The Government's budget is formulated annually. Listed companies hold the general meeting of shareholders annually. Double pay is also given annually. Why are we considered to be asking for too much in proposing an annual review for these workers earning a few thousand dollars a month? How can this be too harsh a demand to make? How can this add to the cost borne by enterprises? To those Members who are still considering and have not yet decided whether or not to support the amendments, I hope you will consider to our demand. While you may not support the many other demands proposed in the amendments, I earnestly hope that you can support this humble aspiration of ours for conducting a review annually. Being the first to deliver a speech, I hope to gain more time for me to make this appeal to Members who have not yet decided on how they will vote. Please be lenient and give us your support. Thank you, President.

**MR RONNY TONG** (in Cantonese): President, today, just like Mr WONG Kwok-hing, I also have mixed feelings.

President, today is an important milestone to the Civic Party and me. In 2004, when I was elected a Member, I pledged to myself that I would strive towards three goals. Of course, the first is to campaign for universal suffrage, the second is to campaign for a minimum wage and the third is to campaign for a fair competition law. Today, although the first goal is still nowhere to be seen, it seems the second and the third goals are within sight.

To the Civic Party, today is also an important day because back then, when we were planning to set up the party, I insisted that the issue of minimum wage be included in our party platform. During the early days after our political party was formed — I have no reservation about divulging this — the great majority of party members opposed the introduction of a minimum wage. I remember that when I raised this subject in the first meeting, it was voted down by party members. However, after a year, I finally convinced other party members, and in the six years that followed, we have joined hands with Honourable colleagues in the Legislative Council and friends in the labour sector to persuade the Government to legislate for a minimum wage.

However, President, if this piece of legislation is passed today, does it mean that our campaign in this area has come to a satisfactory conclusion? Unfortunately, I think the answer is in the negative. President, why do I say so? Actually, the reason is that as revealed from many precedents, when the Government draws up legislation relating to human rights and social justice, it always, to put it kindly, acts cautiously; but to put it unkindly, it is overtly amenable but covertly putting up resistance. Consequently, the legislation often fails to meet the standard demanded by us.

President, I can think of many such examples, including the legislation on privacy, the Disability Discrimination Ordinance, the Race Discrimination Ordinance, the Sex Discrimination Ordinance, and so on, and the examples are too many to be exhausted. In fact, each piece of legislation could have been stipulated to meet international requirements and standards as well as the aspirations of Hong Kong people. However, when these pieces of legislation were drawn up, something was always left to be desired. However, it does not mean that we will not continue to support this piece of legislation. Rather, we

hope that in the days to come, we can work in concerted efforts with other Honourable colleagues, friends in the labour sector or future Legislative Council members, to strive for a more satisfactory and flawless piece of legislation, which can meet international standards and the aspirations of Hong Kong people.

President, as I said just now, there is no doubt that the Civic Party and I both support this legislation. However, there are indeed many loopholes in it and although it cannot be said that it is fraught with problems, there are many serious mistakes and omissions that we find unacceptable. This is just like the Race Discrimination Ordinance that was deliberated and passed by us earlier. At one stage, in fact, we had to consider if we had better reject it altogether. However, many civil groups and friends of the labour sector said to us that it was better for the door to be pushed slightly ajar than being closed altogether.

President, the recent constitutional reform package and the Competition Bill introduced today are all prime examples. President, why do I have so much reservation about this legislation? Because from the beginning to the end, the Government's basic attitude and position well illustrate its unwillingness to devolve power to the people to handle the issue of minimum wage; instead, it desperately wants to retain power to hold sway over the determination of the minimum wage level.

President, why do I say so? This is because from the formation of a Minimum Wage Commission (MWC), its power and the voting procedure, through whether or not the Government will accept the level of minimum wage proposed, to the submission of the proposal to the Legislative Council, the Government gives people the impression of being a black hand behind the scenes throughout the entire process.

President, later on, the Secretary will probably say that all over the world, all Governments would retain some room for manoeuvre with respect to the legislation on minimum wage. My response is: President, the great majority of Governments would retain some room for manoeuvre because they are elected by the people and they enjoy the highest level of popular representation. However, our present SAR Government does not have a public mandate. Not only does it have no public mandate, its credibility is also very low and all along, people have the impression that the Government favours the business sector. In these circumstances, the Government still insists that it wants to keep some cards up its

sleeve and plans to hold sway over the determination of the minimum wage level. This would arouse a great deal of suspicion, distrust and even opposition among many people.

President, what I am talking about is of course the absolute power of the Chief Executive to appoint whoever to the MWC. We hope that the MWC can truly represent Hong Kong people, wage earners and of course, employers as well. We do not wish to see this important committee being formed by the Chief Executive based on favouritism. This is the first point that is unacceptable to us. Moreover, President, the Government also wants to reserve some power in the process of discussing and voting on the minimum wage level by the MWC. Not only will government officials be appointed into the MWC, they also have the power to vote on and decide the level of minimum wage. Why? Should the Government not assume the role of a referee? Why does it want to join the fray?

At the third stage, even if the MWC has determined a minimum wage level, the Government still claims that this is only an advice for the Chief Executive who is not obliged to accept the proposed level. At the same time, the Legislative Council has no right to amend the legislation and cannot revise the proposed minimum wage level. President, this gives us the impression that "only officials are allowed to set fires but the public are not allowed to light candles.". The power of the Legislative Council to amend subsidiary legislation is conferred by the constitution. Under the present political structure, the Legislative Council is the highest body representing public opinion and its public mandate is far greater than that of the Government. How come the Chief Executive can reserve the power to ignore the minimum wage level determined by the MWC; yet the Legislative Council is not allowed to play any part in amending the level?

President, I have discussed this issue with the Secretary many times and we have also exchanged views a number of times. Here, I wish to make a public statement, if the Secretary can, on behalf of the Chief Executive, say in this Chamber that the Chief Executive would absolutely respect the minimum wage level set by the MWC and would not make any amendment, the Civic Party is willing to oppose Ms Cyd HO's amendment and give up our right to make amendments. In other words, we will vest all power in the MWC, so that it can, through discussions in society and negotiations between the labour sector and

employers, set a minimum wage level that is acceptable to society. However, if the Chief Executive is unwilling to do so, and insists to have the power to reject the decision of the MWC as he sees fit, I am sorry, I think we would have sufficient reasons to support Ms Cyd HO's amendment.

President, apart from this problem, of course, we also have to consider the issue of whether a review should be conducted annually or biannually. In deliberating the amendments, the Secretary will surely explain at length why he believes that it is more appropriate to conduct a review once every two years. In theory, the Secretary has his justifications but we think that the base level is really too low and comes too late. Wage earners in dire conditions are still making some \$10 to \$20 per hour, so do we still want them to wait for two more years? Of course, if the MWC were to set an hourly wage rate of \$33 today, as demanded by friends in the labour sector, it would perhaps still be marginally acceptable to conduct a review every two years. Although I believe that my view is not excessively pessimistic, it seems unlikely that the rate would reach the level of \$33. Since we are now talking about the lowest level, why do we still make our friends in the labour sector who are in need of help wait for two more years?

I believe that at the early stage after the enactment of legislation, it is essential to conduct a review annually. When this system has matured to a level on a par with other countries, for example, with that of the United Kingdom and even the Mainland, a biannual review may be a reasonable level. However, the Government has not promised to conduct a review annually at the early stage. Since legislation has to be enacted, we can only insist at this stage that a review be conducted annually. If this system reaches maturity in the future and we believe that there is a need to make amendments, a proposal can be introduced into the Legislative Council for amendment. Therefore, I hope the Secretary will understand that our view is different from his because our perspectives are different.

President, of course, apart from the several points raised by me just now, there are also many other major problems concerning this legislation. One of the greatest problems is the issue of live-in domestic workers. President, this is a very thorny issue because an hourly rate is not applicable to this kind of work. In terms of human rights, rationale and principles, I also believe that this legislation should cover foreign domestic helpers. However, we also notice that

if their wages are calculated at an hourly rate, this would cause a great deal of conflict and hassle in society. We also notice that at present, it is not true that foreign domestic helpers do not have a minimum wage, they do have a minimum wage level. Since that is an administrative rather than legal requirement, the protection provided is of course not secure. If we arbitrarily add a provision to this legislation to provide that the wage for this group of workers is also calculated on an hourly basis — even though initially, their wage may be calculated on a daily basis, in the end, they will be calculated on an hourly basis after a level has been set. As such, the problems discussed by us just now will still exist. Therefore, President, we have reservation about the amendment on the inclusion of foreign domestic helpers in the legislation.

President, as regards other amendments, including the treatment of persons with disabilities, we are also extremely dissatisfied. One of our greatest dissatisfaction is the Government's insistence that an employer who does not accept the assessment result of a person with a disability can dismiss him without having to face the sanctions prescribed by the Disability Discrimination Ordinance. Why should the employer be exempted in this legislation under this circumstance? We believe that this is not in line with the principle or the principle of justice. However, in this regard, we have also listened to the views of the labour sector and organizations for persons with disabilities. They consider that it is better to have such a legislation to protect them than otherwise.

I said many years ago that this mode is based on that of Australia, so that persons with disabilities will not be subject to unacceptable discrimination or unfair treatment under a minimum wage system. Having regard to the overall picture, we can only say that we will accept this arrangement with reluctance but hope that in future, there will be opportunities for ongoing reviews.

President, when the amendments are deliberated, I will express more specific views on each of them.

**MR ANDREW CHENG** (in Cantonese): President, the Members who spoke just now all talked about their course of fighting for the introduction of this Bill. I believe that, on the issue of minimum wage, all Members as well as the officials present have their story to tell and have experienced different feelings in the past decade or so.

As a Member who has just left the Democratic Party, I can share some of my feelings with all of you on this issue. In each political group, including trade unions and political parties, and I believe even within the Government, there are surely leftist, centrist and rightist views on this highly controversial issue which relates to social policies. In countries that implement minimum wage, a review of their literature will enable us to find the different views expressed by leftists, centrists and rightists when the issue was discussed at the parliament. The reason is that not only are political parties divided into leftist, centrist and rightist camps, the Government, and even academics and economists are split into leftist, centrist and rightist camps. Some very conservative economists regard minimum wage as an anathema, while other economists who have closer ties to people believe that this is a system manifesting justice. For this reason, President, I think that in the legislature, the issue of minimum wage has to be considered very often from a political angle because in the final analysis, economists are just like two sides of a coin in that the views held by both sides have their merits. However, at a political level, is minimum wage beneficial or harmful to society?

Just now, Mr WONG Kwok-hing spoke sternly and forcefully — I often think that among the 60 Members, apart from Mr James TO and needless to say, "Long Hair", he is one of the Members who can speak without a microphone. Often, I think that one does not need to speak so loudly, all that matters is to spell out the arguments clearly. Sometimes, if one is too agitated, whether his emotions are real or pretense, it will affect his emotions and health. He talked about joining hands with Miss CHAN Yuen-han to "bargain" with the Chief Executive. They did not bargain about the minimum wage level but about whether or not the Chief Executive would introduce a minimum wage. If he would, they would sign their names in support of his nomination. President, I do not know what is in the Chief Executive Donald TSANG's mind, in any event, the issue of minimum wage has, for years, been a bargaining chip in political tussles. At that time, the Chief Executive introduced a Wage Protection Movement and that was really a shrewd move. He got his nomination without having to implement instantly a minimum wage, and the Movement could last for a year or two, or even for a longer period of time, as an act of exchange. We can see that the Hong Kong Federation of Trade Unions (FTU) and the Hong Kong Confederation of Trade Unions (CTU) have different stances on this issue. If I

remember correctly, the CTU is less confidence in the Movement than the FTU. Obviously, the Wage Protection Movement was a delaying tactic adopted by the Government.

Of course, the Government has now made a decision and we are certainly happy about this. I believe Secretary Matthew CHEUNG has put in a lot of efforts. When I was the spokesman on labour policy for the Democratic Party, Secretary Matthew CHEUNG gave me the impression of being a hardworking and sincere Secretary among the many Directors of Bureaux. I am also glad that he lobbied me a couple of days ago. Why am I glad? Because I did not join the Bills Committee on Minimum Wage Bill as Mr WONG Sing-chi was the representative of the Party at that time. As I was not the spokesman, I did not join the Bills Committee. Hence, regarding the voting intention on this Bill and even the amendments to the Bill, I am a little outdated. Of course, when the Secretary approached me, he had briefed me ..... he even gave me a well illustrated chart showing clearly all the amendments to be proposed by Members and the Government. However, Secretary, I will of course also consider the voting intentions in the pan-democratic camp.

President, frankly speaking, in the face of so many amendments, it is by no means easy to make a decision but I will raise several major points today. I hope the labour sector and the business sector will understand, both the political parties and individual Members will regard the irreconcilability between trade unions and business associations over this issue undesirable for society. However, since legislation will soon be enacted, I hope that business associations or businessmen will at least understand that, after all, there are indeed some unscrupulous employers in the business field. I will not venture to say how many employers are unscrupulous, because Mr Tommy CHEUNG would definitely say that such employers only account for a small minority. There are not many such employers in the catering industry, as evident by the fact that after Mr Tommy CHEUNG proposed an hourly wage rate of \$20, many bosses of small and medium enterprises (SMEs) in the catering sector came out to criticize him, saying that nowadays, it was practically impossible to hire a dish-washing worker at an hourly rate of a mere \$20. Therefore, in our view, if employers are unscrupulous, the consortia would not make any concessions until they have reaped enormous profits. Moreover, these companies always seek to attain

better performance than that of the previous year, and that is the fundamental cause of wealth disparity in society nowadays.

When society is getting out of control and a large group of people are living in extreme poverty, the Government has to take measures. This is inevitable and this is also the only way to protect the dignity of grass-roots workers at work. For this reason, even though some members of the business sector or academics consider that the introduction of a minimum wage — this was one of the issues that has aroused heated discussion within the Democratic Party at that time — would surely result in serious unemployment, and there are indeed many supporting figures to which I also agree; even though the introduction of a minimum wage would result in short-term pains, it would, in the long term, make society more just and reasonable, hence we have to accept these short-term pains. After the implementation of a minimum wage, so long as there are other social welfare measures that can provide continuous protection to grassroots people who may become unemployed and may have to apply for CSSA, while people with the stamina can rejoin the labour market, society will be invigorated. We believe these are the basic factors underlying the discussion on minimum wage.

Therefore, I hope that Members will look at this matter in the light of the current economic environment of Hong Kong and the fact that the problem of wealth disparity has gone out of control. I believe the Minimum Wage Bill will be passed with a high number of supporting votes during the resumption of debate on its Second Reading, the problem only relates to the handling of the amendments.

President, first of all, I would like to talk about the Minimum Wage Commission (MWC). The MWC has indeed aroused the concern of many people. Yesterday, the Chief Executive made us feel strongly that he still "treated people differently according to affinity". It seems that the Chief Executive is equated with this attitude, causing great concern to the public. If a political leader does not select people based on their merits, but based on his personal preference or even some pre-determined goals, then people who may be regarded by the public as unscrupulous employers can be appointed into the MWC; and if people whose beliefs are even meaner than those of "twenty-dollar

CHEUNG" are to serve as members of the MWC, will the legislation on minimum wage be "in jeopardy"?

Concerning the amendment proposed by Ms Cyd HO, President, although the Secretary spent the longest time lobbying me on this issue, I am still greatly worried that the MWC will not be able to strike a balance as claimed by the Government, since I have an increasingly strong impression that the Chief Executive, Donald TSANG, treats people differently according to affinity. After all, if a balance is to be achieved, the Government has to accept people with different views. However, our Government is led by Donald TSANG, the Chief Executive who was returned by a 800-member committee, the membership of which will be increased to some 1 000 in future. All members of that committee are returned by small-circle elections, and the majority of them come from the business sector. You can imagine what kind of people will be appointed by this Chief Executive into the MWC? Even if they are academics, they may, as I say, belong to the school of free economy and do not think highly of minimum wage. Since they are appointed as members of the MWC, in order not to push up the unemployment rate, as they think it would be, they would therefore set the minimum wage level between \$20 and \$25. In that case, it would be terrible.

President, just try to calculate the living expenses of Hong Kong people in terms of clothing, food, accommodation and transport, and see how much one has to spend each month to live with dignity. The median income for each person is about \$10,000 and half of this sum is \$5,000. In overseas countries, \$5,000 is usually adopted as the baseline in setting the poverty line and a minimum wage. When I was in the Democratic Party, I strongly demanded setting the minimum wage at 60% of the median income, that is, at about \$6,000. Just think, with an income of \$6,000 each month, how much money will be left after deducting the expenses on clothing, food, accommodation and transport in Hong Kong? In addition, it is also necessary to prepare for retirement and health problems in old age, so \$6,000 is by no means excessive. As regards standard working hours, how possibly can the working hours of elementary jobs be 44 or 48 hours per week? Rather, it stands at 50 to 60 hours. Therefore, if the standard working hours is 44 to 48 hours, an hourly rate of \$30 to \$33 is a minimum wage that would ensure the dignity of workers at work. Just now, I purposely borrowed this football jersey from Mr LEE Cheuk-yan to put it here. By coincidence, this

football jersey has the number "33" printed on it but we all know that very often, the best football player will wear the football jersey with the number 10 on it; hence, it is fortunate that this figure is not 10. Under the standard working hours, if some conservative academics and business people set the minimum wage at \$10, will it not be lamentable? However, I believe this would not happen and I am only using this football jersey as an analogy. "33" is also the amount of minimum wage that I support.

In addition, President, there is also the issue of whether a review should be conducted annually or biannually. The Government shows great concern about this matter. I do not understand why it has so much concern. After the enactment of legislation, I believe more frequent reviews are called for at the early stage, and in fact, an annual review is beneficial to all business people, bosses and employees. At least, everyone knows how to plan for the next year. Of course, the Secretary said that a review would be conducted at least once every two years but more reviews can be conducted. In that case, since the Secretary also finds it necessary to conduct more reviews, why does he not support the proposal of conducting a review once a year, as proposed by trade unions? At any rate, many civil service staff unions or business associations also conduct pay reviews each year, so in the same vein, the minimum wage should also be reviewed every year.

President, the time is now up and I will comment on the various amendments at the Committee stage. With these remarks, I support the resumption of Second Reading of the Bill.

**MR WONG SING-CHI** (in Cantonese): President, having heard Mr Andrew CHENG's speech just now, I thought of the discussions of the Democratic Party on its position on minimum wage many years ago. At that time, I was also one of those opposing minimum wage and my consideration was that, as Mr Andrew CHENG has put it, quite a number of people who are less competitive may not be able to find suitable jobs after the introduction of a minimum wage.

However, we can see that for many years, although the economy has been on the upswing, the incomes of the general public have been on the decline in a

totally inversely proportional way. As a result, wealth disparity in Hong Kong is very serious and has become a joke to the world. For this reason, having thought long and hard, we think that if the legislation on minimum wage is not enacted, it will be practically impossible to protect the rights that the general workers are entitled to. However, will the introduction of a minimum wage help people with little competitiveness find jobs and give them protection, we think that this may not necessarily be the case. Nevertheless, the Minimum Wage Bill actually includes protection for the employment of persons with disabilities and later on, I will give a detailed account of the views of the Democratic Party.

Regarding this Bill, we have actually discussed the level of the minimum wage but the views were extremely divergent. The need for a formula was also discussed but in the end, we believed that adopting a formula would be too rigid. For this reason, after looking at the basket of indicators, other relevant factors and the ideas on assessment drawn up by the Provisional Minimum Wage Commission (PMWC) on 20 March 2010, the Democratic Party believes that there are two proposals that can be discussed together.

First, objectively speaking, we do not oppose in principle the four major factors to be considered in the basket of indicators drawn up by the PMWC. The factors include overall economic conditions, the condition of the labour market, competitiveness and the standard of living. We think that all these factors must be taken into account but they are a bit too general and some of them are not specific enough. We can see that if the minimum wage level is set at half of the median hourly rate of all employees in Hong Kong, such an amount is very basic. Regarding the median wage, according to the 2009 Report on Annual Earnings and Hours Survey, half of the median hourly rate of all employees in Hong Kong is \$29.25 and if this amount is rounded up, we believe that the wage should be at least \$30. Of course, if the PMWC believes that it is necessary to raise it to \$33 or \$35, so long as there are strong justifications, I believe there is no reason that the Democratic Party would oppose.

The Democratic Party thinks that the four factors in the basket of indicators should also include this concept raised by us, that is, the amount should not be less than half of the median hourly rate of all employees in Hong Kong. In fact, this is not a significant amount and it is only slightly better than CSSA payments.

It should be noted that it does not mean we consider this to be the upper limit; rather, it is only a lower limit. We believe that this measure can protect the majority of workers in Hong Kong — since some workers are persons with disabilities who cannot benefit from a minimum wage — and ensure that they can have a reasonable living standard.

The Democratic Party observes that the PMWC has, apart from drawing up a basket of major factors, also included other relevant factors. I think these other relevant factors are even more general because concepts such as social harmony may give rise to political considerations in the process of determining a minimum wage, so we believe that it is a debatable concept. For this reason, we hope that when the PMWC determines the amount of minimum wage, it should set a minimum threshold, for example, it must be higher than the level of CSSA payments or half of the median income, as these are more objective indicators.

In addition, the Democratic Party is concerned about whether the gender perspective and the promotion of gender equality have been taken into account in the decision-making process of the PMWC. According to the 2009 Report on Annual Earnings and Hours Survey, which has significant referential and indicative value in determining the first statutory minimum wage in Hong Kong, the median hourly wage for female employees was evidently lower than that of male employees. The median hourly wages of male and female employees were \$64.3 and \$53.4 respectively. According to the Report, from the hourly wage level and distribution breakdown by sex and age group and the hourly wage level and distribution breakdown by sex and educational attainment, it can be seen that the hourly wages of female employees in most of the categories and groupings were lower than that of male employees of the same age and educational attainment. Therefore, female employees have long been subject to discrimination and cannot get wages equal to that of male employees.

We propose that when the Chief Executive appoints the Chairman and members of the Minimum Wage Commission (MWC), he should take into consideration a gender participation goal of at least 30%, that is, be it male or female members, their proportion should not be less than 30% and by this I do not mean that the proportion of women must stand at 30%. Of course, if women account for 80% and men for only 20% of all members, this is not balanced either. However, why is it so important for men or women to account for at

least 30%? This will enable us to put ourselves in others' shoes when we consider the wage from the perspective of both genders. We think that only by doing so can members of the public of both genders feel protected by the Minimum Wage Ordinance fairly.

In addition, the Democratic Party also opines that a member of the MWC who is not a public officer should not be appointed continuously for more than six years and should not serve on more than five other advisory and statutory bodies at any one time to ensure that the duties assumed by official members will not exceed the workload that they can handle. We can see that at present, there are three official members in the PMWC or the MWC and in fact, the amount of minimum wage set by the MWC will ultimately be decided by the executive authorities, that is, the Chief Executive will be the one to give the green light. If there are double representation and double decision-making power, this is not fair. For this reason, the civil servants in the MWC should not be allowed to vote where possible, and only in this way can a fairer degree of participation be ensured in the process of determining a minimum wage.

Concerning the proposal to include live-in domestic workers in the coverage of the Minimum Wage Bill, the Democratic Party agrees in principle that the greatest coverage of a statutory minimum wage should include all qualified workers, that is, all workers. However, at present, we can see that there are indeed some situations in which difficulties exist. Due to the unique job nature of live-in domestic workers, the relevant Bureau proposed that the actual number of working hours of domestic workers be calculated according to a certain proportion of the hourly rate under the statutory minimum wage, so as to determine the amount that employers have to pay. There are indeed some difficulties in doing so and we agree to this. If the Government includes live-in domestic workers (including foreign domestic helpers) in the scope proposed by the Bureau, we are concerned that families in the middle and lower classes that hire live-in domestic workers may have to dismiss or refrain from hiring such live-in domestic helpers in future as they cannot afford the additional expenses. Not only will such a situation render these families without anyone to provide help, a large number of live-in domestic workers will also become unemployed. We believe that such a situation may possibly arise but at present, we have not yet seen any figure indicating such a situation. If we rashly include live-in domestic

workers in the coverage of the Bill, we can hardly access how far Hong Kong is able to withstand this. In view of this, we must deal with this issue cautiously.

In fact, we believe that whether the Bill covers live-in domestic workers or not, this will still give rise to some social impact in Hong Kong. However, so far, it seems that neither the Government nor any group has conducted any study on the social impact. If such impact is observed after conducting studies, I think that so long as the impact is not great, amendments can be made by way of a motion. If the impact is great, we have to think carefully. In any event, at present, the situation of live-in domestic workers is actually very bad, so we think that there ought to be other channels to ensure that the rights of live-in domestic workers are protected. Their working hours, wages and even working environment should also be protected. Later on, we will discuss this issue in greater detail when the amendments in this regard are moved.

The Democratic Party believes that employees with physical disabilities should be treated equally as able-bodied employees and be protected by the Bill as well. However, frankly speaking, after the enactment of the Bill, the employment of persons with disabilities is not protected. We have discussed this issue many times and the Bill may actually reduce the employment opportunities for persons with disabilities or people who are less competitive. For this reason, we also believe that if assessments on the Bill can be made, so that persons with disabilities will not be included in the coverage of the legislation on minimum wage, this will actually enhance or safeguard their employment to some extent. However, frankly speaking, President, this is not a desirable approach to protect persons with disabilities. The most desirable approach is to set employment quotas for persons with disabilities in society in future. Therefore, I believe we should have detailed discussions in this regard in future and today, we are not going to look into this matter in detail. However, I think that it is only in this way the employment of persons with disabilities can be protected.

In this Bill, one issue that has aroused our greater concern is that the Government proposes amendments to the Disability Discrimination Ordinance to the effect that even if employers refuse to sign the certificate of productivity assessment and terminate their employment relationships with employees with disabilities, they will not have violated the Ordinance. The Democratic Party

opposes this proposal as a matter of principle. However, the Government said that this move can ensure employment opportunities for persons with disabilities but in reality, this is not the case. I have already said that this is not so; quite the contrary, this would enable employers to discriminate against persons with disabilities with even greater justification. For this reason, I believe that the provision not only fails to help persons with disabilities find employment, but also legitimizes the discrimination against them under the legislation. The Democratic Party finds this unacceptable.

In principle, the Democratic Party does not object to the provision that student interns are exempted from the coverage of the Bill. Of course, whether students are studying overseas or in Hong Kong, if the subject of study pursued by an intern is relevant to the internship, we believe it should absolutely be supported. Unfortunately, the present Bill provides that even if the job is not related to the university programme pursued by a student, so long as the employment is for 59 calendar days or less in a year, it is also excluded from the coverage of the Bill. We consider this provision unsatisfactory and unacceptable because some university students may, during their internship, be exploited and even deceived by unscrupulous employers through such a channel. Hence, we find this provision unacceptable.

President, later on, when various amendments are discussed, we will further elaborate on the views of the Democratic Party on the whole Bill in detail. For the present moment, these are the stances that we want to express. Thank you, President.

**MR LEE CHEUK-YAN** (in Cantonese): President, to the Confederation of Trade Unions (CTU) and myself, our patience is eventually paid off today, as legislation can finally be enacted on minimum wage. I think today marks the victory of workers and the victory of justice. From this day onwards we can be parted from the shameful wage level and embrace a tomorrow with more justice.

How I feel today can be compared to the Spanish national football team, but we have not yet entered the stage of the final tournament. This match today should be the semi-final when Germany is beaten. Beating Germany in this match stands for the successful attempt to make legislation, and if we succeed in fighting for \$33 as the minimum wage level, that would be like beating the

Netherlands and becoming the World Cup Champion. We have not yet won the World Cup, but we must win this World Cup of \$33 for workers. Only when we succeed in doing so can we accomplish the mission of the CTU. Only when we succeed in doing so can we truly do justice to the efforts contributed by tens of thousand workers for this battle of minimum wage over the years.

President, I have waited for 12 years, seeing my hair turn from black to grey and the Secretary turn from hairy to hairless, (*Laughter*) 12 years have passed. President, I remember that I proposed the enactment of legislation on minimum wage for the first time at a meeting here on 28 April 1999. That was the first time this Council discussed legislation on minimum wage. The motion that I proposed at that time suffered a crushing defeat, as there were only nine votes in support of my motion. Nine votes only. I am very glad that the proposed legislation on minimum wage will, I believe, finally be passed today. But President, what we have gone through is actually a long and winding road. The motion proposed for debate on that occasion was supported by a mere nine votes. Of course, this issue was given more support when it was further raised for discussion subsequently. While I had made this proposal thrice on behalf of the CTU and the Federation of Trade Unions had also raised it thrice, the motion still suffered a crushing defeat on all the six occasions due to opposition from functional constituencies. So, Members can see for how many times we have debated this issue in this Council. I have even eaten vegetable scraps in this Chamber to show the very deplorable conditions of workers.

