

OFFICIAL RECORD OF PROCEEDINGS

Thursday, 15 July 2010

The Council continued to meet at Nine o'clock

MEMBERS PRESENT:

THE PRESIDENT

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

THE HONOURABLE ALBERT HO CHUN-YAN

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

THE HONOURABLE LEE CHEUK-YAN

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

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

DR THE HONOURABLE MARGARET NG

THE HONOURABLE JAMES TO KUN-SUN

THE HONOURABLE CHEUNG MAN-KWONG

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

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

THE HONOURABLE LEUNG YIU-CHUNG

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

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

THE HONOURABLE LAU KONG-WAH, J.P.

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

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

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

THE HONOURABLE ANDREW CHENG KAR-FOO

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

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

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

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

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

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

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

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

THE HONOURABLE WONG KWOK-HING, M.H.

THE HONOURABLE LEE WING-TAT

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

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

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

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

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

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

THE HONOURABLE CHIM PUI-CHUNG

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

THE HONOURABLE KAM NAI-WAI, M.H.

THE HONOURABLE CYD HO SAU-LAN

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

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

THE HONOURABLE CHAN HAK-KAN

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

THE HONOURABLE CHAN KIN-POR, J.P.

DR THE HONOURABLE PRISCILLA LEUNG MEI-FUN

DR THE HONOURABLE LEUNG KA-LAU

THE HONOURABLE CHEUNG KWOK-CHE

THE HONOURABLE WONG SING-CHI

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

THE HONOURABLE IP WAI-MING, M.H.

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

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

DR THE HONOURABLE PAN PEY-CHYOU

THE HONOURABLE PAUL TSE WAI-CHUN

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

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

THE HONOURABLE LEUNG KWOK-HUNG

THE HONOURABLE TANYA CHAN

THE HONOURABLE ALBERT CHAN WAI-YIP

THE HONOURABLE WONG YUK-MAN

PUBLIC OFFICER ATTENDING:

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

CLERKS IN ATTENDANCE:

MRS CONSTANCE LI TSOI YEUK-LIN, ASSISTANT SECRETARY
GENERAL

MRS VIVIAN KAM NG LAI-MAN, ASSISTANT SECRETARY GENERAL

MRS JUSTINA LAM CHENG BO-LING, ASSISTANT SECRETARY
GENERAL

MRS PERCY MA, ASSISTANT SECRETARY GENERAL

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

PRESIDENT (in Cantonese): We now continue with 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**

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

DR PHILIP WONG (in Cantonese): President, I originally did not intend to speak at the resumed Second Reading debate on the Minimum Wage Bill (the Bill) and would just vote for the Bill. However, after listening to the speeches made by several Members from the commercial and industrial Functional Constituencies (FCs) yesterday who expressed reservations about the Bill, I echo their concern that the Bill will create more insoluble social problems after its passage.

As I said in the past, FC Members can serve a gatekeeping function, warding off motions proposed by individual Members which are not conducive to society. That said, we cannot ward off government Bills which would have a negative impact on society. Many Members from the commercial and industrial sectors cited examples would cause such negative impacts yesterday. I share their views and do not wish to repeat their justifications, but all in all, we are afraid that these Bills may do a disservice.

I wish to cite a real example here.

About a year ago, the Central Government passed a new labour law after years of debate to protect the interests of mainland workers, but the law turned out to be a disaster. Thousands of plants closed down in the Pearl River Delta after the promulgation of the law, leaving many workers with no money even to

buy train tickets back to their hometowns. Any breakdown of law and order would lead to grave consequences. In order to remain viable, the commercial and industrial sectors adopted some unusual practices.

As far as my factory on the Mainland is concerned, I decided to invest in all such facilities which could facilitate automation so as to minimize labour costs. I had no choice but releasing those workers who had served my company for years. About 400 to 500 employees were dismissed, who had all fought the battle with me. I have been upset for quite some time, but I have no other options. This is the only way to preserve my company and the other employees.

Hence, President, I have come here today with a helpless and heavy heart to vote for the Second Reading of the Bill. I hope that the concerns of Members from the commercial and industrial sectors will not come true. But if they do, please do not put the blame on us or other Members not coming from the commercial and industrial sectors. Should the responsibility not be borne by the SAR Government?

President, I so submit.

MS AUDREY EU (in Cantonese): President, I am glad that I can speak in support of the resumed Second Reading of the Bill on minimum wages. Mr LEE Cheuk-yan was extremely excited when he spoke yesterday. He said that it was a very important historical moment for the labour sector and the Hong Kong Confederation of Trade Unions (CTU). President, I agree that the Bill is a significant milestone, which is comparable to the stipulation of statutory paid leave in 1977, and more important than the Protection of Wages on Insolvency Ordinance enacted in 1985 or the Mandatory Provident Fund Ordinance enacted in 1998.

President, Mr LEE Cheuk-yan mentioned in his speech that he had put forth a motion on minimum wage in 1999, but it was supported by only nine Members. President, I recalled that I was lobbied to stand in the election of the Legislation Council in 2000. At that time, one of the important questions posed to me was whether I support setting a minimum wage.

President, I have conducted some surveys and found that minimum wage was first advocated by the Fabian Society, at the end of the 19th century. New Zealand was the first country in the world to pass legislation on minimum wage, when the law was enacted 116 years ago in 1894. The United Kingdom and Australia prescribed a minimum wage in succession in the early 20th century. The United States stipulated a minimum wage in 1938, which was 72 years ago. Minimum wage is also implemented in Europe, Japan and China. President, even Pakistan has prescribed a minimum wage since 1992.

Hence, firstly, this is a common practice with a long history. Second, President, actually, in Article 39 of the Basic Law, it is mentioned that Hong Kong should comply with certain international conventions, which include the International Covenant on Economic, Social and Cultural Rights (ICESCR) mentioned by many colleagues yesterday. It is stipulated unequivocally in Article 7 of the ICESCR that the remuneration provided to workers should to the very least be sufficient to sustain a dignified living for the workers and their families. So, after reading all the relevant information, I told my friend at that time that Hong Kong should prescribe a minimum wage.

President, many people have pointed out that if a minimum wage is set at an exceedingly high level, it will trigger off a chain of problems. If so, President, there may be two possibilities, that is, the minimum wage will either be set at a considerably suitable level, or an exceedingly low level. Am I right? Hence, I cannot object to the legislation on the ground that the minimum wage set may be too high in the process of legislation. Though this is a reason commonly cited by Members opposing the legislation, I do not consider this a good reason. Actually, in many developed economies, surveys on various aspects have been conducted.

President, when I stood for the election in 2000, this issue was part of my platform. Certainly, as mentioned by Mr LEE Cheuk-yan, this motion has been proposed a number of times since I joined this Council. The motion has been proposed six times, three times by the Hong Kong Federation of Trade Unions and three times by the CTU. Since joining this Council, I had voted for the relevant motions every time they were put to the vote.

President, till 2006, I belonged to the Article 45 Concern Group, and we had been considering forming the Civic Party. One of our considerations then

was whether we should support the legislation on minimum wage. A number of forums had been organized on this issue, and many volunteers from the Article 45 Concern Group had attended those forums. Some volunteers who had been helping us for a long time indicated that they would not join the Civic Party if we insisted on supporting the legislation on minimum wage, for they considered the subject "radical". President, what I want to say is that the term "radical" or "extreme" is not new to the Civic Party. I have never considered myself "radical". I am only acting in accordance with the justifications and principles, but many people opposing these justifications and principles consider us going to the extreme. Particularly they consider that the Civic Party should be a party representing the middle class, and they do not understand why the Civic Party will support minimum wage which is an issue relating to the benefit of grass-roots workers.

I do not think that this is an issue relating to the benefit of grass-roots workers. It is a matter of human rights — fundamental rights. If Hong Kong lays claim to be a world-class city, it should offer protection up to the world-class standard. Hence, after an intense debate, President, this item was included in the platform of the Civic Party. For this reason, we have indeed attracted criticisms. But all along, we have held fast to our principles and visions. At the early stage, we already supported the application of minimum wage to all trades. At that time, among Members in the Council, many political parties and groupings, including the FTU at the time, supported the setting of a minimum wage, but they only advocated the application to a couple of trades — the cleaning and security services sectors. But, right from the outset, we support the application of minimum wage to all sectors and trades.

Unfortunately, President, due to the existence of functional constituencies in the Legislative Council, the relevant motions were never passed. When the Wage Protection Movement proved to be a failure, the Government could not but succumbed to the protracted fight and struggle and agreed to enact legislation on minimum wage.

At yesterday's and today's meeting, I heard many colleagues from the commercial and industrial sectors stating their helplessness in supporting this Bill. Dr Philip WONG said earlier that he felt helpless and downhearted. President, sometimes, I think it is ironical. Actually, Members who have joined the Council should follow their own views in voting. If one opposes the Bill

because of his or her own opinion, President, I will accord greater respect to these opposing votes, for the Member concerned is opposing the question according to his or her own judgment. But this is not the case in reality. More often than not, when the Government submits certain policies, colleagues will always take the order of the Government for they have grown used to supporting the Government. Hence, even if they consider the decision wrong at heart, they will not speak but just vote for it. This gives people the impression that they are just polling machines. President, I would rather respect those who come forward to state their arguments for opposing the question. I think it is after all better than being dubbed a polling machine. Though they may be extremely unwilling, they will give their support to the policies formulated by the Government.

President, there are only several reasons for opposition. Just review the history of the past century and we will find that the attitude towards minimum wage has remained the same. Many people oppose it for economic reasons, for we have to trust the free market. President, a number of academics were quoted in the speeches given by Members from the business and industrial sectors yesterday. Chairman, honestly, there are many types of academics. One can surely find certain academics who support his or her views. Besides, the free market is fantastic. If so, the Government may as well not to enact any legislation on this. President, I can also find some academics who support my argument. Particularly, I would like to introduce an academic to the Liberal Party, for this renowned economist from the United States is a Nobel Laureate in Economics. He claims to be a Liberal and has written a book titled *The Conscience of A Liberal*. He has mentioned minimum wage in the book and cited many surveys in this connection, including the surveys conducted by David CARD from the University of California, Berkeley and another conducted by Alan KRUEGER from Princeton University. From the classic studies conducted by these two outstanding labour economists, he finds that there is no evidence indicating that the increase of basic wages in the United States has resulted in a drop in employment.

The writer of *The Conscience of A Liberal*, Paul KRUGMAN, has also conducted a lot of researches. He has mentioned that all the experience and evidence indicate that a suitable increase in basic wage will not result in a significant loss of job openings. Surely, as I mentioned earlier, the word "suitable" is very important. Many people say that if the basic wage is set too

high, it will give rise to a lot of problems. This is always true, President. If some extreme cases are cited, they will definitely be true.

Hence, the present legislation will only draw up a framework, and to a certain extent, this arrangement will leave the problem to the Minimum Wage Commission (MWC). The Government should certainly support the MWC, but the Government has left some leeway for itself. Ronny TONG and Alan LEONG of the Civic Party have mentioned this in their speeches, and I will not repeat this now. Hence, President, when it comes to economics, the majority of Members opposing minimum wage has quoted a certain type of academics. But I would like to point out that we may as well quote the studies of academics holding different views, and there are many of them indeed.

President, many people have pointed out that the other major reason for opposing the Bill is that they fear it may do a disservice despite its good intentions, and will do harm rather than good to the problem. Dr Philip WONG mentioned the Pearl River Delta case earlier in his speech. President, in my view, sometimes, only appropriate examples should be cited. For instance, we may cite the local cases in Hong Kong as examples. I recall that friends from the business and industrial sectors in the legislature would often caution us, and certain profit warnings issued in response to the present legislation are apt examples. Indeed, we have heard a lot of warnings before that. For instance, when we passed the law to ban smoking, many people from the Liberal Party and the business sector told us that if the law on smoking ban was passed, the entertainment establishments would surely close. President, we recall that during the discussion on the legislation on food labelling, many people from the business sector told us that once the legislation was enacted, many nutrient food products could no longer be imported into Hong Kong.

President, the enactment of an ordinance will after all have some impact, and we have to admit that. I know that if the legislation on minimum wage is passed, there will surely be some individual cases affected by the legislation. However, we notice that over the many years in the past, wages in Hong Kong have kept decreasing, which is definitely a serious social problem. In his speech yesterday, Mr Vincent FONG mentioned that as a result of the enactment of the legislation, the relationship between employers and employees would become tense. Actually, the relationship between employers and employees is not built solely on money. Despite the offering of the minimum wage to employees, the

relationship between employers and employees may still be undesirable if an employer is mean in all other aspects. If an employer treats his employees as his partners, he or she will be more understanding about their need to feed their families. Hence, if a minimum wage is to be prescribed, it should not be set at a level at which only the basic needs of an individual is met, for the consideration of enabling an employee's family to lead a dignified living should also be taken into account. Regrettably, the Government disagrees with this. Even though we mentioned the ICESCR, the Government said that it was aspirational — as in the case of universal suffrage, which is stipulated in the Basic Law, but no date of completion has been laid down for it — it all depends on whether an unanimous consensus can be achieved. Hence, this is a distant dream that can hardly come true.

President, I would like to mention the several specific situations covered in the Bill. First, it is surely the one about persons with disabilities (PWDs). Mr Vincent FANG, who spoke yesterday, and other colleagues have mentioned that some PWDs do not want to see the passage of the Bill, or that they do not want to be covered by the Bill, for they fear that they may lose their jobs. Insofar as persons with disabilities are concerned, the mainstream opinion held by organizations helping PWDs is that they should also be covered by the Bill in order to prevent discrimination against them. However, these organizations think that there are many imperfect, undesirable and unreasonable provisions in the Bill, including the provision of wages of not less 50% of the minimum wage during the trial period of employment for PWDs, and they consider that the Government should provide subsidy for this. These organizations consider the provision of subsidy a worthwhile deal despite the cost incurred, for if PWDs do not work, they would have to apply for Comprehensive Social Security Assistance and impose a burden on society. However, if PWDs are allowed to integrate into society, where they can have a job and earn an income at the minimum wage, with or without subsidy by the Government, it will be greatly helpful to the integration of PWDs into society as a whole.

President, we very much agree with this view. I also agree with the Committee stage amendment to be proposed shortly to abolish the exemption proposed by the Government in this respect. Under the exemption, employers of PWDs may, after the trial period, refuse to acknowledge the outcome of the assessment even if it is available, and despite the refusal to sign the contract, the employer is not violating the Disability Discrimination Ordinance. Insofar as

this point is concerned, I consider it extremely unfair, hence, I will support the amendment proposed by colleagues in this aspect.

As for the arrangement for live-in domestic workers, because of the time constraint, I cannot say much about this. I only wish to state the position of the Civic Party. As a matter of principle and because the need to provide fair treatment, we strongly support the provision of statutory protection for live-in domestic workers. However, due to the nature of their work, and the inclusion of accommodation, food, air tickets, and so on, in their employment, it will be difficult to set an hourly wage for their work. According to our stance, we can only abstain from voting on the amendment proposed by Mr LEE Cheuk-yan this time, but we will urge the Government to review the issue of live-in domestic workers as soon as possible, so as to provide them with statutory protection and ensure that they are afforded equal treatment.

With these remarks, President, I support the resumed Second Reading.

PRESIDENT (in Cantonese): Does any other Member wish to speak? Dr Margaret NG.

(Mr LEUNG Kwok-hung rose and intended to speak)

PRESIDENT (in Cantonese): Mr LEUNG Kwok-hung, Dr Margaret NG had raised her hand before you did. If you want to speak, please press the "Request-to-speak" button.

DR MARGARET NG (in Cantonese): President, I am really sorry that I still have yet to get used to pressing the button, and raised my hand instead.

President, colleagues in this Council have already raised those justifications, why then do I need to supplement a point or two? Because I am the only Member from the Civic Party who is returned by a functional constituency (FC) election, so in order that I will not be mistaken for a FC Member being compelled to cast the same vote as that of the Civic Party, I need

to make clear the stand I have adopted in respect of minimum wage all these years in this Council.

President, you may also be aware that I have all along kept a low profile in debates on minimum wage issues. This is because I always consider that I have very limited knowledge about the most pertinent and practical aspects of this subject. Nevertheless, I have all along been following up this important subject matter, as it involves certain social policy, economic development and human rights issues. As such, over the past years, the data that I would first look at were always financial data. Today, I can briefly tell Members why I fully support setting a minimum wage.

Firstly, I have read all the financial data and opinions put forward by scholars. While some scholars consider setting a minimum wage is commendable and will do good to the economy, some other scholars opine that as indicated in some financial data, setting a minimum wage is a bad thing. Actually, after looking at both sides of the coin — let us not listen to those people who speak with an ulterior motive but consider only those conclusions founded on sincere and truthful studies — we will come up with a conclusion that a minimum wage may have its merits and demerits, and the merits and demerits will co-exist. The so-called consensus we try to reach is the level at which the minimum wage is pitched. Hence, my conclusion is that as far as the economy is concerned, whether we look at it in the light of economic theories or financial data, the effect of this minimum wage policy is totally neutral.

Secondly, we need to discuss whether we should legislate for a minimum wage. I consider this an issue of social conscience. If you are living in an advanced society, and if you respect the dignity of workers, you would have no reasons to not set a minimum wage. Hence, if we are living in a civilized society, how can we say we should not legislate for this purpose because so doing will reduce the profits enjoyed by certain people? This is a question of social conscience. In a civilized society, the middle class, lower class, and higher class of society all need to think from this angle.

President, I have also made reference to the relationship between social policies and free economy. The free market operates blindly. The meaning of a free market is that the Government does not manipulate the market, but the development of a free economy will certainly give rise to certain social

consequences. One such consequence is that those people who are not highly competitive or do not have much bargaining power will be unfairly treated and will be faced with certain hardships. As such, a free market cannot resolve all the social problems. Under such circumstances, we need to have some social policies, we need to rely on the Government to rectify some of the unfair phenomena in society. If we do not enact legislation as a matter of policy but rely solely on the free market, how long will our workers have to wait to break through such unfair situations in which they are trapped?

President, from the social stability point of view, as a current affairs and social policy commentator, I have all along been following up the policies of the British-Hong Kong Government, even as far back as in the 1980s. The British-Hong Kong Government had made it clear that it did not want any political parties or trade unions in many aspects, as it was very fortunate that Hong Kong did not have any labour disputes. In order to reduce labour disputes or to avoid any confrontations between workers and employers, the Government would not make particular efforts to deal with issues in this respect. Nevertheless, this could not constitute any reason for the then Government to hinder society from developing in a fair manner. As such, the practice adopted by the British-Hong Kong Government was that when it saw that the employers were indeed treating their workers very unfairly, it would request the employers to slightly relax the constraints imposed on workers. This was how the Government handled things then.