I am very grateful to many workers for continuously putting up a fight. Yesterday, I, together with Uncle YIM, held a press conference. The purpose was to thank him for revealing the reality that he was paid at an hourly rate of \$7. When was he paid \$7 per hour? That was nine years ago. He worked for 14 hours daily in a public toilet in Mong Kok at an hourly rate of \$7. Worse still, he had to sleep in a worker's room next to the public toilet. At night, he had to curl his body and squeeze himself into the tiny room to get some sleep. He was paid at only \$7 an hour. Worse still, Uncle YIM had no rest day at all. His boss told him that if he took a day off, he would have to pay \$150 (which is \$50 more than Uncle YIM's wages) to hire a substitute worker. So, he worked on all 365 days of the year with no rest day. Uncle YIM's case reveals the dire plights of workers living on meagre wages, making the strongest accusation against society. Certainly, many workers have courageously come forth, and I do admire them for revealing the plights that they themselves do not wish to talk

about and making an accusation against society, in order to fight for the enactment of legislation on minimum wage. Finally, their fight and the accusations that they have made are all paid off today.

True enough, there is one major turning point in the process and that is, the Government has set a minimum wage level for outsourced work. In May 2004, the Government announced the setting of a minimum wage for its outsourced work. This door has eventually been opened because at least a minimum wage is set for work outsourced by the Government. As people gradually realized its advantage and the benefits so generated, the road of our fight then took shape steadily.

I remember clearly that for some time I had been very worried, not knowing for how many more years we must keep on fighting in order to achieve this objective. When did I have such a feeling? That was when the Government said that the Wage Protection Movement would be introduced. I had so little confidence at that time. It was because when the Government said that a Wage Protection Movement would be rolled out, I firmly believed that the Movement would certainly fail to yield satisfactory results and that it was destined to be a fiasco given that participation was voluntary. What is more, the Government said that the Wage Protection Movement would cover only two sectors, namely, the cleansing and guarding services sectors. I was very worried because after the Wage Protection Movement failed in these two sectors, wage protection would be provided only to the cleansing and guarding services sectors, meaning that there would not be wage protection for other sectors, such as catering and retail. I had no idea for how many years we must wait before there could be wage protection across the board.

However, I wonder when the Government had, all of a sudden, changed its stance and announced that the legislation on minimum wage will extend beyond these two sectors. I always consider the act of providing wage protection to only these two sectors stupid. It is good to see that eventually, the Government is not stupid, because workers in all sectors can now enjoy the protection of minimum wage.

Today, legislation will soon be enacted on minimum wage. The next goal that we have to fight for is, as everyone knows, to pitch the level of minimum wage at \$33. I must really say that justice is done after a long delay. Why can

legislation be made successfully? I think this is attributed to several factors, including changes in society and the economy as well as changes in social values.

Looking back, why did I not propose the setting of a minimum wage before 1997? It is because before 1997, our general perception was that one could support his family so long as he was willing to work hard. But things changed completely after 1997. The public were of the view that no matter how hard they worked, they would not make enough money to support their family. This change was attributed to two incidents that occurred in 1997 which had significant impact on workers. First, it was, of course, the financial turmoil. With the advent of the financial turmoil, all companies immediately laid off their staff and cut their wages. The more impoverished a worker was, the more badly he suffered. While the salary of high-income earners may still rebound following the economic recovery, this would never happen to the impoverished and low-income earners, as their supply is considered to be in excess of demand. Their bargaining power has thus been undermined and their wages have consistently been exploited. Second, the Government took the lead to outsource its work. Major enterprises thus followed suit and contracted out their work. Once work is outsourced, all workers immediately have to face serious problems in making ends meet, because when employers contract out their work, they also contract out their conscience in a way that they get those unscrupulous contractors to do what they themselves are ashamed to do. This is why workers are forced to accept these humiliating and cruel wage levels, as well as the wage logic of competing by undercutting each other. This is the second reason for the changes that occurred in society, thus driving us to propose the enactment of legislation on minimum wage.

Having said that, the dire straits of workers have brought certain advantage and that is, they have brought changes in social values. The sufferings of workers have challenged the collective conscience of the community of Hong Kong. Enacting legislation for this purpose represents the victory of social conscience over free market. That legislation will be enacted has restored my confidence in human beings. Hong Kong people have proven that they are not economic animals and that they are not selfish. Human beings are the wisest of all creatures on earth. They are sentimental; they have conscience. We have finally proven our worth. Legislation on minimum wage has already been enacted all over the world, and Hong Kong only acts now. That said, we have finally enacted the legislation. Hong Kong has changed from a society

embracing the values of free market to one embracing the values of social justice. This has led to the enactment of legislation today.

I would like to cite some verses from the Bible: "And I will come near to you to judgment; and I will be a swift witness against the sorcerers, and against the adulterers, and against false swearers, and against those that oppress the hireling in his wages, the widow, and the fatherless, and that turn aside the stranger from his right, and fear not me, saith the LORD of hosts." Several millenniums ago the Bible already said that the wages of workers must not be oppressed. Oppressing the wages of workers is tantamount to not fearing God. This is something as serious as such. Today, Hong Kong can finally translate this verse into action: Not to oppress the wages of workers. The principle of not allowing exploitation and oppression of workers can finally be upheld.

President, I wish to make a very important point and that is, what is the purpose of enacting legislation on minimum wage? The purpose stated by the Government is very stupid as it is said to prevent employers from paying their employees wages at too low a level. Saying this is tantamount to saying nothing at all, is it not? But what does it mean by paying wages at too low a level? The Government has never explained this. Let me stress that a minimum wage means a wage level sufficient for supporting one's family. This is why I must propose an amendment to state in express terms that the needs of employees and their families must be taken into account. The worst thing about the Government is that it is skewed ..... consortiums — I almost had a slip of tongue — I mean it is slanted towards consortiums and it is skewed towards them. The Chief Executive once said that the minimum wage cannot guarantee that workers definitely can provide for the living of their families, and I think this remark is outrageous. If workers cannot support the living of their families, why do they work? Tommy CHEUNG has made even more outrageous remarks. He said in the programme "News Magazine", "Is \$20 not enough to fill up your stomach?" A reporter asked him how possibly one can support his family with monthly earnings of \$5,000 or \$6,000. He said, "The husband can get a job, the wife can get a job, and the children can also work." Was he trying to say that children should work as child labourers? If the husband should get a job and the wife should get a job, who is going to take care of the children? Let me ask him: Who is going to take care of the children? So, the argument that it is enough so far as a worker's earnings can support his own living simply does not hold water.

I would like to cite a few lines from the founder of free market, Adam SMITH — even Adam SMITH is not as "cheap" as you people here — He said, "A man must always live by his work, and his wages must at least be sufficient to maintain him. They must even upon most occasions be somewhat more, otherwise it would be impossible for him to bring up a family, and the race of such workmen could not last beyond the first generation." He made it very clear that if workers cannot support the living of their families, not even their own generation can survive, which means that their next generation will all die. Is this what we wish to see? Even Adam SMITH who advocated free market had the attributes of human beings as he considered that workers should at least be able to provide for the living of their families in order to bring up the next generation. But from the tone of those bosses nowadays, they seem to be saying that workers do not have to bring up the next generation. Is it that only the bosses can bring up their next generation? Is that what they mean? That is certainly not the case. Providing for the living of one's family is a right. Everyone can see it very clearly now. Even the founder of free market is not as cruel as they are.

The business sector has put forward another argument which I consider to be alarmist. What they have said is all scaremongering. They said that once a minimum wage is set, jobs will be drained away. I would like to provide some information to Members. According to a report on the effects of minimum wage in Australia, the minimum wage in Australia increased by 12.2% from 2005 to 2008, but only 8 000 job vacancies were lost, accounting for 0.07%. If this is applied to the situation in Hong Kong, with a workforce of 3 million in Hong Kong, 0.07% is equivalent to 2 000 jobs. If the Government can provide 3 000 posts of activity assistants, that can already offset a loss of 2 000 jobs. This is actually very easy. Therefore, the business sector should not employ such scaremongering tactics, trying to make people think that a minimum wage is a ferocious monster. This is very unreasonable.

Moreover, even if the minimum wage is set at \$33, the overall cost of wages will increase by 1.6% only, which is even less than the contribution for the Mandatory Provident Fund. Think about this: A wage level of \$33 can benefit more than 400 000 workers. As we have said, if the living of 400 000-odd families can be improved as a result, they will increase their spending. This will create a multiplying effect to society and the economy, and the economy will become more robust. Is that not very good? In fact, instead of saying that a

minimum wage will increase the cost borne by employers, we may as well say that the cost of rental has crippled employers. Hong Kong is, in the final analysis, crippled by rent. The rent increase can be as much as 50% or even 100%. Frankly speaking, no matter how much the minimum wage will be increased, it is not going to catch up with the rent anyway.

Café De Coral has increased its prices because the rent has increased and so has the cost of food. But before the setting of a minimum wage, the situation could be different as it could exploit the workers and reduce their wages to offset the rent increase. They could oppress the low-income workers and make workers bear the brunt. As a result, workers still have to work even when their hair has turned grey. I hope that this will never happen again. I hope that they will not exploit their workers anymore. Rather, they should turn "upward" and ask the landlords to reduce the rent. If employers cannot stand it anymore, they should ask the landlords to reduce the rent, rather than exploiting workers and making it necessary for them to keep on working even when they are old. So, we must really overturn the prevailing logic in society and overturn the current *modus operandi*. Do not turn "downward" and exploit those at the bottom. Instead, turn "upward" and put forth the demand, so that the gap between the poor and the rich can be narrowed.

Lastly, President, I would like to say a few words about the two amendments. I will further explain the details in the Committee stage later. But I must point out that the arrangements for persons with disabilities are unreasonable. With regard to the arrangement that the minimum wage will be discounted after assessing the productivity of persons with disabilities, I agree with the position of the Forthright Caucus and that is, if the Government, in recognition of the employment difficulties of persons with disabilities, makes this arrangement of discounting their wages at a rate commensurate with their productivity, it can make up for the wage difference. I would be convinced if the Government is willing to do so. Only in this way can it be considered fair and just. It is true that employers will face difficulties in employing persons with disabilities and this is why their wages will have to be discounted at a certain percentage. But persons with disabilities also have the right to live and support their family. Their right in these respects should not be infringed upon.

Moreover, we consider that foreign domestic helpers should also be covered by the minimum wage on the basis of a daily wage, so as to uphold the principle of equality that the minimum wage is enjoyed by all. I am a representative of trade unions, and I cannot ask for the protection of Hong Kong workers only to the neglect of foreign workers. The Bible says that we must not deprive strangers of justice. We have to do justice for strangers too, especially as they have made significant contributions to the economy of Hong Kong.

President, I will elucidate the amendments to be proposed by the CTU in the Committee stage later. Lastly, I wish to add that the CTU definitely will not slacken our efforts following the passage of this legislation. We do appreciate that after the passage of this Bill, there are very important things to do. As I said earlier, we still have to fight a tough battle against the Netherlands — we definitely have to ensure that the minimum wage is set at a reasonable level. It is because even if this Bill is passed, but if the level of minimum wage is suppressed to the extent that nobody is going to benefit from it, the legislation would be meaningless. I do not know when we can have in Hong Kong a minimum wage of \$33, the right to collective bargaining, maximum working hours, and work which truly upholds workers' dignity. To put it in the words of HU Jintao, this is "decent work". We will continuously work hard to achieve "decent work" and "dignified work".

Thank you, President.

**MS LI FUNG-YING** (in Cantonese): President, after all the efforts made over numerous years and months, I believe employees in Hong Kong can finally enjoy the statutory protection of a minimum wage after today's debate. Despite the fact that Hong Kong is a developed economy with an annual per capita income of over \$200,000, legislation is only enacted today to provide employees with the protection of a minimum wage, and throughout the entire process from the discussion, drafting and scrutiny of the Bill to its enactment today, there have been various unimaginably queer arguments in society. In view of these, I have very mixed feelings. I do not know whether I should be happy seeing this long overdue legislation or I should feel sad for the miserable destiny of workers in Hong Kong. But anyway, the enactment of legislation on minimum wage for the protection of workers is a milestone in the labour movement in Hong Kong.

Here, I have to thank friends who have made efforts to achieve this goal, including veterans of the labour movement, who are the pioneers of labour movement in Hong Kong. They have made unyielding efforts and endured untold difficulties and hardships to strive for the interests of employees in Hong Kong. Here, I must particularly mention the former Chief Executive Mr TUNG Chee-hwa. If he did not take the first step by providing wage protection for outsourced government services, the legislation on minimum wage might be stalled for an uncertain period of time before its introduction. I also commend government officials for their efforts in the hope that the Minimum Wage Bill (the Bill) can be passed as soon as possible, even though I may not agree with some of their initiatives.

President, the purpose of enacting the legislation on minimum wage is simple and clear. It is meant to safeguard that employees can get a wage that can support their most basic needs of living. If this purpose is not served, the setting of a minimum wage will lose all its meaning. When the Bill was introduced into the legislative programme, the reason of opposition that I most often heard was that the setting of a minimum wage would increase the staff cost borne by employers, leading eventually to a reduction of jobs and hence depriving the less competitive grassroots employees of their employment opportunities. These arguments sounded familiar, President. In 1978, when the Hong Kong Government enacted legislation to make it mandatory for students to receive three-year free junior secondary education, the employers' representatives in the former Legislative Council raised opposition on the ground that this requirement would deprive young people of the opportunity to work in factories. History repeats itself some three decades later. The community can no longer tolerate the extremely harsh treatment imposed by employers on their employees, yet, a group of employers' representatives and academics on their side opposed the enactment of legislation on minimum wage for similar reasons. We consider that young people have the right to receive education and for this reason, we supported the mandatory junior secondary education. We consider that employment earnings should be sufficient for employees to meet the basic needs of living and for this reason, we support the enactment of legislation on minimum wage. We cannot agree to the argument that this would deprive people of the right to work, and we cannot tolerate the logic of the disadvantaged being trampled on wantonly by society. In fact, for all proposals aiming to improve workers' rights and interests, some employers' representatives will invariably

oppose on the ground that they would undermine the competitiveness of Hong Kong, jeopardize the business environment and push up the unemployment rate. This was the case for the mandatory requirement for students to receive junior secondary education some three decade ago that I have just mentioned. The same situation also applies to the more recent cases such as the improvement of compensation for sick leave for employees and the setting up of the Mandatory Provident Fund by the Government. Today, if we consider the reason given back then for opposing the mandatory requirement for students to receive three-year free junior secondary education is ridiculous, I strongly believe that history will show that the reasons for opposing the enactment of legislation on minimum wage are equally ridiculous.

The Bill now determines the level of minimum wage on two principles only, which are to strike a balance between the objectives of forestalling excessively low wages and minimizing the loss of jobs, as well as sustaining Hong Kong's competitiveness. Ensuring that the minimum wage can support the basic needs of living is not a standard for setting the minimum wage level. There are even comments in the community that during the initial stage of implementing the minimum wage, the wage level ought to be more conservative in order not to create too big an impact on the economy.

If we pass the Bill as originally drafted by the Government, it means conferring powers to the Minimum Wage Commission (MWC) to consider the minimum wage level based on economic factors rather than human factors. If we further look at the composition and operation of the MWC, the three employers' representatives and the three representatives from the labour sector will offset each other; the academics will give academic views, leaving behind the three government representatives with voting rights. Their position is, in fact, the decisive factor for determining the level of minimum wage. I do not think that such an arrangement is conducive to achieving the objective of setting a minimum wage to protect the low-income employees. President, no wonder friends who are concerned about the living of grassroots workers have, through various channels, called for a reasonable level of minimum wage even at this time when the Bill will soon be put to a vote. I, therefore, support the amendments made to the effect that the MWC must, in performing its functions, have regard to employees' living expenses in considering the minimum wage, and that the voting rights of public officers in the MWC should be restricted.

Minimum wage and standard working hours have always been the two sides of the same coin. At the end of last month, this Council passed a motion on standard working hours. I do not wish to repeat what I had said on that day, but I must reiterate one point today and that is, the Bill has entirely evaded the issue of standard working hours. Enacting legislation on minimum wage but not imposing regulation on standard working hours is, according to the Government's explanation, to ensure that the more the employees work, the more they earn. This specious reason has, in effect, abolished the distinction between normal working hours and overtime work and equated normal work wages with overtime work wages. Enacting legislation on minimum wage without the protection of standard working hours is incomplete and imperfect. In the absence of the protection of standard working hours, I support that the holiday or overtime premium made by employees should not be counted as part of the wages for a wage period. But President, I must stress that this amendment is just better than having nothing and cannot replace the statutory protection of standard working hours.

In the course of the scrutiny of the Bill, I was very concerned about the operation of the MWC, including the review cycle of the minimum wage and the transparency of the MWC. I welcome the Government's initiative to propose amendments in the Committee stage to expressly undertake to publish the copies of all the reports submitted by the MWC to the Chief Executive. But concerning the review cycle of the minimum wage, I think whether a review should be conducted at least biannually or annually is primarily not a difference in the fundamental principle. President, the pay of civil servants is adjusted annually according to the pay trend survey. I have never heard the Government say that the civil service pay trend survey should be changed from an annual survey to a biannual one in order to maintain flexibility. Why is it that the civil service pay trend survey is conducted annually but the review of the minimum wage has to be conducted biannually? This is double standard for unfounded reasons, and discrimination against the rights and interests of non-civil service grassroots workers. The Government had all along told the Bills Committee that it would propose an amendment to the review cycle of the minimum wage under clause 11 of the original Bill, but it announced that the amendment would be proposed under clause 13 of the original Bill instead just before the Bill was introduced to the Legislative Council for completion of the three readings. I do not know whether the Government's purpose in changing the clause to be amended at the

eleventh hour is to allow greater room for its amendment to be passed. I, however, consider the Government's disrespect for the Bills Committee regrettable. Here, I urge other colleagues in this Council to support the amendment proposing that the review of the minimum wage should be conducted at least annually.

President, another issue of the Bill which has aroused much controversy is whether live-in domestic workers should be exempted from the Bill. A slogan in the labour movement is: "Workers without borders". As we are all under the same sky, I do not see the need for grading workers in the protection of workers' rights and interests and subjecting workers to different treatments. But on the other hand, by live-in domestic workers, we are mainly referring to foreign domestic helpers whose conditions of employment are indeed different from those of local employees. For example, the employer has to provide accommodation to them and to pay for their transportation cost for travelling between their place of origin and Hong Kong, and there is already a set of standards in place for calculating the minimum wage of live-in domestic workers. To enable the Bill to be passed as soon as possible, I am willing to first put aside the controversy on live-in domestic workers. But this does not mean that the problem has been solved. I think the Government must comprehensively review the policy on foreign domestic helpers. I already made this proposal amidst the controversy on the Government's imposition of a levy on foreign domestic helpers. If the Government does not conduct a comprehensive review, that will be unfair not only to foreign domestic helpers, but also to local workers.

President, I also have to particularly make my position clear on several amendments. I do not agree to the Government's amendments to expand the scope of exemption to cover student interns from non-local universities and include the work experience of all full-time university students in the scope of exemption from the regulation of the Minimum Wage Ordinance. The amendments have created a lot of grey areas and as the Government also admitted in the Bills Committee, law enforcement would be difficult in the event of abuse of the provisions. Moreover, with regard to the deletion of clause 15(4) from the Bill to empower the Legislative Council to amend the level of minimum wage, even though this may give this Council greater decision-making powers on the minimum wage, it is not difficult to envisage controversy to arise more extensively and more frequently year after year in the entire community on the

setting of the level of minimum wage, and this is also against the purpose of setting up the Minimum Wage Commission. Having weighed the pros and cons of this amendment, I cannot agree to it.

President, I speak in support of the resumption of the Second reading of the Bill. Thank you.

**MR CHEUNG KWOK-CHE** (in Cantonese): President, after a decade-long fight for legislating on minimum wage, we have finally come to the moment of putting this Bill to a vote. At present, 90% of the countries and regions around the world have already set a minimum wage to protect the rights and interests of wage earners. I absolutely support Hong Kong taking this step today. At the same time, I have mixed feelings, because a lot of unfairness, which can still be found in the existing Minimum Wage Bill (the Bill), needs to be addressed. There is still concern about the effectiveness of the Bill, even after its enactment.

To start with, the composition of the Minimum Wage Commission (MWC) is very much like a black-box operation. Moreover, its members are obviously dominated by the Government because, of its 12 members, three are employers' representatives, and another three are government representatives. On the contrary, only three members represent the labour sector. According to the Government's usual practice, the Labour Department, that is, the official side, will only act as an intermediary in mediating disputes without biasing towards any sides. The inclusion of official representatives this time is obviously not in line with the Government's usual practice.

Even if official representatives are not taken into account, members of the Commission, whether they belong to the employee or employer side, or they are academics, are appointed by the Chief Executive. This means that the views of the Commission will definitely be united. Once appointed by the Government, academics, not to mention the employers' side, will definitely incline towards the Government's position. Hence, I cannot help but query the independence of such a composition. I am also very worried how the future minimum wage can protect the livelihood of the grassroots.

I wonder if the Government considers the double protection still inadequate. It has even required that the Chief Executive and the Executive Council hold the final power to revise the level of minimum wage set by the Commission. This implies that the level of minimum wage will eventually be decided by the Government. Although the Legislative Council has veto power, it has no power to make amendments. This is extremely unfair. Moreover, the Commission is being treated like a rubber stamp.

Furthermore, in determining the level of wages in future, the Commission will rely mainly on the evaluation of the Annual Earnings and Hours Survey conducted by the Census and Statistics Department (C&SD). Inevitably, there will be concern that these data will have time-lag problems, which means that there will be a substantial discrepancy between the published data and the actual situation. As a result, the level of minimum wage can hardly reflect the latest social situation.

Members might say that a time lag in data collection will not have a substantial impact on the level of minimum wage, for the amount we are talking about might translate to a monthly sum of money ranging from dozens of dollars to around \$100 at the most. While such a small sum of money might be negligible to us, Members in this Council, as well as senior government officials, it can, at any time, mean a lot to the livelihood of the grassroots and wage earners, who are living in straitened circumstances every day.

I understand that the income survey conducted by the C&SD is not the single factor taken into consideration for the formulation of the level of minimum wage. The Commission will also make reference to the overall economy, the situation of the labour market, and so on, as well as considering relevant factors, such as social harmony and possible "knock-on" effects, before making the final decision. Unfortunately, none of the aforesaid factors has been included on the Bill. As a result, there is simply no law for the Commission to follow. With the rule of man being put on top of the rule of law, the protection rendered by a minimum wage might possibly fail to live up to its name. This is why I hope the Commission can enhance its transparency in determining a minimum wage in future by giving a detailed account of the various factors influencing the wage levels, so that public misgivings can be dispelled.

It is evident from all sorts of manoeuvres that the Government's decision to set a minimum wage is just for the sake of political compromise. The Chief Executive is doing this purely for the purpose of fulfilling his electoral pledges and pacifying Members of this Council. He is not sincere in fighting for a more dignified living for the grassroots. Nevertheless, I still think that we should not give up even though we cannot achieve much, because I strongly believe that we have to take this step forward, so that we can have one more platform to fight for a fair and just society and ease the disparity between the rich and the poor. It is precisely for this reason that we still have a long road that lies ahead, and we have to continue to monitor the Government properly.

I would like to reiterate that the purpose of setting a minimum wage is not to bring the income of the grassroots close to the level of payments received by Comprehensive Social Security Assistance recipients. Its purpose is to make the grassroots live with more dignity while giving them at least the momentum to pursue upward mobility.

At present, the labour sector is calling for an hourly rate \$33 as the minimum wage level. For small and medium enterprises, it might only mean an increase of several hundred or several thousand dollars a month; whereas for large enterprises, it is just a drop in the bucket. Why do they not pay such a small price to bring a substantial improvement in the living standard of the grassroots?

The last point I would like to raise is that the voices of opposing the setting of a minimum wage have all come from employers. They are worried that the setting of a minimum wage will result in much higher costs, less profit, and some of them will even have to wind up their business. However, have employers considered in depth what constitutes the largest share of the operating cost of a company? For the retail and catering industries in particular, their largest share of expenditure actually goes to rent.

It can be said that major property developers are the real common enemies of both employers and employees. In Hong Kong, shop rents, which are exorbitant, can account for half of the operating cost of a shop at any time. Rent can determine whether or not a company can continue to operate. This is why I

also understand that, after the implementation of a minimum wage, small businesses will actually be like treading on thin ice. I believe neither employers nor employees would like to see their companies wind up should there be a worsening of the economy or an increase in rents.

It is thus evident that, while addressing the issue on minimum wage, the Government should also reflect on the current high land price policy as well as its practice of working in collusion with major property developers, helping the evildoer in his evil deeds, and exploiting common people. In my opinion, the Government should come forward and stop assisting major property developers in squeezing the people dry, only in this way can the problem of small shop operators and ordinary people being exploited at each tier be resolved.

With these remarks, President, I support the resumed Second Reading of the Bill.

**MR IP WAI-MING** (in Cantonese): President, today is a historic date for Hong Kong and the labour sector because we are going to debate on the enactment of the Minimum Wage Bill (the Bill). Just now, many colleagues have talked about their feelings. Indeed, for those of us who have been working for the labour sector and trade unions, we have very mixed feelings. We have spent more than a decade fighting for legislation on minimum wage and today, we finally reach a stage when we hope the Bill will be passed. We also hope that the enactment of this legislation can help grass-roots workers. It is quite true that for an economy which champions free and open market operations as Hong Kong, the legislation on minimum wage is something very special. Why do we need to legislate? As many colleagues have pointed out, it is a proven fact that elementary workers are suffering because of the continuous exploitation by the market and employers. As a result, workers cannot support their families resulting in the problem of in-work poverty or even inter-generational poverty. Secretary CHEUNG, the disparity between the rich and the poor has become a deep-rooted conflict in Hong Kong. We have waited and waited and we have fought and fought even after failures. And today, we have almost reached our goal.

President, according to the Universal Declaration of Human Rights (the Declaration) adopted by the United Nations in 1948, "Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection." The Declaration was promulgated 62 years ago in 1948. President, why do I cite this provision of the Declaration? Because as many colleagues have said just now, the level of minimum wage we are asking for is merely intended to cover the basic needs of the workers themselves and their families. It is just a humble wish. Since Hong Kong's reunification, the work environment faced by local workers has become increasingly severe. It seems that long working hours and low salaries have become the norm and for some workers, their salaries are so low that it is beyond description. A case in point is "Uncle YIM" cited by many colleagues. There are also many other examples given by other colleagues such as Mr WONG Kwok-hing.

Whenever the subject of disparity between the rich and the poor is brought up, we invariably mention Gini coefficient. Why is wealth disparity worsening? This has to do with the constant suppression of the salaries of workers. According to a survey conducted by the Oxfam last year on the salaries of grass-roots workers in Hong Kong from 2001 to 2007, the hourly wage of certain non-skilled low-end jobs such as dish-washing in restaurants and fast food shops was on a decreasing trend no matter how the economy was doing. For those who work as toilet cleaners, their hourly wage has even dropped by some 20%, from \$29.5 in 2002 to \$21.7 in 2007.

Although many colleagues have mentioned this information before, I still want to share some figures with you. Our colleagues have studied the statistics from the Census and Statistics Department (C&SD) and found that in 1997, the average monthly salary of the lowest paid workers in Hong Kong was \$4,500. But according to C&SD's statistics, for the first quarter of 2009, the average monthly salary of the 10% lowest paid workers in Hong Kong was only \$3,100. President, the drop was a staggering 31.1%. Therefore, if we allow the situation to persist, the conflict in Hong Kong's society will only become more acute.

In the past 10 years, many employers would resort to cutting the salaries of employees in order to reduce operational costs. Non-skilled workers will bear

the brunt. Even the Government and enterprises running chains stores have outsourced their services to contractors or agencies, causing exploitation of workers at each level. The Hong Kong Federation of Trade Unions (FTU) has been studying this problem for 12 years, striving for the stipulation of a minimum wage in the employment contracts of government service contractors as well as those of cleaning workers and security guards.

President, although both the Government and the Secretary have said that they will act now, we know that many government officials and even some in the business sector have many concerns about minimum wage. From their point of view, minimum wage is against the principles of market economy and may jeopardize Hong Kong's competitiveness. That is why in the past 10-odd years, they have been stalling the issue. In the past 10-odd years, we in the labour sector can only fight for piecemeal improvement of the pay condition of workers. In 2004, Mr LEUNG Fu-wah, the then Legislative Council Member of the FTU, first proposed stipulating a minimum wage for workers employed by government service contractors. After the suggestion was accepted by Mr TUNG Chee-hwa, the monthly wage of workers employed by government service contractors was pitched at the level of median monthly wage per quarter. Then in 2006, the Government launched the so-called Wage Protection Movement, which eventually proved to be a failure. Secretary, we have waited so long and we have also given employers plenty of time to change their practice. However, many employers have not changed their nature of bullying the employees. Many a times, they resort to exploiting the workers in order to earn more. Therefore, as the Wage Protection Movement failed to deliver satisfactory results, legislating for a minimum wage is a must and this is what we are discussing today.

President, one of the objectives of the Minimum Wage Fixing Convention of the International Labour Organization is to "ensure the satisfaction of the needs of all workers and their families". This is the purpose of prescribing a minimum wage. Therefore, as I said just now, the hourly wage of \$33 we ask for as the minimum wage is actually a very humble demand. This wage level is sufficient to meet the living needs of the worker himself and his family. Of course, the level of minimum wage should not be lower than the level of CSSA payments, otherwise, workers will be less inclined to work. Therefore, having considered the cases of other regions and Hong Kong, the FTU proposes that the level of

minimum wage should be about 60% of the median wage of Hong Kong, that is, not less than \$6,903 per month or \$33-odd per hour. That is why we propose an hourly wage of \$33.

President, in our discussion today, I hope people will not perceive minimum wage as something evil, nor a panacea. President, many friends in the business sector have said that if the level of minimum wage is \$33, some companies have to close down. Some even said that big corporations would have to issue profit warning or it will probably increase their operating costs. Price increases will in turn trigger off inflation. President, workers have but one simple demand. They hope that they can get \$33 in return for the efforts they made; but \$33 is actually insufficient to pay for their efforts. What they are earning now is insignificant and they just want to get a fair return. This is not an unreasonable demand. The workers just want to get back what they need.

In fact, we can make reference to many overseas examples. Since 1992, researches conducted by many academics in overseas countries have shown that the stipulation of a minimum wage will not worsen the problem of unemployment. For example, after the United States increased the level of minimum wage in 1996, the unemployment rate had dropped from 5.2% to 4.2%. With the introduction of a minimum wage in the United Kingdom in 1999, the unemployment rate had dropped from 6% in 1999 to 5.1% in 2001. Some economists pointed out that, after the stipulation of a minimum wage, the salaries of low-income workers will increase which will in turn improve their purchasing power. This will have a positive effect on boosting domestic demand in the economy as well as expanding the labour market. A research conducted by the Legislative Council in 1999 also pointed out that fiscal and monetary policies would have more direct impact on inflation and the price level. In other words, wage level alone will not drive up inflation. That is why I hope the business sector can have a clear understanding on the matter and stop regarding minimum wage as something evil.

On the other hand, President, we shall not consider minimum wage a panacea, thinking that many problems such as wealth disparity will go away after its implementation. It is absolutely not true that once minimum wage is introduced, the whole society will no longer has any problems, and we can delay

in implementing other social welfare policies, or can even scrap such policies. Just as the case with one of the oral questions today, Members have expressed concerns to the Secretary about the current consultation on social welfare planning. What I do not want to see is that the Government becomes less accountable to us in these areas after the implementation of minimum wage. On the contrary, we think that minimum wage is merely a baseline for sustaining the basic living of the grassroots. We consider that in addition to minimum wage, other welfare policies should also be implemented concertedly so as to help prevent poverty among grassroots workers.

President, we have yet to know the level of minimum wage to be set. Of course, we want it to be \$33. But no matter what, we consider that other welfare policies are just as necessary and important. We should use minimum wage as a foundation and continue to build on it by complementing with other welfare policies so that the grassroots can receive all-rounded support. Then, in time, they can get out of poverty. That is why we will continue to fight for the establishment of an unemployment assistance system, the provision of transport subsidies, the setting up of a universal retirement protection system and the legislation for standard working hours. In particular, we have to point out that the implementation of minimum wage does not mean that the labour sector will stop fighting for these goals. In future, FTU will continue to strive for these goals by working with other labour groups, just as our fight for minimum wage. I hope the Secretary is prepared for this.

President, finally, I want to say a few words about the scrutiny of the Bill. During the year-long scrutiny process, we have deliberated on all issues relating to minimum wage including working hours, commission, and so on. I want to highlight the point about meal break. Under the Bill originally proposed by the Government, it is expressly stated that meal breaks are excluded from the hours worked by an employee for the purpose of computing minimum wage. We consider that this will have a major negative impact on the work environment because at present, many workers are entitled to paid meal breaks. We consider that if it is expressly provided in the Bill that meal breaks are excluded, it may lead to abuse, so much so that the entitlement of paid meal breaks of some workers will be affected. Therefore, at our request, the Government has agreed to make the necessary amendment. We are happy about this.

In respect of the composition of the Minimum Wage Commission (MWC), we consider that members of the labour sector in MWC shall come from members of the Labour Advisory Board. Secondly, I also hope that public officers sitting on MWC shall have no voting rights. I will expound on these points when I speak later about the relevant Committee stage amendments.

President, I so submit and support the Second Reading of the Bill.

**MR LEUNG YIU-CHUNG** (in Cantonese): President, today is one of the most meaningful days for me since I joined the Legislative Council 14 years ago because the legislation on minimum wage will be enacted today, which will render wage earners true protection. This is one of the objectives that my friends and I have been fighting for. For me, the fight for minimum wage legislation is as long and arduous as striving for democracy and universal suffrage. Nothing comes easily. That is why I have great feelings about achieving this result today.

In fact, we have been fighting incessantly for legislation on minimum wage over the past few years. However, the community's response was extremely indifferent. Today, we in the labour sector demand that the statutory minimum wage be set at \$33. Talking about the number 33, in fact I came back to Hong Kong from the United Kingdom 33 years ago (that was in 1978). Back then, I had already discussed with some of my friends in the labour sector about the possibility to fight for minimum wage. They told me that it would be very difficult, because they hold that in a free capitalist society, the stipulation of a minimum wage runs contrary to the fundamental ideology of a free capitalist system. As stipulating a minimum stage is tantamount to taking away employers' autonomy to determine employees' wages, it was unlikely to succeed. Back then, even the labour sector did not have faith in this.

I remember I was elected a District Council Member in 1985. The Regional Council election then followed; Mr LEE Wing-tat was a candidate and he asked me to support him. I told him that I would support him on condition that he included the stipulation of minimum wage in his election platform. After discussing my demand with his electioneering team, Mr LEE told me that he could not consent to my request because they concluded, after deliberation, that

the stipulation of a minimum wage could ultimately become the maximum wage and workers would not be benefitted.

President, 33 years have passed and today's situation is totally different. At least, I have heard nothing about those two reasons anymore. There is overwhelming support for legislation on minimum wage and I am particularly happy about this. Back then, I said to LEE Wing-tat whether minimum wage would become maximum wage hinged on how strong the labour force was and whether we had the right of collective bargaining. If we had this right, minimum wage would not become maximum wage. When we had the right of collective bargaining, we could negotiate with employers or the Government for our demands. Regrettably, we did not have the right of collective bargaining at that time, and things did not work. However, notwithstanding the fact that no minimum wage has been stipulated, some sort of minimum wage has already emerged. For example, the hourly wage of cleaning maids in the market is \$20. This market price is thus their minimum wage. However, we hold that this minimum wage at market rate fails to give workers dignity and respect at work. That is why we have to legislate so as to raise this wage level.

Considering the above, we are indeed very happy about our success in fighting for legislation on minimum wage. However, President, while I am happy, I also feel very sad because many of the workers who have been fighting with me for legislation on minimum wage at that time have now retired or ousted from the market, and some have even passed away. We have fought such a long battle to get what we demand for.

President, I remember that before Hong Kong's reunification, I had asked Secretary Matthew CHEUNG, who was then the Commissioner for Labour, why Hong Kong could not introduce minimum wage given that the relevant legislation had already been enacted? The Trade Boards Ordinance (TBO) enacted in 1940 was intended to safeguard the wage level of workers. According to TBO, if the Governor considered that wages paid to workers were unreasonably low due to economic conditions, he might establish Trade Boards so that a reasonable level of wage could be prescribed. This legislation has been enacted for long, but it has never come into operation because of the ensuing world war. However, after the war, the Government had since then, shelved the law without activating it. Before 1997, I asked the then Commissioner for Labour Mr Matthew CHEUNG why the authorities did not set a minimum wage by implementing that

Ordinance? The Ordinance has always been there and in fact, we need not legislate again today. We could have implemented this Ordinance a long time ago and establish trade boards to prescribe the relevant wage levels. But unfortunately, the authorities have never paid proper attention to this Ordinance. As a result, many workers have to live in a totally unreasonable and disrespectful environment for so many years. That is why today, while I feel happy, I also feel extremely sad because I am really very sorry for those workers who suffered so much in the past. But no matter what, we have to move forward. While it is a good thing that this piece of legislation is enacted today, I want to tell everybody that this Ordinance is passed today not because it is a deliberate attempt on our part. It is because we see a group of workers still living in dire straits nowadays, and thus we have to safeguard their interests as soon as possible.

President, I remember one night at around 11 pm two years ago, I saw a middle-age woman clearing the garbage with two little girls in the housing estate where I lived. She was a cleaning worker. I asked her how come she still worked at such late hours and she said, "There's no other way. If I do not finish my work, I cannot earn enough money to raise my two daughters." I then asked whether the two little girls were there to help her and she said, "Yes. I can never finish without their help." I said, "But they have to go to school." She replied, "Yes, but what can I do? We will finish our work quickly, and go home immediately." I asked her where did she live and she told me she lived in Tin Shui Wai. At that time, she was working in Kwai Fong and it was past 11 pm already. President, there is a group of workers earning meagre pay in our society. This woman is just one of the many. Is this a pathetic and heartless society? There is really a group of workers who have to live under such conditions and even their off-springs have to "work" together. Can we allow this situation to persist? Therefore, I am really glad that we are going to enact legislation on minimum wage today and hopefully, we will no longer see our workers living under such conditions.

Nonetheless, although we are likely to pass this legislative framework today, I am still very worried about the situation in future because we are absolutely in the dark as to the exact level of minimum wage. I remember the media once cited a conversation between Donald TSANG and the colleagues of Hong Kong Federation of Trade Unions — I do not whether it is true — and the Chief Executive has said that the minimum wage should be set at a cautiously low

level. I do not know how cautiously low that level should be? I am worried that it would be too low because many friends in the business sector are now advocating \$20 or \$24. Is that low enough? Should minimum wage start from that level? If it should start at that level, I honestly think that similar incidents in which a woman has to work with her children to clean up the building at night will not become less in number.

We hope that we will pass the legislative framework of minimum wage and then hopefully, bring a reasonable standard of living for workers. We do not want to see people living like this. Therefore, I hope the wage level should be high. However, we of course understand that many organizations cannot afford this so-called "high level". Therefore, the level of minimum wage must be reasonable. But what is meant by "reasonable"? This will depend on how the level is determined. But unfortunately, this level is to be determined by the Provisional Minimum Wage Commission (PMWC). More unfortunately still, we cannot participate in the PMWC's discussion and determination of the level of minimum wage. If we do not accept the prescribed level, we can at most veto the decision, but we do not have the power to make amendment. This arrangement is regrettable because there are a lot of voices in society saying that if the level is set too high, many organizations will close down or some jobs may be lost.

President, whenever we enact new labour legislation, we would invariably hear similar things. For example, when we enacted the Mandatory Provident Fund Schemes Ordinance (I remember that was in 2000), those in the business sector said, "I used to have three employees. Upon the passage of the Ordinance, I will only employ two staff members and one of them must go." The same thing was said then. But is that what really happened? President, I think this situation may last for a period of time, that is, there will be pains for a short period of time, just like the situation in Australia as cited by Mr LEE Cheuk-yan, some workers may be forced out of work due to an increase in salary, but this will only last for a short period of time. Even so, not many people will be affected. And even if a relatively large number of people are affected, the Government has the responsibility to resolve the problem. In the past, during the SARS pandemic when the unemployment rate was extremely high, the Government had also created job opportunities for the purpose of poverty alleviation so as to reduce unemployment. I think should something like that happen, the Government has the responsibility to resolve the problem. The

Government cannot ignore the problem and blame it on us by saying that we have to accept the responsibility because we demand a higher wage level. I think the Government should not shift the responsibility to us. Instead, the Government is duty-bound to implement measures to assist those workers who might lose their jobs because of the minimum wage legislation and help them find employment again.

As many colleagues mentioned just now, workers are in fact always the underdog and the target of exploitation. Why is that so? Because as many colleagues explained just now, when small enterprises start to expand, the landlord will see the opportunity and increase the rent. But as the small enterprises cannot exploit the landlord, they will exploit the workers, albeit unwillingly. They may either freeze the salaries of existing staff or employ workers with a lower salary so that the burden is transferred to the workers. That is why the Government should have the responsibility to resolve the problem. I have said before that I support rent control. Rent control should apply even in private market because if there is no such control, continuous rent increases will only break the small enterprises.

I saw a television programme on NOW yesterday about minimum wage. In the programme, an operator of a small business stated his full support for the implementation of minimum wage. He also said that his business suffered most as a result of high rent and continuous demand of rent increases from the landlord. He considered that the problem which the Government must address is rent increases. Hence, as long as the problem of rent is unresolved, the workers will always suffer. I very much hope that the Government will take targeted actions to deal with the problem.

Lastly, I want to tell the Government that it should not think its work ends with the enactment of the legislation on minimum wage because there are still a lot of issues to be dealt with, such as the issues of long working hours, right of collective bargaining and wage level as mentioned by other colleagues. I hope the Government will actively take forward the issue on working hours after the enactment of the present legislative framework.

President, I so submit.

**DR PAN PEY-CHYOU** (in Cantonese): President, sometime around Lunar New Year, I met a relative. He and his wife, together with a few partners, operate a restaurant and they work very hard. At that time, the Legislative Council was discussing the issue on minimum wage legislation. Maybe my relative knew I represented the labour sector and the Hong Kong Federation of Trade Unions and so he did not say much. But I knew from his tone and expression that he was indeed a bit worried. I understand his feelings, he was concerned that the legislation on minimum wage might increase operational costs or even make it difficult for them to continue operation.

I work in a hospital and have come into contact with many colleagues. At the place I live, I come into contact with many neighbours. Many people are indeed concerned about the legislation on minimum wage and want to know more about it. Through the many people I come into contact with, my impression is that they might think about issues like whether the management fee of our housing estates will increase with the legislation on minimum wage and if so, what is the rate of increase? Will consumer prices continue to increase? Is our livelihood getting harder? Indeed, the community is generally very concerned about the legislation on minimum wage.

I know some people are asking this question in their hearts. I believe the majority of Legislative Council Members already have a consensus today. As we all know, we are in support of the legislation on minimum wage. But I think a consensus has yet to reach in the community as a whole. Many people would ask why we need to legislate and what's wrong with the non-intervention policy of the past? Honestly, what is wrong with the non-intervention policy of the past, that is the *laissez-faire* economy where government intervention is kept to a minimum to allow for free market operations as far as possible? What has gone wrong? Here, I want to state my views as to what has indeed gone wrong.

The disparity between the rich and the poor in Hong Kong is worsening. As indicated by the Gini coefficient which is a measure used internationally to gauge income and wealth inequality in society, Hong Kong's Gini coefficient in 1981 was already at a high level of 0.451. Nowadays, the Gini coefficients of many western countries range from about 0.3 something to 0.4 something. In 2006, Hong Kong's Gini coefficient has risen to 0.533 which was considered a dangerous level. We may still recall that according to a recent study conducted

by academics at the Hong Kong Baptist University, an increasing number of people concur with the use of relatively violent means to express their opinions. Over the past 30 years, Hong Kong's Gini coefficient has been increasing. As we look through the figures, it is indeed on the rise.

Let us look at another set of figures about low-earning families living on Comprehensive Social Security Assistance (CSSA). In other words, the income of these families is below the level of CSSA. In addition to their own income, these families need the support of CSSA. In 1998-1999, the number of such families was 7 562. In 2008-2009, the number has risen to 16 306 representing more than a two-fold increase. In respect of low-income employees, say those with a monthly wage of less than \$6,000, the number stood at 443 000 in 1998. But in 2008, the number rose to 638 500 representing an increase of 44.1%. What have these figures illustrated? They clearly indicate that there are more and more low-income employees. Put in another way, the income of grass-roots workers is decreasing.

I think these figures clearly tell us one thing and that is, the labour market has become dysfunctional. In recent years, new economies and new developing countries have actively engaged in modernization and industrialization. During the process, massive labour force has been released. At the same time, a large number of low-skilled jobs in some developed and advanced regions have been lost as a result of globalization. There is large-scale relocation of factories to new markets such as Mainland China, India and Brazil in South America.

Under these circumstances, there is keen competition for the remaining low-skilled jobs in these advanced regions such as Hong Kong. Many people need these jobs because the skills they originally possess might have become obsolete as the work processes have been relocated to developing and emerging economies. As a result of market competition, the wage level keeps on decreasing. During this process, Hong Kong's GDP keeps on increasing and there is continuous accumulation of wealth in the market and in terms of capital. If we look at the wage level of employees by their income groups, the wages of high income earners have kept on increasing over the past 10 years while the wages of low income earners have been decreasing.

Just now, some colleagues have cited cases about how mean the employers or the Government can be. But I believe that most of the employers in Hong

Kong are kind-hearted. Only a few are really unscrupulous. We know that is true. While most of the employers do not want to keep the wage level of their employees unduly low, they are forced to minimize operational costs because of keen competition in the business. Otherwise, the customers may go to his competitors. Under the circumstances, even the kind-hearted employers have to find ways to cut costs and unfortunately, staff cost would invariably top the list.

Hong Kong has always championed free market operations which is the philosophy of Milton FRIEDMAN or Friedrich HAYEK. Under the so-called "big market, small government" principle, the Government will try its best not to intervene with market operations. However, we are now facing a dysfunctional market. When the market becomes dysfunctional, low-income earners cannot share the fruits of social and economic prosperity. More importantly, they can barely survive with their meagre wages. As their wages keep on decreasing, they are drawn towards a downward spiral of suffering. Under these circumstances, how can we turn a blind eye to their plight?

We have also heard some of the concerns about the implementation of a minimum wage. One of the problems is increasing operational costs resulting in economic recession. However, we can see that many advanced countries and regions in the world have already implemented minimum wage. Instead of looking at the farther regions, we can see that Korea, Singapore, Mainland China and Taiwan as well as Japan in Asia have all implemented minimum wage. In western societies, countries such as the United Kingdom and France have also implemented minimum wage, with Australia and New Zealand being the forerunners. Their histories have shown that their economies have not been ruined by the implementation of minimum wage. In fact, their economies have performed quite well in recent years. Notwithstanding the financial turmoil and financial tsunami, the economic development of these areas is still quite good. Therefore, this concern is not valid.

Some also say that the implementation of minimum wage would increase the operational costs of individual industries causing unemployment to workers in these industries. However, if we make reference to overseas experience and look at the footsteps of forerunners, we will find that this is in fact avoidable. Just now, Mr LEUNG Yiu-chung asked whether the Chief Executive has said that minimum wage should be set at a cautiously low level when he met with the Hong Kong Federation of Trade Unions. I do not recall the Chief Executive

mentioning anything in particular about this matter but he did talk about the example of the United Kingdom. Since the implementation of minimum wage since 1999, the wage level of the United Kingdom has been on the increase. We will not comment on whether the approach adopted by the United Kingdom is appropriate because even though the country is successful in implementing minimum wage, it does not mean that we have to follow suit. However, let us look at the situation in the past decade. From 1999 to 2006, the overall ratio of jobs in the eight industries most affected by minimum wage in the United Kingdom as against the total number of jobs has not been reduced within these seven years.

I remember Mr TAM Yiu-chung mentioned just now that winding-up rate of businesses in these industries is more or less the same as in other industries. It has not changed as a result of the implementation of minimum wage. I think we can see this result more clearly in Hong Kong. Within the past 10 to 20 years, many of the industries employing cheap and low-waged workers have already been relocated outside Hong Kong as a result of globalization. Those industries still operating in Hong Kong and employing a relatively large number of grassroots workers are basically those that cannot be relocated. These are mainly service industries such as the cleansing and guarding services. As their clientele is based in Hong Kong and there is no way they can provide their services to local people outside Hong Kong, I do not envisage a significant reduction in the scale of these industries after the implementation of minimum wage.

There is another saying that minimum wage will force the relatively low-skilled workers out of job. I think this saying may be right in certain aspects. For example, the disadvantaged or elderly workers may be affected. However, let us not forget that in the past 10 to 20 years, this situation has already existed in our society. In fact, the job opportunities of the elderly, the senior workers and the disadvantaged have already been lost. In the past, some elderly persons may work as caretakers after their retirement. But nowadays, these jobs have mostly been taken up by young persons who are strong and healthy. Many dish-washing jobs in restaurants are now taken up by young or middle-aged new immigrants who are strong and healthy. There is much less opportunity for the mature or disadvantaged persons. I think this situation should be improved with other measures, and I do not think it will be worsened by the implementation of minimum wage. Moreover, we can provide certain exemptions to alleviate such

situation or inclination so that the less-abled persons can still have job opportunities.

President, to the majority of Hong Kong people or those who are not directly affected by minimum wage, I want to say to them, the most important element in the legislation on minimum wage is sharing. Sharing is a part of our human nature and it is a universal hope and desire. We want to share with those who are in deprivation and through our sharing, the other party can benefit and their smiles will bring us great contentment. Even though our society has become more prosperous and has accumulated more wealth, grassroots workers cannot share the fruits of these riches. They cannot even enjoy the self-respect and self-confidence that should rightfully come from their work. Instead of applying for CSSA, some people choose to work and live on an income that is less than the level of CSSA just because of they want to have the dignity and self-respect that come with work. Therefore, we should look at minimum wage from the spirit of sharing. Although the general public may need to pay a small price for this, it will bring us greater social justice. With these remarks, I so submit.

**MR IP KWOK-HIM** (in Cantonese): President, a few days ago, a civic group campaigning for a minimum wage of \$33 launched a protest, accusing the five major real estate developers for offering a shameful remuneration to their security guards and cleaning workers. Citing a senior staff member of a certain conglomerate as an example, the protesters pointed out that the hourly wage of that staff member was as high as \$18,700, while that of a cleaning worker was only \$22. The amount earned by that senior staff member for one hour's work was equivalent to that earned by a cleaning worker for working four months. President, I agree to the protesters' aspiration for a minimum wage, but on the other hand, it is often said that comparison breeds discontent. I think it is both unnecessary and not very meaningful to compare the income of the employer with that of the employees. Actually, the problem is not how much the employer earns but whether the employees are exploited, which is our major concern.

People's income may differ due to differences in their capabilities and circumstances. The purpose of legislating for a minimum wage is not to narrow the income gap between the high-income group and the low-income group but to prevent the exploitation of employees. Earlier, a member of the public who

once worked as a security guard called into a radio programme, complaining that right after a Member of the Legislative Council had proposed prescribing a minimum wage of \$20, the company he worked for cut their hourly wage by \$2. This incident reflected that some employers still think that people are willing to take up jobs at an hourly wage of \$20. However, for grassroots workers, they simply have no alternative but to earn as much as they can by doing the only thing they are capable of, and which is manual labour. When employers think there is further room for downward adjustment, they will try to cut the hourly wage further, which is obviously an act of exploitation. The purpose of legislating for a minimum wage is to combat unscrupulous practices of employers. The Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) supports legislating for a minimum wage on the basis of social moral and responsibility, and I believe it is also on such basis that other Honourable colleagues support this Bill.

President, I am a member of the Bills Committee on Minimum Wage Bill (the Bill) of the Legislative Council. Since the introduction of the Bill by the Government of the Hong Kong Special Administrative Region (SAR) last year, the controversy over it has been focused on the minimum wage level. There has been a huge conflict between employer and employees on this issue. On the one hand, employees have an excessively high expectation of the minimum wage level, and they have imposed on it too many responsibilities of a social safety net, including alleviating the wealth gap. On the other hand, employers have taken the consequences that may arise from a minimum wage too seriously, thinking that a minimum wage will push up the cost of operation of enterprises, thereby undermining their competitiveness.

I would like to stress that minimum wage is not designed to play the role of a social safety net. Actually, it only aims at preventing the incessant wage exploitation of grassroots workers. However, this does not mean that it is reasonable to casually prescribe a minimum wage rate which is slightly above \$20, and neither will we be regarded as accountable to the public by doing so. Come to think about it, if 11.8% of the entire working population in a society, that is, over 400 000 people in the case of Hong Kong, have a monthly income of less than \$6,000, which is not enough for them to scratch a living and support their families, how can there be long-term social harmony and development? How can there not be strong grievances in society?

On the other hand, it is undeniable that a minimum wage will inevitably push up the cost of operation of enterprises. However, the Low Pay Commission of the United Kingdom believes that the competitiveness of enterprises does not hinge solely on the cost of manpower, and innovation, sound management and technological advancement can also enhance their competitiveness. Some competitive enterprises in the world boost their profits by developing innovative products to expand their market share rather than exploiting the wage of their workers.

Statistics announced by the SAR Government in the latest quarterly economic report are exhilarating: the GDP has grown by 8.2% in the first quarter, reversing the fall after the financial tsunami and representing a record growth over the past four years. The economy has recorded positive growth for four quarters in a row and has rebound from the trough of the financial tsunami. Benefitting from the robust growth of the Mainland economy, the economy of Hong Kong is now on the path of steady recovery. It is estimated optimistically that barring any drastic downturn, the economic growth of Hong Kong this year will be higher than the original forecast of 4% to 5%. I think given the prevailing positive conditions for economic development in Hong Kong, we should introduce a reasonable minimum wage level in a timely manner, so as to maintain the vitality of enterprises and the steady supply of employment opportunities, and enterprises can strive for development in a stable environment. Substantial staff wastage is definitely not conducive to the development of enterprises.

The Government has set up a Provisional Minimum Wage Commission (PMWC) to recommend a minimum hourly wage rate on the basis of an evidence-based approach. I hope the representatives of employers and employees in the PMWC will uphold the spirits of mutual understanding and mutual accommodation and come up with a wage rate acceptable to both parties through negotiation. In prescribing a minimum wage rate, we should be objective and impartial rather than allowing our emotions to rule over our sense, and neither should we politicize the issue. Therefore, the DAB does not agree to the amendment moved by Ms Cyd HO, which proposes that the Legislative Council should be given the power to amend the prescribed minimum wage rate.

The DAB supports the Government's decision that the Legislative Council may only reject or endorse a prescribed minimum wage rate rather than amending

it. Actually, there are three representatives of employers, employees, academics and public officials respectively in the PMWC. I hope they can propose a reasonable wage rate on the premise of independence, objectivity and respect for statistical evidence, and the Legislative Council must not pre-empt the work of the PMWC.

On the other hand, Mr LEE Cheuk-yan's amendment proposes to include all live-in domestic workers in Hong Kong in the coverage of the minimum wage system. The DAB has reservation about it. We think foreign domestic helper (FDH) groups may file judicial reviews against the SAR Government if live-in domestic workers are exempted from the coverage of the minimum wage system. We can see that there are such possibilities. On the other hand, however, if all the 220 000 live-in domestic workers in Hong Kong are included in the coverage of the minimum wage system, there will be concern that some employers who do not earn much money but employ FDHs due to the needs in their families may hardly be able to afford the cost. The legislative intent of prescribing a minimum wage is to protect disadvantaged workers from unreasonable treatments and exploitation. There is already specific statutory protection for the remuneration package of FDHs in Hong Kong. They do not have to worry about their living and accommodation, and they are also at liberty to remit their income to their home countries. I think including them in the coverage of the minimum wage system is contrary to the legislative intent of prescribing a minimum wage.

Prof Nelson CHOW of the Department of Social Work and Social Administration of the University of Hong Kong stated in an article that the most apparent slogan displayed by FDH groups in the 1 July rally was: "Wage legislation, equality for all". Prof CHOW said he felt a bit uneasy upon seeing this slogan because once the issue of FDHs' wage becomes the issue of whether FDHs are accorded fair treatment, the point at issue will be of a different nature. Prof CHOW said political parties as well as concern groups should understand that social justice, which involves the major principle of equality for all, is a very solemn matter. Therefore, one should not causally use it as a point of argument unless it is absolutely necessary to do so. I agree to Prof CHOW's viewpoint that FDHs' demand for inclusion in the coverage of the minimum wage system only involves a wage issue, and it is unnecessary to elevate the issue to the moral high ground of human rights and social justice.