In fact, if we do not want the labour relations to deteriorate and become a factor of social instability, the Government must set up certain mechanisms to protect one side, which is the worker side, from long-term exploitation and suppression — I do not wish to use the word "oppression". It is just impossible to prevent them from striving for their own rights in the long run. Not letting workers to strive for their own rights is in fact a social instability factor created by society itself. President, from my observation of the efforts to legislate for a minimum wage from an on-looker's perspective this time, I can see that things have been getting heated up continuously. When this subject was first raised in this Council, the Government considered that it could bring everything under control, and the discussions on that were conducted in a comparatively more moderate manner. Even though Mr LEE Chuek-yan was rather "noisy" in making his speech, we did not hear many agitated voices in society. But then, when this Council repeatedly negated the motion to legislate for a minimum

wage, I began to see the increasing intensity of the labour movements in these past few years.

Today, I am glad that the Government has drummed up the resolve to make a law on this. Actually, I am not sure whether the Government can remedy the situation at this stage. The Government pointed out in the first place that the minimum wage should not be less than \$20, so the workers would certainly insist on this \$20 (as the starting point). In fact, the Government was unwilling to tackle this issue and failed to deal with the issue before some heated emotions were stirred up. As things have developed to this stage, I can envisage that whatever level the minimum wage is pitched at, certainly many people will feel unhappy. Hence, confrontations between workers and employers will arise, and thus give rise to some elements of social instability. However, all these should not be attributed to the setting of a minimum wage by the Government, but to the fact that it was unwilling to set up a minimum wage initially. It is the Government who has agitated the public so much, because it chose to wait until the workers had felt the heartlessness of employers and the employer representatives to start handling the matter. When such a sentiment is formed, it is just impossible to avert the situation.

For this reason, we can see from various aspects that the Members of this Council who organize labour movements and represent the workers are indeed behaving in a very much restrained manner. In future, the Government has to rely on some labour representatives trusted by workers to genuinely convey the reasonable and rational voices in discussing the wage level, and hence, resolve all such problems in an orderly manner. However, to resolve all these problems, the Government should not suppress the labour representatives. Instead, it should resort to reason and adopt a neutral stand. It should examine the rationale and the stage towards which society can develop, rather than pulling one party over to its side and attacking the other.

President, I would like to raise two points. Firstly, I support the argument that the minimum wage should be set in accordance with social conscience and human rights. And for this reason, I support that the minimum wage should be pitched at a so-called living wage level. In other words, a basic living standard should be formulated and adopted as the lowest point of the minimum wage. President, I have heard some Members say today and yesterday that legislating for a minimum wage would cause some businesses to collapse and fold. President, I am not sure whether Members have noticed a large page of

advertisement placed by The Professional Commons the day before. In this advertisement, The Professional Commons referred to some justifications, facts and judgments, and pointed out that if the minimum wage should be pitched at \$30, the great majority of the existing businesses would not experience any material change in their profit levels, though some of them might experience some slight influence at the most. However, for certain trades, such as the cleansing and security services sectors, the profit level will be affected, and perhaps to a rather large extent. But then, how will The Professional Commons make their judgment? Should we accommodate such trades and give up setting a minimum wage, or should we pitch the minimum wage at a level lower than \$30? The Professional Commons do not agree to this. They consider that such trades could survive simply because they have employed some very lowly-paid workers to work for them, and they believe so doing will not do good to the long-term development of society.

President, every time society makes some advancement, some people will lose out. Hong Kong was able to develop certain light industries in the 1950s because some members of the public were so poor that they would accept a very low wage. But are we going to retain such a social phenomenon deliberately? Every time our society advances, some trades or modes of operation will certainly be phased out, such as pig raising and the so-called sweatshops. In other words, workplaces which are highly exploitative will also be phased out. But are we going to say that society must retain such sweatshops? President, we cannot do that. I just hope that when our society advances Dr Philip WONG mentioned earlier that after the law on labour benefits had been enacted on the Mainland, many firms closed down all of a sudden. For one thing, honestly, I am really very unhappy with Hong Kong's capitalists. Because Hong Kong requires comparatively better benefits to workers, so these capitalists make investments in other places which provide no protection for workers. It is just unacceptable that they exploit the workers of other countries to build the prosperity of Hong Kong. As regards the impacts of the Mainland law on labour benefits, I believe such impacts may be attributable to hasty implementation, non-comprehensive consultation, or the lack of good preparation. Hence, very unfortunately, some people who are not heartless have been made to suffer. However, in Hong Kong, if a piece of legislation is to be enacted, the affected parties will be given a long enough period of time to adapt to the changes. In some cases, I even consider the adaptation period too long. As such, I believe we will not have any problem in this respect.

Last but not least, President, even though the legislation we are going to pass today has enormous significance in history, the content of the Bill is in fact rather minimal. Many important issues are not included in the framework of this particular law. For example, there is limited information on issues like the concept of living wage, and the criteria for joining the Minimum Wage Commission. What should we examine when formulating a minimum wage? In my view, the principles to be considered are rather far from the ideal case of justice. As such, this framework is not comprehensive. As Ms Audrey EU also mentioned earlier on, I really consider that it inappropriate to not allow foreign domestic helpers to enjoy minimum wage protection. Certainly, I also agree that it just will not work if we pitch the minimum wage (at a certain level) arbitrarily. Yes, this framework is by no means complete. Still, we have to pass this framework today because the first step is the hardest to make. However incomplete this framework is, we have to pass it first. We hope that with our continuous effort after the passing of the framework, the minimum wage will carry significance not only in history, but also in real terms.

President, it is only by making continuous improvement, taking into account the many different factors and securing fairness for all that we can achieve social harmony. For this reason, President, even though I am a layman, I also feel very happy that we can finally legislate for a minimum wage. I also hope that we can continue to make advancements. Thank you, President.

MR LEUNG KWOK-HUNG (in Cantonese): The legislation on minimum wage before this Council today is indeed long overdue. President, as you also know, the concept of minimum wage already exists among the so-called immediate demands in the final part of the Communist Manifesto. At that time, Karl MARX said that those demand could be amended in the light of actual situations. If the demands were not appropriate, they would be amended. It was 1848 then. What year is this now? In fact, the concept of minimum wage is by no means a progressive concept. As Members all know, I have spent almost a million dollars on the litigation I instituted. Justice Geoffrey MA mentioned in his judgment that after the Treaty of Versailles was signed in 1919, many people felt that the majority of the soldiers who had fought in the War were peasants and labourers who might stage an uprising — of course, this was not what he said but my supplement. He said that the International Labour Organization (ILO) was

created under the Treaty of Versailles, and the ILO still remained part of the framework of the United Nations Organization. In 1928, in order to promote social justice and international labour rights, the ILO issued "Circular No. 26 of the ILO" to urge its member states to expeditiously formulate a minimum wage. In other words, if the wage levels of certain trades were too low, the member states were requested to reconcile the contradictions between classes, so as to pre-empt the occurrence of class struggles.

President, as Members all know, you are well-versed in this part of history. Shortly after the First World War, a revolution broke out in Russia and the Union of Soviet Socialist Republics (USSR) was created, and so was the Communist International. Besides, the international red campaign of communist labourers also commenced. Justice Geoffrey MA did not understand this part of history; some lawyers just passed him the information. Do you believe he really knows this? He was just reading from the written text. What does this tell us? Indeed, because societies across the world were so "rotten" that the concept of minimum wage induced an international war. The working class and peasants worldwide had to enter the battlefield to fight for their Motherlands, or to be exact, to fight for the greedy imperialists of their Motherlands. After the War, the victorious felt that it just would not work. What then should they do? Justice Geoffrey MA also said — because the lawyers told him that, and so he read from the script — the crux of the matter was that an Independent Labour Party was already formed in the British Empire — according to my memory, I only refer to my memory and very seldom refer to books — naturally, this Independent Labour Party became a leftist labour party as a result of the tide of revolution. Actually, the British Empire had already enacted a Minimum Wage Act in 1932, and since we were governed by the British-Hong Kong Government, Hong Kong was also covered by the Act. Our Government then was not really British-Hong Kong, at that time Hong Kong was under British rule. The British capitalist class in Hong Kong did not have any independent personality or politics. Even though a minimum wage was already prescribed in 1932, it was, of course, never implemented. You know what did the year 1932 see? The beginning of troubles. Back in 1931, Japan had started invading our country and given rise to the September 18 incident. However, Britain was busy playing games with the two devilish countries, the USSR and Germany. How many years have lapsed since 1932? President, by some simple calculation, you can see that almost 70 years have passed. The minimum wage was not implemented

in the end, why? Because the Government considered it too dangerous. As a result, the Trade Boards Ordinance (TBO) was enacted instead. The TBO does not stand for Tuberculosis Ordinance, but the Trade Boards Ordinance. This is the history. We initiated litigation and spent almost a million dollars simply because this refined concept of minimum wage was to be repealed on the grounds that the death toll was not high enough. What happened in 1940? President, war had broken out, and the Government could not support the minimum wage anymore. What happens in a war? War is the most intense form of class struggle. The workers must be oppressed and compelled to serve the State machinery and war machinery. President, you do understand that very well, and LENIN had also mentioned that before. So, we could not choose the Trade Boards Ordinance enacted in 1940 either, because the British Empire said it was not willing to choose that because a war had broken out. That was what happened then. And the year was 1940.

In 2006, I invoked the TBO to institute a judicial review. Our Judiciary then told us that the Ordinance was outdated and the penalties were too light, and that we just could not prove that the Government had not adopted the Ordinance. Our Government had "cheated", and I discovered this only last night in reading the relevant papers. I instituted the judicial review in 2006, and in the same year Donald TSANG also said in this Council that — at that time you were not the President of the Council, you were sitting over there teasing him — he would introduce a Wage Protection Movement. What kind of a Government do we have? Knowing that under the separation of powers, he would definitely lose the case for he had violated his constitutional responsibility or failed the responsibilities he should perform, the Chief Executive simply introduced the Wage Protection Movement. Justice Geoffrey MA, Justice Andrew LI and Justice Michael John HARTMANN all based on this to say that the Government would do something, and that the Movement had already been introduced to the cleansing and security services trades. The Hong Kong Federation of Trade Unions is discussing this issue fervently today. In fact, it has discussed the issues of the cleansing and security services trades with the Government before. From the Government under TUNG Chee-hwa to the Government under Donald TSANG, the purpose is to avoid class struggle. The various parties should sit down and discuss working hours first. Hence, the two largest trade unions did not mention minimum wage but only working hours earlier on, as TUNG Chee-hwa said the issue of working hours should be discussed first.

President, why have I recapped so many things? Actually, I wish to tell all colleagues that wages can be changed, and the concept of minimum wage can be changed as well. This is in fact a comparison of strength between the different classes. The President understands that very well.

Why should the working class not have any power? We now know that Britain does not have a minimum wage, but the people there enjoy the right to collective bargaining instead. Certainly, the problem with the right to collective bargaining is that it will be very troublesome for those who have not joined any trade unions, because they do not enjoy any representation.

From this we can see that this Council is of a very low academic and political standard. Petty as I maybe, I know that minimum wage is a basic requirement. Let me quote an article in the first issue of the Daily War News published on 6 July 1973. That was where I spent my youth. (I quote) "With Hong Kong facing such a hard time in life, we believe that not only the workers should stand up and fight for their rights, students should also stand by the workers to launch an extensive mass movement. At present, we at least have to fight for the following." With the mimeograph technique in use at that time, we have to use a needle pen to inscribe on the stencil to highlight each of the points raised. The first thing to fight was a statutory minimum wage; the second was unemployment protection payment; the third was improvement to the working environment and benefits of workers; and the fourth was the organization of a democratic and strong trade union.

Actually, after all, the second and third points are the means, and the first one is the immediate end. In 1973, which was some 40 years ago, this "statutory minimum wage" idea was advocated by a group of young men, who were arrested for distributing leaflets. President, you do know that the Home Affairs Bureau under your younger brother now was then known as the Secretariat for Home Affairs. At that time, it required that a copy of all leaflets printed in Chinese be sent to it, but leaflets in English were waived. We were living under such a system at that time, and yet we had already started fighting for a minimum wage. So many years have passed, how can we say that this is a joyous day for the labour movement?

I would like to ask a question. Why does one get a wife or get married so late? Why does one have to wait so long? If somebody says, "today is the best

time to get married, today is the best time to get a wife", it just means that he could not do that in the past but has to wait "to learn the trick at old age". I am not referring to the President. I have to make it clear that this metaphor is not referring to the President.

At long last, we finally achieve our objective. But if today we still say that this is some big achievement, we are actually saying that we were so incapable in the past. I must admit that I was also incapable. A picture of "the younger days Long Hair and Hulk" has been circulating on the Internet lately. In that picture, I was walking in front, in a very thin frame. In fact, President, I was not walking in front, for the one walking in front had entered the police station for negotiations. That person was NG Chung-yin and he has passed away already. Perhaps you also know him. We staged a demonstration in San Po Kong on 1 May 1977 to raise 10 major demands on Labour Day. I do not intend to read out the demands here. The police came to arrest us and two of our colleagues were arrested. We were then walking into the demolished old police station on Arsenal Street. In the end, we staged a two-person demonstration on 1 May — because a group of three would constitute an offence in law — two by two we walked on the streets with clothes on. In the end, the British-Hong Kong Government got some plain-clothes police officers to throw several glass bottles onto the floor and arrested two of our colleagues.

President, our fight has only one objective, which is to fight with the strength of the working class. The struggle today will not come to an end because whenever we started discussing legislating for a minimum wage, I could always hear all kinds of clichés. One example is the claim that Hong Kong will certainly "die" if the minimum wage is pitched at too high a level. Such clichés are not tenable. We have all read the *Wages, Price and Profit* before, and the President must have also read it. It was written by Karl MARX in 1865 as an answer to that question. I will elaborate that later on when I speak in other debates.

Today, I would like to quote a few sentences to conclude my speech. They are quoted from George ORWELL's essay entitled *The Art of Donald McGill*. (I quote) "There is a just man that perished in his righteousness, and there is a wicked man that prolongeth his life in his wickedness. Be not righteous overmuch; neither make thyself over wise; why shouldst thou destroy

thyself? Be not overmuch wicked, neither be thou foolish: why shouldst thou die before thy time?"

This is how this Council operates. While one should not perish in righteousness, one should not live for wickedness either. But one should at least let others know this is the case. So, that is why this debate goes like this today. We speak casually and sing some praises.

President, this debate still has a long way to go. I just wish to mention one thing. I talked about "CHAN nineteen" the other day, which had fully reflected the wish of Donald TSANG and his electors (the 800 functional constituency electors). Their wish is to set a minimum wage that cannot function as a minimum wage in effect. Such a minimum wage is just like a gold-plated chain, locking the workers' wage at \$24 an hour. President, the purpose of setting a minimum wage is not to lock the workers with a beautifully gold-painted chain. Honourable colleagues, this struggle will not end, for today is just the beginning. I hope Members will rather perish in righteousness than living for wickedness. Even if we do not perish in righteousness, we should never live for wickedness. I just hope Members will speak from their heart.

PRESIDENT (in Cantonese): Does any other Member wish to speak? Mr CHAN Kin-por. Mr LEE Wing-tat, do you request to speak?

MR LEE WING-TAT (in Cantonese): It is Mr CHAN Kin-por who made the request before me.

PRESIDENT (in Cantonese): Members who wish to speak will please press the "Request to speak" button. I understand that Members would like to wait after other Members have spoken to deliver their speeches, but I wish to make clear which Members are waiting to speak. Mr CHAN Kin-por, please speak now.

MR CHAN KIN-POR (in Cantonese): President, I did press the button just now. *(Laughter)* I originally did not intend to speak, but now I wish to after hearing many colleagues' views.

As a new Member of the Legislative Council, I stated support for the legislation on minimum wage when I ran for the election in 2008. I find it easy to make a decision very much due to my experiences in life. With a grass-roots background, I fully understand the plight of grass-roots workers or families. So I very much hope that workers in Hong Kong can lead a life with dignity.

It is very easy for me to make the decision also due to my experiences. With 36 years of working experience under my belt, I had risen from a junior trainee to a senior manager when I left a large company. I am so lucky that I have worked for only two employers in my 36 years of service, both of them being large companies and conscientious employers who pay me a very high salary. Basically, I believe that the hourly rate of each employee in those two companies is more than \$30 to \$40. This, I am very sure and I have no doubts about it. From this, I have also come to realize that a very good labour relation means mutual understanding and joint effort to resolve problems. I think this was due to some historical factors because Hong Kong economy was on a take-off and I luckily came across the exodus prevalent at that time. Basically, as a matriculant, I had to work very hard for almost 10 years in order to pass some professional examinations. I had had no entertainment except studying and examinations during that period, which was really an ordeal. I knew that some people were working as hard as me but they did not have the opportunity. I was very lucky because of the exodus and got promoted very quickly because many competent people had emigrated. Of course, I had to overcome a lot of difficulties and sacrifice my family life. I was working extremely hard when the others were enjoying their holidays. At that time, there were plenty of opportunities, wages kept rising and people were working very happily. As for the employers, they were also prepared to give regard to their employees and labour disputes were rare. To boost our business turnover so as to reap profits from the take-off of Hong Kong economy was the only thing on our mind. Labour relations were very good as the annual pay increase was more than 10 percentage points.

However, as we all know, there was a significant change when 1997 was approaching. In the past, everybody got a pay rise, which was no longer the norm after 1997 because the conditions did not allow this. After the financial turmoil, things have changed. Some companies which used to be very generous to their employees have gradually tightened the employment conditions as they also found it hard to survive. Perhaps owing to lots of factors, they have to

make such changes. I think this is the reason why there is no more mutual trust between employees and employers. Therefore, as competition will become increasingly keen in the foreseeable future, I believe labour relations will deteriorate. However, if we put our focus on struggling instead of contemplating how to ensure the growth of Hong Kong economy, I believe the ultimate victims will be the people and workers even though those who encourage struggling will surely benefit from it because they will win people's votes.

I would like to speak from the bottom of my heart. As I said earlier, owing to my experience, I can ask this question in a forceful manner: Why has minimum wage not been implemented so far and why can we not let workers lead a life with dignity as soon as possible? For me, this is really a very easy decision. However, if I am engaged in a trade which will really be affected by minimum wage, such as the small and medium enterprises (SMEs) — just now I said that I work in a large company. Large companies do not have any problem with this. We seldom see any employees from large companies come forward to ask for the setting of a minimum wage, and only a few of them have made comments either. However, more than 200 000 SMEs or large industries subject to the impact will see their operation being affected. The bosses will have to do their utmost to maintain the operation of their business. But faced with a narrow profit margin and the fact that they have to support their families and school-age children, they are racking their brains on how to maintain the operation of their companies. Furthermore, they are afraid of competition. If minimum wage will really bring about significant impact, they may be forced to lay off workers due to the difficulty in running their business. So I think they absolutely have the right to present the hardships and difficulties they face. Possibly, those who are bickering here do not have any direct interests, so they can speak in a particularly loud voice.

Let me cite an example. In my opinion, lawyer's fees in Hong Kong are exorbitant, particularly the cost of hiring a barrister. Under such circumstances, any proposal of reducing such fees in Hong Kong will certainly elicit a unanimous agreement, and even a call for its early implementation from the public. However, I believe the legal profession or the Legal Functional Constituency will certainly present a lot of data as strong disproof of such a proposal. I absolutely agree that the profession should speak up and explain why their fees are so high that many people cannot afford them on the one hand and are banned from applying for legal aid due to the asset ceiling on the other.