Besides, Mr WONG Kwok-hing's amendment proposes to review the minimum wage rate at least once in a year. The practice proposed in this amendment is more or less the same as the Government's practice of conducting annual civil service pay surveys as the basis for civil service pay adjustments. Therefore, the DAB supports this amendment. Certainly, there are various different views in the caucus of our party. Mr WONG Ting-kwong has also lodged an application for exemption in the caucus meeting today in order to vote in accordance with the decision of his sector. In this regard, I would like to make it clear that the caucus of the DAB has accepted Mr WONG Ting-kwong's application. Regarding the Government's amendment to review the minimum wage rate at least once every two years, if the Member's amendment is unfortunately negated, the DAB will support the Government's amendment to avoid the absence of an established review mechanism.

The Government has proposed eight amendments to the Bill, which include widening the scope of student interns exempted from the Bill, exempting employers from recording the total number of hours worked by high-paid employees, and allowing employers and employees to decide, upon mutual agreement, whether meal break should be regarded as hours worked. Actually, the DAB has already expressed its concerns about these issues to the Government in September last year. Therefore, we welcome these amendments moved by the Government.

Besides, when implementing the minimum wage policy in future, the Government should also put in place complementary measures, which may be categorized into two areas. On the one hand, the Government may make reference to the practice adopted by Taiwan by providing a single-window access for minimum wage advisory services and engaging business consultants to provide online or on-site advisory services so as to assist affected enterprises in financing and also provide assistance on areas such as human resources management and business management. On the other hand, the Government should expand the transport subsidy scheme to provide subsidy to low-income earners who have to work across districts. In this regard, we think the Government should conduct a review and expand the relevant scheme expeditiously. We notice that the Chief Executive has responded to this issue yesterday. Actually, this initiative can effectively alleviate the burden of the low-income group. For workers who will become unemployed after a minimum wage has been prescribed, the authorities should actively provide them with

employment services, unemployment assistance and vocational training so as to establish a comprehensive social safety net for laid-off workers and boost the re-employment rate. In this regard, I think the Government must formulate a comprehensive plan in advance to ensure the protection of workers after the enactment of the relevant legislation.

With these remarks, President, I support the resumption of the Second Reading of the Bill.

**MS EMILY LAU** (in Cantonese): President, I speak in support of the resumption of the Second Reading of the Minimum Wage Bill. Like Members who have spoken just now, President, I wish to share the joy of the working masses because most of them hope that they will receive protection after the Bill has taken effect. The Secretary should surely know that Hong Kong has entered into the International Covenant on Economic, Social and Cultural Rights. In order to implement this Covenant, we must ensure that workers are remunerated with reasonable wages that enable them to maintain a living with dignity. Although we have been submitting reports to the United Nations from time to time, such protection is yet to be genuinely realized.

President, just now a few Members have pointed out that among the some seven million people in Hong Kong at present, there is a poor population of 1.3 million, and the number of households with a monthly income of \$4,000 or less amounts to 190 000. Compared with the situation before 1997 when Hong Kong was under the British rule, the poor population has more than doubled. Just now, Mr TAM Yiu-chung reminded us that most of them are full-time workers, so this situation is not a result of the ageing population, as suggested by the authorities. Certainly, there are also elderly people among them, but most of them are full-time workers. President, come to think about it, how can a family live on \$4,000 per month? How can these 190 000 households live with dignity? Even if this Bill is passed, how much can their lives be improved with an hourly wage at \$30 or \$33?

Being a member of Hong Kong, I really feel disgraced. Ms LI Fung-ying has also reminded us just now about the per capita income of Hong Kong. How much is it? It is \$200,000! However, some people are unable to make ends meet, which shows that a huge conflict exists. Why did our State leaders call

this a deep-rooted conflict? The Chief Executive also said yesterday that there were actually only a handful of real estate developers, yet Hong Kong people have been "working for" them for numerous decades.

A member of the public called into a television programme this morning, talking about his recent visit to the government housing in Singapore. When he saw that the kitchens in these flats were even bigger than his entire flat, he asked whether the prices of these flats were very high. Then, he was told that people only had to pay \$2,000 per month. President, how can the public not be infuriated?

Therefore, even if this Bill is passed, the authorities still need to step up its effort to provide the public with bigger living space. After the programme was shown, we received many telephone calls because members of the public attach great importance to clothing, food, accommodation and transport. I have no idea how the Secretary will give an account of it later. According to the statistics provided by the authorities, there are 190 000 households which have a monthly income of less than \$4,000.

Just now Mr LEE Cheuk-yan recapped that he was the first person to move this motion, and that was in 1999. I went through the records at once and found that the relevant date was 28 April 1999. Just now he said the motion failed totally as only nine Members supported him. Among those nine people, four of them are still in office. President, they certainly include Mr LEE Cheuk-yan, Ms Cyd HO and Mr LEUNG Yiu-chung, who are sitting next to me, and myself. Other people who supported the motion were all from the labour sector.

President, Members from the business sector have not spoken much, and I believe they will speak later on today. I also believe they will express their support, or else the authorities would not have been so confident. President, just now I heard that Mr WONG Ting-kwong from your political party asked for an exemption. The DAB should support this Bill, but if he is given an exemption, he will not be able to support it. Actually, I think the business sector should sense the urgency that the people sense and join hands to pursue this cause. If the business sector takes an opposition stance, a serious problem will arise.

President, apart from being a Member of this Council from the Democratic Party, I am also the appointed Deputy Chairman of the Business Facilitation

Advisory Committee. I have repeatedly indicated at meetings of the Committee that both the Democratic Party and I attach great importance to business facilitation. We very much hope that the policies and legislation formulated by the authorities can truly facilitate the business of small and medium enterprises (SMEs); while large enterprises do not need our care because we have worked for them for numerous decades. Apart from the view that prescribing a minimum wage will incur a rise in their expenditure, these large enterprises have also put forward other strong views at the meetings. Why? They think the rules and regulations laid down by the authorities are very complicated. When a certain problem arises, they will have to consult 10 Government departments one after another, and these departments will simply shift the responsibility to each other, which will not facilitate their business at all. However, President, from the press reports today, I learnt that some people said this Bill would trigger a spate of false layoff cases. In particular, the cleansing and guarding services sectors are plotting to lay off staff members of higher seniority before renewing their contracts in order to reduce the expenditure on long service payments in future. The catering sector has also indicated that it will outsource more work and adopt the contractor system in order to reduce the expenditures on insurance and mandatory provident fund contributions. President, some restaurants have also resorted to every conceivable means to outsource their dish-washing work and require workers to work for four hours in the morning and then come back and work as part-time workers in the evening so as to save the need for granting them rest time in between. Some employees said if this practice is adopted, their wage will be reduced by \$1,700 per month, which is a wage cut in effect. I believe the Secretary has also read about such reports.

Besides, President, some employers said if the hourly wage rate was \$33, they would issue profit warnings, revealing that their companies would incur losses, and their financial positions would become unsound and their share prices would drop. Will the situation really be so serious? I hope the Secretary will provide a brief response to this in his speech later.

President, to achieve success in this endeavour, different sectors of the community must work together to make concerted efforts. I would be greatly concerned if some members from the business sector adopt such an opposition stance. In 2006, the authorities launched the so-called Wage Protection Movement on a trial basis and intended to conduct a review two years afterwards. The Movement only covered two sectors, that is, the cleansing and guarding

services sectors. Participation was on a voluntary basis and the Movement was implemented by the relevant sectors themselves. The authorities thought that problems would be resolved after the introduction of the Movement, but no one would have thought that members of the Executive Council and the authorities had to admit, before the expiry of the Movement, that it had failed to yield satisfactory results. This implies that employers will not offer wage protection to their employees if we allow them to do so on their own initiative without introducing legislative regulation. On the one hand, we can see that the business sector is making tremendous profits and each time listed companies announced their performance, they reported huge profits, so much so that some people have even described them as being so obese that they cannot even put their socks on. On the other hand, however, there are 190 000 families whose monthly household income is less than \$4,000. What kind of a world is this? How come Hong Kong has also established itself among one of the richest cities in the world?

The issue of legislating for a minimum wage has been discussed for more than a decade. Now that the legislation is to be enacted, some people are saying that they would only render support if such and such exemptions are granted. This is tantamount to calling on the business sector not to support a minimum wage. This is simply not right. I think the Secretary has failed to do his job well, and I even thought he had already made a deal with various sectors and convinced them that enacting this legislation would be beneficial to Hong Kong as Hong Kong can show the whole world proudly that it is capable of legislating for a minimum wage, although it has come a bit late. However, the actual situation is the business sector has indicated that it will not support this legislation, it just allows its passage with reluctance. If this is the case, given the great resistance already present at this stage, the relevant committee will encounter greater difficulties in prescribing a minimum wage rate in future.

Frankly, if the hourly wage rate to be prescribed in future is too low and we cannot amend it, problems will arise. We can certainly discuss the rate, but we cannot in any way amend it. We may choose to revoke the minimum wage rate, or else we have to accept whatever rate is proposed. If we do not accept the proposed rate, there will not be a minimum wage rate. It is simply impossible, and I think it will arouse tremendous reverberation in society. This Council is not democratically elected, with only half of the Members returned through direct elections, and the Chief Executive is returned by a small-circle election. I know

the authorities would tell us that in some countries, parliamentary competence is even not available. However, the governments of these countries are returned by elections, and the systems formulated will not be discussed in the parliament because they are highly controversial. If all our Members were returned by direct elections, such a decision would not cause any problem. However, it is not the case, and this Council is not given the power to make the decision. When the business sector is so much on the alert, and members of the relevant committee are not adequately represented, I just have no idea how they could discuss the minimum wage rate. What should we do then?

Some people may think that we should be happy if the legislation is passed. However, we may feel happy too soon. I hope Members who will later speak on behalf of the business sector will express support for the Bill because members of the business sector have to understand that workers are their partners, and they should treat them well. President, some surveys have pointed out that employees in Hong Kong are relatively not so loyal to their employers. In other words, they will change their jobs whenever they have the opportunity. Why do employers not ponder and ask themselves why this is so? The Secretary may tell us later whether employers in Hong Kong are considerate and caring to their employees, or they only try every means to exploit and ill-treat their employees most of the time.

I have seen some elderly people searching through trash bins or begging for money in the street, and an 81-year old elderly still had to work as a minibus driver and died of heat stroke, although he had said that he did not work for money. Such incidents have happened time and again. As a member of the society, how should we face up to this situation?

Through campaigning for this cause both inside and outside this Council, we hope to make the authorities understand this situation. Throughout these years, however, the authorities have only been protecting the interests of the business sector, especially those of real estate developers. These real estate developers do not only engaged in real estate business, they have also monopolized all businesses related to different aspects of our daily living.

Therefore, I hope the authorities will call on the business sector to refrain from impeding the progress of the development, and I believe the Business

Facilitation Advisory Committee will discuss any question that may arise. This is an important step, but in order to take this step forward, the co-operation of all stakeholders is required. We have been waiting painstakingly for so many years; finally, the authorities have plucked up courage to introduce this legislation. I hope the authorities will do the best they can to liaise with the business sector, do not lay off employees, do not say that automation can do more work and hence deprive people of the work; do not refuse to pay the minimum wage rate. I hope the Secretary will understand these aspirations because the people of Hong Kong have a higher expectation than before. I hope when we submit our report again under the International Covenant on Economic, Social and Cultural Rights, there will be some concrete evidence of improvement. I do not hope to see the enactment of the legislation will result in chaos, with workers still getting low wages, mass layoff, people pouring out endless grievances or even besieging the Legislative Council Building.

President, we are only taking a small step today, but the co-operation of various sectors in the community is required, and the authorities are duty-bound to effect such co-operation.

With these remarks, I support the resumption of the Second Reading of the Bill.

**DR PRISCILLA LEUNG** (in Cantonese): President, the legislation on minimum wage introduced by the Government of the Hong Kong Special Administrative Region (SAR) should be one of the most influential pieces of legislation after the reunification. Some Members have queried whether legislating for a minimum wage would contravene the requirement under the Basic Law that the capitalist system of Hong Kong should remain unchanged. I did not agree to this because I think offering wage protection to grassroots employees in a commercial society will not cause any change to the system of Hong Kong as a capitalist, free commercial society. Therefore, I support in principle legislating for a minimum wage.

Legislating for a minimum wage is in essence a good move, but contrary to some commentaries, it will not be able to resolve the wealth disparity problem or bring about a breakthrough to the existing deep-rooted conflicts in Hong Kong.

I am not so optimistic about it. The minimum wage rate only serves as a guideline for employers and employees in respect of wages, it cannot resolve the wealth disparity problem and deep-rooted conflicts in Hong Kong, and neither can it change the existing economic system of Hong Kong.

From a more realistic point of view, I think the legislation on minimum wage is a knife with blades on both sides at the present stage. If a proper legislation is enacted, employees' interests will be protected; otherwise it will push up more rapidly the unemployment rate of the most disadvantaged groups, such as the elderly and people with disabilities who attract great concern or the less competitive groups. When the legislation on minimum wage is enacted, workers who are not represented by labour unions will very likely be most seriously affected.

I am a Member of the Kowloon West geographical constituency, which is one the most complicated geographical constituencies. In this constituency, there is the co-existence of old and new districts; there are flats with the highest prices and there are also people in greatest poverty. The collapse of the building at 45J also occurred in Kowloon West. It can be said that the problem of wealth disparity is very serious in that constituency. I have visited different communities and listened to people's views on legislating for a minimum wage. In the following, I would like to cite three examples, all of which were actual situations I came across during my visits.

When I asked a young employee of a Hong Kong style café about his views, he said he welcomed legislating for a minimum wage. He thinks it is a kind of recognition for workers' dignity at work, and he strongly believes that his employer will not lay off any employee because of the implementation of a minimum wage. Certainly, he is among the young and the energetic group.

Another example is an old lady of over 65 years of age who is a cleaning worker in a Hong Kong style café. Actually, she also welcomed legislating for a minimum wage. However, she was concerned that as her employer was not a powerful, large enterprise, she might become unemployed. She very much hoped this would not happen and she did not wish to live on Comprehensive Social Security Assistance scheme (CSSA) payments.

The third example is a boss of a small business in a public housing estate. Actually, I think it is more appropriate to call him a general member of the public than a boss, for he only makes a meagre profit every month. Therefore, he has to find out how the enacted legislation on minimum wage will affect the cost of operation; of course he also has to consider other factors before deciding whether he will have to reduce manpower. He will try his best not to lay off staff because although he is the boss, he is not from the upper class, and he even thinks he does not belong to the middle class. He thinks that under this circumstance, those who will be most affected by minimum wage are actually not large enterprises or big capitalists who are being chided by the public.

Honourable colleagues from the Hong Kong Federation of Trade Unions (FTU) mentioned the issue of a monthly income of \$6,000 just now. For a relatively large-scale enterprise, it is not a high rate at all. In a big city like Hong Kong, \$6,000 is certainly not a large amount. If large enterprises express concern about this rate, actually we do not have to show sympathy for them. Rather, people who should be concerned about this rate are traders who make meagre profits by running small businesses, such as dai pai dongs, congee stalls and hawker stalls. These small businesses cannot even be categorized as small and medium enterprises (SMEs) because in order to be regarded as such, they have to go through an enterprising process. Although traders of these small businesses are called bosses, they may only have one or two, or at most four to five employees.

In legislating for a minimum wage, the Government is definitely well-intended. However, it must consider whether small business operators will be affected during the implementation of a minimum wage. Perhaps, these operators are at a crossroads under this circumstance, being unable to decide whether they should reduce manpower or move their businesses to another district as a result of the increase in rentals and the possible slight increase in their employees' wages. The Government and Members have to consider whether additional support or assistance at the policy level should be provided under this circumstance. Actually, all these are very practical issues.

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

During the process of legislating for a minimum wage, quite a number of SME operators have relayed to me their dissatisfaction, which was that they could not express their views under the system or the establishment at the initial stage. In my impression, it was only until a later stage that they came forward to express their views in a relatively high-profile manner. It was only after we had commenced to legislate for a minimum wage that this group of SME operators realized that they had to make their voices heard, and so they relayed their difficulties to Members and society one after another. I think in implementing the legislation on minimum wage after its enactment, we should pay close attention to the situation of these stakeholders.

I would like to reiterate that large enterprises, especially monopolistic enterprises, should not be affected by the enforcement of the legislation on minimum wage upon its enactment and so they will not require our attention. Actually, these large enterprises should be able to afford paying all their employees at the rate of \$6,000, which is just very low. Even SMEs will not pay their employees at such a low rate. Rather, enterprises which require our attention most are those which can barely keep their businesses going. I think we should pay special attention to them because chances are that they will cut manpower or even close down because of the decrease in profit.

I have some personal experiences in this respect, and perhaps this is why I am more sympathetic to them. I fully understand the difficulties they shared with me because my father also ran a small business. Frankly, these employers are not bad people, and they want to maintain their businesses so as to provide for the living of their employees. Very often, they will pay wages to their workers out of their profits first, while the remaining amount may already not be enough to support their own families. This is the life of these so-called employers which I witnessed during my childhood. It is actually very tough to run small businesses, and they may barely make ends meet. Therefore, in legislating for a minimum wage, I am more concerned about this group of people who are likely to be affected most.

Regarding the exemption for foreign domestic helpers (FDHs), some Honourable colleagues are strongly against exempting FDHs from the regime. Actually, when I see so many FDHs gathering outside, with banners in their hands, I really do not hope legislating for a minimum wage will turn into a racial conflict. This is definitely not what Honourable colleagues want to achieve, and

neither do I believe anyone has ever wished this to happen. I support exempting FDHs from the regime. I think FDHs in Hong Kong have made great contribution to many middle-class families in Hong Kong, especially to working women like me, over the past two decades. Frankly, some of my classmates in university have no alternative but to quit their jobs after emigration because they cannot afford employing domestic helpers whose wages are exorbitant. Therefore, we, working women in Hong Kong, indeed have to express gratitude to FDHs for helping us look after our families, so that we can concentrate on our jobs.

Actually, however, regarding the exemption for FDHs, I cannot say for sure whether the Government will succeed in the judicial review. A close relative of mine recently told me that she had decided not to renew the contract of her FDH because she did not know whether the Government would lose, and as her FDH's contract had just expired, she would prefer changing to work part-time to look after her children because, upon computation, she found that after the implementation of the minimum wage, she would have to pay the FDH almost \$6,000, which was quite a large amount for her family. This is not an isolated example. Actually, many representatives of women from middle-class families have relayed their specific situations to us at public hearings. Insofar as the issue of FDHs is concerned, the families which will most likely be affected are not high-income families but families which can barely make ends meet but have to employ FDHs because both parents have to go to work. These families will be most affected.

Besides, regarding enforcement, I think employers of FDHs are different from those in the business sector. FDHs have to dwell in the relevant household, and employers can trust their children and home with them, and trust, care and understanding among family members are very important. If FDHs are included under the coverage of the legislation on a minimum wage, I can see that a practical problem will arise, which is how employers should compute the number of working hours worked by FDHs. We have to trust FDHs, and we would not mind it if they take a rest and watch television at times after we have gone to work. However, if we really have to compute their working hours in future, and count the night time as four working hours, what about the day time? Do we have to install a close circuit television? This will bring tension to the relationship between employer and employee. Therefore, I think exempting

FDHs from the coverage of the regime is actually more in line with the existing situation of Hong Kong. Actually, it is not necessarily a bad thing for FDHs because just like the situation of other occupations, there is a chance that the issue of layoffs will arise if the minimum wage regime is applicable to them.

Besides, another exemption is for students aged below 26 undergoing internships for not more than 59 days. I also agree to this exemption. However, regarding how it should be enforced and how we should deal with cases in which the students concerned may not be enrolled in an accredited programme or they may be enrolled in a programme at secondary level rather than undergraduate level during the so-called 59 days, I think there are still some uncertainties in the legislation. Here, I must point out that many young people, particularly students, including secondary students, find summer jobs in order to obtain work experience, and sometimes their parents will also help them find summer jobs. If this exemption is granted, everyone will have more peace of mind.

However, in legislating for a minimum wage, I think many problems are yet to be resolved. For example, how should we deal with the standby time and how should commission be counted. We now propose that these issues be dealt with in the contract. It is a good idea to leave some room in the terms of the contract, but for small enterprises which are unable to set up a human resources department or cannot afford to engage a lawyer to give advice on these issues, I think it is vitally important to provide them with a minimum wage enforcement guideline. The authorities must avoid adopting the solution proposed in the Bureau's reply to the committee. In other words, the authorities must ensure that employers do not have to submit controversies to the court for settlement. We have proposed, and Members have already reached a consensus, that all details should be set out clearly in the guideline. For operators of small businesses and SMEs or even for employees, they simply cannot afford pursuing litigation, which is indeed a painstaking process. I think the guideline must be drawn up with caution and in great detail, and also written in layman terms to facilitate understanding by employers and employees. Our stance is that we should avoid resolving the relevant problems by way of litigation, and the Legislative Council should not shift this responsibility to the court. We should set out these issues clearly.

As such, I support the resumption of the Second Reading of the Bill and the amendments moved by the Government.

**MR ALBERT HO** (in Cantonese): Deputy President, after more than a decade of debates in society, we are very happy to see that a consensus has finally been reached on legislating for a minimum wage. After the Government has agreed to the policy objective of the legislation, the business and industrial sectors think that they should no longer resist against legislating for a minimum wage. Therefore, we can see that government decision plays an important part.

We can see that in recent years, income disparity in Hong Kong society has been widening. With deteriorating wealth gap, Hong Kong has become an M-shaped society. The Gini coefficient has surged from around 0.4 a decade or so ago to 0.533 these days. Hong Kong ranks one of the top places in the world with the most serious wealth gap problem. Ms Emily LAU has just said that the number of working poor in Hong Kong plus their family members add up to more than one million people. However, there are at the same time a considerable number of rich people — some being modestly wealthy and some are incredibly wealthy. It is natural that there are strong calls to draw up some policies to remove social injustice.

I recall that throughout this decade or so, quite a number of academics hold clear views against setting a minimum wage. Many people think that a minimum wage policy will disrupt the operation of a free economy, twist the principle of supply and demand and so undermine the economic benefits. In reality, we can see that most of the countries which practise capitalism and a free economy, especially those democratic countries, have enacted laws on minimum wage. Why is there such a big difference? Is it simply because a government returned by the people has to address the people's demands? I do not think so. I think the biggest difference is that many economists just concentrate on economic theories. However, the issue of minimum wage also involves people's expectations for social justice, thus turning the issue into an issue of political economy, instead of an issue purely related to economics. It is because of this reason that our economy will still be in operation. After the implementation of a

minimum wage, I can see that for many countries, they do not have to face the problems as predicted by these academics.

Recently, the Democratic Party conducted a survey on the public's support of a minimum wage. It was found that 59.7% of the interviewees supported and accepted the idea of legislating for a minimum wage. Only 20% of the interviewees objected to the idea. So there is sufficient support in public opinion that this policy should be implemented. I also believe when this policy is put into practice, those who oppose it will not have to fear the emergence of certain social consequences, such as a surge in unemployment rate.

Undeniably, some people would get worried. Their worries are justified because when the legislation on minimum wage is passed, job opportunities for the old and the frail may decrease. Some of them even have to apply for social welfare and unemployment payment. However, I always think that it is better for elderly persons who have lost their jobs to be on CSSA than for young and strong people to be on CSSA because they are out of work. As we know, the likely consequence is that once a minimum wage is prescribed, some employers can no longer hire the elderly and the frail by giving them despicably low wages; instead they have to hire able-bodied persons who would otherwise be unemployed and have to rely on CSSA. On the other hand, some elderly persons would lose their jobs and have to rely on CSSA. I think that this kind of adjustment is not unreasonable. In any case, enterprises have to spend more on operating costs. This is, in my opinion, a reasonable expectation as enterprises should at least fulfill their corporate social responsibility by offering a wage level that respects human dignity and take that level as part of their operating costs. This is a reasonable act.

Deputy President, three bodies are involved in the framework as stipulated in the legislation: First, the statutory Minimum Wage Commission (MWC); second, the Chief Executive in Council; and third, the Legislative Council. We will look at the statutory MWC first. A number of Honourable colleagues have talked about the representativeness of the MWC. I understand that we need not have high expectations of it for it is actually a private advisory body to the Chief Executive. As a matter of fact, its powers are actually not what it claims to be.

Hence, I do not have too much expectation for its representativeness. Its most vital power is to collect information relating to wages, come up with some recommendations base on certain factors as stipulated in the law, and then submit a report to the Chief Executive. This is the main function of the MWC.

However, Members should note two points. First, the so-called statutory factors are only meant for reference. These data and factors do not constitute any clearly defined methodology or formula so that the Commission can arrive at a figure on minimum wage in a scientific and objective manner. The Commission cannot even prescribe a clear wage level to be recommended to the Chief Executive. In other words, different people will draw different conclusions with these figures. If they are given to Mr Tommy CHEUNG, Mr LEE Cheuk-yan or Albert HO, different conclusions may be drawn. Moreover, if we look at these factors, they are not decisive in any way, that is, people can come up with any conclusion with these figures. So in my opinion, this Commission will make recommendations according to its political judgment. Of course, the most important issue is, whether the Chief Executive will accept its recommendations or how he will use the report and what kind of recommendation will then be given to the Legislative Council. This is after all a political decision and it is not based on any data which are scientific or absolutely objective. Therefore, I think we should not have too much expectation for this Commission. Honestly, I am sure the three official Members can exert great influence, they will guide the Commission to arrive at a minimum wage rate which is acceptable to the Chief Executive.

Second, like I have just said, the Chief Executive will submit a recommendation to the Legislative Council after reading the report. This is purely a political decision as well. For this reason, it really does not matter much if the Legislative Council shall have the power to make amendments. There is nothing to be said against it. After all, it is a political decision.

I recall some friends and academics say that the Commission will make a recommendation based on data, which is arrived at after analysis made by many experts, and the Commission will submit a report to the Chief Executive. Based on the analysis, the Chief Executive will inform the Legislative Council of his

decision by way of legislation. Since the Legislative Council has not undertaken any studies, should it be given the authority to make amendments? Actually, the question is simple. After listening to my above analysis, I think Members should come to understand that the decision made by the Chief Executive is in fact a political decision. It is because the data is drawn from different persons who have considered a number of factors based on different standards. So the conclusions arrived at are all different. It can range from \$20 to \$33. In my opinion, if the Legislative Council has the authority to make amendments, it does not matter much. In any case, this power to amend in the end will have to ..... as it is raised in the form of a Member's motion, it has to undergo voting by division. Given all these constraints, if this can still be passed, it will show that our decision is a very safe one and it is a decision which is truly representative. Therefore, I agree very much that the Legislative Council should have the power to make amendments. I will give my full support to the amendment proposed.

I have also said earlier that a number of factors are involved and they cannot constitute any scientific data which can guide the Commission in making a recommendation. All these figures are not scientific and objective in any sense. But as a matter of principle, I agree with what some Honourable colleagues have suggested in their amendments that certain factors like the CSSA rates should be considered. This is because the minimum wage should not be lower than CSSA payment rates. At least this is a level which can be used as a good reference.

Also, I know that Mr LEE Cheuk-yan or maybe some other Honourable colleagues demand that considerations be also given to the needs of the employees and their families, such as general wage levels, living costs, social security benefits, and so on. I think even if these suggestions are included, it may not and probably will not have any legal binding force. This is because I believe even if LEE Cheuk-yan would lodge a judicial review base on these data, it would be difficult for him to instigate any legal proceedings. But this is the spirit and it conforms with the stipulations in Article 7 of the International Covenant of Economic, Social and Cultural Rights. I think it is right to add in these recommendations to remind the Commission and the Chief Executive. So we would support this amendment.

Concerning the scope of this legislation, the greatest controversy lies in the issue of domestic helpers. We know that the entire law is based on hourly wages. If domestic helpers are involved, this will involve very complicated work pattern and the method of computing their salary. As a matter of principle, I very much hope that they can be included in this law. However, when I see Mr LEE Cheuk-yan's amendment, I realize that there are certain things that cannot be solved easily. He mentions a so-called multiplier value, but this value is hard to define or help us calculate the actual working hours. This is my first worry.

Second, there is something which cannot allay my misapprehensions and that is, when all these are worked out, what should be done to adjust salaries in future and what would be the impact on society. This includes the impact on employers and employees alike. With respect to this, I am a little worried. So we find it difficult to support this amendment. But we will not oppose it either. This is because as a matter of spirit and principle, I think minimum wage legislation should be enacted as soon as possible to include domestic helpers, though it is not possible to do so today. I think the Government should devise a mechanism expeditiously or invoke another law to deal with the issue of domestic helpers so that they can come under a system like the present one which can offer them protection.