Although a lot of proceedings would have been unable to proceed without legal aid, many people are not eligible for legal aid because they own assets which are worth just around \$100,000 and are therefore denied a fair trial. As we all know, lawyers and the Court will have different views on the same issue. It is possible that 10 lawyers may give 11 views on the same matter. The Court is the same. A higher Court may overturn a lower Court's judgment and the Court of Final Appeal can overturn the judgment of a lower Court. So, it is impossible to know when a case will really come to an end because even a judgment of the High Court may be overturned. Therefore, the rich will certainly be at an advantageous position as they can, with the assistance of lawyers, lodge an appeal with a higher Court. I am very envious of those who have access to the service of duty lawyers. In fact, some people in this Chamber can engage in lots of activities due to the assistance rendered by duty lawyers. I hold a positive view of this, but I hope that duty lawyers will not limit their service to cases involving political issues. I hope those Hong Kong people who are really aggrieved will be offered assistance by duty lawyers.

From this, we can see the people best qualified to comment on this matter are those whose interests are affected. As I said just now, I absolutely support that the people should enjoy their own rights and lead a life with dignity. I also understand that a monthly income of \$3,000 to \$4,000 for working eight hours a day is really outrageous and totally unacceptable. However, I think those whose interests are being affected should command our respect and be given a chance to express their views. We may disagree with their views, but why should they be confronted? I really cannot figure it out. What kind of society is this? Is this true democracy? The cornerstone of democracy is respect for different voices. Why should we confront a person simply because he has said something unpleasant to our ears? Are we trying to increase our influence so as to gain more votes by confronting the others? As a citizen, I find this most worrying. Regarding direct elections, I often think that our society has not yet reached a mature stage because a mature society which is prepared to hold "one-person-one-vote" elections should be one in which people have mutual respect for each other. No matter what you say, I will not besiege you or besiege your residence. I run a company, but I would not worry about being besieged tomorrow because of my words by more than 100 people who wish to exert influence on me.

Even though we speak as Members in the Legislative Council, we will be bombarded for several days in a row if our speeches are unpleasant to somebody's ears. So, that is why the President just now asked why no one dared press the "Request-to-speak" button until the very last minute. I believe this is because some Members are worried about being bombarded. But what right do they have to bombard us? It really puzzles me. We should respect other people. Employees' views will certainly be different from that of employers. This is a simple fact. In Hong Kong, we have the so-called functional constituencies (FCs) and direct elections. This is the so-called balance, which aims at absorbing different views. If FCs

(Mr LEUNG Kwok-hung rose)

PRESIDENT (in Cantonese): Mr LEUNG Kwok-hung, what is your point? Mr CHAN Kin-por, please hold on for a second.

MR LEUNG KWOK-HUNG (in Cantonese): I hope Mr CHAN can elucidate some of his points because I do not understand what he said.

PRESIDENT (in Cantonese): Mr LEUNG Kwok-hung, please be seated first. Let me reiterate the rule on seeking an elucidation. A Member seeking an elucidation needs the consent of the Member who is making a speech and my approval.

MR LEUNG KWOK-HUNG (in Cantonese): I know, thank you. I am just concerned that

MR CHAN KIN-POR (in Cantonese): President, I would like to ask him I am prepared to elucidate.

PRESIDENT (in Cantonese): Mr CHAN Kin-por, please be seated first.

MR LEUNG KWOK-HUNG (in Cantonese): Mr CHAN spoke in a hasty manner. He said

PRESIDENT (in Cantonese): You need only raise the part for which you seek an elucidation from Mr CHAN Kin-por.

MR LEUNG KWOK-HUNG (in Cantonese): Does he consider that FC elections exist in this Council? Does he mean that this Council is a fair political mechanism? He said that we need fairness and fairness between employees and employers, and hence it is fair that we have both FC elections and direction elections. Does he mean that? Just a very brief answer will do.

PRESIDENT (in Cantonese): Mr LEUNG Kwok-hung, please be seated. Members should not turn an elucidation into a debate. Mr LEUNG Kwok-hung, your speaking time is exhausted. Mr CHAN Kin-por, Mr LEUNG Kwok-hung has posed a question. You may either make an elucidation or continue to speak.

MR CHAN KIN-POR (in Cantonese): What I want to say is that I am elected a Legislative Council Member in accordance with the prevailing legislation and procedures in Hong Kong. In respect of fairness, I think there is room for improvement in the system. But I think the system is set up on the basis of some rationale and wisdom, which is a balance we need at the present stage of Hong Kong society. I agree that we may discuss the issue in detail in the future. But I think improvement should be made gradually. Given that I am returned to this Council in accordance with the legislation of Hong Kong, I have the right to speak.

What I wanted to say just now is: Why do we need a directly elected functional constituency? The reason is that a FC can tell us the difficulties faced by the industry concerned and then we make the decision. And this is fair. Regarding the electoral method for FCs, I also agree that the electorate base should be expanded to enhance their representativeness. But I think what is

most significant point behind this is that we hope a balance can be struck between the business sector and the labour sector, or the general public.

In fact, many Members of FCs are also representatives of the labour sector, but many people insist that Mr CHIM Pui-chung put it most correctly the other day, that there are only a handful or a dozen of Members who really represent the tycoons, while the majority of the remaining Members are professionals who have their own views. So I think it is most imperative for Members of FCs to express freely their views without any fear. I do not think any person has the right to level verbal attacks and accusations at Members of FCs because, as I have said time and again, a score of Members have been working for this Council with the utmost diligence. I do not think that they should be reprimanded. I just want to say that it is easy for those whose interests have not been jeopardized to make noises all the time. But in fact the business sector is being affected. For instance, since I am not affected, it is easy for me to express support, but I will also think of the situation of those who are affected. They have every right to make their voices heard. And they should neither be banned from speaking nor expressing their views. Nor should they be threatened in a manner prevalent in the Cultural Revolution.

I find it very weird. Nowadays many people rather detest the cultural revolutionary way because it made China regress for 10 years. At that time, the students persecuted the teachers, the teachers persecuted the principals, the children persecuted their parents who, in turn, persecuted their predecessors. Do we wish to gradually turn Hong Kong into such a state? It has been most saddening to see that the development of Hong Kong in the past couple of years after I have been elected a Legislative Council Member has made young people fond of challenging the authorities. Such challenges should be a good thing *per se*. However, if the authorities are challenged on every occasion, Hong Kong will become extremely chaotic and no one will abide by the rules. As a result, those Members will certainly win people's votes. But the greatest harm to society is that the harm itself, which may last for one or two decades, is irreversible. I think we should search our soul every night in bed and ask ourselves, given such serious damage done to Hong Kong, whether it is worthwhile to do so merely for winning people's votes. If you ask me, I will absolutely answer in the negative because it will take many years to educate a child and foster a trend in society. It will also need the help of many devoted people who have to work painstakingly. However, it is very easy to do damage

because at least 10% or more of people in Hong Kong are very radical. They will sabotage whatever you do. Once such a radical culture has formed, it will be very difficult to contain it or induce moderate people to serve the community.

In Hong Kong, there are many people who are silent, but they actually hold some views. Moreover, Hong Kong people are very smart. I believe many people who have remained silent will come forward and speak up sooner or later in view of such drastic actions. So, I just want to say: Please respect those whose interests are being jeopardized, let them speak out and enjoy the same freedom. Very much in the same way, even though I entirely disagree with the words and even actions of some Members in this Chamber, I would prick up my ears to their speeches, and when I can tolerate no more, I would only leave the Chamber. I would not come out and lash out at them, right? So, why can they not respect the others? If we want to talk about democracy and hope that "one-person-one-vote" election by universal suffrage can be achieved eventually, I hope you can understand that Hong Kong will not make any progress if we cannot preserve this cornerstone. It will only make the road to universal suffrage more difficult.

As I am running out of time, I just wish to say that the Government has taken actions to address the minimum wage issue. As I said earlier, some people would be adversely affected. But I believe a minimum wage should be set in view of the fact that workers are really leading a very hard life. However, when dealing with the issue, we have to discuss lots of details. We have to give regard to workers and the interests of the affected entrepreneurs as well. But this is not the most important point. Most importantly, we should understand that Hong Kong needs to make money. While the continuous improvement in social welfare is good, this is an action of "dishing out money". We should understand one further point: If we cannot make any money, how can we have the money to give away? So, I hope in the future this Council can focus more on how to enhance Hong Kong's competitiveness and improve its economic benefits so that Hong Kong can make more money and everybody can get a share of the wealth. If we cannot do a good job in this regard, we are simply deceiving ourselves. I hope Members can understand one thing and do not keep quoting and reciting articles written more than a decade or even two decades ago. What is the use of doing so? Times have changed. The progress of China is obvious to all. Compared with the Communist Party several decades ago, the Central Committee of the Communist Party nowadays has completely changed. And many things have changed too. Of course, there is still a lot of room for improvement in

terms of governance. But we should understand that this requires a process. In fact, China has made a lot of progress. I also hope that it will make progress. We should not read out any quotes from those books. I really find it very weird.

Finally, I would like to thank Secretary Matthew CHEUNG. I know that he has been working painstakingly for this matter. As for some amendments, I will support the Government. The Secretary has often been criticized by some people in the business sector for favouring the labour sector. But I respect and trust his judgment. I trust he made the decision after striking a balance among various factors. So I support some of the Government's amendments. Thank you, President.

MR LEE WING-TAT (in Cantonese): President, I choose to speak at a later time not because I wish to chide at CHAN Kin-por. So CHAN Kin-por, you need not fear as I am not the spokesman of the Democratic Party for this issue. I have joined this Council for a very long time, but this issue has already been debated both in this Council and in society for too long, and as such I do have some personal feelings about this issue and wish to say a few words. But I wish to first of all share some of my views with Mr CHAN Kin-por.

First, I find his comments very positive. Young people may criticize the authorities, who should rightly be regarded as targets of criticism because they do possess power. As some may suspect the Democratic Party, and I do not mind such suspicion at all. I would find it somewhat weird if they do not hold any suspicions as they may not agree with the decisions I made. Of course, I do not approve of certain behaviour, but still I must let him have a free hand to do it. When compared with Mr CHAN Kin-por, I may have stayed in this position longer than he does, so I have grown quite used to this. I must find it weird if no one suspects me. I am referring to the decisions I have made.

Besides, what we must do is to encourage the young people to, apart from making criticisms and surrounding others, sit down and talk. I often make use of the Facebook, and not everyone uses foul language in Facebook. Some articles are rather long, and the contents written by the young people are rather decent. Therefore, we should give them some encouragement. As for the question of whether criticizing the entrepreneurs would delay the democratization

process, I hope Members can look at the issue this way: Not all supporters of democracy would act in this manner. So do not consider the small number of people acting in this way representative of everyone in society. Very much in the same way, I do not think that those who surrounded the Democratic Party during the march on 1 July stand for the majority of the young people. I do not often meet critiques on the streets. On the contrary, many people offer to shake hands with me, to indicate their support of the Democratic Party. For those who make the loudest noise in society, we call them "the vocal minority". But ever since I joined the political circle, I have never been worried about this because they are only the minority. Most people are silent, and they will not support us in any demonstrations. Therefore, I hope Kin-por will not think that we will collapse after a couple of people have lashed out at us. It is not like that. Lots of people in the pro-democracy camp are very rational and moderate, and they will resort to reasoning. Even if I chided at CHAN Kin-por loudly, yet the volume of my voice could only be as loud as that. So, how can you say that it is very hard for the pro-democracy camp to accept all this? Therefore, all Kin-por has to do is to broaden his horizon, and then he will be able to embrace universal suffrage and democracy. Just read the faces of CHEUNG Man-kwong and mine when we are looking at you, and you will find how gentle and kind we are.

President, why do I have to speak on the issue of minimum wage? Because I wish to raise several points. First, in this discussion on this issue in this Council, I do not subscribe to certain viewpoints. It is all about philosophy. If the issue of minimum wage is described as a pure economic issue, or just a labour relation issue, I would completely disagree with such a proposition. Of course, I know at the stage of formulating policies and specifying the level, we must have regard to economic considerations and impacts on different aspects, that is, we must take full consideration. For example, I once had a debate with Prof Francis LUI in a television programme on NOW TV on the subject of land supply and property prices. I told Prof LUI that I completely disagreed that the issue of land supply and property prices was a purely economic issue because it involved the consideration of many social factors, government factors and even humanitarian factors. Therefore, if we look at the issue from a purely economic perspective, then we are definitely barking up the wrong tree. After contemplating this issue for so many years, and still we cannot solve it simply because the Government had placed too much emphasis on this perspective in considering the issue.

I once said in a debate with SIN Chung-kai in the Democratic Party, "SIN Chung-kai, regardless of what you said, I, LEE Wing-tat, find it most unacceptable to see those women washing dishes earn as little as \$4,000 a month after working 12 hours a day in the back alleys of Wan Chai or Mongkok. Regardless of what you have told LEE Wing-tat, I cannot accept this as a humanistic wage. I am not demanding a monthly wage of \$8,000 or \$9,000 or even \$10,000. I am just hoping that this lady or granny can make \$5,000 to \$6,000 a month for working 10 hours a day, so that she can live a dignified life or her children can give her less pocket money." I asked him whether it was an excessive demand. We also wish to ask Matthew CHEUNG and the Government: Is this an excessive demand? I may say that, if they cannot even achieve this on this issue, I really suspect whether this Government has taken any humanitarian factors into its consideration. Certainly, many Honourable colleagues from the business sector often ask us, "If we do this, will our economy be considerably affected? Or will the SMEs be affected too much?" Naturally we must also take these into consideration. It is not true that we have not considered these at all.

However, I still recall the time when we discussed the issue of prohibiting smoking in restaurants two or three years ago. Then I heard many colleagues — I do not want to name names — say that, "Once the legislation is enacted, 20% to 30% of the bars will close down, so will the restaurants." I seldom patronize bars, but I did go to such places to watch soccer matches for a couple of times. It is quite boring to watch soccer matches alone at home, but you may say whatever you like in bars. President, I did not use that kind of language. But I did hear a lot of people talk in that manner. And for me, I went there just for savouring the atmosphere. The business of the bar was good, and of course, not just during the time when the World Cup Finals were in progress. I had also spoken to the operator of the bar, and he said the impact was minimal as everyone had already got used to the idea — people who wish to smoke will go out of the premises, and I did see people smoking outside the bar and they would return five minutes later. Therefore, the bars are not affected. So I cannot help thinking whether Honourable colleagues have overestimated or emphasized excessively the impact of minimum wage on SMEs.

In fact, I would also like to ask CHAN Kin-por and other Honourable colleagues to consider this question. In the overall operation of enterprises, which factor brings about the greatest pressure to bear on SMEs? As we all

know, it is the rent. Why do Honourable colleagues not say in a fair manner that the high rents account for 20% to 30% of the operating costs of SMEs? In some cases, the rent may even account for 30% to 40% of the costs. Why do they not ask the Government to introduce better land and housing policies, so as to bring the rents down to a more stable level? I am not asking the Government to interfere with market rents, but these are the ABCs of economics. With inadequate supply, prices will naturally rise. But I seldom heard Honourable colleagues from FCs mention this. I am not saying that they always comply with the property developers, but they should state fairly whether the minimum wage would raise overall operating costs by some 3% to 5%, so this is absolutely not feasible — I am not a member of that Bills Committee, I just heard about these. Do the rents bring about even greater pressure to bear on small business operators? Is this not even more significant? I often go to eat at the Hong Kong-style cafes, and I often go to the wet market to buy vegetables and food. In my casual chats with operators of such small businesses, I asked them which item constituted the largest operating cost. They told me that, apart from the exorbitant rents, the greatest threats were chain stores and shopping arcades. For vegetable stall operators, their greatest worry is that The Link might bring in large supermarkets, because this would mean they will have to close down very soon. We can see the impact of major chain restaurants on SMEs, but have we ever heard Honourable colleagues from FCs mention this aspect? In fact, this will definitely bring about some impact. I am not saying that we should ban them from doing any business. I am slightly rightist as well. Therefore, I support free economy. However, should we also at the same time think about why these SMEs are forced into such predicaments? Are their predicaments completely caused by the minimum wage? In addition, is this really such a significant issue? Or are high rents or large chain stores the even greater threats? Yet, I rarely hear Members mention all these.

President, on the issue of minimum wage, naturally the Government should bear the greatest responsibility. During the past few decades, when Hong Kong enjoyed economic prosperity in the 1960s, 1970s and 1980s, the rates of economic growth and wage increase were proportionate. So, although wage earners did face much unfair treatment, they had no difficulty earning a living. Someone told me that when society was at its worst, wage earners would work overtime, instead going on strike or taking part in demonstrations, though I have not conducted any specific studies on this aspect. Our society in Hong Kong is

very much governed by utilitarian values. Although I do not agree with LAU Siu-kai's description of such a situation as "family functionalism". In other words, when workers face difficulties, they would not resort to collective confrontation. If they do resort to collective confrontation, we would not see that labour unions only have a membership of less than 300 000. With 300 000 members, the Hong Kong Federation of Trade Unions (FTU) is already doing a very good job. The Hong Kong Confederation of Trade Unions (CTU) only has a little more than 100 000 members. Less than 50% of the workers in Hong Kong have joined any unions, not to mention the possibility of joining any confrontational activities, as some Honourable colleagues have said. In fact, if they are not forced into a corner, Hong Kong workers are usually very moderate and mild, very easy to manage, and in fact, the employers are very happy as well. Come to think about this. How many cases of labour disputes are there in Hong Kong? If not for wage reductions or mandatory overtime work without suitable payment, they will never do that. Therefore, insofar as this issue is concerned, the Government should feel ashamed of itself for not having done enough all these years for the workers who have been working hard for the prosperity and stability of Hong Kong for such a long time. Most of them are quiet — not going on strike, not taking part in demonstrations, not even in the march on 1 July. When they find their incomes not making ends meet, they will go ahead finding a part-time job or working overtime in order to pay for the schooling of their children. However, sometimes I will think in this way: Have we been too mean to them? Sometimes, the Government or a minority of people in the business sector have exploited them too much — exploiting them for their sympathy and tolerance.

President, workers sometimes find social phenomena frustrating. Why are the Chief Executive, Secretaries of Departments and Directors of Bureaux unaware of such phenomena? It is because these officials have too little contact with workers. I met some friends yesterday and they said that the 39 Conduit Road incident would not happen elsewhere in the world, except in Hong Kong. In fact, with continuous accumulation of such instances, the worker and the middle classes, no matter how moderate they are, will find the Government favouring certain people. I do not like instigating class conflicts by calling on the workers to hate those chief executive officers whose annual income may range from 10 million to dozens of million dollars. However, if all the newspapers and the media are filled with reports about those CEOs and their friends enjoying wine and fine dishes in Hong Kong Club while the workers can

only afford cheap lunch boxes of rice with BBQ pork and chicken at \$15 each, you can imagine the anger and feeling of the workers. Hence it is very difficult to convince the workers that Hong Kong is a fair society.

The workers nurture their children with the hope that the young ones will have the opportunity to stand above the others. My parents were workers and they knew that I would be somebody when I had the chance to study in a university. Now, 20% of the workers' children are receiving university education but their monthly salary will only be \$8,000. If you ask the workers who are parents whether their children will have the opportunity to stand above the others when these young people have to face high property prices but will probably have only a pay rise of 1% to 2% in the next five years, the answer of these parents should be quite different from that of mine. My parents said, "My good boy, you've succeeded as you're admitted to the University of Hong Kong. You will definitely make a good living." I would like people in the business sector to understand that it is exactly the accumulation of pictures of this kind that has made some workers filled with indescribable and inexplicable discontents and hatred against employers. Mr CHAN Kin-por said that some people were instigating certain sentiments in the community. He should bear in mind that instigation would not bear fruit if there were no seeds of such sentiment and the soil for its development. Surely the Democratic Party does not want to do so, but if no improvement is made to the basic system of society, more people will be tempted to instigate with radical means. Therefore I said just now the Government had the largest responsibility in dealing with this task.

President, I would like to make two points in closing. The first is about the wage level to be stipulated in the future. Of course, I know that there will be a Minimum Wage Commission (MWC), but I hope that the Government will consider one thing. What the workers ask for is not excessive. Even if an objective level of economy and wage is found, some positive incentive should be added to it by the Government in the same manner as it treats the civil servants. We see that when the surveys on the remuneration of civil servants are released, many civil servants will propose that, taking their morale into consideration, their salary should not be cut or the increase should be augmented. However, why does the Government not do the same to the workers at large? Of course, I know that this will exert some pressure on the SMEs. However, everyone will have to contribute more when the whole community is in the same boat.

I think that if this system is securely established, the MWC will stipulate a more humanistic level which can take care of the workers' living. This will be a good start. Through the present issue, the business sector and workers in Hong Kong should find more common grounds, not disagreements; more communication, not confrontation; and more harmony, not struggles. Many people like struggling very much, but the choice is the Government's, after all. Where it positions the issue will decide in which way society goes. Thank you, President.

MRS SOPHIE LEUNG (in Cantonese): We are discussing the minimum wage issue today, but I think this Bill should have been introduced as early as the end of the 1980s or early 1990s, rather than in the present atmosphere when both sides are at odds. This may not bode well for our future. If the Government has the vigour, it should have enacted this law towards the end of the 1980s or the 1990s before the emergence of other labour legislation. That was the right thing to do.

I agree that we all wish Hong Kong can be a place where basic human rights can be displayed, instead of the case now, whereby the Government completely ignores the various problems in society, passing the buck to the employers — any shortfall in employees' living allowance is shifted totally to the employers. President, we should recap some history. From the 1960s to the 1980s, or even in the 1990s, the extent of industrial diversification in society had reached the point where new industries kept emerging. This is something we should not forget. Our manpower resources then were not adequate to meet the needs of all the new industries. Hence, the wage earners faced good prospects, and they naturally had lots of training opportunities to "move up the ranks".

However, today, we have not seen the emergence of new industries for many years, apart from those in the financial sector. In the past decade, the financial sector has thrived a lot, but are those positions in the industry within reach of the lower-rank employees in Hong Kong? No. Most of those positions are taken up by people returning from overseas, and what is more, they may not be Hong Kong people.

We have established the retraining organization for a decade or two, but what has it achieved? At the most, it has only trained workers belonging to the lowest ranks. Consequently, with the same group of people, competition becomes very keen and wages drop increasingly lower. Nonetheless, the Government ignores this situation and continues to let those who can take part in retraining to run their own course. In short, they can get some money so long as they receive training: to be trained in this field this year, in another the next, and yet in some other fields the year after. This retraining organization is absolutely unsuitable for organizing retraining anymore, but the Government has allowed it to continue with what it is doing.

We have mentioned this problem here, but have Members who are directly elected done so? Have they discussed these problems in depth? I agree with what Mr LEE Wing-tat said earlier, that is, our rent is too high, and utilitarianism in Hong Kong is too serious. Recently, there have been two news reports that are heartrending to me. Human beings are basically kind, but where has this kindness gone? Why have they changed to what they are now? Why are they so apathetic?

Mr CHAN Kin-por said earlier that some people have attacked others in the name of democracy. He was not referring to the entire democratic camp. This time, the Democratic Party has not scrambled with the others for food from the same pot. I think it is the right thing to do. They have chosen to take a more difficult path which they have never taken in the last two decades. They are really serving the masses and I wish them success. If there is anything I can help, I will be more than willing to do so. I think we have to serve the public from a wider angle, rather than encouraging a small number of them to take to the streets and employ radical means. I am not saying a small minority, but some people who are even very high up, Members of the Legislative Council making more than \$100,000 a month — the monthly salary from their own profession already exceeds \$100,000 — are doing the same thing. They are doing such things against their conscience.

Even if we take a look at the labour movement, in the past 10-odd years President, I have to be honest with you, before Miss CHAN Yuen-han became an elected Member, she fought vigorously in the streets, and it was then that my family and I decided to close all our factories. While the other factories were still recruiting workers, we introduced our workers to the other factories. I did so because I realized that for those advanced countries which saw drastic

labour movements in the 1940s and the 1950s, they had turned away from labour movement over the last decade or so. I still remember that a minister from Britain responsible for labour investment made a special visit to Hong Kong then to invite us to make investments in Britain, but I remarked that their labour movement was too fierce and the Labour Party was so dominant. Upon hearing my remark, he said they knew that direction would not work, therefore, they had halted the movement and tried to bring an end to it. However, at that time, Hong Kong was just beginning to organize labour movements like a wildfire. Being an economic entity and a free market, was it appropriate for Hong Kong to organize such fierce labour movements during that period?

President, I remember I said eight years ago that the factions of our labour movement were clearly positioned, if one faction was drastic, the others had to be more drastic because they had to fight for votes. For many, they have no options but to maintain a drastic position because they are now living for votes. Regardless of which party they are to follow, I wish our young people can have a clear idea about this.

President, the Legislative Council has a Committee on Members' Interests, should votes also be regarded as interests? Very often, I would ask myself whether we should look at it this way? When a small interest is involved, they will make a big uproar and cite authorities, but they will not utter a sound if the issues at stake are not conducive to their own interests. How can this be?

President, a very good friend of mine has been the president for several terms in a very nice burgeoning democratic country in northern Europe. He was returned by "one person, one vote". He was very popular and the workers would greet him when they bump into him in the streets. When I was strolling around with him in his country, I realized that he was very popular. I asked him why he did not seek a re-election (he gave up voluntarily for not running). He said nowadays, the ladder of democracy has come to a rung where votes are everything and conscience is nothing. Therefore, he did not think that he should stand for election again.

President, I said just now that we have been doing a very bad job in training but the Government has failed to address it squarely. Providing the entire society with manpower resources should be the responsibility of the Government, and piecemeal efforts will not suffice. It is not only during this present era of Secretary Matthew CHEUNG that the Government fails to address

the problem, it has also adopted this attitude since as early as when Hong Kong was under British rule. Then, many other labour laws were enacted. We are only facing this minimum wage legislation today, but in fact, we should have enacted this legislation long ago.

Let us take a look at our employers. There are numerous small and medium enterprises (SMEs). Sometimes when we visit those shopping arcades with low customer flow, we will realize that those SMEs are very miserable, for there is not even one customer, with only the couple or an elderly inside the shop. They have been operating there since the 1970s and the 1980s and there is not much room for them to survive. Luckily, they own the shop, thus spared of the high rent. Why are there so many SMEs of this kind? Does our society need so many of them? Mr LEE Wing-tat mentioned The Link earlier. In fact, I expect The Link to perform one function, that is, to upgrade these SMEs a bit. This is my expectation of The Link. If shopping arcades under The Link continue to house such downmarket SMEs, SMEs outside will all the more have no room for survival. We should ask ourselves: should there be so many SMEs?

The other day, someone criticized Mr CHAN, which I think is not fair to him. What has he done? He has only seized the opportunity to set up a fast-food restaurant. I believe many young people also like to patronize fast-food restaurants. I like to do so very much. Its glutinous rice dumpling wrapped in lotus leaf tastes the best, many Hong Kong-style cafes only come second, OK? Although I enjoy eating it most, I only dare eat it once in a while. He has improved a lot of food items and is now beginning to upgrade to health food. What has he done wrong? He has so many workers under his employ, what again has he done wrong? He is banking on his strength to contribute to this place, he has not recruited foreign workers, not like our financial sector. What has he done wrong? He only talked about his difficulties. Has he provided training for his employees? I know he has because I see that some of his employees started from a very low level, then upon reaching a certain stage, they were promoted to the management level. He is only doing all he can to supplement what the Government has not done. What has he done wrong? He has only voiced his difficulties. He should not have been given the ill treatment.

President, I came to Hong Kong when I was nine. I have witnessed purges, I have seen people knelt on glasses in the square, and I have also personally seen relatives suffering such hardships, but this is exactly what we are

experiencing now: making no distinction between right and wrong, votes come first. Insofar as friends from the FCs are concerned, not everyone has done a good job, and I believe many of us have room for improvement, but I can say, the vast majority has been working conscientiously. Why do we have to be Members here? Just as Mr CHAN Kin-por said earlier, we are elected under the existing system, can we just stay away from running? How could we be like the Civic Party which is hurling insults at the others? Do they not have party members standing for election? Why do they have to connive at this system? Why do they have to "gain double benefits"?

(Ms Audrey EU stood up)

PRESIDENT (in Cantonese): Ms Audrey EU, what is your point?

MS AUDREY EU (in Cantonese): President, I seek an elucidation by Mrs Sophie LEUNG.

PRESIDENT (in Cantonese): Please sit down first. Mrs Sophie LEUNG, Ms Audrey EU would like you to elucidate, are you prepared to give way and hear what she would like you to elucidate?

MRS SOPHIE LEUNG (in Cantonese): President, I have listened to many of their arguments. Very often, I would just sit and listen. I do not think I have to elucidate. I wish to continue with my speech.

PRESIDENT (in Cantonese): In that case, please continue.

MS AUDREY EU (in Cantonese): President, if she does not want to elucidate, I would like her to withdraw her remarks just now because she made it very clear that

PRESIDENT (in Cantonese): Are you raising a point of order?

MS AUDREY EU (in Cantonese): Yes, President, a point of order. She criticized the Civic Party just now as "gaining double benefits", conniving at the FCs. President, this remark is offensive. To all Members from the Civic Party and to Dr Margaret NG in particular, this is offensive. We have never said that our purpose of running in FC elections is to abolish the FCs, we have never connived at them. She said that we had harboured ulterior motives in taking part in FC elections, and that we are conniving at the system, those words are offensive, President.

PRESIDENT (in Cantonese): Ms Audrey EU, please sit down. I believe you have actually responded, and I have also noticed that Miss Tanya CHAN of the Civic Party has pressed the button to indicate her wish to speak. Members will notice that when Members speak, including during yesterday's whole-day debate, many Members would make scathing criticisms of the other political parties, and the political parties criticized may not consider those criticisms fair. If every time a Member levels some criticisms at a certain political party, and I have to allow the other political party to ask the Member concerned to retract such criticisms, it would be difficult for our debate to go on. Since several Members from the Civic Party are in attendance, and I have also pointed out that one of your party members is poised to speak, I believe she will have sufficient time to respond to accusations made by other Members of your political party which she thinks are unfair. Therefore, I consider it unnecessary for Mrs Sophie LEUNG to retract her remarks made just now.

Mrs Sophie LEUNG, please continue.

MRS SOPHIE LEUNG (in Cantonese): President, before I joined the legislature, I did not even know what "gaining double benefits" means, nor would I use such words, but after joining the legislature, I have learnt such words from many Members. They have used many of them, and I consider myself to be very gentle when I use them.*(Laughter)*

President, I was saying earlier that I could not understand why utilitarianism is so dominant in our society. Could it be due to the fact that some Members of this legislature are practising what they preach, displaying this culture of "gaining double benefits" blatantly in front of the television, thereby causing utilitarianism to be so dominant in our society? I will not rule out this possibility. I look forward to seeing our sociology professors look into the situation in the future to find out why there is such an attitude in society.

President, I also said earlier that many friends from the FCs have in fact realized that there are many complicated dimensions to this social problem, but for the sake of votes, many of us who are present here have chosen to tackle such social problems in a much simplified manner, living for the votes. I agree that our employees have to live in dignity, and I also agree that an enterprise should work towards boosting employees' morale. I wish that more of us here will die for justice and not live for votes.

President, I so submit.

MISS TANYA CHAN (in Cantonese): President, since I have pressed the button, I would make the best use of my time.

This morning, I heard many criticisms which some FC Members claimed were made from their hearts. They said that some Members, elected Members in particular, are doing things by hook or by crook for the sake of securing votes.

First, when they spoke earlier — I do not know if it is because they are not sure where their votes come from — they said we are doing everything for the votes. Actually, when you have to take to the streets — just as what I did when I earlier took part in the five-district referendum campaign, I took to the streets three times every day, and in the four months after my resignation, I had altogether taken to the streets 231 times — and really come into contact with the people, you will genuinely understand what they think, instead of simply knowing what those people from the fields you come into contact with think. Hence, if you are speaking for the sector represented by you, I will respect you. However, if you are always hurling insults, saying that we are only living for the

votes — just now, I am not sure which Member made that remark. We all have our own jobs, but we are willing to come out to take up this task of serving the public simply because of our conscience and our beliefs.

Members earlier said that there seems to be many problems with the electoral system, and even said something like democracy corrupts people. When this electoral system was designed, it was hoped that the democratic camp which had the support of the majority public would not take up the majority of the seats. Under this system of proportional representation, parties with less support can also have the opportunity of making their way into the legislature. Those people you are now scolding have the support of voters. If the eyes of the voters are as discerning as you said, let us see what the results of the next election are. They have to face the people. We have debates, we have platforms, we have to explain our stance, this is the fact. Unlike the coterie elections where there are not even votes, where there are not even elections and people are returned with nil votes, what should we say?

The question raised by Mr LEE Wing-tat earlier is one which will be raised when I talk about minimum wage with the people I come into contact with in the streets every day, and that is, land price. In fact, setting a minimum wage has largely to do with justice, and it is a question of how we look at fairness and justice in a developed place. What we are striving for now is some dignified reward. I remember during the by-election, we printed a flyer which is now widely circulated. The flyer is of course well received, but every time when we make broadcasts in the streets on the subject of minimum wage, people will stop and listen attentively, and many will ask us for our flyer.

We do not intend to insult anyone verbally. Every time, we will fairly say that the particular Member may be a good person, only that the system makes him a representative of the sector and so he has to fight for the sector he represents. Nonetheless, we have to ask ourselves, is this really a conscientious system?

On the subject of minimum wage, we are only talking about a dignified reward. I remember once when Dr Margaret NG and I were in the streets speaking through the loudspeakers, the very simple remarks she made remain in my memory even now. She said, if you are tending the fields with cows or pulling the carts with horses, you have to at least feed them well. However,

when it comes to employing a worker to work for you, even if you have fed him, what about the partner and the children of this wage earner?

Come to think about this. Minimum wage is in fact a very humble request. When the annual income of the people of Hong Kong is close to US\$30,000, why are we still seeing a minimum wage of less than \$20 an hour for some? Moreover, let us do a calculation. With an hourly rate of \$24, what is the monthly income for working nine hours each day and 26 days a month? That amounts to \$5,616. Is this enough for feeding the whole family? Most importantly, it is comparable to the biggest difficulty faced by SMEs, which is rent.

When I took part in the five-district referendum campaign, there was this volunteer who is the owner of an SME. He has a shop in Happy Valley. As his business was doing well, he tried to enquire about shop rentals in some busy areas. He asked about the rent for a 600-sq ft street-front store opposite to the Times Square. Do Members know what the monthly rental is? \$320,000. To that worker with a monthly income of \$5,616, even if he is given his income for a year — regardless of whether this worker is a woman who washes dishes or a man who is a cleaner — the money is only enough for paying rent for five to six days. Let us see what a distorted situation we have now come to. The SMEs have to survive. Honestly, I do not think it is the few extra dollars they fork out to those workers which matters, rather, it is because the rent is sinistinely exorbitant. The buck stops with the Government, and it has to consider this.

Mr LEE Wing-tat said earlier this is a matter of supply and demand. We all understand this. Yesterday, I talked about the problem of chain stores. In the past, what did supermarkets sell? They sold commodities like cornflakes, rice, and so on, which were offered by grocery shops, but now, even plasters, pain killers, sneakers, stationery, ball pens are also available. Unbelievably, even incenses and candles can be found. President, if we are to worship the gods or paying visits to columbaria, we have to buy the offerings there. This is really one-stop service. They are snatching all business. What can bookshops sell? What are drug stores selling? I am talking about real drug stores, not Mannings or PARKnSHOP. What are genuine drug stores selling? They are selling "green water", laundry powder and detergent. If they just sell drugs, they may not be able to sustain.

Insofar as these chain stores are concerned, first, they have deprived many small shops of the room for survival; second, regarding rent, only such chain stores can afford the rents of shops located in places with higher customer flow or shops which can attract more customers. Finally, the SMEs can only be marginalized. However, when they have swallowed the bulk of the market, why are they still so mean to their employees?

Many people mentioned the SMEs earlier, and some even talked about the lifestyle in the past. I remember that when I was young, there were people selling "rice rolls" in the streets, and people could even chat with the owners or employees of many shops. Such were empathetic memories. They could also provide a lot of professional advice to customers. Take soups as an example. At present, supermarkets sell prepacked stuff but in the past, if we were to cook up a soup, the stall owner would tell you what were seasonal, and after buying some winter melon, you would go to the shop opposite to buy barley and pork, then cook up a pot of refreshing winter melon soup after returning home. Also, barley is diuretic. In fact, it was a small community in the past, not only was there no difficulty for the SMEs to survive, but also, there was sufficient time to chat and communicate with neighbours and customers. However, nowadays, regardless of those going out to work or their family members, no one may be able to enjoy life. As the wage level is not high, parents very often have to work for long hours, leaving the children at home. If they are lucky, they may be taken care of by foreign domestic helpers, otherwise, the elderly at home will have to help look after the children.

What still impresses me is the Hong Kong spirit. Of course, in the minds of many, Hong Kong owes its success to the free market economy, but meanwhile, the Hong Kong spirit is also a factor. Different people may have different interpretations of the Hong Kong spirit, but to me, apart from not being afraid of hardship, we can also climb up the social ladder together, for there is the possibility of social mobility. Nonetheless, if society is to continue to develop in this direction, despite working for long hours, parents are not able to bring home a handsome income, and the next generation will be the most directly affected. With working poverty, those making a living are not the only ones who are suffering, for the suffering experienced by their children may be greater, and they are subject to even greater long-term impact. We hope that when the legislation on minimum wage is finally enacted today, it will mark the opportunity for making the first step. As to the question of how we go from

here, it really hinges on the continued co-operation between society and the Government, and the minimum wage level is vitally important to many families.