Lastly, as we all know, there are two kinds of people who may be given exemption under this law. They are persons with disabilities and student interns. They are outside the purview of this law but they are not totally exempted from it. For example, for persons with disabilities, there are some mechanisms for making assessment and these permit them to receive a lower income than the minimum wage. We are aware of the practical needs for this exemption. As we can see from the stand of many rehabilitation agencies, this exemption should be supported. But we should examine these mechanisms very carefully. We have made many suggestions for revision. We think these should be supported so that these mechanisms and exemption should be made sounder (*The buzzer sounded*)  
.....

**DEPUTY PRESIDENT** (in Cantonese): Speaking time is up.

**MR ALBERT HO** (in Cantonese): ..... and any possibility of abuse can be avoided.

I so submit.

**MR ALAN LEONG** (in Cantonese): Deputy President, this Council is finally able to proceed with the Second Reading and Third Reading on the Minimum Wage Bill today. After so many years of discussions, we have eventually come to the moment of voting. Hong Kong is thus able to take a significant step towards achieving greater social justice, this is indeed encouraging.

Hong Kong is such an affluent society, but surprisingly, the hourly wage of some cleaning workers is only \$11, and in some cases, a full-time security guard's monthly wage is just \$4,000 or even lower. However hard such a worker works, the wage he receives at the end of each month is still unable to support the living of him and his wife. However hard such a worker works, he is still unable to earn enough money for meeting his basic living expenses. People all see a very great problem in this respect.

The Civic Party has all along advocated the enactment of legislation on minimum wage. As a matter of fact, when the Party was formed, we had already included this policy objective in our party platform as an important principle and guideline to be followed by our Party. The reason for the Civic Party's concern about legislating for a minimum wage is that we want to bring into being a just and fair social obligation that is recognized also by enterprises, rather than tolerating a social system that exploits workers and monopolizes the fruit of economic success. Naturally, Deputy President, you may also remember that the road to the enactment of legislation has been full of twists and turns. To begin with, some representatives of course ..... In particular, functional constituency Members representing the industrial and business sectors and employers repeatedly voted down motions calling for the enactment of legislation on minimum wage. Then, in 2006, the Administration launched the voluntary two-year Wage Protection Movement intended solely for cleaning workers and security guards. However, due to the predominance of big corporations in Hong Kong, our imbalanced population structure and the ineffectiveness of the wage-setting mechanism in the labour market, employees were still faced with

intolerable low-wage exploitation. Since then, there has been a fundamental change to society's overall consensus. The Government has come to realize that it is impossible to delay the matter any more, so it has proceeded with legislating for a minimum wage on the basis that the Wage Protection Movement has been ineffective. It is of course better late than never. But it is obvious that the Government has left some wiggle room regarding certain key issues covered by the Minimum Wage Bill, and the overall design is also far too conservative. Put simply, the Chief Executive and the privileged industrial and commercial sectors may still control the whole situation under the mechanism set out in the Blue Bill.

Deputy President, for example, many members of the Bills Committee have requested that in prescribing the minimum wage level, it should be guided by the concept of living wage. Deputy President, you are also aware that in Hong Kong, apart from the safety net provided by Comprehensive Social Security Assistance (CSSA) and the provision of the Transport Support Scheme ..... When compared with the United Kingdom, the United States or some European countries ..... In such countries, poverty lines are often drawn, and with various administrative measures, the governments there often assist low-income families who fail to make ends meet. In view of this, Hong Kong's minimum wage legislation cannot be compared with the approaches adopted in the United Kingdom, the United States or European countries. But we may look at some statistics. According to these statistics, in 2009, 147 000 families in Hong Kong has an income below CSSA rates. But only 10%, or roughly 15 000, of these 147 000 families were in receipt of CSSA. Therefore, the very small safety net in Hong Kong is not so much a safety net of last the resort. I must clarify at this juncture that such is the background against which we now consider how we should enact the required legislation. For this reason, we cannot possibly come up with any excuses if we do not consider living needs as an indicator or set the minimum wage above CSSA rates in the course of setting the minimum wage level.

The problem now is that the Government has left some wiggle room for itself. When it comes to whether the Provisional Minimum Wage Commission (PMWC) will follow a set of objective criteria in setting a minimum wage level, whether trade unions can recommend the employee representatives and whether the three government officials will have any voting power, the Government has actually held fast to its position. This means that the PMWC will not put down

in black and white any objective standards or targets for setting a minimum wage. Perhaps, as remarked by Mr Albert HO just now, since it would eventually be the Chief Executive's political decision, nothing would be written in detail lest people might apply for a judicial review. However, it is clear that the Government has left some wiggle room for itself. We only need to imagine the voting situation to know what will happen. There are 12 members. If the three government officials also have voting power, then these three government officials, together with the three employers' representatives, will easily become the majority as long as they can win just one academic over to their side. Of course, they may not really need to do so because the PMWC is only supposed to offer advice to the Chief Executive. The Chief Executive may simply refuse to accept its advice.

Another example of the wiggle room left by the Government is that the Legislative Council is not empowered to revise the minimum wage level put forward by the Government. As rightly pointed out by Mr Albert HO just now, if it is just a political decision, then it is only normal to expect a political tug-of-war. But the Government refuses to yield. Another bottomline which the Government adamantly adheres to is the frequency of review. As we reckon, the problem now is that the initial rate to be set will not be too high. I have mentioned that as many as 147 000 working families have to eke out a living, with a monthly income lower than CSSA rates. The first minimum wage level set by the Administration may not be able to tackle the problem faced by them. For this reason, from our standpoint of protecting the people's livelihood, it is of course better to conduct reviews annually than biannually because we can rectify problems more quickly. But the Government also refuses to yield.

What is more, many important issues are left to be stipulated in the employment contracts, thus plunging employees with no bargaining power into a very disadvantageous position. As we can observe clearly, on many significant issues, the Government is still rather conservative in attitude, clinging firmly to its bottomline.

Deputy President, under this situation, it is all the more necessary for us to realize that even if the Minimum Wage Bill is passed, we cannot immediately solve our deep-rooted problem, that is the problem of disparity in wealth.

I naturally hope that the Chief Executive can set the minimum wage at a reasonable level, so as to relieve the plight of the 147 000 working families. Besides, I am also of the view that the Government must make incessant efforts to improve our welfare services, such as primary health care, public health care, subsidized basic education, public housing, the fruit grant and CSSA for low-income earners. All these services are in need of continued improvements. It is unrealistic to expect that a minimum wage alone can bring complete relief to such impoverished families.

In addition, another task that the Government should undertake is the creation of employment opportunities. In recent years, we have frequently heard in this Council how the Chief Executive talks about the six major industries and how we must formulate new industrial policies with a new mindset. However, there has just been thunder but no rain. Even if the Bill is passed today, the Government should still continue to make efforts in this direction. In particular, it should seek to break the monopolization of the industrial and commercial sectors as far as possible, so that young people or the common folks with special creativity power may also make a mark in society one day. Even if the Bill is passed today, the Government should still make such efforts.

Deputy President, I so submit and support the resumption of the Second Reading debate on the Bill.

**PROF PATRICK LAU** (in Cantonese): Deputy President, the issue of minimum wage has been discussed in society for many years, and now we have finally reached the Committee stage. I think we need to set a minimum wage to protect grassroots workers from receiving excessively low wage, so that they can maintain their basic living needs. Despite the fact that views from various sectors of the community on the issue are diverse and some technical problems remain unsolved, I think we should pass the Bill first to effect minimum wage protection for employees and then conduct studies on how to solve the technical problems.

One of the problems we need to solve is that the passage of the Minimum Wage Bill (the Bill) may not be able to fully protect all employees. For example, with the increase in costs following the enactment of the minimum wage legislation, service contractors may need to cut staff to control costs, and

consequently workers with a higher wage may be compelled to accept a wage reduction or they will be dismissed. A staff cut will inevitably increase the workload of the remaining staff and create unemployment. As such, for grassroots workers, the loss may outweighs the gain.

Besides, if the Bill is passed, should we also consider the wage of foreign domestic helpers which is about \$3,000, and align it with the standard rate set out in the legislation? As a free and open society, Hong Kong always welcomes individuals of different nationalities coming to work here, and the principle of fairness is also one of Hong Kong's core values. If these issues are not handled properly, it may easily trigger proceedings on racial discrimination.

Actually, as the economic environment changes with time, regular reviews on the minimum wage level can strengthen protection for employees. That said, the level of minimum wage will also affect the decision of employers in employing staff. I am of the view that the review mechanism should have flexibility. If the minimum wage level is to be reviewed annually, some employers may cut long-term workers, and shorten the term of employment contracts, for example, by changing the original two-year contract to one-year contract, which will bear an impact on the protection of employment for grassroots workers. Besides, with the exception of the Mainland China which has provided that a review should be conducted at least once every two years, countries like the United Kingdom and the United States have not set forth the review period in their legislations. In the United Kingdom, a review will be conducted only when such need arises. It is reasonable for the Government to propose that a review will be conducted at least once every two years. In doing so, we can review the wage level at a regular interval for the protection of employees, and solve the problems, if any, in a flexible manner; moreover, we can also minimize the impact on employers and employees and strike a balance between them.

According to the provisions of the existing Bill, people with disabilities are also covered by minimum wage protection. In order to avoid any impact on their employment opportunity, they may opt to enter into an agreement with their employers for an assessment of their degree of productivity, and for an appropriate wage level to be calculated according to the assessment report. Prior to such assessment, they can still enjoy the level of remuneration under the

original contracts. This is a proper arrangement as it can safeguard the job opportunity of employees.

Deputy President, as for the extension of exemption for interns, particularly university and tertiary students, it will have a positive effect on the training opportunities for students. At present, many institutions are competing for places of internship for their students. Students can gain some social experience and lay a good foundation for their future job through internship programmes, which are very important for their development. As this exemption arrangement can relieve employers' worries, they will be more at ease in offering places of internship for students to gain useful experience, thereby enabling students to find a job with better pay more easily upon graduation and eliminating the quagmire of inter-generational poverty.

It is proposed in Mr WONG Kwok-hing's amendment that the Minimum Wage Commission (MWC) has to assure that the minimum wage rate must not be lower than the Comprehensive Social Security Assistance (CSSA) level. This proposed amendment is of paramount importance as CSSA provided by the Social Welfare Department aims at providing a safety net for the applicants to meet their basic living needs. If the minimum wage can be set at a level higher than CSSA payments, this will encourage members of the public to be self-reliant by joining the workforce. The spirit of Hong Kong people working hard to gradually build for themselves a road to success can be upheld. I hope the MWC, upon its establishment, will take this into consideration in setting the minimum wage level.

Today, we are at a very important moment. Of course, I hope that all Members will vote for the Bill, so that the broad principle and relevant framework for minimum wage can immediately be established and implemented. Thank you, Deputy President.

**MR PAUL CHAN** (in Cantonese): Deputy President, first of all, I wish to declare my interest. I am an employer and my company hires cleaning workers, amahs and persons with intellectual disability. I also employ foreign domestic helper at home.

Deputy President, the issue of legislating for a minimum wage has been discussed for more than 10 years and it has never been easy for us to come to this stage. It has been more than one year since the announcement on the enactment of legislation was made last year. There are divergent views in the community and in this Council. In some aspects, it can even be said that views are polarized. Even up to last night, I still got e-mails from friends in my sector urging me to oppose this legislation.

Deputy President, as the representative of the accounting constituency and a professional, how would I view the issue of legislating for a minimum wage? The accounting profession is involved in many kinds of commercial activities and it has close links with the business sector. We have all studied economics and we have been living in a capitalist society for a long time and naturally, we believe in the free market. Hence, our intuitive response is against minimum wage legislation, and we opine that wage rate should be left to market forces of demand and supply. Regrettably, there are times that market operation fails to function and the market can be cruel and apathetic, with no sense of right and wrong, and no feelings of compassion. It can even be said that in the market, the weak are the prey to the strong, and the market is a synonym for greed and avarice. A decision made by market forces differs from one made by we, humans beings with flesh and blood, feelings and conscience.

Deputy President, let me quote from two sets of figures to support the view I have just raised. According to results of the General Household Survey compiled by the Census and Statistics Department, households in Hong Kong were classified into 10 groups six years ago (that is, in 2004) according to household income. For households in the group with the lowest income, the median monthly income was only \$3,000. Five years later in 2009, the median monthly income for households in this group is still \$3,000 — with no change at all. If the clock can be put back to an earlier time in 1997, the median monthly income of the lowest income group was \$4,300. This is 40% more than the figure for 2009. In other words, the wage for households in the lowest income group has not increased but fallen over these 12 years. On the other hand, the actual growth in per capita GDP for Hong Kong over the past 15 years is more than five times. With this stark contrast, we cannot help but ask, what is wrong with Hong Kong? Do we want to see our wealth built on exploiting grassroots workers?

Deputy President, the second set of figures is found in the Report on 2009 Annual Earnings and Hours Survey released by the Census and Statistics Department this March. The Report points out the two trades with the lowest median hourly wage, namely estate management, security and cleaning services; and the catering industry. Their mean hourly wages are \$27.6 and \$32.7 respectively. Members may think that the problem is not as serious as it appears. But if we take a good look at the contents of the Report, we find that under the category of estate management, security and cleaning services, people who earn a wage from \$20 to \$25 and less than \$20 an hour take up 21% and 6% respectively of all employees in that category, or more than 27% in total. As for the catering industry, employees with an hourly wage from \$25 to \$30, \$20 to \$25 and less than \$20 take up 18.9%, 17.6% and 3% respectively of the total number of employees in that group, or more than 40% in total. Deputy President, what do these figures tell us? In this affluent society of Hong Kong, these two industries with a considerable number of employees have 27% and 40% respectively of their employees whose income is far less than the median hourly wage of the group with the lowest income. Just think, how can their income sustain their life?

Deputy President, one of the issues which is most talked about in the discussions on minimum wage is the impact of minimum wage on the business environment and Hong Kong's competitiveness, especially its impact on small and medium enterprises (SMEs). It is argued that additional costs would enhance the operation difficulties of SMEs, causing a great loss of jobs and even massive closures of SMEs. I think when minimum wage is implemented, the operation costs of SMEs would inevitably increase, this is an issue which we should handle carefully but it should not be magnified indefinitely.

Deputy President, as time is running short, I wish to raise two points only. First, since some advanced overseas countries including the United States, the United Kingdom and Germany, have all prescribed a minimum wage, does it mean that they have no competitiveness? Certain trades in the United States rank very high in terms of competitiveness. And at least the United States is a very prosperous and affluent country. So the argument that minimum wage would pose a negative impact should not be seen superficially. After the implementation of a minimum wage in the United Kingdom, local studies found that the impact on SMEs was minimal. The second point is about the SMEs in Hong Kong. We can look at this issue from two aspects. First, on the local

level, the increase in costs will naturally be transferred to customers, as in the case of rental increase. If everyone is subject to the same set of regulations and rules of the game in running a business, provided that the law is appropriately enforced and there is no bias, I believe the impact on the business environment of SMEs is not great and the competition among them will be offset. For the past few years, I went to a Hong Kong-style café to have breakfast. I found the prices charged by cafés in North Point are different from those in Happy Valley. Even for cafes in North Point, the prices are different, depending on the food quality, service and the approach taken in running the business. Over the past few years, we can see clearly that even though inflation rate is not too high, prices have gone up considerably owing to the increase in rent and other operation costs. It can be said that there was an increase of more than 10% over the past two or three years.

At the international level, I think SMEs in Hong Kong cannot simply rely on low prices to compete successfully. They should have smart ideas, added value and creativity. This is because things have never been cheap in Hong Kong. Rentals here are exorbitant. Let us look at some reports. Someone has made a survey on the cheapest place in the world where one can get a Big Mac. The result is that Big Macs sold Hong Kong are the cheapest. But rentals in Hong Kong are the most expensive. So I would like to ask how this is possible? Should we be proud of the fact that our Big Macs are the cheapest in the world? If these Big Macs are cheap because workers' wages are exploited, I think this is something we ought to be ashamed of instead.

Deputy President, I think that the stipulation of a minimum wage is, to a certain extent, meant to put a check on some big corporations. Very often, members learn from the media that some big chains and large supermarkets are some of the unscrupulous corporations. Although not all big corporations are like that, many of them are criticized severely by Members as unscrupulous. As for contractors for cleaning and security services, I do not think they are common SMEs.

Deputy President, I would also like to point out that when we discuss legislating for a minimum wage, I once had concern about its impact on the employment opportunities of the elderly, the frail and the disabled. Are we doing the wrong thing with a good intention? There are certainly some impacts on elderly workers, but we have to choose a lesser evil. I hope there can be

some matching policies from the Government. In Singapore, they have the Workfare Income Scheme, under which if the income of a worker is too low, he will be offered some subsidies. The subsidy rate offered to elderly workers is even higher. On the other hand, there is also the "productivity incentive", a term used in Singapore. Corporations which offer training to elderly employees to raise their productivity can get very substantial tax concessions. In my opinion, to evade legislating for a minimum wage cannot solve the employment problems of elderly workers. We cannot refuse to legislate for fear that these workers will no longer be competitive; instead we should help them in other aspects.

As regards persons with disabilities, I have much sympathy for them. But I think we should not help them by not implementing a minimum wage. Instead, the Government and public bodies should take the lead to offer a certain number of jobs to those persons with disabilities. I hope that with this move, corporations can be urged to fulfill their corporate social responsibility and help these disadvantaged people. This would be more effective than pushing the wages down.

Deputy President, the minimum wage level cannot be too low, but at the same time, I think that at this stage, we cannot say for sure that the level should be set at a level which can sustain the living of the whole family. This is because the conditions of each family are different. In fact, at the early stage when a minimum wage is implemented, we should give due regard to Hong Kong's competitiveness and problems should be identified and tackled in the process. In this way, we can avoid doing the wrong thing with a good intention. So in this regard, I think a better solution is to draw on the example of Singapore mentioned by me just now, to provide a subsidy to people with a monthly income less than a certain level and encourage them to continue working. In the case of Singapore, people whose monthly income is less than S\$1,700 can get a subsidy from S\$150 to S\$400 and older people will get a higher rate.

Deputy President, I will talk about the amendments for the remaining time of my speech. Mr WONG Kwok-hing and Mr LEE Cheuk-yan propose that the minimum wage level should be reviewed annually. I support this idea. As for the reasons, I think many Honourable colleagues have talked about them. I do not think that this is something we cannot do. Regarding the amendment proposed by Mrs Regina IP that the mentally disabled should be exempted from

minimum wage, I also agree to it. Ms Emily LAU raises the points of gender participation and the "six-year rule" and "six-board rule". I think it is inappropriate to write these rules down specifically in the law. That is because it is difficult to find the suitable persons and the participation rate of each gender may not be met. Moreover, I have been involved in public duties and some public bodies may ask a member to serve one more year to complete a project that is still in progress. I think it would lead to inflexibility if the rules are written down in the law.

Regarding the proposal of Mr WONG Kwok-hing that the Minimum Wage Commission should avoid setting a minimum wage level lower than the CSSA payment rates and that the minimum wage should be able to meet the essential expenses of individuals and families, as I have just said, we should model on Singapore and ask the Government to offer subsidies to low-income persons. So I would not repeat that point. Mr LEE Cheuk-yan points out that the number of working hours should be taken into account when employees are asked to travel to and from a workplace which is not their habitual workplace. The travel time should be counted. As I am worried that this will easily lead to abuses, I cannot support this amendment at the present stage. As for other amendments, I hope I can make a decision after listening to speeches made by Honourable colleagues in the Committee stage.

Deputy President, I so submit to support the resumption of the Second Reading.

**MR VINCENT FANG** (in Cantonese): Deputy President, first of all, I wish to declare my interest. I employ a considerable number of employees in Hong Kong, including security guards and cleaning workers.

Summer recess is around the corner and it should be an exciting time for those of us working in the Legislative Council, but since 2006, I always have worries that the Government would introduce some Bills for our deliberation and passage before the summer recess. I hope that the meeting time on this occasion would not break the record of the meeting to scrutiny the Interception of Communications and Surveillance Bill. In 2006, the meeting to deliberate on the Bill extended to two or three o'clock in the morning. All Members of the

Liberal Party almost had no sleep on that day, because we had to go to Chater Garden the next morning to take part in a march against the introduction of the commodity and service tax.

Deputy President, I mention the past event because I was very moved when I took part in that rally. At that time, not just employers took to the street, many wage-earners also joined us. Last week, I organized a seminar on combating counterfeit products and promoting the use of genuine products in the wholesale and retail sector. A dozen or so people came and made a petition. They were staff of a drug store. As business of their drug store was severely hit by counterfeit drugs, they were forced to have a pay cut. They urged the Government to impose heavy penalties on those drug stores which sell counterfeit medicines.

We can see from these two examples that both employers and employees have come out to defend their rights. Why is that so? It demonstrates the fact that employers and employees have an intimate relationship. They are in the same boat. If business is not good and the company has to close down, employees cannot stay away from this. They may have to get a lower pay and they may even lose their jobs. For employers, they fail to accomplish anything if they work alone without the assistance of their staff. So in general, employers regard employees as their working partners and together they will expand the business. Whenever this Council discusses labour issues, I always say that I hope Members will not smear labour relationships. The two should help each other.

When we speak in this Council, we are often quoted out of context and Members often exaggerate their contributions and attack those who hold different positions. This phenomenon is very common. As an employer and a member returned from a functional constituency, I expect I will be under attack against what I say today. But I must speak on behalf of my sector because the wholesale and retail industries and their related service trades are all internally-oriented. Their roots are in Hong Kong and cannot move elsewhere. According to rough estimates, there are more than 100 000 companies, shops and stalls in Hong Kong, hiring more than half a million people. More than 90% of the enterprises in the industries are small and medium enterprises (SMEs). These bosses operate on a small capital, they are not under media limelight and

have no channels to voice their opinions. But if you ask them what do they think about minimum wage legislation, what do you think they will reply? They will say that the legislation will be introduced if the Government wants to, and their concerns will simply be ignored. With no other alternatives available, the only thing they can do is to cut expenses by employing less staff. For those people operating a small business without hiring any staff, they can only rely on family members for assistance. Or they may say, fortunately we are small companies and cannot afford to hire cleaning workers and security guards; the legislation should not have any effect on us.

As an employer, I must admit that unscrupulous employers who exploit workers can be found all over the world. Both the Liberal Party and I agree that they should be punished. However, Members also agree that the law only regulates those who abide by the law. There are always people who deliberately challenge the law. For those law-abiding people, whenever a piece of legislation is enacted, the scope and flexibility for doing business will be further tightened. As in the case of counterfeit products and drugs, although the Government has spared no efforts in combating the selling of such products, such illegal activities are still rampant. For those law-abiding businessmen, they cannot get any support from government policies, worse still, business operation has become increasingly difficult as the Government keeps on rolling out measures which will increase their costs. For example, a pharmacist is required to station in a community drug store; people engaging in selling food would have to pay attention to nutrition labelling, they also have to worry about price-checking teams from the Consumer Council, as they may be accused of charging excessively high prices. With the enactment of legislation on minimum wage, the situation is indeed worrying.

The reason why I cite these examples is to raise one point, when the Government enacts laws, when Honourable colleagues urge the Government to legislate on some issue, they only consider whether there is a need to enact legislation, without considering if the trades and people affected by the law would be able to comply. If they cannot comply, what will be the effects on society, as well as the economy and employment situation in Hong Kong?

In recent years, people are concerned about the widening of wealth gap. I think that this is caused by two reasons. One is an increase in people who lack

skills to make a living. In order to solve this problem, we should offer training to these people and raise their incentive to seek employment, instead of just offering CSSA and welfare to them. In promoting the idea of minimum wage to us, the Chief Executive said that in order to attract people on CSSA to join the workforce again, the minimum wage set must be higher than CSSA payment rates. I am sure the Government has no reason to shift all the responsibility to the business sector.

Another reason accounting for wealth gap is that it is increasingly difficult to do business in Hong Kong. There is a lack of attraction to start a business. In the past, many people tried to start a business, but nowadays, the worst possible advice one can give to his friend is to ask him to start a business. Those who are already running a business would have to think about how to cut cost to minimize expenses. To be honest, I am not a mean employer and I pay my staff according to their qualifications and contributions made. But are there employees who are unhappy with me? I am sure there are. During the past few years, I have become a public figure and there were complaints made by my staff to labour groups or to the media, saying that I have changed the commission system, that I advance the payment of year-end double pay but delay the payment of salary for two days, and so on. I do not mind these reports at all.

On Monday, the RTHK programme "LegCo Review" called me and inquired about the hourly wages of my staff, in particular the security guards and cleaning workers. I refused to reply, and I do not mind that the programme will say when it is to be broadcasted tomorrow. I refused to reply because I do not want to complicate things as we are now discussing this controversial issue. I still recall after the onset of the financial tsunami, the media called me and asked for an interview. I have an elder brother who is a very low-profile person. He closed his factory on the Mainland and terminated the employment of all the staff according to the labour law requirements. He is called a conscientious employer by his staff. My elder brother said to me that he was merely fulfilling his responsibility and there was nothing worth reporting by the media. If the same act takes place in Hong Kong today, the employer may be criticized for trying to evade the payment of minimum wage or for providing inadequate compensation. As the saying goes, gossip is a fearful thing, even if something is done out of goodwill, other people or those with ulterior motive may distort it. So no matter how Honourable colleagues would criticize the business sector or the Liberal Party; and no matter how they would criticize me Vincent FANG or hundreds of

thousands of employers in Hong Kong, I still want to say that the Minimum Wage Bill to be enacted will impair labour relations in Hong Kong. It will end the interpersonal relationship between employers and employees once and for all. I dare say that the following situations will occur in Hong Kong later.

First, the working population will drop. As there are a large number of small enterprises in Hong Kong with great flexibility in the mode of employment, many employment opportunities are thus created. Let me cite an example. My company is situated in Kwai Chung. There are some small food premises that deliver orders. But they will not deliver just one lunch box. After 2 pm, we have to ask the shops whether orders for delivery will still be taken. This is because these shops hire temporary workers to deliver orders. Hence an order for delivering just one lunch box will not be accepted, for the money earned is insufficient to pay the wage. After 2 pm, those hourly-rated workers will be off-duty. This kind of hourly-rated jobs attracts many housewives because they can earn some pocket money and can socialize with other people. If the minimum wage level is set too high, they will have fewer chances to work.

Second, people who are the least competitive will be forced out of work. Members have received submissions from the mentally disabled and the physically disabled. They hope that they can be exempted from minimum wage. This is because they know that if minimum wage is introduced, they would lose the chance to work, come into contact with people and learn new things.

Third, underemployment rates will rise. When minimum wage is implemented, some companies with less financial resources may convert some full-time jobs into part-time jobs to cut costs.

Fourth, the number of self-employed persons will soar, just like what has happened when the Mandatory Provident Fund was first introduced. This time, the minimum wage will further increase the number of self-employed persons.

Fifth, employment contracts are likely to be revised. Once the legislation is enacted, the mutual understanding, support and trust that used to exist will all be gone. In order to protect their interest, employers will certainly write down all requirements in black and white, such as how meal time, overtime work, casual leave, business trips, and so on should be calculated. Employers will be

very mean and careful, so as to avoid the existence of any loopholes or inadequacies that can be manipulated by the staff. Once the minimum wage legislation is passed, which trades will stand to gain the most? I think the sale of time clocks will surge, human resources consultants and lawyers will also have good businesses!

No matter how many points I have said, there are still two main points that I wish to raise in conclusion, that is, labour relations will worsen, those who want to work may not get a job and those who do not want to work will still not join the workforce. We have been branded as unscrupulous employers for many years. Although the Liberal Party will support the minimum wage legislation and we agree that such a framework should be in place, I do not believe that we will no longer be criticized after the passage of this law. Those Members from the labour sector will continue making noises to canvass more votes. I believe there will be fewer people who want to start a business in Hong Kong from now onwards. Hong Kong's story of success will become dull. I believe we will see very soon whether the legislation will bring more advantages or disadvantages to Hong Kong.

I so submit. Thank you, Deputy President.

**MS CYD HO** (in Cantonese): Undoubtedly, minimum wage legislation is a very controversial issue, not only in Hong Kong, but also in overseas countries. In fact, not only employers in the commercial sector oppose legislation on minimum wage, the economists also share the same standpoint as they think that the market has an auto-adjustment system for its supply and demand, and that the labour market as well as the boom and bust of trades are therefore linked to the economic performance. However, the academics have overlooked the human nature of endless greed and the commercial consortia's monopolistic power in designing a social system. Thanks to this power, workers and even small enterprises have become so helpless that they can only struggle in a market that has been distorted by the high land price policy. The consortia, together with the Government, uphold the high land price policy, and the result is that even if workers work 12 hours a day, they might not be able to make ends meet. As for many small and medium food premises and retail shops which have made painstaking efforts to keep the business going, even if they can make profit, they

cannot afford the rental hikes demanded by the landlords and are forced to discontinue their business.