Of course, both today and yesterday, we have heard the aspirations of many people who are employers. Actually, my mother — I grew up in a single-parent family — is also a co-owner of an SME and an employee, so I very much understand the difficulties she has to face because I can feel it first-hand. Hence, employers will of course meet some difficulties, but if we still remember the Hong Kong spirit, I very much hope that we can come up with a minimum wage considered reasonable by all.

We wish that some unfair phenomena in Hong Kong can be reversed and improved soon. In Mr LEE Cheuk-yan's speech yesterday, I was most impressed when he said one must persist and believe in one's ideal and principle. So long as one can hold on to the end, he will be able to see the light. The road to democracy is by no means easy. I am a late comer. Today, I have the opportunity to witness the enactment of the minimum wage law. This has indirectly encouraged me to continue to fight for democracy. Therefore, no matter which camp they belong to, I hope that people will keep up their efforts and continue with their fight.

With these remarks, I support the Second Reading. Thank you, President.

DR LAM TAI-FAI (in Cantonese): President, Mrs Sophie LEUNG said just now she had patronized the fast-food restaurant operated by a Mr Chan and tried a "glutinous rice dumpling in lotus leaf" there. I did not patronize that one. Instead, I went to a social enterprise restaurant called "Family" in Fanling last month and tried their "glutinous rice dumpling in lotus leaf", which tasted good. I later found that the restaurant was run by Mr WONG Sing-chi. I recommend Members to visit that social enterprise, which is soundly operated, if they have the time.

President, coming back to labour relations, I think this is a very delicate issue that can be both very simple and very complicated, very harmonious at one time or very discordant at the other. I have been an employee and an employer, so I know and understand the relationship between the employers and the employees. I had taken part in a strike over wage when I was an employee, and participated in handling and settling a strike when I was an employer. So I have

such experience because I have taken part in both of them. Mr CHAN Kin-por said earlier on that he had worked for 36 years serving two bosses, and I am more loyal than he is because I had actually worked just once as an employee in my life.

I have seen many employees and employers developing a friendship, caring for and showing concern for each other, exemplifying a very harmonious employment relationship. I have also witnessed many cases in which the employers and the employees argue with each other in Court and expose the wrongdoings of the other side, which is sometimes not for money, but for the venting of grievances. With so many years of work under my belt, I have had a lot of such experience.

Labour disputes are unavoidable insofar as human nature is concerned. By human nature, we are suspicious, showing no trust, and sometimes greedy if interests are involved, as our attitudes towards interests are different. Besides, it also involves social problems. With a rising unemployment rate, a difficult financial position and a difficult business environment, companies need to take measures to survive, such as laying off staff. Owing to human nature, conflicting interests and social problems, labour disputes are unavoidable. Precisely for this reason, we have the Labour Department and the Labour Tribunal. However, in recent years, I think the term "unscrupulous employer" has been somewhat abusively used and demonized, which is likely to discourage people from setting up their own businesses and becoming employers and impart a feeling to the employees that all they have to face in office every day are unscrupulous employers. I think the term is misused or demonized in some measure.

Are there unscrupulous employers in society? Certainly, there are, and in all industries. And are there conscientious employers? Certainly, there are and we need to agree on this. Are there diligent, responsible and faithful employees? Yes. I am one of them. Are there employees who diddle around, shirk responsibilities and do nothing for a salary? Yes, we have seen not a few. Whether they are the unhelpful and lazy employees or unscrupulous employers, they are only the minority. I believe, owing to the implementation of popular education in Hong Kong, most of them are conscientious employers as well as faithful and diligent employees. Nonetheless, it is precisely because of this

small group of undisciplined people that we cannot but enact legislation or formulate codes of practice to regulate them or for their compliance. So, frankly speaking, I support the minimum wage legislation. The Chinese Manufacturers' Association of Hong Kong holds the same stance and agrees to the enactment of legislation, so that we will have a legal base to solve any labour dispute when it occurs just to avoid arguments. To this I agree.

I believe the minimum wage legislation will soon be implemented. I hope the issue will be discussed in a rational manner, and not in a confrontational manner, for it will not do any good. As Members have just said, Hong Kong is a free economy. To put it simply, no one will force you to take a job, nor will anyone force a company to take on a certain person. There is freedom in employment. All is conducted willingly and voluntarily. Scenes of compelling a female to engage in prostitution or forcing a gambler to work for repayment of debts as depicted in the movies are illegal, and cannot be mentioned in the same breath. In Hong Kong, there is freedom in entering into an employment relationship. As such, I agree to the enactment of legislation. But we must deal with the details of legislation carefully as we need to have regard to the relationship, interest and development of both employers and employees, while doing so in a fair and impartial manner. During the course of enacting the legislation, we can start with these minor things, but we must take the whole situation into consideration and put the interest of the whole above everything else, otherwise very often the employers and employees will use the legislation to seek self interest and attack the other side, to the detriment of both the employers and wage earners ultimately.

As I have just said, in no event should we put employers and employees in an antagonistic position in the formulation of the details of the law, and we must do everything to guide them towards harmonious and sincere co-operation so as to ensure that the law will protect the legitimate rights and interests of both sides. However, I have to point out that a minimum wage may not necessarily be helpful to preserving employment. I am not opposed to enacting the legislation, but I have to say in advance that a minimum wage may not be able to help improve the employment situation. To the employees, of course they want to look for jobs with a high pay, good fringe benefits and promising prospects, which is the normal thinking of wage earners. To the employers, of course they hope that their businesses are operating properly with high profits and fast

development, and not to have quarrels with employees every day. So if the level or details of the minimum wage constitute pressure on the sustained competitiveness, cost, administrative operation and culture of a company or an enterprise, it has to work out some personnel and manpower arrangements it considers appropriate for its survival and development. Particularly for some marginally surviving small enterprises, they will be forced to close down or discouraged to continue their operation if they cannot withstand the pressure. Ultimately, not only will the enterprise suffer, the workers will also lose their jobs. We do not want to see the emergence of such a lose-lose situation, still less do I want to see such a situation after enacting the law for we have taken part in it.

The relationship between employers and employees is interrelated, like the lips to the teeth. If it is tilted to benefit one side, and not both sides, the relationship will not last long, and will break up eventually. The legislation will then fall through to the detriment of both sides. The original intent of setting a minimum wage is to assure a reasonable income for workers so as to enable them to live with dignity, and it is absolutely not an act of poverty alleviation or some form of welfarism, still less is it a political stake or instrument. If we place the relationship between employers and employees on the table and create a confrontational situation, the eventual victory will not belong to the employers or the employees, but to someone else, which is improper, unfair and inappropriate.

Actually, both employers and workers are human, and in such sense, there is little difference between them. The ugliness of human nature that can possibly be found in both employers and employees and absolutely not in just one of them is, for instance, that they are irresponsible, greedy and uncommitted. Of course, employers hope to have good employees to work for them, and likewise employees also hope to have a good employer so that they can live and work in peace and contentment as well as bringing their talents into play. However, it all depends on their personal capability and the objective environment, as well as chances and opportunities. So I think both the employees and employers must treasure the chance and opportunity of co-operation if they have. They need to respect each other, be helpful, accommodating, compromising and mutually-reliant so that they can grow and develop together. After enacting the law, if we handle the relationship between both sides rigidly in accordance with

the law, there will certainly be ruptures in such co-operation, thus plunging both sides into a state of despair and "life-or-death" confrontation most of the time. I think this, being meaningless, will do us no good.

As such, I hope we can focus our mind on taking more care of the harmonious development of the relationship between employers and employees by starting with the minor things and putting the interest of the whole above everything else in the course of enacting the legislation. Mr LEE Wing-tat said just now a minimum wage is not a factor contributing to the unsatisfactory development of SMEs. I agree with him that this is not the key factor, but one of them. Facing a lot of problems, the development of SMEs is not smooth. For example, as regards section 39E, not section 29E, of the Inland Revenue Ordinance, we have heard how the Chief Executive responded to my question about section 39E in the Question and Answer Session two days ago, from which we know how difficult and helpless the operation of SMEs is.

Will the functional constituencies (FCs) be abolished? Even if they were to be abolished, they would not be abolished simply because of a few more remarks made by the democrats, instead I am worried that they will be abolished by the Government. When Members returned by the FCs can no longer fight for the interests of their sectors, they will be dumped by them. As regards section 39E of the Inland Revenue Ordinance, as "Ah Yan" has mentioned it, I might as well say again that the issue of section 39E has now reached a most precarious situation, in which a lot of people in the sector do not know how to maintain their business, and they even dare not decide on matters concerning their upgrading or transformation. In the face of the incessant claims for recovery of tax by the Inland Revenue Department, they do not know whom to turn to, yet the Government still said with folded arms that the Joint Liaison Committee on Taxation is conducting a study on the matter. In the last two years, I have had the feeling that if the Government does not wish to do something, it will use "conducting a study" as a shield, as an in-depth study will take time, and we have to wait patiently then. So, apart from the test imposed by the minimum wage legislation, I think the most serious problem of our survival comes from the inadequate support of the Government for the SMEs.

Lastly, I wish to talk about a point on the minimum wage legislation, which may be discussed later at the Committee stage. Hong Kong is an economic city,

and a caring society as well if viewed from another perspective. Irrespective of who we are, if we are capable, we should help the disadvantaged, including the elderly who are incapable of making a living, people who are sick and disabled, and people with intellectual disabilities, who have more difficulties in finding jobs than ordinary people, and hence less opportunity. So, we need to strike a balance in the course of enacting the legislation. Can the legislation really protect them? Or, is the legislation just protecting them on the surface, but actually affecting them unfavourably? I hope we will handle it with care when we discuss the issue later on, and not to let the disadvantaged be affected in the legislative process. Why do I have to emphasize this time and again? Because we will be held liable for any impact or adverse effect brought about by the legislation in the future as we have participated in the process and we are made "murderers" for not being thoughtful enough to give it holistic consideration.

President, I so submit.

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

MR TOMMY CHEUNG (in Cantonese): President, summing up the remarks made by Members from the labour sector, they all thought that with a minimum wage, the problem of market disequilibrium can be resolved, thus preventing employees from being continually exploited with low wages and improving the disparity between the rich and the poor. Honourable colleagues also pointed out that even if problems arise from the eventual minimum wage, they will not be as serious as the business sector has claimed. Mr LEE Cheuk-yan quoted the Australian example, saying that the number of job losses caused by minimum wage is limited. Ms Audrey EU cited earlier the report by David CARD, an economist. In 1997, David CARD and Alan KRUEGER published a paper on an empirical research on the fast-food restaurants in New Jersey, which preliminarily indicated that the number of employees in these shops had shown an increase instead of a decrease after a raise in the minimum wage level, in an attempt to illustrate that minimum wages are not "sugar-coated poison". However, the conclusion of the research paper has actually been refuted by David NEUMARK, an authority on minimum wage, and his partner, William WASCHER, who found, by collecting data of the actual payroll records, noting that the number of employees has shown no increase, but a significant decrease

instead. This prompted CARD and KRUEGER to adjust their conclusion by drawing reference from the data of NEUMARK and WASCHER, and said afterwards that the effect was not very great.

In 2006, David NEUMARK, an authority on minimum wage and his partner, William WASCHER, published a paper, which is still always quoted by the academia. Citing nearly 100 research papers in 15 countries over the past 10 years or so, they found that most of the serious economic researches indicated that minimum wages brought negative effects to the employment market.

In the middle of last year when the United States was prepared to raise the minimum wage, NEUMARK said in his article in all earnestness that so far there was no research to support that minimum wages could reduce the number of poverty-stricken families. Instead the research conducted by him and WASCHER found that minimum wages would make more families plunge into poverty than those getting away from it. He even added that minimum wages would result in job losses and deal a severe blow particularly to the low-skilled workers in poverty-stricken families.

President, the labour sector or the media likes very much to cite single or individual examples in discussions on issues. However, in formulating policies, the authorities must take matters into consideration from a holistic perspective. I do not want to see someone incessantly politicizing the issue of minimum wage, smearing people with different views, and resorting to deliberate misinterpretation out of context or verbal violence, rather than addressing the problem of minimum wage squarely and engaging in-depth discussions on how to avoid the damages that could result from minimum wages.

Labour organizations have incessantly accused me of exaggerating the crisis, and stressed that as the catering industry in Hong Kong has long been unable to employ enough hands, how can it afford to cut jobs? And why do these employers not sympathize with the employees in times of trouble? President, we cannot say that the employers are not prepared to share the economic fruits with their employees, but rather we have to do what is suitable to the occasion. We have to take contingency measures if the operation costs rise to an unaffordable level.

According to the statistics of the Census and Statistics Department (C&SD), most eateries recorded only a single-digit profit before deduction of tax

and depreciation, while 20% sustained long-term losses. A survey conducted by the Hong Kong Catering Industry Association reveals that even a minimum wage of \$24 will lower the profit rate by 3% to 4%, and deal a very heavy blow to the catering industry with a low profit margin, especially those Chinese eateries and cafeterias, let alone a minimum wage of \$28 or \$33 per hour.

Of course, the catering industry will exhaust all means to increase income and reduce expenditure. The survey even finds that if the minimum wage were set at \$24 per hour, 30.8% of the respondent companies said they would increase prices, while 28.8% said they would cut working hours or switch to employing part-timers. The number of those indicating that they would close down some of their shops would increase from 1.9% when the minimum hourly wage is \$24, to 9.6% when it rises to \$28, and further to 28.8% when it reaches \$33. The respondents are eateries with relatively substantial strength and more than eight branch shops. As such, it is expected that the overall situation of the catering industry will be more serious.

President, some colleagues do not believe my figures. That does not matter, but even by looking at the C&SD figures alone, 50% of the employees in the catering industry will have a pay rise if the minimum wage is set at \$33 per hour, and the expenditure will increase by 7.9% before accounting for the knock-on effect. How can the industry sustain this all of a sudden?

Experiences in foreign countries tell us that once the minimum wage legislation is passed, the level of wage will only rise, but not decline, under the pressure to go with what is politically correct, and this will bear a sustained impact on the traditional labour-intensive industries employing low-skilled workers, thus forcing them to undergo structural changes. In the United Kingdom, there has been a reduction in the job types in these industries.

In Hong Kong, there are two traditional eating cultures — Chinese restaurants and cafeterias, which are comparatively labour-intensive, that is, employing a great deal of lower- to middle-rank staff and characterized by a unique multi-layered manpower structure, and they will suffer from the knock-on effect of wage increase triggered by the minimum wage far worse than other industries in Hong Kong and even the catering industry in foreign countries.

To maintain competitiveness under the impact of minimum wage, these enterprises have either to turn to the middle-to-high-end market, just like some existing high-end cafeterias, or to change their mode of operation, including simplifying the menu, reducing the job types and cutting manpower. In so doing, the cafeterias in the streets will become fast-food shops, and the Chinese restaurants in the housing estates will soon be eliminated.

On a television programme, I saw that LEE Cheuk-yan was posed the question of what would happen if eateries closed down one after another. He said that there would be a new one if an old one closed down. I feel helpless on hearing that. Does he really know the far-reaching implications of such a situation? Will the new one employ as many staff as the old one? As regards the new shop to be opened, what kind of eatery will it be? Will it be a branch of a large restaurant chain? Will the market of small and medium sized eateries continue to dwindle? Perhaps, there will not be an eatery, and instead another business requiring less manpower will take its place, and the original investor in the catering industry may prefer going to the neighbouring regions with lower costs to set up an eatery.

Some people said that an eatery can increase prices if it is really in difficulty. I hope Members will understand that it is very difficult for eateries operating in districts of weak consumption power or adopting a low-price strategy to raise prices. For large restaurant chains, they may only need to raise the food prices by \$0.5 as they have central food processing plants and other machinery for food production, but the inexpensive eateries or eateries in the housing estates and the New Territories may need to increase prices by \$1 so as to break even. But if they increase prices by \$1, they will risk losing \$20, as customers will turn to patronize the chain restaurant next door asking a smaller price increase.

Some people said that we can pre-empt the situation of wages being unreasonably suppressed and can possibly force the property owners to reduce rents following the enactment of the legislation. But I can tell Members that the property owners will only be prepared to reduce rents when there is a massive closing down of eateries or SMEs followed by a significant drop in the number of lessees, and in such circumstances a painful elimination game will be witnessed in the catering industry. We will see some not so well established eateries with little capital and low liquidity closing down one after another and the workers

joining the unemployed ranks, and only then will there be an adjustment of the market rent.

Some people said that the main cause for the disparity between the rich and the poor is the absence of a minimum wage in Hong Kong. Such a conclusion has confounded the complexity of the issue. There are actually two important factors causing the disparity between the rich and the poor: first, the ageing population in Hong Kong; second, an accumulated growth in the number of new arrivals from the Mainland coming to settle in Hong Kong, and as such there has been an oversupply of non-skilled workers over the past 10 years, thus causing these job types to lose the bargaining power over wages.

All along, I hold that the problem of disparity between the rich and the poor should be tackled at source by increasing the job opportunities for low-income workers and enhancing their transformation capabilities and competitiveness. However, with knock-on effects of a minimum wage, those hardest hit will be the disadvantaged whose productivity is relatively low, such as women from grass-roots families or the elderly working as food delivery workers.

We have to know that the catering industry in Hong Kong has provided many types of work for the non-skilled workers. If the catering industry dwindles, non-skilled jobs will become less, and the situation of an oversupply of non-skilled workers will worsen. The problem of disparity between the rich and the poor in Western countries has never been resolved through the implementation of the minimum wage legislation, and the same will happen in Hong Kong.

President, the Liberal Party initially did not support the introduction of minimum wage, but we later changed our mind. The turning point for this is the statement made by the Chief Executive in his 2008-2009 Policy Address, that the spirit of the relevant legislation is to forestall excessively low wages, pre-empt losses of low-income jobs, and maintain the overall economic development and competitiveness of Hong Kong, including avoiding the closure of SMEs. Among all these critical aspects, we need to strike a balance.

The catering sector and I agree to such spirit, particularly we should protect the low-income employees. That said, how can we achieve such a balance? I

believe it will not be easy, and it all depends on the minimum wage level ultimately set.

However, I must stress that, as the authorities said, we have to forestall excessively low wages and not to regard minimum wage as a living wage.

The labour sector has proposed that the minimum wage be further raised to a level that one working person can support the basic living of two persons. But I hope Members will give it second thoughts, as it means the threshold of becoming an employer will become higher, thus stifling a great deal of business and employment opportunities, minimizing the chance of upward mobility, creating a situation that only those with financial strength can do business, and further tilting the market, which will not be conducive to the long-term economic development and social equilibrium.

President, actually there is still much room for improvement in the legislation. I am particularly concerned that after the implementation of the minimum wage legislation, employers may not be willing to employ staff with relatively low productivity, especially those youngsters who fail in school and drop out to look for their first job. It is very wrong for the authorities to draw reference, only in part but not in whole, from the United Kingdom legislation when they drafted ours, without drawing up provisions for a discounted minimum wage for the youngsters under 21 years of age as the United Kingdom did. Talking about the experience in the United Kingdom, the measure can actually serve as a buffer to assuage the knock-on effect caused by a minimum wage, mitigate the damages done to the service industry, and ease the situation of unemployment of the youngsters. So I hope the authorities can reconsider the introduction of such a measure.

Besides, the authorities have calculated the minimum wage on the basis of an hourly rate, which has completely changed the practice that has been adopted for years by all trades and industries of calculating wages on a monthly basis. Especially for the past employment contracts, we would not expressly set out the meal time in such contracts. However, the authorities now propose an amendment to delete the original provision that the meal time for employees is not included in the hours worked, thus putting the onus of interpretation on the employers and employees. To avoid disputes and legal proceedings in future,

the employers cannot but enter into new contracts with their employees, which will trigger a mass replacement of employment contracts.

The only saving grace is that the authorities finally accepted the suggestion of the business sector and proposed an amendment to exempt the requirement on employers to keep records of the wages and hours worked of employees whose wages are above a prescribed level, thus slightly sparing them of some unnecessary administration work and expenses. However, I hope the authorities will ensure the reasonableness of the basis of calculation for the determination of the level of exempted wage or monthly salary when they submit to Members the relevant subsidiary legislation in future.

At all events, there will soon be an outbreak of mass replacement of employment contracts. I urge the authorities to strive to take forward the work of the tripartite groups of all industries to formulate a code of practice, particularly in the catering industry which is the hardest hit by the minimum wage legislation. The authorities must clearly spell out the relevant legislation and details in the code of practice, and conduct extensive publicity prior to the enforcement of the legislation, in order to ensure that all employers, big and small, will understand the law in detail, and allow for a grace period of at least one year, so as to give employers ample time to modify contracts.

I would also like to take this opportunity to remind employers in the catering industry and their management that they must gain an in-depth understanding of the legislation. If there is anything they do not understand, they can approach the Labour Department or me. The impact to be caused by this law is far greater than the Mandatory Provident Fund Schemes Ordinance as there was no need to change the contracts last time. But now this law will change the mode of employment adopted in the catering industry over the past century and there will be a substantial change in the commonly used contract terms. So we must under no circumstance take it lightly, else we will be held criminally liable at any time.

Lastly, I would like to urge the Chief Executive, Directors of Bureaux and the Provisional Minimum Wage Commission to, in the process of determining the minimum wage level, try to prevent losses of low-skilled jobs, maintain the employment opportunities for middle-aged workers with low skill and low education level, prevent the damage to the competitiveness of the industries,

ensure sustainable development, and avoid triggering the closure of businesses *en masse*, particularly SMEs, while ensuring that the wage level will not be excessively low. And it will be difficult for the Liberal Party to lend its support if the minimum wage level fails to realize the points just stated.

President, I so submit.

PRESIDENT (in Cantonese): Does any other Member wish to speak? If not, I now call upon the Secretary for Labour and Welfare to reply. After the Secretary has replied, this debate

MR PAUL TSE (in Cantonese): Excuse me, President. I

PRESIDENT (in Cantonese): Mr Paul TSE, if you wish to speak, you must first raise your hand. You may stand up to speak only after I have called your name.

MR PAUL TSE (in Cantonese): I am sorry. I am sorry.

PRESIDENT (in Cantonese): Let me ask Members once again. Does any Member wish to speak? Mr Paul TSE, please.

MR PAUL TSE (in Cantonese): President, it is not so much because I am afraid of any rebuke. Rather, it is just because I have a bad habit, the habit of hearing as much as possible and understanding as much as possible before making any well-thought-out responses. Another habit of mine is that I always find myself not having done enough. This explains why something like this sometimes happens.

President, I wish to point out at the outset that I fully agree to, appreciate and sympathize with how people feel about some current social problems, including the wealth gap; the uneven distribution of the fruit of our economic success; working poverty; the negative impacts of the policy of high land prices

on the business environment and the general public; the monopolization by certain large consortia; cases of exploitation; and even the questions of employment and decent wages.

I have also heard Ms Emily LAU say that some elderly persons have to engage in scavenging. I can fully appreciate and clearly understand such plight because I was also brought up in such conditions. I have been seeing many such cases since my childhood.

However, President, the key question is: can the legislation under discussion solve or ease all such problems? This in turn leads to two questions. First, can the legislation achieve the desired effect? Second, effectiveness aside, how are we going to weigh the resultant advantages and disadvantages?

President, I propose to explore this question at three levels. First, I wish to explore the concept of minimum wage. Second, I wish to explore whether a minimum wage is suitable for Hong Kong. And, third, I wish to explore the tourism sector's views on introducing a minimum wage. Since time is limited, I can only do my best.

President, many Members have talked about the origin of a minimum wage. Dubious, I have thumbed through some relevant literature and found that this has absolutely nothing to do with any French war. The concept of minimum wage originated from New Zealand and Australia. At that time, the women there wanted to enter the labour market, but many men did not want them to do so. As a result, the men there compelled the governments to implement a minimum wage, in the hope of dispelling such an aspiration of women. It was 1896.

Later, as Members know, the United States accepted many new immigrants from Europe, thus leading to chaos and many cases of exploitation. There was thus a political need for the enactment of legislation. Massachusetts was the first American State to legislate for a minimum wage in 1912. It was not until many years later, in 1938, that a national law on this subject was enacted.

In Britain, the advocate of legislating for a minimum wage was, surprisingly, a personality very familiar to Members — Winston CHURCHILL.

He was then the Chairman of The Board of Trade. The law concerned was enacted in 1909.

President, why have I spent all this time on giving such background information? It is because I want to show that there were invariably some specific reasons for the enactment of legislation in all the countries concerned. They did not do so without any reasons. Their purposes were not to go with the tide, to follow suit and to catch up with the trend. Nor did they do so because they did not want to lag behind others. They all did so for reasons of their unique social needs and circumstances. There were many reasons.

Recently, Members have perhaps noticed the situation in Germany. Mr Paul CHAN may have made a mistake. There is no blanket minimum wage law in Germany. There is only a minimum wage for individual trades. As required by the European Union, its member states must completely liberalize all their low-competition sectors in 2010. Postal service is a highly profitable but extremely closed sector. In an attempt to hinder competition, Deutsche Post resorted to various means to compel the then Labour Government and trade unions to enact a law for the postal service sector. Why am I mentioning this case? Because it is a very special case. Many scholars have been arguing over the pros and cons of a minimum wage, and they also wonder whether it will lower the unemployment rate. However, very often, such discussions, including the research findings quoted respectively by Ms Audrey EU and Mr Tommy CHEUNG, are purely theoretical. Members all know that different scholars will use different data and methodologies for their analyses. That is why their conclusions are bound to be different. Such studies are often misleading, and the findings are only intended to suit certain particular purposes.

In the case of Deutsche Post, a very drastic law was enacted within a short period of time to push the minimum wage to an extremely high level. How high was the level? In West Germany, it was €9.8 an hour, and in East Germany, it was €8. These are of course very high levels? What happened as a result? Since the intent of the legislation was to drive out competition, several consequences ensued. First, the employment rate plummeted. I have some relevant statistics here I am sorry. I must look for them Please allow me to talk about them again after I have found them. While there was a marked drop in the employment rate, competitors who wanted to enter the market were driven away, thus leading to a drastic drop of the relevant employment rates in

the market. And, consumers were deprived of the benefits that competition might bring forth. Consequently, the enactment of legislation in this case ended up in a three-lose situation. Deutsche Post lost out. Its rivals lost out. And, even consumers lost out. This is a case that can enable Members to clearly see the possible consequences.

Germany is only one example. Then, is the concept of minimum wage desirable or undesirable in the context of Hong Kong? Before analysing the case of Hong Kong, I should perhaps say a few more words on the views of scholars. Setting a minimum wage will entail some universally recognized consequences or undesirable impacts. For example, this will affect marginal workers with low competitiveness, such as young people with no working experience, new immigrants, housewives and persons with disabilities. Besides, even if workers can keep their jobs, they may still be forced to switch from working full-time to working part-time due to their employers' redeployment of resources. Or, their fringe benefits and training opportunities may also be reduced.

Another ironic point Many Members have expressed the hope that Hong Kong can do away with the monopolization by large consortia, so that the best shop spaces in shopping centres will not always be occupied by chain stores. However, the fact is that one effect of setting a minimum wage is often reduced competition, which may force some existing SMEs or family-run shops to close down. If Members do not want their choices of meals to be confined to fast-food chains, they must consider what the present approach can really help SMEs in their survival or will instead lead to the emergence of more chain stores.

Some Members have mentioned several times that rent is the biggest problem in Hong Kong. I agree entirely, and I also think that the authorities should think up methods to tackle this problem. But the point is that if the pressure of rent is compounded by a minimum wage, the resultant double pressure will only make the operation of SMEs and small businesses even more difficult. We must therefore ascertain whether the present approach can help or harm the survival of SMEs.

President, let us look at Hong Kong again. Like it or not, Hong Kong has always been a highly capitalist society. I believe no place in the world is like

Hong Kong, where the implementation of the capitalist system and policies is enshrined in Article 5 of the Basic Law. I am talking about not only the system, but also the policies. And, it also provides that the socialist system and policies shall not be practised. Some Members have pointed out that although many American and European countries practise capitalism, they have also put in place a minimum wage. They are right, but unlike Hong Kong, they do not specify that capitalist policies must be adopted.

I have raised a question regarding this matter and received a reply from the Secretary for Justice. According to him, since the Trade Boards Ordinance was enacted as early as the 1940s, it was retained as an existing ordinance when the Basic Law was promulgated. As a result, no legal challenge will arise from this issue. I have reservation about this argument. I even think that in case any owners of SMEs are prosecuted for being unable to pay the minimum wage, they may challenge this ordinance. I think they have a chance of winning. I also encourage Members to give more thoughts to this issue in case they think that it is worthwhile to fight for a just judgment. The reason is that what are involved are not just legal issues. Rather, the system, spirit and values upheld by Hong Kong are completely changed, in a fundamental and significant manner.

One very crucial cornerstone upheld most dearly by a capitalist society is freedom, freedom and freedom. Freedom in this context does not only denote human rights and freedom in the general and abstract senses. It also denotes the individual's freedom of business operation and of investment, along with freedom in many other areas. If such freedom is infringed upon, or in case we want to make any major changes to it, should we not conduct prudent studies and discussions before making any adjustments, in a way similar to how we handle our constitutional reform, freedom of speech or enactment of legislation to implement Article 23 of the Basic Law?

However, I really wonder whether Hong Kong has already reached a point of impossible defence. It seems that the Government is unable to hold the first line of defence regarding the viability of the concept of minimum wage. It simply slips aside and gives way to the demand for legislative enactment, retreating to the next line of defence and holding onto it like the soldiers defending Leningrad. Then, it wants to concentrate on the monetary value of the minimum wage. Has it done so for the sake of expediency? Perhaps yes. Has it tried to leave some "wiggle room" for itself, as pointed out by Mr Alan

LEONG? Perhaps yes. But all these are nothing but political considerations. I maintain that if no one speaks in defence of the free market in the Legislative Council, the situation will be very unfair. Some Members have mentioned that the leftists, moderates and rightists in Hong Kong all support setting a minimum wage, and that the leftists, moderates and rightists all do not raise any objection. But is this really the case in reality? Some Members have even remarked that it is not good enough for employers and business operators to accept a minimum wage with reluctance. Rather, they must welcome the legislation with both arms, without putting up any resistance. To me, they are "bad winners", reaping double advantages. People are not even allowed to speak their minds. I find this really unacceptable.

Therefore, President, let me emphasize once again that first, I do sympathize with workers who encounter the various problems mentioned by me just now. But I am afraid that we cannot rely solely on setting a minimum wage. Rather, there are many other ways. Of course, all this is not relevant to our topic of discussion. But the fact remains that a minimum wage will in many cases achieve the opposite results and do harms. We will not be able to help the vulnerable, that is, the people we want to help most. It can only be described as robbing the poor to aid the impoverished, in the sense that while those who already have stable jobs may receive considerable pay rises after the enactment of legislation, the vulnerable members of society who are even more miserable, more silent and more helpless may be plunged into a greater plight. I hold that there is a problem with the very concept itself. Therefore, I have reservation about the efficacy of a minimum wage as a solution. I have even greater reservation about the suitability of a minimum wage in the context of Hong Kong. But my greatest reservation is about the effects of a minimum wage on Hong Kong's tourism sector.

President, do employees in the tourism sector need to possess many skills? No. But after gaining experience, people will grasp some skills indeed. However, SMEs make up the bulk of the sector, with most of the businesses being run by couples or by brothers. Is it appropriate for us to introduce a minimum wage across the board, rather than focusing specifically on those worst-hit sectors in genuine need of assistance? I have even, even, even greater reservation about this.

President, "24/7" can be described as the feature of the Hong Kong tourism sector. People work seven days a week and 24 hours a day. They must stand by for orders at any time. When on call or leading a tour group, they must give priority to serving their clients. They must provide assistance to those in need at any time. This is the culture of the sector. The Hong Kong tourism sector has always been marked by "low prices and quality services". Despite occasional scandals, generally speaking, Hong Kong's services sector is extremely good and flexible when compared with the tour groups organized by other places all over the world. However, many of the concepts enshrined in this piece of legislation are marked by enforcement difficulties, such as those relating to the definition of working hours and the keeping of work records at all times. The Secretary has admittedly heeded our opinions and drew a line for the keeping of work records, but since employees in the tourism sector must frequently work overseas, it is in general very difficult to estimate their hours worked. Therefore, in regard to introducing a minimum wage, employers are not the only ones who have very great reservation. As far as my understanding goes, even employers and trade unions in the tourism sector also think that although the concept of minimum wage may be desirable, the tourism sector may encounter enormous difficulties in enforcement. I am afraid that if we cannot change the situation in the sector properly and draw up new employment contracts, it will be very difficult for the sector to survive.

Therefore, I must repeat that overall, we must tackle a lot of problems. But setting a minimum wage may not necessarily be the best solution. I have even greater reservation about the proposal of introducing a minimum wage in Hong Kong across the board. In case a minimum wage is introduced across the board, the tourism sector will sustain the heaviest impacts. I have even, even, even greater reservation about this.

Thank you, President.

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

(No other Members indicated a wish to speak)

PRESIDENT (in Cantonese): If not, I now call upon the Secretary for Labour and Welfare to reply. This debate will come to a close after the Secretary has replied.

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): President, the Government submitted the Minimum Wage Bill (the Bill) to the Legislative Council in July last year. Today, the Second Reading debate on the Bill is resumed, and the legislative process for the minimum wage legislation has come to the moment of truth. To begin with, I must sincerely thank Mr TAM Yiu-chung, the Chairman of the Bills Committee on Minimum Wage Bill (the Bills Committee) and the 37 Bills Committee members for their thorough, meticulous and detailed discussions on the policies and contents of the Bill. All members of the Bills Committee must be given credit for smoothly completing the scrutiny of the Bill within the current Legislative Session.

The Bills Committee once invited various stakeholders to express their views. During the eight-hour public hearing that lasted one whole day, members and I listened to the opinions of 72 organizations and individuals on the Bill. Here, I must express my gratitude to all those organizations and individuals who have taken part in the discussions and put forward their submissions for their invaluable and useful advice.

The legislation for minimum wage certainly represents a major change in the Government's economic, labour and social policies. It also signifies the SAR Government's new mindset of governance and administration, a major breakthrough in bettering labour rights and benefits and a significant milestone in protecting the rights and interests of elementary workers. I wish to point out that this policy change was preceded by very hard thinking and prudent consideration. The prescription of a statutory minimum wage has always been a highly contentious topic. Over the past 11 hours of debate, Members have fully given their views in a vivid manner. This is indeed a highly controversial topic.

Some are of the view that setting a minimum wage runs counter to the market economy policy upheld by Hong Kong and will do us more harm than good. They even make it a point to say that since Hong Kong is a highly externally-oriented market economy, its flexibility in setting wages and prices is very important to maintaining its competitiveness and ability to overcome

adversities. We are naturally very clear about all this. However, the reality is that the wage levels of some elementary workers are indeed much too low, illustrating a market failure. I hold that economic progress aside, the protection of disadvantaged workers and the promotion of social harmony are two equally important social policy objectives. In a just society like ours, we must not turn a blind eye to any exploitation. The key lies in the striking of a proper balance. Over the past few years, we have been going about the task of legislating for minimum wage with precisely this objective in mind.

The Bill provides for a legal framework for the setting of a minimum wage. It aims to set an appropriate statutory minimum wage for the prevention of unreasonably low wages on the one hand, and to ensure that no massive loss of elementary jobs will result from any excessive effects on market flexibility, economic growth and competitiveness on the other. The main objective of the Bill is to set a wage floor calculated on an hourly basis, rather than a living wage. All major provisions of the Bill, such as those on the definition of wages, enforcement and penalties, are aligned as closely as possible with those under the Employment Ordinance, so as to avoid unnecessary addition to the compliance cost for employers.

During the scrutiny of the Bill, Members expressed support for the proposals of the Bill as a whole and made a lot of constructive suggestions. Later on, at the Committee stage, I shall move the amendments worked out by the Government after thorough consideration and balancing the views of all sides. These amendments have incorporated the views of all sides as much as possible, and at the same time, they have also taken into consideration the interests of employers, employees and society as a whole in a pragmatic and balanced manner. This is a very important point. The Bills Committee supports our amendments in principle, and I hope that Members will also render us their support.

Some of the amendments I am going to move seek to expand the exemption of interns from the statutory minimum wage, in line with the proposal of certain Members and stakeholders on preserving internship opportunities for students. At the same time, some of the exemption arrangements are subject to limitations, with a view to minimizing abuses and the replacement of elementary workers by interns. This is a balanced arrangement.

As for the setting of a minimum wage and the reports of the Minimum Wage Commission (MWC), the Government's amendment requires the MWC to submit a report to the Chief Executive at least once every two years. The Government will also make arrangements for the release of the report as soon as possible. The original Bill adopts an open attitude and proposes to conduct a review of the minimum wage rate only when necessary, rather than setting a rigid requirement. However, we appreciate Members' concern, so we have worked out an amendment to respond positively to Members' view that a specific review cycle should be stipulated in the law clearly, and to address their concern about the right of access to the MWC reports. The Government's amendments can be described as a combination of the three significant elements of regulation, flexibility and labour rights protection, and a big step forward. I hope Members will support them.

Some Members have put forward their respective amendments, proposing to reduce the review cycle to at least once a year. I wish to point out that a prudent attempt to balance the overall interests of Hong Kong is the most important of all important considerations in the enactment of legislation on minimum wage. I therefore cannot accept their amendments. I shall give a detailed explanation when I speak at the Committee stage.