(THE PRESIDENT resumed the Chair)

The news reports on Uncle YIM, who was offered an hourly wage of only \$7 some years ago, have shocked our society. But this is not an individual case. In fact, during the same period, a female cleaner was only offered an hourly wage of \$11. To make sure that she could complete her task of cleaning two public housing blocks, this female cleaner had to clear the rubbish together with her children, who were over ten years old and studying in primary school. Examples like this have all been widely reported. Recently, there were also news reports about a worker dying of excessive fatigue due to working overtime regularly. This is the institutional violence in Hong Kong, which allows repression and exploitation of the grassroots, without using any vulgar language, and degradation of humans into slavery by institutional means. This is the institutional violence specifically found in Hong Kong.

In the wake of the financial tsunami in 2008, Alan GREENSPAN, Chairman of the Federal Reserve of the United States, said in a Congress hearing that market economy has lost its function and failed to bring benefits to the people because it underestimated the human nature of greed. Indeed, as the greedy ones have the political power to repress the disadvantaged by means of laws, policies and systems, the so-called market economy is nothing but just a synonym for the jungle law. Hence, President, as we can put in place the minimum wage legislation here today, the workers and those who have fought for a minimum wage for years should definitely feel pleased. This is not only the victory of workers but also the victory of justice and conscience.

Many colleagues have just said that as the grassroots are the majority group in society, they worried that when a democratic system is put in place in the future, more minimum wage legislations will be enacted. Actually, this will not be the case. In our society, the middle class is the majority, whereas the grassroots only account for about one-sixth of the population. In this regard, legislation on minimum wage is not only a goal that the grassroots have strived

for, it is also an achievement accomplished by the concerted efforts of many middle class people with social conscience.

In 1999, Hong Kong experienced a financial storm for the very first time. In order to help Hong Kong regain its competitiveness, the Government took the lead to outsource its work, exploit the grassroots workers, start layoffs and introduce pay cuts. Many people had their pay reduced by over 50%, and their present wage rate is still lower than that of 1997. As a result, for the one-tenth of workforce with the lowest income, their current median income still remains at about \$3,300. In fact, many Members have just mentioned a lot of data, among which I would only like to point out the simplest one. Currently, there are 320 000 families with a monthly income of less than \$6,000. Legislation on minimum wage will help alleviate the problem of inequity.

The minimum wage legislation may also help promote gender equality because the majority of grassroots workers are women. Here I would like to provide some figures that have not been mentioned by our colleagues. Currently there are 85 500 women with a monthly income of less than \$3,000. For those with a monthly income of less than \$5,000, the number is 414 000. These two figures add up to a total of 499 500, that is, almost half a million.

President, recently we have often said that half a million is a very important figure. In 2003, half a million people took to the street which resulted in the withdrawal of legislation on Article 23. Recently, half a million people supported the democrats in the referendum, making it possible for the Democratic Party to gain the bargaining power. There are almost half a million low-income women workers, among them, most are non-skilled labourers, including domestic helpers, cleaners, messengers, private guards, security guards, lift operators, general workers and hand packers, and their median monthly income is only \$3,600. If there is a statutory minimum wage, not only can we promote gender equality and eliminate the injustice of different pay for the same work, but we can also assure the children in single-mother families of fairer treatment in their childhood so as to eradicate the problem of inter-generational poverty.

President, though there has been some progress in introducing this piece of legislation, we should not feel happy too early because the minimum wage issue cannot be directly addressed by the legislation. In fact, this is more like a legislation on the Minimum Wage Commission (MWC) than a legislation on

minimum wage. The legislation aims to provide a legal framework for discussing the organization of the MWC, of which the members will be appointed by the Chief Executive and the authority be conferred by the legislation. Most important of all, the minimum wage to be proposed by the MWC, which can be taken as a reference by the Chief Executive, may not necessarily be put into implementation. Moreover, this legislation has also seized the Legislative Council's power to amend the relevant subsidiary legislation. Later at the Committee stage, we will discuss these points one by one.

However, this legislation does not prescribe how to set a minimum wage. It is only stated in the functions of the MWC that two points should be paid attention to when considering the minimum wage rate, which are: preventing the loss of jobs, maintaining Hong Kong's economic competitiveness and forestalling excessively low wages. But how can we define "excessively low"? Should it be an hourly rate of \$7 or \$11? Or at a rate that has aroused public anger? Should it be like that?

Therefore, President, I greatly support Mr LEE Cheuk-yan's amendment, which proposes to stipulate the needs of workers and their families in the legislation.

In fact, the most important function of this legislation is that it enables Chief Executive Donald TSANG to use it as a stalling tactic. When faced with so much pressure from society and so many incidents that had aroused public anger in his term of office, the Chief Executive was forced to launch the Wage Protection Movement. Since the movement had failed to yield satisfactory results, legislative work was carried out. The most important function of this legislation is nothing more than pushing the MWC to the front of the stage to play the role of a scapegoat. Behind the curtain, everything is still controlled by the all mighty Chief Executive. Following the example of the constitutional reform, the Chief Executive will once again leave another bomb for the Government of the next term to dismantle.

President, in fact, the minimum hourly wage of \$33 that we have advocate can only support a family of two, instead of a family of four as the Chief Executive said. Our calculation is based on the CSSA payments. Taking into account the basic CSSA payment for two, the rent of a two-person public housing unit, the traffic expense for two, 5% MPF contributions, 10% savings and the

annual non-recurrent expenses of the CSSA recipients, we come up with the figure of about \$6,300 per month, that is, an hourly rate of \$33. This amount is not enough to support a family of four as the Chief Executive said.

Some Members from the commercial sector said that this income was not meant for supporting families, and if it was not enough to make ends meet, government subsidies should be provided. Such a suggestion actually means nothing but the recognition of the problem of working poverty by the whole society. It also means that since many small businesses cannot afford a minimum wage due to the high rents, taxpayers have to subsidize them. In fact, it means that we have to subsidize the commercial sector in an indirect way. This is neither a just approach nor an effective means to enhance Hong Kong's competitiveness.

President, another issue is about the assessment of persons with disabilities (PWDs). I do have some personal experience in this regard because I have to use a walking stick today. Different types of PWDs have different capabilities, and the assessment concerned has aroused many controversies. For instance, blind people think that they do not need to be assessed because they have no problem in finding jobs and their productivity almost reaches 100%. Parents of some students with intellectual disabilities also do not want to have this assessment as they are worried that it would be more difficult for their children to find jobs in future when such posts are no longer offered. In fact, the core problem is that we cannot ensure fairness for all if we only make use of one assessment mechanism to assess different types of disabilities and physical limitations. Therefore, we should conduct a review after the legislation has come into force for two years. If any inadequacies are found in this two-year period, supplements can be added later in the review of the law.

To eliminate poverty, indeed, we cannot only rely on minimum wage legislation. We should also make investment in education and make effort to strike a balance in the development of economy with a view to providing an opportunity for those with different attributes and abilities to find their positions in the process of economic development. Apart from protecting people's income, we also have to prevent their basic necessities from being monopolized.

Hence, the next issue that we have to deal with is the hegemonism of property developers. Follow-up actions have to be taken in various areas concerning the social system. For instance, how can we push the rich to feed the

poor through our tax policies? In fact, every step involves the redistribution of economic and political power, and every move will arouse controversies. Under the current political system, such controversies may involve the coterie elections and the functional constituencies which are inclined to the interests of the consortia. Of course, all of these are detrimental to people's livelihood. But even there will be elections on a one-person-one-vote basis, we have to be very cautious in order to prevent the economic rightists from running their business at the expense of justice.

Therefore, President, what we have to ask is: What kind of democracy do we pursue? Do we want a democracy that can protect the disadvantaged or one that allows the mainstream and majority groups to take advantage of the minority? Of course, today we still do not have full-scale direct elections, but we have to start thinking about this question now. Thank you, President.

**PRESIDENT** (in Cantonese): It is now 7.55 pm and there are still eight Members in the queue who wish to speak. At about 10.00 pm, I will suspend the Council until 9.00 am tomorrow morning.

**DR RAYMOND HO** (in Cantonese): President, the per capita income of Hong Kong has reached the level of some developed regions. However, there has been no significant improvement in the disparity between the rich and the poor. As the Gini Coefficient, which is widely used for reflecting the inequality of income distribution, has risen to 0.533, it shows that the problem is worsening. Currently, among the 2.25 million families in Hong Kong, 185 000 are living on a monthly income of less than \$4,000. In May this year, Chief Executive Donald TSANG said at the Question and Answer Session that with the implementation of the additional welfare policies on health care and housing, Hong Kong's Gini Coefficient would drop to 0.427. Even if what he said is true, Hong Kong's Gini Coefficient will still be higher than the cities in developed countries like Austria, Belgium, France, Germany, Norway and Sweden, of which the Gini Coefficients are all in the range between 0.25 to 0.3. Our Gini Coefficient is just a little bit lower than that of the United States, which is at a relatively high level of 0.44.

During the 1970s and 1980s, Hong Kong experienced an industrial boom, which provided the public with many job opportunities. However, with the

adoption of the open door policy in Mainland China and the rapid development of its economy, many factories in Hong Kong moved to the north. As a result, a large number of Hong Kong labourers, especially those of older ages and with lower education levels, lost their jobs. On the other hand, Hong Kong has made huge efforts in developing the services industry in recent years. Some sectors, such as finance and information technology, have only created very limited jobs for people with high academic qualifications but failed to provide career opportunities for non-skilled workers with low academic qualifications. For the working class who have not benefited from the economic development, even at times when economic performance is good, they can only find some low-pay jobs such as restaurant workers and security guards. But whenever there was an economic downturn, they were among the first to bear the brunt, very often being the first group to lose their jobs.

With the restructuring of Hong Kong's economy, jobs for non-skilled workers with low academic qualifications have been reducing, leading to the imbalance of supply and demand in the market. As a result, the wage rate of the grassroots remains low, the wealth gap is widening and more serious social contradictions are seen. To prevent the situation from deteriorating, one of the resolutions is to introduce a minimum wage. However, in the process of legislation, we have to pay attention to a few points.

First of all, we must not set the minimum wage at an extremely low level because this will only render the minimum wage useless and prevent the low-income earners from benefiting from the legislation. It may also have an adverse effect that there will be more discontent among the low-income groups and they will hold deeper grievances against the commercial sector, eventually resulting in the intensification of social division. The suggestion of setting a lower minimum wage rate made by some members of the commercial sector earlier has already caused great repercussions in society. It proves that this is a relevant point.

However, on the other hand, we can neither set the minimum wage at a very high level as this will only lead to the loss of low-paid jobs, and in the end, the low-income earners will be the victims. From the experience of some countries in setting minimum wage rates, we learn that there would be a loss of some low-paid jobs. If we set the minimum wage at a very high level, it is believed that it will also affect the employment opportunities of some people

because the enterprises will try every means to reduce their costs, which include replacing manpower with automatic systems. Moreover, a very high minimum wage rate will also affect the employment opportunities for some members of the public, especially those who have recently migrated to Hong Kong, young people who have just entered the labour market as well as workers of older ages. Besides, as some people will be willing to accept a lower wage rate, an underground labour market is deemed to be formed. Some employers might take risk to employ underground labourers in order to reduce costs. In this case, the effectiveness of the minimum wage will surely be affected.

In order to introduce a minimum wage that can protect the interests of the low-income earners, we must avoid setting a very high rate so as to prevent the employers from bearing much higher costs and finally passing them onto the consumers. Otherwise, a vicious cycle of inflation will be formed and the aim for introducing a minimum wage cannot be achieved as the increase in wage rate will fail to compensate for the impact of inflation.

In determining the minimum wage rate, we should strike a balance among the interests of all and take into account Hong Kong's overall economic competitiveness. In terms of legislation, there should not be too many additional definitions or exemptions which will cause difficulties in law enforcement. Besides, a review should be conducted within a certain period after the legislation has come into force with a view to ensuring its effectiveness.

President, many countries have enacted legislation on minimum wage to protect the interests of workers. As a developed economy, Hong Kong should also have such legislation. In determining the minimum wage rate, we must cater for the interests of various parties.

I so submit and support the resumption of the Second Reading. Thank you, President.

**MR WONG TING-KWONG** (in Cantonese): President, with the ineffective outcome of the Wage Protection Movement, today we finally have the Second Reading of the Minimum Wage Bill (the Bill). In July last year, the Legislative Council formed the Bills Committee for the deliberation of the Bill. With 36 Members joining the Bills Committee, this impactful and complicated Bill has

drawn much attention. Since mid-July last year, a total of 30 meetings have been held and 133 groups or individuals have been invited to express their views on the issue. To meet the request of the Administration and to coordinate with the work of the Provisional Minimum Wage Commission (MWC), we have speeded up the deliberation process for completion in this legislative session. So we have to hold meeting for extra hours today to ensure that the last train will not be missed. I believe the Bill tabled at today's meeting, which is supposed to be the last Council meeting of the current session, will pass the Third Reading.

As the saying goes, "It rains when Heaven deems fit, mother remarries when she wants to." I also understand that some issues are inevitable. The Bill is obviously introduced for workers. However, I personally think that employers and employees are inter-dependent, especially in small and medium enterprises (SMEs), where they share mutual interests. The fostering of a good employer-employee relationship is the best guarantee for a thriving business. Employers should treat their employees with respect and care, while employees have to work enthusiastically and diligently. A harmonious relationship is the way to move the company forward. However, I wonder, after the passage of the Bill, if this harmonious relationship can still be maintained. This Bill may strain employer-employee relationship, cause detachment and rigidity, and bring about disputes over the minimum wage rate and hours worked. As a result, remuneration will only be calculated in numbers and the law is followed to the letter, with no consideration to human touch. The growing tension between the two parties will have an adverse impact on the companies, and the consequence is that the enterprises will be forced to end their business and the employees will lose their jobs. As the saying goes, "Teeth are exposed when lips are gone". When a company goes under, the employer and employees will all be the victims. In fact, the loss always outweighs the gain.

President, at the same time, I am particularly worried that comparing to the big enterprises, SMEs have to face a much stronger impact. Large-scale enterprises, to some extent, have the advantage of market monopoly. Even if a minimum wage is introduced, with abundant resources and a satisfactory management system, these enterprises can alleviate the operation pressure caused by the minimum wage through measures like resources regulation and manpower reallocation. Figures from the catering sector and the data provided by the Census and Statistics Department both show that the introduction of a minimum wage will only slightly affect large enterprises. However, it will have a stronger

impact on SMEs which are struggling to make ends meet. This is especially true for those in the catering and security sectors as their wage cost accounts for a huge proportion of their total expenditure. Recently it has been reported that some trade associations and labour groups, while supporting the introduction of a minimum wage, suggest that the SAR Government should also carry out protection measures such as the provision of allowance for low-income earners and the expansion of the scope of the Cross-district Transport Allowance. For the commercial sector, it is believed that such measures will not only be able to prevent SMEs from being affected by the introduction of a minimum wage, they can also address the demand of the labour sector. I think these suggestions deserve the Government's consideration.

President, on the other hand, though the Bill is introduced for workers, employers should also be given reasonable and clear protection. The Bill is a new endeavour in Hong Kong and its impact is far-reaching. My concern is that employers of SMEs may find it difficult to immediately get accustomed to the computation of hours worked for the minimum wage payment. Hence, I would like to stress that the Government should carry out publicity and promotion programmes in this regard, and at the same time, conduct more consultation and listen to more opinions when drawing up industry-based guidelines. This is to ensure that both employers and employees can have sufficient time to study the provisions of the legislation and have a clear understanding of their own responsibilities and rights, so that they will not breach the law inadvertently.

It is not only the Government which has proposed amendments in response to Members' views, but at least nine Members have also moved amendments. Among them, Mr LEE Cheuk-yan is the one who has moved the most amendments. One of his amendments coincides with that of Mr WONG Kwok-hing as they both oppose the Government's proposal of reviewing the statutory minimum wage at least once every two years. In their amendments, they propose that a review should be conducted at least once a year.

President, I specifically want to talk about this amendment. Regarding whether the minimum wage rate review should be conducted at least once a year or every two years, the DAB, of which I am a member, basically does not have strong views. However, since the various salary reviews we currently have, including the pay reviews for the Civil Service and foreign domestic helpers, are conducted annually, the DAB thinks that there should not be any difficulties in

conducting an annual review on the statutory minimum wage. In view of this, other DAB Members will support this amendment.

Nevertheless, I have particularly consulted the sectors concerned on this amendment to see where they stand. The result is that they overwhelmingly support the Government's amendment, that is, a review on the statutory minimum wage should be conducted at least once every two years.

I understand how the sectors think. An annual review on the minimum wage rate and the corresponding adjustment, whether up or down, will have an impact on employers, especially those of SMEs. Such a review, giving the impression of being excessively frequent, will make their budget planning difficult, causing confusion and higher risk. Besides, as annual modification of business plans will be required to meet the minimum wage rate adjustment, it will easily lead to an increase in their administrative and operational costs.

Moreover, the introduction of a minimum wage system in Hong Kong is unprecedented. Hence, we have to be very cautious at the very beginning. Otherwise, our labour market and economic development will be affected. As for the time interval and frequency of the minimum wage rate review, greater flexibility should be exercised to meet practical needs. The minimum interval of two years for the review will not only meet public expectation but also allow flexibility. When the data show that there is a need to have a review, one can be conducted immediately. In view of this, I request an exemption to vote along party line from the DAB. Regarding this issue, I will abstain from voting.

President, according to what Ms Emily LAU has just said, she may have misunderstood the speech of Mr IP Kwok-him. Ms Emily LAU said that I would vote against this Bill. However, this is not the case. Regarding the annual review proposed by Mr WONG Kwok-hing and Mr LEE Cheuk-yan as well as a review be made at least once in every two years as proposed by the Government in its amendment, I oppose the amendments moved by Mr WONG Kwok-hing and Mr LEE Cheuk-yan but support that of the Government. I request an exemption from the DAB on this, and here I specifically want to make it clear to the Members and the public.

Thank you, President. I so submit.

**MR JEFFREY LAM** (in Cantonese): President, after a year of deliberations on the Minimum Wage Bill (the Bill), we have now come to the stage of the resumption of the Second Reading. It is expected that we will spend two to three days discussing the Bill. First of all, I would like to make it clear that this Bill does not represent a tug-of-war between the commercial sector and the labour sector, and there should not be any winners or losers. We all want to work out a suitable plan because the Bill has far-reaching impact, it involves all walks of life in the community and relates to Hong Kong's economic development and competitiveness. In fact, we only want to bring out the views of different sectors and strata of society, among which we can then strike a balance.

I remember that the Chief Executive initiated the minimum wage legislation when he delivered his policy address on 15 October 2008. Let me quote what he said at that time: "First, the introduction of an across-the-board minimum wage should protect workers against exploitation while at the same time prevent the loss of low-paid jobs. Second, wages are returns for employees' labour. As family needs vary, the minimum wage may not be sufficient to cover family expenses of all employees. Employees in need can obtain assistance under the current social security system. This can also encourage able-bodied recipients of the CSSA to rejoin the workforce and motivate them to move from welfare to self-reliance."

I think the most important principle for the minimum wage legislation is that any adverse impact on social development should be avoided. In the process of deliberations on the Bill, different hourly rates were proposed by members of our society. From \$20 to over \$30, different rates were proposed on different grounds. But perhaps "discussions about money will hurt relationships". I found that each time a different figure came out, there were more tension and conflicts, and this was the last thing I wanted to see.

This Tuesday I read a newspaper article by James VERE, Assistant Professor in the School of Economics and Finance of the University of Hong Kong, which says that a statutory minimum wage can only effectively raise the income of workers within a short period of time, that is, within one year or an even shorter period. As for a period of two years or more, the benefits found at the early stage following the enactment of the legislation will start to be offset by the loss of jobs.

The editorial of the *Apple Daily* on the 8th of this month also mentioned this. Let me quote what it said: "A wage increase means that the enterprises have to pay higher costs. It may also mean that their profits will be under pressure and there can even be an instant turn from profit to loss. At times when the economy is filled with uncertainties, in particular, the man-made increase in basic wages will impose a much heavier burden on the enterprises that they will be forced to save manpower and lay off staff. We can say that an unrealistic minimum wage rate will easily turn into a "job killer" who will drag some of the workers into the dire straits of unemployment, and the consequence is that all of their income will be lost. This kind of crisis cannot and should never be overlooked."

President, I believe it is undeniable that the implementation of a minimum wage, with its pros and cons, is not a panacea for solving the problem of low-income employment and working poverty. A minimum wage will have the greatest impact on the aged and those with low academic qualifications and skills. This is the so-called jungle law. With a standardized wage rate, the employers, without doubt, would rather employ the young people with higher skills or replace manpower with mechanical equipment such as automatic dishwashers and automatic vending machines. However, this will only force those who are still capable of working to live on CSSA. I think this is against the legislative intent of "minimizing the loss of low-paid jobs". Some people said that these businessmen were only threatening us and they might not take action to purchase such equipment. But the fact is that some businesses have begun to do so.

President, in the past year, I have personally talked to employers and employees in different sectors, and have also come across many media reports on cases concerning the minimum wage. All of these have left me with a deep impression. The manager of a housing management company said that he would consider installing a "smart card" system at the entrances of housing estates in order to reduce the number of security guards. Some healthy but relatively old security guards are worried that they will be laid off and forced to apply for CSSA due to the introduction of a minimum wage. The boss of a Hong Kong style café revealed that even if the costs would increase, he might not dare to raise the prices for fear of losing customers. A female cleaner also said that though she was faster than many others in washing dishes, she would not possibly be faster than a dishwasher.

The guarding and cleansing service sectors employ the largest number of grassroots workers, and their expenditure on staff wages accounts for the largest proportion of the overall operational cost. As for the catering sector, the three main areas of expenses are rents, raw materials and staff wages, among which the wage expense can be most easily controlled by employers. In fact, just by laying off a waiter or a food delivery worker, they can make the entire set of accounts different.

Another factor that will affect the entire sets of accounts is depreciation. The data provided by the PMWC show that the profit rates of the retail and catering sectors have recorded a negative growth in the first quartile. However, these profit rates are not earnings before interest, tax, depreciation and amortization (EBITDA) but earnings after the deduction of factors such as interest, tax, and depreciation. It implies that the profit rate will decline further. This is especially true for small and medium enterprises (SMEs) because their tenancies are usually shorter and therefore the depreciation rates are correspondingly higher. In other words, if our calculation is based on the EBITDA figures, the introduction of a minimum wage will be liken to a blow on the face, pushing the profits of SMEs even lower, among which many will even face a loss.

President, another point worth our attention is that a minimum wage will cause a series of knock-on and multiplier effects. After its introduction, not only those receiving a wage below the minimum wage can have a pay rise, staff with similar wage rates in the same company can also get the same benefit. In this case, the company's expenditure on staff wages will instantly increase, which means that there will be a decline in profit. Enterprises which are able to achieve break-even will possibly have to experience a loss and an unprecedented increase in operation pressure. As for those enterprises which are still capable of making profits with the minimum wage, they will recalculate their operational costs in order to reduce expenditure. Investors will also meticulously assess their wage expenses to see if it is profitable to run a business in Hong Kong.

Since the introduction of a minimum wage is a brand new policy, its actual impact cannot be accurately assessed until it comes into effect. Hence, we should determine the minimum wage in a more cautious and conservative attitude. The minimum wage in the United Kingdom, in fact, was initially set at a low level and then raised to a higher rate according to the social situation, so that society could gradually adapt to the measure and have room for adjustment.

This approach can avoid scaring SMEs, which will be forced to end their business or lay off their employees. It can also prevent investors from transferring their investments to other places due to their worries over excessively high wage costs in Hong Kong, and at the same time, avoid affecting Hong Kong's competitiveness.

If we set the minimum wage at a very high level right from the start, it would be difficult to make downward adjustment. Even if adjustment can be made, when it comes to that situation, our society has already paid a price, which includes layoffs of employees and the closing down of businesses, and it will take an unpredictable amount of time for us to recover.

Moreover, the introduction of a minimum wage will not only affect the low-skilled and older-aged workers, it will also have a strong impact on the young graduates with no working experience. Many academics believe that the introduction of a minimum wage will inevitably raise the unemployment rate of young people. If the minimum wage is also applicable to student interns, the impact will be even stronger. In fact, what the interns want most is not an income but the valuable working experience that will help them pave the way to find jobs matching their specific knowledge after graduation.

President, I am very delighted that the Administration, having accepted our views and those of the industrial and commercial sectors, allow Hong Kong residents pursuing full-time non-local education programme at undergraduate level or above, irrespective of whether the internship is curriculum-related and whether there is involvement of the institution in arranging the internship, to be exempted from the minimum wage legislation.

As I remember, at the meetings of the Bills Committee, we had more discussions on the computation of hours worked, the definition of the place of employment and the calculation method of commissions. Many employees in Hong Kong are not working at the office from nine to five. For instance, tourist guides have to travel around the world and always be ready to work for the tourists at late night, whereas the couriers need to travel around Hong Kong Island, Kowloon and the New Territories or even commute frequently between Hong Kong and the Mainland to deliver and collect documents. Similar examples can be found in different sectors and it is really hard to list them all out.

For SMEs, they worry that the hours worked by each employee will have to be recorded in detail, which would mean higher administrative expenses as well as the possibility to be involved in disputes and legal proceedings. I hope the Administration will organize more workshops and seminars on the computation of hours worked to help employers have a clear understanding of the provisions and criteria of the legislation. At the same time, regarding the operators of the government hotline 1823, I found that there is still room for improvement in their knowledge about the labour laws. It is hoped that the Administration will enhance their training to make sure that they can answer the questions of SMEs as well as that of employees.

President, the prescribed minimum hourly wage rate is set out in a schedule. While the Legislative Council is not given the power to amend the schedule, it may only approve or revoke the notice to amend the schedule. I hope this can ensure that the minimum wage rate, instead of becoming the topic of emotional discussions, will be set on the basis of an evidence-based approach.

President, I believe after the passage of the Bill, the next focus will be on the minimum wage rate announced by the PMWC. As I said at the beginning of my speech, the minimum wage legislation should not be considered as a tug-of-war between employers and employees, and there should not be any winners or losers. We should strike a harmonized balance in a rational way with a view to protecting the jobs of the disadvantaged employees, forestalling excessively low wages, and at the same time, ensuring the flexibility and competitiveness of the local labour market. We hope that Hong Kong can have good development in all areas, especially the economic sphere. We should not make use of some systems to hinder the development of our economy.

President, I so submit.

**MR ANDREW LEUNG** (in Cantonese): President, I speak in support of the resumption of Second Reading of the Minimum Wage Bill (the Bill) on behalf of the Federation of Hong Kong Industries.

Hong Kong has always upheld a free economy, and the market has always been able to undergone self-adjustment in response to different circumstances and

situations. We firmly believe that wages denote the labour market's recognition of employees' efforts and they are returns for individual employees' labour. Wages should adequately reflect the productivity and effectiveness of employees at their posts, their qualifications, experiences and the market supply and demand. Since the Government's announcement on legislating for a minimum wage, the business sector has had reservations because the wage level will be mandatorily forced upward. In other words, if we solve economic problems by political means, the mode of market operation will be distorted. Most economists have raised opposition as they consider that the adoption of legislative measures will reduce the mobility of the labour market and push up the unemployment rate. Last year, the Government resolutely proposed setting the wage floor by legislative means, and stressed that the objective of enacting the legislation is to safeguard the disadvantaged workers and prevent workers from receiving excessively low wages. At last, we had no choice but to accept the proposal. However, the business sector has all along been worried about the impact of the legislation on our economy as a whole.

Hong Kong is a highly externally-oriented economy and the economic environment is mainly driven by external factors. Looking back, we managed to withstand immense difficulties in the wake of SARS and the recent financial turmoil precisely because there was room for negotiations between employers and employees with regard to wages. After the enactment of the legislation, I am really worried that our ability to meet emergencies in times of economic instability may be considerably undermined, and in turn our competitiveness may be substantively affected.

In the past few months, the business sector and I have been saying that minimum wage will not only affect workers with wages below the statutory level, but will also affect workers whose hourly wages are above the statutory level. We call this the knock-on effect, as just mentioned by Mr Jeffrey LAM. Let us look at some low-paid industries, such as retail, catering, property management, courier, and residential care homes for the elderly (RCHEs). There are around 750 000 employees in these industries whose salaries are almost the same, with only a slight difference of one or two dollars per hour for frontline workers. After the enactment of the legislation, the low-paid workers and other workers alike will have wage increases, irrespective of whether their wages are below the statutory level. After studying the data released by the Provisional Minimum

Wage Commission (PMWC), I notice that in industries such as the retail, catering and property management which employ more low-paid workers, the profit ratios before depreciation are just a half of other industries. If we only take into account small and medium enterprises (SMEs) and their profit ratios before depreciation and loan interests, we find that at least one fourth of SMEs are having losses. If we also take into consideration the fact that the retail industry has depreciation ratios of around 3.5% and the catering industry has depreciation ratios of at least 4% to 6%, we will find that more SMEs will suffer losses. The minimum wage level must be set very prudently at a level acceptable to SMEs so as to avoid creating immediate operating difficulties for them.