As for the requirements on calculating hours worked and commission for the purpose of the minimum wage, the Bills Committee has conducted very thorough discussions. In view of Members' concern, the Government will propose a number of technical and drafting amendments, so as to make the Bill more satisfactory and precise. In addition, we will also propose to amend the provision on keeping records of the total number of hours worked, so as to offer exemption to employees who earn more than a specified income, and to reduce administrative work and cost on the part of employers. We will, on the basis of the statutory minimum wage rate, formulate the wage ceiling for the purpose of exempting employees from keeping records of the total number of hours worked. And, we will submit the relevant subsidiary legislation to the Legislative Council for scrutiny.

With regard to special arrangements for persons with disabilities (PWDs), Members generally agree that the Bill should provide for a mechanism empowering PWDs to opt for productivity assessment, with a view to reducing the possible impact of a statutory minimum wage on the employment of certain

PWDs. I note this proposal with delight. The Government's amendment provides for a transitional arrangement for PWDs already in employment. It has at the same time appropriately incorporated the views of members. It was formulated in conjunction with rehabilitation organizations, and the Equal Opportunities Commission has all along taken part in our discussions. During the scrutiny of the Bill, members also made many suggestions on the operation of the assessment mechanism. Within the two years following the commencement of the minimum wage law, the Government will review this special arrangement in the light of experience gained in actual operation.

Besides, the Government's amendments also involve the drafting of certain provisions of the Bill, or introduce some appropriate fine-tuning to them. The aim is to make them clearer and easier to understand. This will not affect the original policy intent of the Bill.

During the scrutiny of the Bill and the debate just now, some Members expressed concern about certain contents of the Bill. I wish to take this opportunity to reiterate a number of major principles upheld by the Government. For reasons of such major principles, we are unable to accept the relevant amendments put forward by Members.

Some Members have raised the view that the statutory minimum wage should be sufficient to meet the livelihood needs of employees and their families, and that it must not be lower than the Comprehensive Social Security Assistance (CSSA) rates. For quite some time, the Government has been stating clearly its disagreement to this viewpoint. I wish reiterate here that the minimum wage policy is meant to set a wage floor, with a view to preventing unreasonably low wages. A statutory minimum wage should not be equated with a living wage. As Members know, wages are the rewards for employees' labour, and livelihood needs will vary from family to family, with very great variances. The minimum wage may not necessarily be able to meet the livelihood needs of all families; eligible families with financial needs may apply for appropriate assistance under our present social security system, such as financial aid for low-income households. Likewise, the minimum wage cannot be compared directly with CSSA rates either. Why? The reason is that CSSA rates are determined in the light of a family's circumstances, rather than those of individuals.

According to the concept of a wage floor, the formulation of a statutory minimum wage must adhere strictly to an evidence-based approach. The proposal that the Legislative Council may approve or revoke, but not amend, the proposed statutory minimum wage rate is similarly intended to uphold the objective evidence-based approach. Appointments to the MWC must be based on abilities and expertise, and its members must be persons with labour, commercial, academic and government backgrounds. Its non-official members must be appointed in their personal capacities, so that the views of different sectors can be fully considered and appropriate minimum wage rates can be formulated and proposed jointly based on Hong Kong's overall interests.

When conducting studies on formulating the first statutory minimum wage rate, the Provisional Minimum Wage Commission will make reference to a host of indicators, other considerations that are relevant to the statutory minimum wage policy and indicators and also the potential impacts of different rates of statutory minimum wage.

The host of indicators mainly involves general economic conditions, labour market conditions, competitiveness and the standard of living. And, "other considerations that are relevant to the statutory minimum wage policy and indicators" are social harmony, encouraging employment, enhancing quality of life, raising purchasing power and other possible chain effects.

As for the exemption of live-in domestic workers from the statutory minimum wage rate, it is an appropriate arrangement formulated in the light of Hong Kong's conditions and after prudent consideration of the views of all sides and the relevant circumstances. There is a sound legal basis. The Bill proposes to exempt live-in domestic workers, local and foreign ones alike. The basis of the exemption is the very nature of domestic workers' jobs, the fact that they must live in their employers' homes. There is nothing whatsoever to do with sex or racial discrimination. There is no discrimination against foreign or female employees. The exemption for live-in domestic workers is founded on four major considerations.

First, the distinctive working pattern of live-in domestic workers, especially working and resting in the employer's household, will give rise to practical difficulties in calculating and recording the total number of hours worked in their case. But the Bill is mainly about computing the minimum wage rate on an hourly basis.

Second, it is the distinctive remuneration package for live-in domestic workers. They enjoy in-kind benefits not available to non-live-in domestic workers, that is, free accommodation, and usually free food, and savings on travelling expenses and time between home and work. Most low-paid workers in Hong Kong do not enjoy such in-kind benefits.

Third, as pointed out by some stakeholders, many families are heavily reliant on the services of live-in domestic workers. If we lightly ignore the distinctive working pattern and remuneration package I have mentioned and include them in the statutory minimum wage system, many families may cease to employ any domestic workers due to financial pressure. Either of the working spouses (more likely the wife) would be forced to leave the workforce and stay home. Against an ageing population in Hong Kong, any measure that may reduce the labour participation rate of those in the economically active age brackets will certainly affect Hong Kong's social and economic development.

Fourth, some stakeholders have advised us that apart from including live-in foreign domestic helpers in the statutory minimum wage application, the Government should, because of the impossibility of calculating the number of hours worked by them, prescribe "standard working hours" as the basis of computing wages and also remove the "live-in" requirement. These two requests amount to a significant departure from the existing foreign domestic helper policy. The original intent of this policy is to tackle the shortage of live-in domestic helpers in Hong Kong. And, as rightly pointed out by some stakeholders, if the "live-in" requirement is removed, the importation of foreign domestic helpers should be treated the same as the arrangements for importing other non-local low-skill workers, meaning that the employment of foreign domestic helpers should be subject to the regulation and control of the Supplementary Importation of Labour Scheme.

President, regarding the legislative timetable, we estimate that if the Bill and the Government's amendments are passed by the Legislative Council, the MWC can submit a proposal on the first statutory minimum wage rate before the end of the summer holidays (that is, before the end of August). After studying the rate proposed by the Commission and making a decision, the Government will submit to the Legislative Council the subsidiary legislation on the first statutory minimum wage rate as early as possible. Allowing time for society and the business sector to make the required preparations, we hope that the

statutory minimum wage rate can commence fully in the first half of next year. The Government will closely monitor the situation and specify a date for implementing the statutory minimum wage in the light of the actual progress.

Before the commencement of the statutory minimum wage rate, the Labour Department (LD) will proactively conduct publicity and promotion activities. Many Members are very concerned about this matter and hope that more publicity, educational and explanatory efforts can be made. We will certainly do so to enable both employers and employees to understand clearly their respective rights and interests under the statutory minimum wage system. The publicity materials of the LD will set out some specific examples applicable to different trades and occupations, such as the tourism, catering and logistics industries, so as to explain the application of the minimum wage legislation. The LD will also continue to maintain contact and negotiations with stakeholders on the preparations for the commencement of the minimum wage law, such as enforcement, consultation, publicity and other aspects of work. The task will be undertaken in accordance with the established resource allocation mechanism. After finalizing the details of the productivity assessment mechanism for PWDs, the Government will decide on the specific arrangements regarding the charging of assessment fees.

President, this time around the Government has proposed eight amendments to the Bill of its own accord, showing fully that we are sincere, heedful and ready to take good advice. In regard to those proposals which run counter to our fundamental principles, or which may achieve the opposite results, we will definitely stick to our position and oppose Members' amendments. Discussions on a statutory minimum wage rate have been going on for years. It has not been easy at all to get the present result. We have only one aim — striking the balance I have mentioned, in the hope of maximizing the advantages of the minimum wage system on the one hand and minimizing the undesirable effects on the other. I implore Members to support the Bill and the amendments we are going to move later on.

Lastly, I wish to take this opportunity to thank the Labour Advisory Board for co-ordinating the efforts of promoting the enactment of legislation on minimum wage. I am also thankful to the business and labour sectors for their tolerance and compassionate understanding. I must also thank the Legislative

Council, especially the Bills Committee, for their hard work in the past months. With their help, we are able to join hands to establish a suitable minimum wage system in Hong Kong and write a monumental page in the history of Hong Kong's social and economic development.

Thank you, President.

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

(Members raised their hands)

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

(Members raised their hands)

Ms Emily LAU rose to claim a division.

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

(When the division bell was ringing)

PRESIDENT (in Cantonese): Mr LEE Cheuk-yan, please remove the placard before you because I cannot see the Members behind you. I do not know who are present and who are not as a result.

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

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

Mr Albert HO, Dr Raymond HO, Mr LEE Cheuk-yan, Mr Fred LI, Dr Margaret NG, Mr James TO, Mr CHEUNG Man-kwong, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Mr LEUNG Yiu-chung, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Ms Emily LAU, Mr Andrew CHENG, Mr Timothy FOK, Mr TAM Yiu-chung, Mr Abraham SHEK, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr Frederick FUNG, Ms Audrey EU, Mr Vincent FANG, Mr WONG Kwok-hing, Mr LEE Wing-tat, Dr Joseph LEE, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong, Mr Ronny TONG, Prof Patrick LAU, Mr KAM Nai-wai, Dr LAM Tai-fai, Mr CHAN Hak-kan, Mr Paul CHAN, Mr CHAN Kin-por, Dr Priscilla LEUNG, Dr LEUNG Ka-lau, Mr CHEUNG Kwok-che, Mr WONG Sing-chi, Mr WONG Kwok-kin, Mr IP Wai-ming, Mr IP Kwok-him, Mrs Regina IP, Dr PAN Pey-chyou, Mr Alan LEONG, Mr LEUNG Kwok-hung, Miss Tanya CHAN, Mr Albert CHAN and Mr WONG Yuk-man voted in favour of the motion.

Mr Paul TSE voted against the motion.

THE PRESIDENT, MR JASPER TSANG, did not cast any vote.

THE PRESIDENT announced that there were 55 Members present, 53 were in favour of the motion and one against it. Since the question was agreed by a majority of the Members present, he therefore declared that the motion was passed.

CLERK (in Cantonese): Minimum Wage Bill.

Council went into Committee.

Committee Stage

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

MINIMUM WAGE BILL

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Minimum Wage Bill

CLERK (in Cantonese): Clauses 1, 4, 9, 12, 14, 19 and 22.

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

MR LEE CHEUK-YAN (in Cantonese): President, I am not opposing the incorporation of these clauses into the Bill. But I wish to speak on clause 9 in particular, which is a very important of the whole Bill. I must state the Confederation of Trade Unions' position on this clause.

Why did I say this clause is so vital? Because clause 9 is on employees' entitlement to the minimum wage. This means that apart from receiving the wages stipulated in their contracts, employees are entitled to extra remuneration in case their contractual wages are lower than the minimum wage rate calculated in accordance with clause 7(2) of the Bill. The actual amount shall be the discrepancy between the two. Therefore, the whole concept is just about discrepancy, rather than any contractual wages. Members must realize that our case is different from the case in foreign countries, where the laws provide that no contractual wages shall be lower than the minimum wage rates. But in Hong Kong, we are talking about the discrepancy.

What is the difference between the two types of cases? Let me cite an example. What are contractual wages? Let us assume that the minimum wage is \$33 an hour. A messenger who works for his employer for eight hours a day from 10 am to 6 pm under the employment contract will get a daily wage of \$80. This means that his hourly wage is \$10. Members may wonder why this can be

possible under the proposed legislation. This is actually possible because the concept of discrepancy is applied. Even if the hourly wage is \$10 or even as low as the level of \$7 offered to toilet cleaning workers, it is still OK as long as it is stated in the employment contract. In what case will it be not OK? After marking the number of hours worked, the number can be multiplied by the minimum wage. In this way, there is a wage stated in the employment contract, and the minimum wage is quite another matter. But the discrepancy can be calculated.

What is the difference? Suppose the messenger works from 9 am to 6 pm at the very beginning, but all of a sudden, the employer asks him to work from 9 am to 1 pm only. He is not required to work in the remaining five hours, and he may go home. Members may ask whether he will get any pay for these five hours. He will, but the pay will be calculated at the rate of \$10 an hour, not the minimum wage. Hence, there is a great difference. In foreign countries, all will be very clear — the contractual wage must be \$33 an hour. But in Hong Kong, given the wording of the Bill, certain hours worked may not be counted for the purpose of the minimum wage. Rather, all depends on the contractual wage. If the contractual wage is low, the pay will be low. If one's basic wage is \$10, one will receive \$10. If it is \$15, one will get just \$15. It cannot be raised to \$33.

This example can show us that this clause cannot provide workers with adequate protection. As clause 9 is presently worded, there may be two kinds of hours worked for employees. Members must pay attention to this in future. Therefore, the whole thing is about "marking of hours". The hours worked belonging to the first kind are those that can be counted under the minimum wage legislation. Dr LEUNG Ka-lau's amendments regarding hours worked are all about this very concept, that is, the kind of hours worked that can be counted for the purpose of calculating the minimum wage.

The hours worked belonging to the second kind are not within the definition set out in the minimum wage legislation. They are only within the definition set out in the contract signed between the employer and the employee. The two concepts are different. What I want to point out is that while certain hours worked may be defined as hours worked under the contract, they may not be counted as hours worked under the minimum wage legislation. Later on, I would draw a comparison. For example, is one's meal time regarded as hours

worked? The contract may stipulate that this is part of the hours worked, but according to the minimum wage legislation as drafted now, it is certainly not part of hours worked. Even though the Government now proposes to delete the provision that excludes any period allowed by the employer for a meal, it is only a technical deletion. The Bill as it is drafted still excludes meal time. Members must be very clear that even though the provision that excludes meal time is deleted, the Bill as it is drafted does not include meal time all the same. One's employment contract may include meal time, but this is not meaningful because the hourly wage may just be \$10 or so. There are two ways of calculating hours worked. Therefore, when explaining labour legislation in future, Members must bear in mind one point about the minimum wage legislation. This means that two concepts must be clarified. One is about the hours worked under employment contracts. The other is the concept about the hours worked which can be factored into the calculation of the minimum hourly wage under the minimum wage law. The two are very different.

Honestly, Members all know that I naturally want to get as much as possible. Some have asked why I have not used the concept of contractual working hours in the part on hours worked under the minimum wage legislation. I have not done so because I find it very difficult to amend the provisions. The reason is that there are no standard working hours in Hong Kong, nor is there any "overtime pay". I am therefore unable to amend the relevant provision. I very much hope that the Government can explore how to plug this loophole in the future. My objective is to count all contractual working hours in calculating the minimum wage. But it is a pity that there are no standard working hours and "overtime pay" in Hong Kong. It is impossible for me to achieve this policy objective. Therefore, I am unable to put forward any amendment in this regard. I very much hope that the Government can note this problem, and we must try to plug the loophole. I have tried to explain to Members that two concepts must be noted when we study the legislation. Thank you, President.

DR LEUNG KA-LAU (in Cantonese): I have been given to understand that in the future, the Court will consider discussions made in this Council during the legislative process. As far as my understanding goes, as clause 3 provides for the hours worked, which states that "the hours worked by an employee in a wage period must be taken to include" the content which follows that part of the clause (though the content that follows is not exhaustive and there may be other

scenarios not covered by it), as far as my understanding goes, the contract working hours which you mentioned just now are covered by the Minimum Wage Bill. Using your example just now, if the contract working hours were eight hours at an hourly rate of \$10 and the employer asked the employee to go home for five hours during the working hours, as far as my understanding goes, these five hours during which the employee had gone home should count. These five hours cannot be excluded from the calculation. I hold that these are contract working hours which should be covered by the Bill.

MR LEE CHEUK-YAN (in Cantonese): Sorry, I do not wish to explain the law here, but I wish to respond to Dr LEUNG Ka-lau that those hours are really not counted because it is not prescribed in the Bill that the hours worked include the contract working hours.

In the course of scrutiny at the Bill Committee, I also raised this issue, pointing out that the Bill clearly does not cover all of the contract working hours. As you can see from the wordings of clause 3 (let me read them out for you), "the hours worked by an employee in a wage period include any time during which the employee is, in accordance with the contract of employment" — you may be misled by this part to think that the contract working hours are covered here — "or with the agreement or at the direction of the employer," "in attendance at a place of employment, irrespective of whether he or she is provided with work or". In other words, on the premise of a contract of employment, only the time during which you are working at the place of employment with the agreement or at the direction of the employer is counted.

In other words, once your boss asks you to go home, that period of time is covered by the contract working hours. But Members have to pay attention to the fact that after you have arrived home, you are no longer in attendance at the place of employment at the direction or with the agreement of your employer. This is where the problem lies, because you have already gone home. Despite the fact that you have been directed by your employer to go home, but he has not asked you to work at home. He only says, "Go home. You do not need to work today. There is not enough work for you. Good bye." Hence, you are not in attendance at the place of employment at the direction of your employer. If my employer asks me to work at home, my home will become my place of employment. But he does not ask me to work at home, he only bids me good

bye and says that I can go for a tea, Starbucks or wherever I like. Hence, this does not involve your employer's direction or his agreement. Members have to pay attention to this point.

Chairman, this is all I wish to say. Thank you, Chairman.

CHAIRMAN (in Cantonese): I hope Members will try not to repeat points that should be discussed at the Bills Committee.

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

(No Member indicated a wish to speak)

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

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Chairman, I do not need to speak.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clauses 1, 4, 9, 12, 14, 19 and 22 stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 2 and 3.

CHAIRMAN (in Cantonese): Dr LEUNG Ka-lau has given notice to move an amendment to clause 2 to amend the definition of "place of employment". Besides, Mr LEE Cheuk-yan and the Secretary for Labour and Welfare have also separately given notice to move amendments to clause 3.

Irrespective of whether Dr LEUNG Ka-lau's amendment to clause 2 is passed, both Mr LEE Cheuk-yan and the Secretary for Labour and Welfare may move their amendments to clause 3. If Mr LEE Cheuk-yan's amendment is passed, the Secretary for Labour and Welfare may not move his amendment.

CHAIRMAN (in Cantonese): Members may now debate the original provisions as well as the amendments of Dr LEUNG Ka-lau, Mr LEE Cheuk-yan and the Secretary for Labour and Welfare jointly. I will call upon Dr LEUNG Ka-lau to speak and move his amendment first.

DR LEUNG KA-LAU (in Cantonese): Chairman, I move the amendment to clause 2 to amend the definition of place of employment — I did not expect that I would be the one to move this amendment originally.

Why do I have to amend the definition of place of employment? Because this is fundamental to the controversy over the counting of hours worked. In fact, the first thing that the Bill has to deal with is the counting of hours worked. First of all, I wish to clarify that doctors are not low-paid workers and a court precedent has been set that the time during which doctors are on standby duties is counted as their hours worked, so this is unrelated to my sector.

Why am I concerned about this? Because in the past decade, I have found quite many precedents about cases involving working hours, and I have seen many unfair aspects and got to know how these problems involving working hours, in particular involving time on standby duties, can be addressed in a fairer manner. What I meant by unfairness just now is that some previous court judgments on cases in which the employees, under certain circumstances, had to be on standby duties overnight at places next to their working places and be ready

anytime when they were called for work, but such time on standby duties was not counted as their hours worked.