President, nobody will engage in a business that incurs losses. At the initial stage of implementing a minimum wage, the enterprises ..... President, I am speaking but .....

(Honourable Members were talking)

**PRESIDENT** (in Cantonese): Would Members please keep quiet.

**MR ANDREW LEUNG** (in Cantonese): President, nobody will engage in a business that incurs losses. At the initial stage of implementing a minimum wage, the enterprises may still be able to bear some additional costs and will not increase prices at once, but the additional costs will eventually be passed to consumers. In the long run, enterprises may be forced to streamline the operation structure for more effective cost control. Two major fast food chains indicated when they announced their economic performance not long ago that their operating costs would increase substantially if an excessively high minimum wage level was set. Even if the minimum wage level was set at around \$27, they might have to increase food prices by 5% to 8%. Moreover, when the minimum wage reached a certain level, they would have to streamline the operation structure and reduce the number of shops. So, the initial statutory level must have the effect of relieving the pressure on the market.

How can SMEs be spared when large enterprises with abundant financial resources also feel the pressure? The profit ratios of SMEs have always been

lower than large enterprises and they frequently need to pay higher wages to retain employees taking up elementary posts. This is exactly why there is very little room for adjusting their profit ratios. If the statutory minimum wage (SMW) level is set at a relatively higher level, the profits of SMEs may be considerably reduced and some may even have to close down. The market share of many large enterprises in the industries will then constantly increase and the general public will have fewer and fewer choices.

Furthermore, can enacting the legislation really protect the disadvantaged non-skilled workers with low academic qualifications? Or, will it make them lose their jobs if the weak are eliminated and only the strong will remain? Also, the unemployment rate of young people without working experiences has always been higher than the overall unemployment rate. In the United Kingdom, a lower SMW level is set for young people below the age of 22. When there is an economic downturn, the unemployment rate of young people is still higher than that of adults; and in times of economy recovery, the employment situation of young people still remains unfavourable even though the unemployment rate of adults drops. Can the SMW rate in Hong Kong prevent young people from joining the army of those waiting for employment? All these issues deserve careful consideration by Honourable colleagues.

President, the business sector understands that minimum wage may bring a host of adverse effects. Nevertheless, we know very well that legislation has to be enacted after all. Thus, we really hope that the legislation can be drafted in a better way so that a balance can be struck. Throughout the deliberation period, quite a few members of the sector have reflected to me their opinions and I have already conveyed their opinions to the officials concerned at the meetings of the Bills Committee.

If this Bill is enacted, the legislation will be the first of its kind to be implemented in Hong Kong. Different views were expressed when we started to discuss the policy objectives. According to the Government, the major objective of the Bill is to introduce a SMW regime which provides a wage floor at an hourly rate. Honourable Members have had lengthy discussions at meetings about whether the legislation should seek to ensure that workers would be paid at a certain level so as to sustain the basic living of their family, and whether minimum wage should aim at alleviating poverty. Frankly speaking, the business sector has always emphasized that wages are returns for individual

employees' labour and wages should accurately reflect the employees' productivity. Minimum wage is not the only poverty alleviation measure. I am very pleased to find that officials have stressed very firmly time and again that wages are returns for individual employees' labour. They have also restated that as family size and needs vary, the overall family expenses can be very different. Low-income households that are in need may obtain financial assistance from the Comprehensive Social Security Assistance (CSSA) Scheme. The Bureau has also restated that the policy objective of the legislation is to provide a wage floor rather than a living wage.

After the objective has been formulated, we have had quite a lot of arguments in the legislative process. As the Secretary has just mentioned, the enactment of the legislation must take a large number of factors into consideration. We all hope that the legislation can protect disadvantaged workers and forestall excessively low wages but we also want to preserve the jobs of employees and maintain our overall competitiveness. During the deliberation process, I earnestly strived to strike a balance and pointed out that stringent provisions should be avoided, so that persons with disabilities whose productivity is impaired by their disabilities or young people who want to work as student intern during the summer vacation will not be deprived of employment and internship opportunities because of the minimum wage legislation.

President, I declare that I am the Chairman of the Vocational Training Council. For this reason, I am really concerned about the exemption of student interns from the regime. The Secretary also knows that I am particularly concerned about this issue. In fact, I already touched upon this issue when I discussed this Bill with the Secretary and some other friends during the summer recess last year. At the meeting on 19 November last year, Mr Jeffrey LAM and I also asked the Government to exempt all student interns so that students can make use of the summer vacation straddling two to three months to work as interns and earn academic credits. Moreover, other tertiary students (both local and overseas students) can undergo internships during the two-month summer vacation, to experience in person and learn about the operation of the commercial community, and get well prepared for future employment.

I am really glad that the Government has accepted our recommendation and made amendment to the provision on student interns so that local post-secondary students below 26 years of age and Hong Kong residents pursuing

full-time education programmes at undergraduate level or above overseas, irrespective of whether the internship is curriculum-related, will also be exempted. I have recommended at a meeting of the Bills Committee that the exemption should be limited to once in a year for each intern employee and the employment should be for 59 calendar days or less. This recommendation will allay the worry of the labour sector that relaxing this restriction may turn students into low cost workers during the summer vacation, and that the employers may replace other employees with students. The Administration has explicitly stated that it will ensure that employers only need to go through very simple formalities in order to be exempted from the regime when they employ interns.

In addition, employers have always been concerned about the requirement on keeping records of the total number of hours worked by employees as they will be held criminally liable for failing to keep proper records. To ensure the accuracy of the records, employers may have to bear additional compliance costs, and even appoint someone to especially provide the service. The employees for higher paying jobs such as the chief executive officers of listed companies, the senior managers of SMEs or high-salaried employees will basically not have the opportunities to violate the minimum wage legislation, and it is fundamentally a waste of resources for enterprises to keep records of the total number of hours worked by them. I have repeatedly reflected the fact to the officials concerned, and the Administration has eventually responded by proposing an amendment to add a new clause so that employers need not keep records of the total number of hours worked by employees whose salaries reach a specified level. This amendment has not prescribed such level for the time being, but the Government will prescribe the level by way of subsidiary legislation and the Legislative Council may make amendments. I hope the Government would set a reasonable level.

Lastly, it is only set out in the Bill that, when the PMWC prescribes the SMW rate, it should forestall excessively low wages and minimize the loss of low-paid jobs while sustaining Hong Kong's economic growth and competitiveness. But, it has not set out the basket of indicators that the PMWC may take into account, such as the general economic conditions, labour market conditions, competitiveness and other relevant factors. I also hope that the PMWC will prescribe the first minimum wage rate for Hong Kong in a very prudent, rational and impartial manner.

President, the SMW legislation has far-reaching significance, and nobody can foretell what impact it will have on our labour market and the general economic conditions. In the United Kingdom, the SMW legislation was enacted by the labour party government, but it started by setting a rather conservative rate and allowed the SMW rate to increase step by step. After the implementation of SMW, some low-skilled young people with lower academic qualifications and weaker competitiveness, middle-aged people and older front-line workers inevitably encountered difficulties when they became unemployed. I hope that Hong Kong would learn from the experience of the United Kingdom, taking the rate acceptable to most SMEs as the starting point and allowing the community to adapt step by step, so as to reduce the impact on SMEs and relieve the inflationary pressure arising from the enterprises' passing their costs to consumers, so as to benefit the community as a whole.

President, the Bill will be passed these few days and I hope that all the arguments would come to an end. I also hope that employers and employees will co-operate with the Government in enacting this legislation, which will not only help local workers and SMEs but also have positive effects on our economy as a whole.

President, I so submit.

**MR ALBERT CHAN** (in Cantonese): President, since the establishment of the League of Social Democrats (LSD), we have been voicing strong and unequivocal opposition to many major government policies, including policy addresses, budgets and many pieces of legislation. We have also reprimanded the Government many times for ignoring public opinions and aspirations, and turning a blind eye to people's needs. However, when it comes to the enactment of the Minimum Wage Bill today, the LSD must, in a rare fashion, commend the Government highly for its progressive policy and its concern and care for grass-roots workers.

President, what I find most ironic and absurd is that this legislation and policy are advocated and formulated by the Administration led by the Chief Executive who is returned by a coterie election and commands no legitimacy. What I find even more absurd is that the same proposal was initially rejected in

principle by political parties advocating democratic elections, one of which was the "largest" political party in the democratic camp, the Democratic Party. This is indeed ridiculous. In respect of policy formulation, the Government not returned by a democratic election is even more progressive and more attentive to labour rights than the so-called democratic camp which claims to represent the people. Therefore, speaking of Donald TSANG's frequent emphasis of "strong governance" (though we fail to see how strong his governance is), the LSD cannot but give him a rare commendation, at least for his labour policy of setting a minimum wage. He is definitely not "incompetent" in this regard. This present issue can fully show the Government's influence. By wielding its baton, the Government has managed to make many Members and political parties (including the Democratic Party) change their positions from disapproval to alignment and submission. The Democratic Party was initially against the proposal. It only agreed to enact legislation on minimum wage for certain trades and industries, and opposed any across-the-board approach. During its election campaign in 2008, it unequivocally rejected any across-the-board legislation in its party platform. Of course, the Democratic Party's *volte-face* is no longer anything new to us now.

President, discussions on setting a minimum wage have always aroused mixed emotions in me because back in 1999, when the Democratic Party formulated its party platform, infighting broke out, and a split of the party surfaced. Had there not been the different positions on setting a minimum wage back then, the Young Turks might not have resigned, and the LSD might not have come into existence because the Young Turks of the Democratic Party form the backbone of the LSD. Without the LSD, the five-district referendum would not have taken place. Without the five-district referendum, backroom politics will not take place, and the Central Authorities would not have "bought" the Democratic Party's nine votes by offering some special concessions. Without any backroom politics, there would not have been any arrangement for the Democratic Party to betray Hong Kong people. That is why the subject of setting a minimum wage has indeed produced very far-reaching impact on the political scene of Hong Kong.

As far as I can remember, the Democratic Party leader who opposed the setting of a minimum wage was Anthony CHEUNG. This is very ironic. The sect belonging to the former Meeting Point posed the strongest resistance at that

time. They were the very people that betrayed workers years ago. They are also the very people who betray Hong Kong people now. Therefore, whether a person respects the people and shares their aspirations to their rights is actually related to his political position and integrity. Many scholars who study political history therefore regard the political organizations and personalities devoted to striving for the rights and interests of the grassroots as advocates of humanism because they respect the people and care for the people's welfare.

Speaking of setting a minimum wage, it is utterly absurd that in a so-called advanced society like Hong Kong, people still argue whether a minimum wage level should be set. In our great Motherland, a minimum wage was already set many years ago. Even under this communist regime that practises a special kind of capitalism, a minimum wage level is set. In Taiwan, a minimum wage level was set in the 1960s. In the United States and many European countries, a minimum wage level was set as early as 1920s and 1930s. Hong Kong lags several decades or even a hundred years behind other countries, but even now, people still argue whether a minimum wage should be set. Some people even describe the policy heinous. All this fully exposes the feudal and conservative nature of Hong Kong society.

Frankly speaking, many people oppose the setting of a minimum wage out of certain misunderstanding. I took up my first job in Canada at the age of 17, a minimum wage of CAD 1.25 was set then. I was able to complete secondary and university education all because there was the minimum wage policy. I am therefore a beneficiary of such a policy. In many capitalistic societies and advanced countries, minimum wage is implemented effectively without bringing adverse impact on local economic development. Naturally, any policies must have both merits and demerits. A policy may help a community group in a certain way but at the same time, it may have adverse effects in other areas. However, when we weigh the pros and cons, we note that many countries and places over the world have implemented minimum wage and this policy will continue. Hong Kong's adoption of this policy is actually an inevitable and objective trend of development.

When we look at the social environment under which the Government promotes the setting of a minimum wage, we notice a widening wealth gap, the polarization of the rich and the poor, a drastic expansion of the impoverished

population and the problem of working poverty. Eventually, the Government is compelled to squarely address the issue. And, of course, the recent report of a cleaning worker being ill treated for earning only \$7 an hour has forced the Government to take actions. There have been many reports on the plight of employees in Hong Kong, especially the conditions of workers with low academic qualifications. Some of them must take up several jobs in order to make ends meet. Some died in accidents while they were hurrying to the places of their second jobs by cycling or driving a car. There are also cases in which some professional drivers who continued working between shifts died in accidents. There are numerous such examples.

Setting a minimum wage can only provide a basic wage level, a level that gives people more humane treatment. But there are bound to be many arguments over the final minimum wage level to be set. Just now, some Members expressed the hope that all such disputes could really come to an end, but I can tell you, as long as the minimum wage level is not deemed to be reasonable by the working-class people, the struggle will continue. Do not think that things will get settled by enacting the legislation and setting up a commission which is wholly controlled by the Government. If the minimum wage level to be set in future is unsatisfactory, the working-class people will continue with, or even intensify, their struggle.

What is more, the objective environment for setting a minimum wage is actually attributed to the acts of the Government. Years ago, the Government outsourced the provision of many services, thus lowering the wages of many types of work, and driving the working-class people into impoverishment. If the Government had continued to provide the services, no cleaning workers would have been forced to accept an hourly wage of \$7. The reason is that if such work is undertaken by civil servants, their salary will be higher than market rates, and the problem of working poverty would not have worsened. Therefore, to a certain extent, the Government is one of the culprits. The Government is duty-bound to rectify the mistake.

President, many of those who oppose the setting of a minimum wage are academics. Naturally, many employers will, owing to their class position, invariably oppose any proposals that may harm their own interests. Some unscrupulous employers in particular will certainly resist strongly against any

proposals to tighten control on them. Therefore, I do understand why employers oppose the present proposal, and I respect their objection because their class interests are at stake. However, I am infuriated that many academics have raised their disagreement. I think most of these academics are shameless. They object the setting of a minimum wage on grounds of market economy concepts or values. Yet, these academics teach in government-funded universities, and their salaries come from public coffers. If they really uphold the market economy so much, they should not work in government-funded institutions; they should not stay inside the Ivory Tower and receive money from taxpayers — some \$60,000 or \$70,000 a month on the lower end and even \$100,000 on the higher end.

These academics who oppose the setting of a minimum wage are people who pretend to be upright after taking the advantage. This is how Yuk-man often describes some politicians and political parties. These academics are just the same. Their comments are mean. While they teach in government-funded institutions, earning high salaries and leading a very stable life, they advocate the concept of free market economy. Since they believe in free market, why do they not teach in private universities instead? Why do they not look for jobs in the private sector? They choose to stay in the education institution and receive public funded salary, and yet they object to a proposal that safeguards the fundamental rights and interests of employees. What I find most absurd is that pay scales are adopted by many universities and the Civil Service. How come they are not regulated by the free market? How come civil servants are not subject to the rules of the free market? How come teachers are not subject to the rules of the free market? Why should pay scales be set for them? Therefore, these academics are just trying to oppress the disadvantaged from the positions they hold, forcing the masses to remain in low-pay posts under the pressure of the labour market. As I mentioned just now, their hourly wage may be as low as \$7, and there are numerous examples of people earning an hourly wage of \$10 or so.

Speaking of the impacts of minimum wage on the economy, are the impacts of rents equally important? Why do they not mention The Link REIT? Have those academics who oppose minimum wage ever stood forward to criticize The Link REIT for its impacts on trades and industries? They have never voiced any views on such issues because they act like dogs before large corporations which can offer benefits, but they speak with authority before the common folks,

working-class people and people who need protection. All these "rubbish" academics are worse than "dog shit". We must reprimand them and condemn them for being shameless.

Some Members have mentioned that setting a minimum wage will strain labour relations. What an argument! Once the Government has set a standard, everybody is supposed to follow it. How can there be any worsening of labour relations? Some unscrupulous employers reap huge profits but offer their workers an hourly wage of \$7; employees dare not voice their anger and grievances. Can we say this kind of relationship is not bad? Unscrupulous employers have oppressed workers so much that they almost commit suicide. Can we say this kind of relationship is not bad? The critics of minimum wage think that employers should reap huge profits and employees should be oppressed. If such relationship is not considered bad, what kind of logic is this? Therefore, whenever I hear people raise such kind of argument, I do not just want to throw bananas at them, I even want to throw darts at them. I hope these Members should learn about the actual condition and understand what kind of policies have led to the split of our community; what kind of policies have given rise to class conflicts and caused great pains to the poor. They should reach out more. Although they represent employers, they simply cannot distort the objective realities and the opposing relationship in such an unreasonable and shameless manner.

Therefore, the setting of a minimum wage will only make labour relations more stable, at least, we will not have other unscrupulous employers offering an hourly wage of \$7. The increasing stabilization of labour relations will certainly make our society more harmonious on the whole. This may be the Chief Executive's response to the Central Government's appeal.

Finally, President, I wish to exhort Mr Michael CHAN. He was my schoolmate in university. Very often, we studied together in the student study room. When he was in Canada, he enjoyed the welfare benefits for university students under the administration of the Social Democratic Party. He also received education under the governments led by the Socialist Party and the New Democratic Party. He should know that there were many welfare benefits for university students. He lived in a stable society with a minimum wage for quite some time, so he should know what the situation will be like. Since he once

lived in such an environment, he should have greater understanding and should encourage Hong Kong to develop in this direction.

**MR WONG YUK-MAN** (in Cantonese): President, the legislation on minimum wage can at last proceed to the Second and Third Reading before the 2010 Legislative Session ends. It is better late than never.

At this stage, it is already meaningless for us to argue further whether we should legislate for a minimum wage. In this Chamber today, all Members, be they leftist, centrist or rightist, must support the legislation on minimum wage. Some are still not reluctant to accept the realities, so they put forward many "corny" arguments, babbling that this will bring forth unemployment and do harm to the disadvantaged, instead of resolving the poverty problem. All such arguments have been repeated a thousand times. It is meaningless to escalate the arguments to the ideological level.

The Basic Law of Hong Kong provides that the capitalistic system shall remain unchanged for 50 years. This is a piece of minimum wage legislation under a capitalistic system. The situation is not quite the same in our great Motherland. Our great socialist Motherland upholds the socialist path. Let us deviate a little, take a look at the Chinese Communist Party Flag, we will see a hammer and a sickle. So, the working class must be put in the first place. It is impossible to do without a minimum wage in China, but even so, it was not until 2003 that a minimum wage was prescribed. Before 2003, or even earlier, it was the time of "communal pot" system. President, you know very well that I am talking about the time of people's communes, when everybody got the same return regardless of their labour. I suppose "Mr Elephant"<sup>(1)</sup> should know best. The workers in the Mainland at that time were faced with such a situation. It was a society where everybody was equally impoverished. However, our socialist Motherland today wants to adopt socialism with Chinese characteristics. That is actually state capitalism. The disparity in wealth is now a real headache. Wealth is beginning to be over-concentrated in a few hands. Do you know, Chinese leaders will frown whenever the issue of the poor masses or the problem of poverty is mentioned. Owing to corruption and the collapse of the rule of

---

(1) The nickname of Legislative Council Member Mr WONG Ting-kwong

law, the phenomenon of a handful of people holding the bulk of the wealth has started to emerge in our socialist Motherland. Therefore, the authorities are resolved to protect the interests of the working-class people. Strikes have also occurred in the Mainland recently. The Foxconn incident has in fact greatly inspired us. Not long ago, during the times when radical socialism was practiced in China, during the ultra-leftist era of class struggles, anything with the slightest connection with capitalism was deemed to be punishable by death. If one put on cosmetics and perfume, she might lose her life. Anyone who wore beautiful clothes or a short skirt would be greatly purged.

Today, Mainland China enjoys a double-digit economic growth and rapid economic development. When Chinese leaders avow that the country still upholds socialism, they are self-contradicting. The Constitution of the People's Republic of China upholds the four cardinal principles, it upholds Marxism ..... Nowadays, if you talk to others about Marxism-Leninism-Mao Zedong Thought, people will think that you are just joking. In Mainland China, what is the relationship between the national policy and Marxism-Leninism-Mao Zedong Thought? There are no more connections at all. The ideologies have turned into ancestral tablets, just like the Chairman of the Hong Kong Alliance in Support of Patriotic Democratic Movements of China being treated as an ancestral tablet. These tablets are sacred and inviolable.

However, in realities, the wealth gap, the collusion between the government and the business sector and the concentration of wealth in the hands of a few people are the biggest problems that cause headaches to Chinese leaders. They are now trying every possible means to tackle these problems. In the end, they have straightened the crooked to excess, leading to closures of factories and fleeing of employers. The government must provide subsidies as a result. But how much subsidies can it afford? This is how they try to tackle the problem. They have overdone the whole thing.

The Foxconn incident has given us the greatest enlightenment. Foxconn is the biggest electronic enterprise in the world, employing several hundred thousand workers. Years ago, how did the Communist Party criticize those enterprises engaged in export processing or original equipment manufacturing (OEM)? The Party allowed capitalists, foreign capitalists or foreign imperialists to exploit the broad masses of the working class. Let us look at China, Taiwan or Hong Kong. Their economies were dependant on export processing and

external trade in the early days. Labour was cheap, and land supply was abundant, so people brought in capital and technologies and then started to exploit us. Nowadays, the Mainland authorities allow capitalists, foreign capitalists, to exploit the broad masses of the working class on Chinese soil. What is the selling price of an iPhone? How much can an OEM worker earn? These problems have caused great headaches to the Mainland authorities. But nothing can be done. Terry GOU's enterprise accounts for 3% of China's export. Therefore, sometimes, one must succumb to the realities and allow capitalists to make decisions. This is the case not only in Hong Kong but also in Mainland China.

In a capitalistic society, the legislation on minimum wage provides the most basic form of protection. Yet, it seems that the legislation is ready to "kill people". Is \$33 such a big deal anyway? To be honest, all of us are now asking for \$33. The Confederation of Trade Unions will hold on straight to the end. I asked the Federation of Trade Unions earlier today whether it would persist. They replied in the affirmative. I think when the time for setting a minimum wage level eventually comes, it will still be necessary to bargain a lot. This is very obvious. This is what the industrial and commercial sectors are doing. They are still bargaining at this stage. But the greatest problem is that we do not have any bargaining power at all. That is why we must hold on straight to the end. How can we have any bargaining power? Who are the 12 members of the Provisional Minimum Wage Commission? There are three capitalists and three academics of the liberal school. There is not even one leftist scholar. I would not say that they are "fake scholars", but they are entirely different from us in terms of ideologies convictions, to say the very least. They are all scholars of the liberal school. Another three members are from the Government. The rest are LI Kai-ming, LAU Chin-shek and KWOK Chi-kin. There are only three employee representatives. There is an obvious imbalance.

The Chief Executive remarked yesterday that he alone could not have total control. Can he not have total control? When he has the support of nine members out of the 12 members, he will have total control. Frankly speaking, this is my greatest worry. How can we have any bargaining power? They still have the face to chide us for proposing \$33. They have been talking as if we want to kill them and rob them of all their wealth. My wife quarrels with me practically every day. She operates two shops, one of which has closed down

due to high rents. We now propose to set the minimum wage at \$33, so she keeps arguing with me, questioning whether I want her to close down the remaining shop. I have to explain slowly to her on what is right and what is wrong.

At present, what kinds of shops are located on the two sides of Nathan Road from Prince Edward MTR Station to Tsim Sha Tsui? They are mostly shops operated by Luk Fook, Chow Tai Fook and Chow Sang Sang, or those owned by Bonjour or Sa Sa. The rent for each shop amounts to several hundred thousand dollars, so only listed companies and large consortia can afford. How can any ordinary people operate any business? I believe the President may still remember that in the past, the operation of a store or a provision store could support the living of the whole family. If we look at Sai Yeung Choi Street (the electrical appliances street) these days, we will see that the shops are all run by Fortress, Broadway, Gome and the like. All of them are large consortia. In the past, if several persons had connections with one or two suppliers, they could already put together several hundred thousand dollars and jointly operate an electrical appliances shop. This is simply impossible nowadays. If people still want to do so nowadays, their only option to operate a shop that cheats tourists in Tsim Sha Tsui. But even so, they must still pay a monthly rent of several hundred thousand dollars. President, rent is the greatest problem. How can small and medium enterprises (SEMs) survive? They even say righteously that a minimum wage will stifle the survival of SEMs. Why do they not say that rents have stifled the survival of SEMs? They should instead criticize LI Ka-shing, Richard LI, Victor LI and LI Siu-kei. Speaking of 39 Conduit Road, no matter what we say, we cannot do anything about him.

The biggest problem with Hong Kong's economy is the policy of high land prices. What is the percentage of minimum wage in the operating costs of the industrial and commercial sectors? They do not want to talk about this, and even if they really mention it, they will only gloss over it. The Link REIT is a good example. In the past, a family could earn a living by renting a shop in a public housing estate for selling goods, foodstuff and groceries. Shops in Wong Tai Sin and Lo Fu Ngam in the past were operated like this. How much was the average rent at that time? President, it was just several hundred dollars. Nowadays, shopping centres are managed by The Link REIT. It drives away the

original shop operators one by one, and then Café de Coral and McDonald's come, followed by Fortress and Watson's. Except selling coffins, LI Ka-shing lays his hands on all types of businesses, right?

**MR LEUNG KWOK-HUNG** (in Cantonese): Maybe, he also sells coffins.

**MR WONG YUK-MAN** (in Cantonese): Later, after he has acquired SIU Ming's business, he will also sell coffins.

President, one reason for the poverty and wealth gap problems in Hong Kong is the monopolization of wealth. That is why it is necessary to enact a competition law.

Members can observe that for 20 years, Hong Kong's Rich List has been occupied by the same 10 persons. The Rich List has been occupied by the same persons, not any others. This is the result of the monopolization of wealth. How can anyone regard minimum wage as a great scourge? You may not know that the Republic of China formulated a minimum wage law in 1936. The Kuomintang already enacted the law 1936, but civil war broke out before anything could be finalized. The situation then was chaotic. In the early days after the Kuomintang's retreat to Taiwan, there was no minimum wage law, but there was wage protection. Later in 1968, they started to introduce a minimum wage. Nowadays, in the Taiwan area of the Republic of China, the basic wage is not called the minimum wage. It is called the basic living wage. How was the minimum wage set in 1936? In principle, it was set at a level that could support the living of a person and his or her dependants. This was the standard adopted in 1936. What period in history am I talking about? It was the period shortly before the Japanese invasion. There was already such a concept in 1936.

At present, the minimum wage in Taiwan is NT\$95. That is why there is an organization called the "95 League" in Taiwan. Two years ago, we visited the "95 League" with the main intention of observing the implementation of a minimum wage there. The League of Social Democrats (LSD) organized a delegation of 30 people to visit Taiwan to observe their implementation of a minimum wage and social security measures. President, the per capita income

in Taiwan is US\$19,000. As an advanced economy in the world, as a developed place, Hong Kong is very affluent, with a per capita income of US\$30,000. However, when we talk about the setting of a minimum wage, some people even mention \$20 or \$24 an hour. Given the present exchange rate, NT\$95 is roughly HK\$24. Their minimum hourly wage is \$24, but their retirement protection is better than ours. They have annual old age pension, and in contrast, we only have "fruit grant". And, if we live in the Mainland for long periods, we will lose our eligibility for "fruit grant". Despite their limited resources, their social security is still better than ours.

Last year, we visited Taiwan with the delegation of the Subcommittee to Study the Subject of Combating Poverty, led by Frederick FUNG. LEE Cheuk-yan also joined the delegation. The conditions in Taiwan and Korea are better than ours, though we are wealthier. What is the reason for that? The point is that I will be very rich if I can get 50% of my wealth and that of LI Ka-shing counted together.

There is a wide wealth gap, and wealth has been monopolized. So, what is the point of talking about all such rubbish? Secretary, the legislation will definitely be enacted. Some Members said that they need to explore how the legislation can be perfected. I agree with them. I have written down some questions, 14 altogether. Let me read out several of them to Members. On the Minimum Wage Bill, we have a number of questions. How are we going to set the minimum wage rate? Does the legislature have the power to revise the minimum wage level? Is the definition of "student intern" adequate? Will foreign domestic helpers be covered by the minimum wage legislation? Can the productivity assessment mechanism for employees with disabilities provide adequate protection to persons with disabilities? Does the Minimum Wage Commission have any credibility and representativeness? How can we enhance the transparency and credibility of the Commission's decision-making process? Should the minimum wage level be reviewed annually? Lastly, does the minimum wage legislation cover the Trade Boards Ordinance, which is to be repealed? All these questions are found in this pile of documents.

Therefore, our position on the amendments is very clear. We will support all the amendments proposed by the Confederation of Trade Union. We will also support all the amendments put forward by the Federation of Trade Unions.

As for other amendments, we are sorry to say that we will not support them. We will certainly oppose the Government's proposals. However, we will definitely support the Second Reading of the Bill. I think this Bill is very important to Hong Kong's social harmony. We must protect employees. We must protect not only their income but also their dignity. Will they become very rich if they are given \$33 an hour? Secretary, I do not know how much you spend every day. Is \$33 a large sum of money? It is just sufficient to cover basic living expenses. We work because we want to secure our basic living expenses. Of course, from the perspective of capitalism, it is all about the free market; wages are the prices of labour, which should be determined by market forces. I also know such theories. But what we see now is a distorted capitalistic society. President, do you still want to talk about any grand theories? If you want to argue with me, I will take the challenge.

Thank you, President.

**MS MIRIAM LAU** (in Cantonese): President, the long-discussed Minimum Wage Bill (the Bill) has finally reached the voting stage today. The Liberal Party must reiterate that the business sector as a whole has all along had worries about legislating for a minimum wage, especially setting the minimum wage rate at a high rate right at the beginning. They are afraid that the introduction of this new measure will bring adverse impact on the operating cost, the competitiveness of Hong Kong, as well as the labour market.

Among the enterprises of Hong Kong, we need not worry about large enterprises as the minimum wage will not deal a great blow to them. However, 98% of the enterprises in Hong Kong are small and medium enterprises (SMEs), usually with a narrow profit margin. Their ability to pay the minimum wage and adapt to the environment is certainly well worth our concern.

To the labour market, the introduction of a minimum wage can certainly raise the income of some workers. However, some undesirable side-effects may also emerge at any time. For example, workers with low qualification or low skills or elderly employees have higher risks of being dismissed. Some Honourable colleagues said that the argument is "corny"; of course, our knowledge may not be profound, but a number of economists in Hong Kong,

China or overseas have arrived at the same conclusion in their studies over the years, pointing out that the side-effects I mentioned earlier are inevitable upon the setting of a minimum wage.

In respect of the Hong Kong society as a whole, inflation may be aggravated, and the extent varies from region to region. Our competitiveness may also be affected. In fact, our competitiveness may be really totally different from that of the United Kingdom, France or the United States. It is because the labour market of our peripheral region — the Mainland — is very different from that of Hong Kong with a distinctive wage system. For this reason, Hong Kong has to face every day the impact and challenge of the cheaper labour of the Mainland. This is a unique situation of Hong Kong. Recently, an economist — I am aware that Mr Albert CHAN has some strong opinions against local economist — Dr CHAN Yan-chong, MBA Programme Director of the City University of Hong Kong, has mentioned in his article that he worried about the possibility of stagflation after implementing a minimum wage, meaning wage increase will only raise living expenses instead of stimulating production and increasing demands.

Despite these studies in economics, the Liberal Party also agrees that in an affluent society like Hong Kong, there are people who work very hard but can only earn a monthly salary of \$3,000 to \$4,000. This is of course highly undesirable. We should indeed show concern about the plight of the low-paid workers.

When the Government introduced the Bill into the Legislative Council in June last year, it clearly stated that the legislative intent of setting a minimum wage is to "prevent individual employee from receiving excessively low wages but without unduly jeopardizing the labour market flexibility and economic freedom and competitiveness and without causing significant adverse impact on the employment opportunities for the vulnerable workers." I describe this as a "five-not policy", that is, there are five "nots": not to affect the labour market, not to affect the economy, and so on. If the Government can really act according to this legislative intent, I admit that, to a certain degree, it will relieve the worries of the business sector over the minimum wage. However, the Government must closely adhere to these principles. If the Government can do so, the Liberal Party will certainly accept these arrangements.

However, we also hope the Government will ensure that the adverse effect caused by minimum wage in our society will be kept to a minimum. One of the greatest difficulties in implementing a minimum wage in Hong Kong is that most of the local companies adopt a monthly salary system, and it is a common practice for many trades and industries to have a commission-based income system. Many technical problems have to be resolved in adapting to the arrangement of a minimum wage at an hourly rate in future.

Therefore, at the 30 meetings held by the Bills Committee over the past year, the Liberal Party has always put forward our views in the hope of perfecting the Bill and better defining the provisions, so that the Bill can really meet the needs at the practical operation level.

For trades and industries which adopt the salary regime of basic wage plus commission, people involved include over 30 000 real estate agents, over 20 000 employees in tourism industry, including full-time tourist guides and tour escorts, insurance agents, as well as some banking staff, their salaries fluctuate greatly from month to month. In peak season, they may get a handsome commission that makes people green with envy. However, in low season, they may get nothing at all. According to the Bill, every employer has to ensure that the monthly income of all his employees must not be lower than the statutory minimum wage level, or else the employer has to bear legal responsibility. For the commission-based trades and industries with unreliable profits, how can employers comply with the legal requirement in the months when income targets cannot be achieved, this issue has aroused considerable concern in the sector.

The relevant trades and industries and the Liberal Party have met with the authorities several times to reflect the views and concerns in this regard. Eventually, the Government is willing to try to clarify the matters involved, specifying that the legislation does not seek to change the current practice under the Employment Ordinance where employers and employees can negotiate the payment of commission by instalments. Moreover, the Government will move an amendment later to affirm such a flexible arrangement in the legislation, which may generally remove worries of some members of the sector about the commission system. However, will there still be problems in its practical operation? When you ask me now, I really cannot give you an answer. However, an immediate problem we have to face now is how the contract should be written if employer and employee wish to agree on such a commission

payment method. The sector and I are troubled by this. Perhaps later we have to seek help from the Bureau in the drafting of these agreements.

Regarding the definition of hours worked, when the Bill was first introduced, a number of deputations have already listed a number of grey areas involved. For instance, how hours worked are counted when an employee travels to and from the Mainland to work or when he is on a business trip. Similarly, this issue has aroused considerable concern. The Law Society of Hong Kong has warned that the failure of the authorities in giving a clear definition will give rise to a large number of lawsuits in future. The authorities are going to make an amendment now, specifying the time of hours worked should be restricted by the condition that is "in accordance with the contract of employment, or with the agreement or at the direction of the employer". In our view, this amendment is essential to reduce the differences and disputes between employees and employers.

Therefore, with regard to the problems that may arise in practical operations, the concerns of the trade and industries and the technical problems involved mentioned by me earlier, the Government must draw up a set of concise and clear codes of practice with the illustration of actual examples after the passage of the Bill for compliance by employers, so that they will not be unknowingly caught in the net of justice by mistake due to the presence of grey areas in the law. Employers do not wish to encounter such a situation, nor do we hope to see it happen.

Moreover, as the legislative intent of setting a minimum wage is to ensure wage protection for low-income workers, I believe the Government has no intention to unnecessarily impose extra administrative costs on employers upon the enactment of the legislation. Therefore, the Liberal Party is very pleased to learn that the Government has accepted our proposal to specify in a schedule to the Ordinance that, if an employee's wage is not less than a certain amount in a relevant wage period, the employer can be exempted from recording every day and every month the number of hours worked of the employee. However, we think this regulation must be practical and reasonable. It should not include those who originally are not targets of the legislation in the recording of hours worked, as employers will then have to spend a large amount of money on unnecessary administrative work. It is also hoped that the minimum wage will be set at a relatively pragmatic instead of a very high level. Otherwise, the amendment will be meaningless.

President, the key issue of minimum wage is indeed the rate of the hourly wage. Only the framework of the Bill will be passed by this Council today, the minimum wage rate will not be discussed. However, I still wish to take this opportunity to briefly express the concern of the Liberal Party in this regard. The Liberal Party thinks that the minimum wage rate should be set a relatively "safe" level at the beginning, such as starting from an hourly rate of around \$24. This proposal is put forward after careful consideration and studies. Last year, we commissioned the University of Hong Kong to conduct a survey on 506 SMEs. The findings have revealed that if the hourly rate is set at \$24, it is projected that 1% of the working population, that is around 36 000 people, will be affected. They will either be sacked or replaced. If the minimum wage is set at an hourly rate of \$32, a much larger number of employees will be affected, possibly as many as 170 000 employees will lose their jobs or they will be transferred.

When compared with the latest figure released by the Census and Statistics Department, the number of unemployed people in the period from March to May is about 170 000. In other words, if the hourly rate is set at \$33, and if the situation as predicted in our studies last year unfortunately arises, the number of the unemployed will be doubled. I absolutely do not wish to say this, but Members should give a thought to this situation. We should not ignore some objective studies and facts just because we wish to help employees. We think these data are at least worthy of consideration by the Government or the Provisional Minimum Wage Commission.

According to a survey conducted by the Census and Statistics Department, at present, 130 000 employees in Hong Kong earn an hourly wage of less than \$24, representing 4.7% of the 2.77 million employees in the territory, which is similar to the 4.5% employees covered by the minimum wage when it was first introduced in the United Kingdom.

A number of chambers of commerce in Hong Kong are not against the hourly rate of \$24 because many of their surveys and conclusions also find the rate appropriate. These chamber of commerce include the Hong Kong Small and Medium Enterprises Association, the Hong Kong Chamber of Small and Medium Business Ltd (\$23.4), the Hong Kong SME Development Association and the Federation of International SME (\$25), the Hong Kong General Chamber

of Commerce (an hourly rate not lower than \$23 but not higher than \$26, that is, around \$24 to \$25) and the Employers' Federation of Hong Kong (\$23.4).

In fact, the minimum wage rate in the United Kingdom was started at a low level. As the local enterprises can absorb the impact of a rising wage, the employment situation has not been seriously affected. Hong Kong should draw on this experience.

I would also like to talk about the ripple effect caused by the minimum wage. In fact, many economists have conducted studies on this issue. Although the ripple effect may vary in different places, the general conclusion is that such an effect is inevitable. We hope the ripple effect in Hong Kong will not be too great. However, since ripple effect is bound to emerge, we should take it into consideration.

Based on the above analysis, the Liberal Party is of the view that the minimum wage level should not be set at an excessively high rate at the beginning. Rather, a relatively "safe" approach should be adopted, and reviews can be conducted after the implementation of the policy. If enterprises in society can adapt to this new measure, the rate can be raised in future so that employees can earn more.

I hope that the labour sector will not regard the worries of the business sector as "alarmist talks" only. The conclusion is drawn based on the collective wisdom and experience of the business sector (not just one business sector but a number of business sectors), and they have also extensively studied overseas experiences. We hope that Members will not handle the issue of minimum wage purely from an emotional perspective, a rational attitude is also needed to formulate this policy. Thank you, President.

**MR FREDERICK FUNG** (in Cantonese): President, the Hong Kong Association for Democracy and People's Livelihood (ADPL) and various labour groups have persistently strived for years for enacting legislation on minimum wage, the aim is to protect the basic living need of low-income earners, and alleviate the serious marginalization of the labour market.

Looking back in history, with the restructuring of our economy, the industrial and labour-intensive industries have been in decline. On the contrary, the service sector such as the financial services industry has developed rapidly under the Government's bias elective policy. Traditional manufacturing industries, the major supplier of elementary posts in the past, have moved northwards as manufacturers want to go after low cost. Furthermore, the Government all along shows no foresight and vision; it refuses to invest resources to promote value enhancement, as well as innovation and restructuring of industries, and turns a blind eye to the decline of the manufacturing industries and the adverse impact on the grassroots, consequently giving rise to the present situation.

As the authorities firmly believe that local industries have no room for development, they just let them dwindle, ultimately leading to a heavy drain of elementary posts. The service sector has outshone other sectors under the Government policy, thus polarizing the labour market. High-skilled workers in an advantageous position enjoy higher wages, better fortune, development prospects and living conditions. The unemployment rate is even less than 2%, almost equivalent to full employment.

On the contrary, the unemployment rate of low-skilled workers has remained high. Their wages and living conditions are all lagging far behind and even getting worse. In the midst of rapid economic growth, the wages of low-income families have dropped. The reality is that the grassroots are rejected by mainstream society due to their lack of competitiveness. Under the merciless operation of a free market, they are forced to accept inferior jobs. Their wages are seriously suppressed by unscrupulous employers to a level that they can hardly sustain their living. In addition, they have to work from morning to evening, with utterly no family life. It can be said that they are leading a life with no dignity at all, not to mention the chance to move up the social ladder.

In the face of the grassroots workers' poor condition and the exploitation they suffered, the SAR Government still clings to the outdated idea and refuses to change. It brags unblushingly that a free market works in this way and insists to govern Hong Kong by the ideology of commercialism. Whenever proposals are

made by the civil groups to protect labour rights and interests, such as minimum wage and standard working hours, the Government will depict such moves as interfering with the market mechanism and bringing harm to the business environment. Hence, it mercilessly rejects all these proposals.

It is lamentable that the authorities always have profound faith in the "trickling down" theory of economic growth, thinking that as long as the economy continues to develop and more job opportunities are available, wealth will naturally trickle down to the lower stratum and the living of grassroots workers will thus be improved. Obviously, this "take for granted" attitude with no regard of the facts cannot stand the test of history. President, in fact, a large amount of data has proved that such an effect has never existed. I have talked about it before, and I do not wish to repeat here again.

In fact, in a free market, businessmen will, in pursuit of additional profits to fulfill their insatiable greed, exploit people in the lower stratum. Being in an advantageous position, employers exploit grassroots workers by giving them excessively low wages. As the wages of the grassroots have continually been suppressed, the problem of working poverty has become increasingly serious. The grassroots has never been able to share the fruits of economic success. The current per capita income of Hong Kong people is US\$30,000, that is, \$20,000 per person. However, the median wage of an individual person is \$5,000. Why is there such a large gap? Theoretically, the annual wealth distribution for a three-member family should be \$60,000. However, the current median wage of a three-member family is \$18,000. President, this is the outcome resulted from commercialism and free market.

Hong Kong has lagged far behind in the rules and regulations for the protection of labour rights and interests. Actually, many countries in the world have implemented a minimum wage. Let us not talk about the European and American economies and concentrate on Asian countries, South Korea, Singapore, Taiwan, and even the Mainland have implemented a minimum wage. We only start discussing the legislation on minimum wage now, and even if the law is successfully enacted, we still have to wait some time before the legislation can be enforced.

President, the question is that the Government has all along adopted delaying tactics on setting a minimum wage. For years, the Government has refused and stalled on legislating for a minimum wage on the grounds that it will violate the principle of a free market economy and interfere with the market in determining wages, resulting in the loss of flexibility of the labour market, and an increase in operation costs, and so on. Subsequently, under the enormous pressure in society, the Government finally took some actions. In 2004, it mandatorily required that the wage rate in government services contracts must not be lower than the average wage level of the relevant trades and industries; and later it "put on an act" and announced in the 2006 policy address to implement the so-called voluntary Wage Protection Movement for cleaning workers and security guards. When this proposal was announced at the time, we in the labour and the community sectors hold that the Movement would definitely fail. However, upon the insistence of the Government, the Movement lasted for two years, meaning that the legislation on minimum wage was delayed for two more years.

The subsequent review proved that the Wage Protection Movement implemented on a voluntary basis yielded unsatisfactory result. The Government could no longer stall the issue. Under public pressure, this Bill was finally introduced into this Council for discussion and passage.

President, with regard to the protection of labour rights and interests, I can say that the legislation on minimum wage has opened up a new prospect for Hong Kong. The setting of a statutory minimum wage is one of the core issues in the entire movement to strive for labour rights and interests. It manifests the change in social values from the predominance of a free market to the recognition of the dignity of workers and the value of labour. Enterprises have to bear social responsibilities, and such responsibilities are not just expressed in words, but written down expressly in our law. They must be upheld and integrated into the practical business operation. Through this legislative effort, the undesirable of the past, such as excessively low wages that fail to sustain a living, job insecurity of grassroots workers and absence of dignity at work must be turned into history.

President, in setting a minimum wage, we have to take into account several major principles. First, the criteria and methodology for setting the statutory minimum wage (SME) rate; second, the legislative procedure for setting the SME

rate and the frequency of reviews. All this will have an impact on the legislative effect and the legitimacy of the minimum wage, as well as whether it will be adjusted appropriately according to the economic environment.

First, on the criteria and methodology for setting the SME rate, according to the Bill, when the proposed Minimum Wage Commission performs its functions (including recommending a minimum wage at an hourly rate, as well as the timing and frequency of the minimum wage rate reviews), it must consider: (i) maintaining an appropriate balance between the objectives of forestalling excessively low wages and minimizing the loss of low-paid jobs; and (ii) sustaining Hong Kong's economic growth competitiveness.

The objective of "forestalling excessively low wages" is not clearly defined. Moreover, it gives people an impression that the Minimum Wage Commission will bias towards factors such as economic development and corporate competitiveness rather than the well-being of grass-roots workers. Obviously, this reflects that "work until you drop" ..... In such a piece of legislation, the Government still puts economic development and economic execution in the leading place. Workers work eight hours a day, spending a lifetime working for their boss to earn money, but is the money they earn enough to support themselves and their families? The authorities have not considered nor pay attention to these facts.

President, this makes people doubt about the real motive of the authorities to set a minimum wage. Are there any other objectives? If the main objective is not to safeguard workers but, rather to alleviate the enormous public pressure on minimum wage over the years, and avoid causing harm to the profit-minded businessmen, that is not unacceptable at all. If the Government sets an unreasonable minimum wage rate, so that businessmen can wilfully exploit grassroots workers in a lawful way, that is not acceptable at all.

The ADPL and I think that the Government should clearly set out in the Bill the criteria for setting the minimum wage rate. Apart from economic considerations, factors such as the current CSSA level, the need of workers and their families, as well as the living expenses should also be taken into account.

In fact, specific criteria are set out in Article 7 of the International Covenant on Economic, Social and Cultural Rights (ICESC) and international labour conventions. We can refer to these criteria to ensure a reasonable wage for workers so that they can maintain a decent living. What is more, it is stipulated in Article 39 of the Basic Law that the provisions of the ICESC and international labour conventions as applied to Hong Kong shall remain in force and shall be implemented through the laws of the Hong Kong SAR.

Therefore, the Administration should ensure that the setting of the minimum wage rate must enable workers to receive a reasonable wage reward so that they can meet the basic living need of their families.

The ADPL and I are definitely of the view that the minimum wage rate should be reviewed once every year. Only in this way can the changes in the economic environment and the wage structure be appropriately reflected. In fact, even if the rate is reviewed once every year, the review itself actually lags behind the reality because the data under review reflect the situation in the past whereas the policy to be formulated targets at the next 12-month period. Hence, we think it is appropriate to conduct a review once every year.

Moreover, the Minimum Wage Commission plays a very important role in the setting of a minimum wage rate. Therefore, its composition must have a broad representation, and its operation must be open and transparent. The authorities should consider the inclusion of labour representatives elected by different labour unions and organizations, so as to ensure that the view and condition of the majority of workers can be reflected by these members on the labour side. At the same time, in order to maintain the independence of the Commission, the practice in the United Kingdom should be followed where government officials in attendance of the meeting are only responsible for giving support to the research work of the Commission, and not given a right to vote.

Under the Bill, the prescribed minimum hourly wage rate is set out in a schedule. The Legislative Council can only either approve or revoke the notice to amend the schedule, but it cannot amend the content of the schedule. In other words, the Legislative Council is actually not given the power to prescribe the exact minimum hourly wage rate.

President, in fact, this arrangement is not reasonable. The Secretary has kept telling us that this provision is to avoid political disputes in the Council which may affect the setting of the rate. The so-called political disputes are to avoid political intervention and participation. However, we have to bear in mind that the Legislative Council is a forum where public opinions converge, and the rights and interests of the various strata are represented. On the contrary, the Chief Executive is yet to be elected by universal suffrage at present. Even if he is elected by universal suffrage in future, the people he appoints are actually those who meet his "inclination", and the decision he makes also meets his "inclination". He is the one who makes the final decision in future, which means he has the say from the beginning to the end. Are these not politics? Are these not political inclinations and values? Such a political inclination does not involve democracy; it is an issue related to social class. Will you help the business sector and hold neutral and balanced values in social development; or will you help the grassroots? Actually, every manoeuvre you take indicates such an inclination. If you tell me that the Chief Executive does not have such an inclination, it is only possible when he does not live in Hong Kong. Therefore, the ADPL thinks that this arrangement is not reasonable.

The Legislative Council has a public mandate and it should have the power to support, reject or revise some decisions and proposals made by the executive authorities under reasonable and unreasonable circumstances. In doing so, some irrational cases can even be avoided. For instance, if the Chief Executive ignores the recommendation of the Minimum Wage Commission and decides to adjust the minimum wage rate downwards, I think the Legislative Council can at least play the role of a gatekeeper and divert the minimum wage rate back onto the right track, so that the working class does not have to suffer.

President, as I mentioned earlier, if the setting of a minimum wage is the core issue in the entire movement to strive for labour rights and interests, it manifests a change in the social values of Hong Kong. Such a change begins today or tomorrow when we pass this Bill. The saying that a free market always overrides everything will change; recognition will be given to the dignity of workers and the value of labour. Of course, our next target is: What is the reasonable working hours for an individual? How much work should an individual take up? This is another core issue in the next movement to strive for labour rights and interests. Its impact is wide and far-reaching, whether we look at it from its extent of coverage or its positive effect on every employee's living.

Subsequent to the legislation on minimum wage, it will become another battle front where the ADPL and I, as well as all the political parties and organizations which concern for labour rights and interests will engage in to strive or demand for another legislative process by the Government.

Here, I wish to remind the Government that it should be realistic and sincere, and truly face the strong demand in society for the setting of standard working hours. It should not disregard such a demand like what it did in the past, using excuses such as our competitiveness will be undermined, the market will be disrupted, and so on. Please bear in mind that a worker is a human being. He has to earn money and use the money to support himself and his family. He also has a life, not just a "working" life, but also a family life that he shares with his wife and kids. A human being has the right to such a life. I hope that a free market will not be used as an excuse to deprive people of these basic needs and basic rights. Thank you, President.

**MR WONG KWOK-KIN** (in Cantonese): President, today, several colleagues of mine have expressed many views on the Bill on behalf of the Federation of Trade Unions (FTU). Originally I can wait until the next scrutiny stage to speak. However, come to think of it, today should be a landmark day in the history of the labour movement of Hong Kong because the legislative process for setting a minimum wage has begun. Therefore, I think I should take this chance to share my feelings in this Chamber.

President, the legislation on minimum wage is a great breakthrough in the history of our striving for labour rights and interests in Hong Kong. It is of utmost significance because it manifests social justice, it also represents a consensus reached by people from all walks of life (including employers) to recognize the dignity of workers and the need for a reasonable reward for the workers' labour. The setting of a minimum wage ensures that workers are given a reward in a certain proportion to their labour. We are saying it is in a certain proportion because I agree to Mr Frederick FUNG's earlier comments: Will fairness be achieved following the setting of a minimum wage? Relative to what workers have paid, is the amount of wage a fair and reasonable reward? We are not sure about this. Therefore, I can only say that this is a reward in a certain proportion, and the present continuous drop in wages can be arrested.

I wish to cite a very personal example. The wife of one of my old friends is an outsourced cleaner. Whenever she sees me, she complains to me. As she is an outsourced worker, she has to sign new outsourcing contracts frequently. Each time she signs a new contract, her wages will be lowered, consequently, her wages have been reduced from around \$5,000 to the current \$4,200 only. This is a very common phenomenon. If legal protection is not provided, no one knows when such an endless drop will stop.

Under the present economic structure of Hong Kong, the strength of employees and employers is seriously out of imbalance, as the former do not have any bargaining power. We see that workers in Hong Kong are now facing several major difficulties. One of them is the lack of job insecurity. Many jobs are on contract terms, or on short term or temporary basis, and many workers are forced to become self employed. Without job security, workers are in a constant state of anxiety. Even if a worker secures a job, he always has to face difficulties such as long working hours, heavy workload and great pressure. This is a very common phenomenon nowadays. Moreover, even if a worker can secure a job and stand the workload and pressure, the wage he receives is not in a direct proportion to the efforts he paid. At present, cases of working poverty are very common in Hong Kong. This is the reality workers of Hong Kong are facing.

We are not against the view held by many employers that wages should be determined by the market. However, the market mechanism of Hong Kong has obviously ceased to be effective. Hence, we advocate the setting of a minimum wage as a remedial measure to safeguard workers, so that they can get a minimum protection.

Moreover, we must point out here that minimum wage is not a welfare measure, it is not prescribed out of pity and charity. Workers have the right to get a minimum wage. We should not regard minimum wage as something perfect as it cannot lift workers out of poverty. Let us give this a thought. We are now asking for an hourly rate of \$33. Even if we succeed in fighting for it, the wages of workers are still less than \$7,000 a month. Can they break off from poverty? That is practically impossible. The setting of a minimum wage can only reduce the serious wealth gap in Hong Kong, so that it will not keep widening without limits. President, I am saying reducing and not eliminating the wealth gap because it is practically impossible to eliminate a wealth gap.

Rather, it can only be slightly bridged. To the public, it can just slightly alleviate their pain.

We have heard the criticism of many chambers of commerce and employers that a minimum wage will deal a great blow to society. Of course, at this stage, we cannot completely deny that. However, I think this kind of comment is just a deduction and a prediction. Everyone is just making guesses. As no verification has been made, it all depends on how the data are interpreted. People with different stances and different interests may arrive at totally different outcomes when they interpret the data.

I think employers need not regard minimum wage as a great scourge because it is still unknown whether the setting of a minimum wage will bring about so many negative effects. Perhaps after operating for some time, positive effects may be seen. Therefore, we should not assume now that the setting of a minimum wage will have adverse consequences. In fact, we do not wish to see the legislation on minimum wage will turn into an employee-employer wrestling ground. I think in society, employees and employers are like the two sides of a coin, which are interdependent.

To borrow a past remark of Chief Executive TUNG and change it slightly, it becomes "if employers are good, employees will be good; if employees are good, employers will even be better". If all of us can handle this issue in a more rational manner, and do not regard minimum wage as a fight and wrestle between employees and employers, I believe the setting of a minimum wage will not necessarily bring negative impact on society. We do not agree to one of the present comments, saying that the setting of a minimum wage will increase the operation costs of employers and affect the competitiveness of Hong Kong. Perhaps there will be some implications, but it is fair to ask workers to shoulder the responsibilities concerning the increase in Hong Kong's competitiveness and the increase or decrease in the operation costs of employers? Why do we not consider whether there are ways to bring down rents; whether there are ways to bring down the profits of major real estate developers? Is it fair to shift all these responsibilities to workers? Whether a minimum wage will have cost implications on employers still remains unknown. However, even if there is such an impact, or an impact on our competitiveness, we should not blame workers who are only fighting for their entitled benefits.

I would also like to take this opportunity to tell employees not to expect too much. As I mentioned earlier, even if we succeed to fight for \$33 now, it will not immediately bring great benefits to workers. They cannot immediately break off from poverty or greatly improve their life. It can only provide them with a preliminary protection. I believe this is just a starting point. We have to continue to fight for more in future in the hope of improving the condition of workers in every aspect.

In my view, the Government should make complementary efforts to facilitate the smooth transition or integration after the setting of a minimum wage. For instance, we always ask the Government if the existing cross-district travel allowances can be turned into travel allowances for low-income earners. This is a complementary measure in setting a minimum wage, which I think the Government should give serious and active consideration.

Lastly, I also wish to talk about the level at which the minimum wage should be set. At present, employers and employees have different views. We have all along insisted on \$33, but I have just heard that the Liberal Party has advocated \$24. We have proposed an amendment in the hope that in considering the wage level, the need of family will also be taken into consideration. This is not a vain hope. Let me cite an example. I remember when I was small, that is, in the 1950s, 1960s, there was generally one bread winner in every family. My parents have five children. At that time, my father was the only bread winner and my mother stayed home to take care of us. My father was a barber, a "handicraft workman", and yet he could support a family of so many members with his hands. However, nowadays, it is not easy for a single income earner to support himself, let alone a whole family. Is our society moving forward or slipping backward? President, this question is worth our deep thought. Hong Kong is a relatively affluent society by the internationally-recognized standard. However, the wages of our workers do not allow them to consider the need of their families. I find it very hard to accept, President.

Regarding the various amendments of the Bill, I will discuss them later in the next scrutiny stage. President, with these words, I support the resumption of the Second Reading of the Bill.

**SUSPENSION OF MEETING**

**PRESIDENT** (in Cantonese): The time now is 10 minutes to 10 o'clock. I now suspend the Council until 9 am tomorrow.

*Suspended accordingly at ten minutes to Ten o'clock.*