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

In some extreme cases, such as the precedent of the Correctional Services Department (CSD) sometime ago, the Government requested the CSD staff to be in attendance on a deserted island, but the time during which they were in attendance was not counted as their hours worked. Moreover, in 2002, another precedent was set concerning the Housing Department, in which a welfare worker was requested to wait for work on the third floor of a home for the elderly where the first and second floors were designated for the elderly. In case the elderly have any needs, he could take care of them. However, the time he spent waiting for work was also not counted as his hours worked. I think this is unfair.

I wish to clarify that this amendment of mine, strictly speaking, does not expand the definition of hours worked or place of employment in the original clause, but rather, it seeks to plug the loophole which exists in the original Bill or will remain in the Bill as amended by the Government later. Then, what is the loophole? The original clause 3(1)(a) under "Hours worked" now provides that "the hours worked by an employee in a wage period must be taken to include any time during which the employee is in attendance at a place of employment, irrespective of whether he or she is provided with work". We can clearly see from "irrespective of whether he or she is provided with work" that the original clause intends to count the time during which an employee is on certain standby duties as the hours worked because irrespective of whether the employee is provided with work during that time, such time spent is covered by the Bill as time on standby duties.

Then, what is the controversy about the loophole? It lies in the place of employment. Just as the two cases of unfairness I cited earlier (that is, the precedents about the CSD and the home for the elderly), why did the Court rule that the time during which the employee was waiting for work was not counted as his hours worked? The reason lies in the fact that the room where he slept was not his place of work. It is as simple as that. Hence, the definition of the place of work is a very critical factor to the hours worked. My amendment thus seeks

to amend the definition of "Place of employment" rather than the definition of "Hours worked" because an important consideration of the original clause 3(1) is whether the place where he is in attendance is his place of employment.

How does the Bill define place of employment? In clause 2, which is the interpretative provision, "place of employment" is defined as, "in relation to an employee, means any place at which the employee is, in accordance with the contract of employment or with the agreement or at the direction of the employer, in attendance for the purpose of doing work or receiving training". The crux thus lies in "doing work". Does "doing work" include "waiting for work" as referred to in clause 3? The Bill does not clearly provide for that. I can envisage that disputes will arise between employers and employees in the future. When an employer requests his employee to wait for work at a certain place, the employee will think that the time he spends on waiting for work should be counted as his hours worked, but his employer will contest that the place where the employee has waited for work is not his place of employment because the place of employment is defined as the place where an employee is in attendance for the purpose of doing work. Conversely the employee will also say that the crux is whether "doing work" includes "waiting for work". Judging from clause 3, it appears to be included because clause 3 specifies that "irrespective of whether he or she is provided with work", so "waiting for work" should be included. Right? But the loophole of the Bill is that the employer will contest that the place where the employee is in attendance does not fulfil the definition of "place of employment" because the latter is defined as a place for doing work. In the end, disputes will arise between the two parties over whether "doing work" includes "waiting for work".

Members of the Bill Committee have discussed this dispute for a number of times. This topic was debated at the meetings of the Bills Committee on not less than three occasions. What was the reply of the Government? It replied that it would depend on the terms of the contracts. If it was provided in the contract that time on standby duties falls under the hours worked, such time would be counted as the hours worked; otherwise, it would not be counted. This gives rise to another problem. If it depends on the terms of the contracts, this may clash with another clause (clause 14) in the Bill on "No contracting out", meaning that a contract should not specifically preclude certain types of work. This is illogical. A private contract cannot override the provisions of the law. Hence, in case disputes arise over whether "waiting for work" is regarded as "doing work", the

matter will have to be settled in Court, which is not a desirable approach. I hope that we can strive for the greatest degree of clarity in making a law.

Second, just as unfairness exists in the two precedents I mentioned earlier about the CSD and the home for the elderly, justice should also not be taken for granted. What does my amendment to clause 2 seek to do? It simply seeks to add "waiting for work" after "the purpose of doing work" in the definition of "place of employment". The clause as amended will read "in relation to an employee, means any place" — what are those places? — "at which the employee is, in accordance with the contract of employment or with the agreement or at the direction of the employer, in attendance for the purpose of doing work, waiting for work or receiving training". In this way, clauses 2 and 3 will now tally with each other. Clause 3 specifies that as long as an employee is waiting for work at the place of employment, the time spent on waiting for work will be counted as the hours worked, while clause 2 also provides for the definition of place of employment and that the place where the employee is waiting for work is also included because the employee is, after all, in attendance at that place at the direction of his employer.

When it comes to the question of whether Members should support this amendment, I urge Members to consider three conditions. If these three conditions are met, they should support this amendment.

The first condition is whether they agree with my goal, which is to clarify that while time used for private purposes is not counted, what types of standby-duty time should be counted. I seek not to count the time which the employers ask their employees to help under very exceptional circumstances as standby-duty time. I seek not to do that. I only hope that the Bill can clearly differentiate between these two situations. This is my goal. If Members do not agree with this goal, they can choose not to support this amendment because our goals are different.

The second condition is whether the clause as it stands now or the clause as amended by the Government can achieve my goal. In fact, during the scrutiny of the Bill, I had repeatedly asked the Government how it would include in the Bill the two precedents about the home for the elderly and the CSD. Unfortunately, the Government was unwilling to answer this question to the very end. It insisted that the two precedents were related to the CSR (that is, the Civil

Service Regulation), which were irrelevant to the Bill. However, taking the Hospital Authority as an example, which is now independent of the Government, it has copied the entire CSR into our contracts. As these provisions also appear in private contracts, the Government should make an account to us. But it was unwilling to do so.

Moreover, I hold that the literal meaning of "doing work" is too narrow. It has been clearly provided in the Bill that a place is regarded as the place of employment only if an employee is in attendance at that place for the purpose of doing work. Should disputes arise, the Court may not consider the interpretation made of "doing work" by the Government or Members of the Legislative Council during the legislative process. Irrespective of what we have discussed now, if disputes arise and the matter is taken to Court, the Court will hold that the term "doing work" is plain in meaning and it will not find it necessary to base its consideration on the legislative intent, which is the interpretation made by this Council or the Government in making this law. It will disregard this interpretation.

Besides, Members have raised concern at the meetings of the Bills Committee about whether the time during which property agents wait for calls in their offices, tour guides conduct tours outside Hong Kong and employees who have to stay overnight in Guangzhou in order to deliver goods there are counted as the hours worked. In response to these concerns, the Government would often just repeat clauses 2 and 3, stating that the time during which employees having to stay overnight to deliver goods to Guangzhou or tour guides conducting tours outside Hong Kong is not considered as their working hours. But the Government actually has not explained why some situations are covered, while other situations are not.

I thus hold that the Bill now cannot achieve the goal I mentioned just now. It fails to explain why certain time during which you are waiting for work is counted, while some other time is considered as private time and thus not counted. I wish to add that in its explanation on the example of delivering goods to Guangzhou, the Government said that the employee had to stay overnight in Guangzhou because he could not find transport back to Hong Kong, and thus the night he stayed in Guangzhou was considered as his private time. However, this situation is not provided for in the Bill.

The third condition is whether this amendment can achieve the goal I wish to achieve. If not, this amendment is unnecessary. Earlier, I did try different ways to amend the Bill and see if these versions could achieve this goal. In my amendment to the definition of place of employment, I originally wanted to use "any purpose" in respect of the purpose of an employee being in attendance, as long as he is directed by his employer to do so. The Government then asked whether going back to the office to watch the firework display should be counted as a purpose. If any purpose should be recognized as long as it is agreed by the employer, which is the same as my original idea, should employees going back to their office with the agreement of their employer to watch the firework display be recognized? I then realized that this would not be feasible.

I thus revised my amendment to any purpose which is work-related, but the Legal Adviser to the Legislative Council still held that this definition was too broad. In his letter explaining to me whether certain worked hours are counted, the Legal Adviser pointed out that the Court will look at the facts and one of its considerations is: "Is the employee supposed to be working?". If the employee is waiting for work, such time should be counted. Then, how will the Court interpret "waiting for work"? I hope Members will understand that if an employee stays at a place overnight to wait for work in the next morning, to me, this is not waiting for work. If this is regarded as waiting for work, we are all waiting for death because I will ultimately die.

Then, how should "waiting for work" be interpreted?(*The buzzer sounded*)

.....

DEPUTY CHAIRMAN (in Cantonese): Dr LEUNG, your speaking time is up.

DR LEUNG KA-LAU (in Cantonese): If you are ready for work anytime you are called, this is "waiting for work"

Proposed Amendment

Clause 2 (see Annex I)

DEPUTY CHAIRMAN (in Cantonese): I now call upon Mr LEE Cheuk-yan to speak, to be followed by the Secretary for Labour and Welfare; but no amendments are to be moved at this stage.

MR LEE CHEUK-YAN (in Cantonese): Deputy Chairman, in fact, this placard carries several topics. I have more than 10 of these, so when I am going to speak on a certain topic, I will show you what I am going to talk about. *(Laughter)* Now what I wish to speak on my amendment relating to the fact that employees should be protected when he or she is travelling (in either direction) between his or her place of residence and the place of employment which is not his or her usual place of employment. Why am I proposing this amendment? As I have also pointed out earlier, in fact, a key point in the whole minimum wage legislation is "marking the hours", and what "hours" should be "marked", and what other "hours" should not be "marked", which is the inclusion of hours worked mentioned in clause 3 pertaining to "marking of the hours worked".

Regarding "marking the hours", what is the wording in clause 3 about travelling (in either direction) between the place of residence and the place of employment? It is written like this: not to include — the "marking of the hours worked" does not include — any time during which the employee is travelling (in either direction) between his or her place of residence and his or her place of employment. That is to say, the travelling time from the employee's home to the place of employment will not be included. It is clearly written that the hours should not be "marked", and then in the brackets (of the Chinese version of the Bill), it provides that "other than a place of employment that is outside Hong Kong and is not his or her usual place of employment". What does that mean? Let me first explain the relevant legislation before I explain my proposed amendment — the relevant legislation is very simple, that is, the travelling time from the employee's home to the place of employment is not counted. But if one day your boss tells you to go to work in Dongguan, then you are travelling from your home to a place of employment that is not your usual place of employment, and if you go to work in Dongguan every day, then it is not going to count, for the provision requires that it should not be a usual place of employment. So if you have to travel to work outside Hong Kong and it is not your usual place of employment, that is, one day you have to go to work in Dongguan, then the travelling time will be counted, this is very clear.

My amendment is very clear. Why should Dongguan, which is not a usual place of employment, be counted, and why should a place of employment which is not a usual place of employment in Hong Kong, not be counted? Why is protection not afforded?

Therefore, my amendment is very simple. For example, I live in Tin Shui Wai, and I go to Tsuen Wan to work every day, but out of my expectation, one day I am ordered to go to work in Sha Tin. The travelling distance has significantly increased, and it is not a usual place of employment, then the travelling time during which I am travelling between my place of residence and the place of employment which is not a usual place of employment should be counted as hours worked, which is the same as going to Dongguan to work. My idea is very straightforward, so that the travelling time could be marked as "hours worked"; this is what I mean. Therefore, to employees, this amendment will rarely apply, because employees seldom travel to a place of employment which is not a usual place of employment. It just so happens that one day an employee has to travel to a place of employment which is not the usual place of employment, and according to the relevant provision, this place should be a place outside Hong Kong, therefore the travelling time may be counted as hours worked.

During the discussions with the Government — I am trying to refute my view point for the Government — the Government may argue that every day, fitting-out workers need to travel to different places of employment which are not usual places of employment, then should their travelling hours be marked simply because they travel daily to different places of employment which are not their usual places of employment? We have to bear in mind that if you travel to a place of employment which is not the usual place of employment on a daily basis, then you will have no usual place of employment; if you have no usual place of employment, how come you have a place of employment which is not the usual place of employment? Do Members understand what I mean? Right? If you do not have a usual place of employment, then you will have no place of employment which is not a usual place of employment. Therefore, these people need not even think about it, for fitting-out workers, I am sorry, this is really none of their business, because they go to a place of employment which is not the usual place of employment on a daily basis, because they have no usual place of employment. Furthermore, on the other hand, if the employee actually has no usual place of employment, then how should the travelling time be calculated, in fact, it has to be dealt with by means of contracts. Our proposal concerning

"marking the hours" does not include this, and it is very clear, those working hours will not be marked.

This is my amendment, which I consider will provide better protection to workers because it will be fairer to them, and they have to spend more travelling time from their place of residence to the place of employment which is not their usual place of employment. Thank you, Deputy Chairman.

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Deputy Chairman, the Government opposes the amendment to clause 2 of the Minimum Wage Bill proposed by Dr LEUNG Ka-lau in relation to the definition of "place of employment", for the purpose of including a place where an employee waits for work, and the amendment proposed by Mr LEE Cheuk-yan to clause 3 to include the travelling time spent when an employee is travelling (in either direction) between his or her place of residence and his or her place of employment that is not his or her usual place of employment as hours worked.

Clause 2 of the Bill has clearly stated that the "place of employment", in relation to an employee, means any place at which the employee is, in accordance with the contract of employment or with the agreement or at the direction of the employer, in attendance for the purpose of doing work or receiving training.

According to the amendment proposed by Dr LEUNG Ka-lau, the definition of "place of employment" would include all the workplaces where employees wait for work. This will not only significantly expand the definition of "place of employment", but also affect the basic principle relating to the calculation of hours worked under clause 3 of the Bill considerably.

I hope Members can note that there are variations in the arrangements when an employee is on call or standby. Before we could decide whether or not the on-call or standby period is counted as hours worked, we must also take the definition of "place of employment" into consideration. Besides covering circumstances and providing general principles on the definitions of "place of employment" and "hours worked" irrespective of whether the employee is provided with work or training at the time during which the employee is in attendance at a place of employment, the existing clauses 2 and 3 of the Bill will provide sufficient flexibility to deal with different arrangements on the

calculation of hours worked under different circumstances (including standby or on-call work). In short, as long as a certain on-call period meets the relevant definitions in clauses 2 and 3, they will be taken as the hours worked in the calculation of minimum wage.

According to Dr LEUNG Ka-lau's amendment, the definition of "place of employment" will be widened to include all the on-call or standby time and any location at which an employee is in attendance for the purpose of waiting for work. In view of the fact that the on-call or standby arrangements of many trades are subject to the employment contract or mutual agreement between the employer and the employee, while there are diversified on-call or standby modes which suit different needs, we therefore consider it not a proper or sound approach to include any location at which an employee is in attendance for the purpose of waiting for work as the "place of employment", as this will ignore a variety of practical arrangements to be made between employers and employees.

For example, because Dr LEUNG Ka-lau's amendment proposes to include a place where an employee is waiting for work in the definition of "place of employment", so the private time of an employee on overseas business trips, such as a tour leader who escorts his tour group on an overseas trip, should be counted as the hours worked in computing minimum wage. There will be a grey area and it will cause disputes between the employer and employee. Employers and employees will argue whether it is the standby time of the employee, or it is simply the employee's private time. As there is no clear criterion, it will give rise to disputes and litigations between employers and employees, which will in turn undermine the harmonious labour relations.

At the same time, we also need to consider whether the proposed amendment is reasonable and fair to both employers and employees. Whether or not a place is "place of employment" is a factual question, so we suggest that employers and employees should clarify their respective understandings. A definition too wide in coverage could lead to controversy, which is detrimental to a harmonious labour relationship.

As the "place of employment" is an important concept in the Bill, the Minimum Wage Bill Committee (the Bills Committee) has already conducted detailed and in-depth discussions on this fundamental concept.

Mr LEE Cheuk-yan's amendment to clause 3 proposes that the time during which the employee is travelling (in either direction) between his or her place of residence and his or her place of employment that is not his or her usual place of employment should be deemed "hours worked". I would like to point out clearly that the proposed amendment is vastly and fundamentally different from the essence of the original clause of the Bill. The Government opposes the amendment proposed by Mr LEE Cheuk-yan.

According to clause 3 of the Bill, "hours worked" shall include any time during which the employee is travelling (in either direction) between his or her place of residence and his or her place of employment that is outside Hong Kong and is not his or her usual place of employment. The main purpose of this is to take care of the exceptional situations in which an employee needs to go to work in a place of employment outside Hong Kong which is not the employee's usual place of employment; in general, the travelling time is relatively longer than the usual travelling time.

We must note that, once this concept is extended to a place of employment which is not a usual place of employment in Hong Kong by including the relevant travelling time in the computation of hours worked, it will give rise to enormous disputes in reality. For example, the travelling time each employee needs is different, depending on the location of his or her place of residence, and even the travelling time the same employee needs on each occasion can be quite different because of various reasons (such as different traffic conditions), therefore it will be rather difficult to enforce. When disputes arise between employers and employees, any determination will be difficult in the absence of objective criteria, such as the length of travelling time and whether or not the means of transport selected by the employee is reasonable, and so on.

We must be particularly careful that Mr LEE Cheuk-yan's amendment could have a negative impact on employers and employees. On the one hand, employers have to pay the employee minimum wage for the travelling time between the employee's place of residence and his or her place of employment which is not his or her usual place of employment; they also have to be responsible for keeping the relevant records and performing the relevant administrative duties. It will create a burden on employers, particularly owners of SMEs which should not be ignored. And on the other hand, some employers may require their employees to return to the company first because of this

amendment, so as to avoid the inclusion of travelling time as hours worked, or they will require their employees to take a more expensive means of transport with a view to minimizing the travelling time. This will virtually increase the burden of transport costs on the employees, while some other employers may possibly refuse to employ those people living in remote districts. All of these will be unfavourable to the employees.

As the "hours worked" is a fundamental concept in the Bill, the Bills Committee has already conducted detailed and in-depth discussions on the relevant provisions. Deputy Chairman, I solemnly reiterate here that it is not appropriate to make some hasty amendments which have deviated from the policy intent at this stage; we therefore oppose Mr LEE Cheuk-yan's amendment. I urge Members to consider carefully the negative impact to be caused by the proposed amendment, and to vote against the relevant amendment.

As to the Government's amendment to clause 3, which will be moved later on, the details of the proposed amendment have already been set out in the paper circularized to Members.

When computing the minimum wage, the hours worked by an employee must be taken to include any time during which the employee is in attendance at a place of employment. Such time shall be subject to the interpretation relating to the "place of employment" in accordance with the contract of employment or with the agreement or at the direction of the employer. In order to spell out the relevant restriction, we propose to amend clause 3 and its drafting by setting out that the hours worked by an employee in a wage period include any time during which the employee is in accordance with the contract of employment or with the agreement or at the direction of the employer.

In the proposed amendment, the original provision relating to meal breaks under clause 3(2)(a) will be deleted. This is my positive response to the views expressed during the deliberation of the Bills Committee on the provision. Specifically, when computing the minimum wage, times spent on meal breaks other than the scope specified in clause 3 are not "hours worked." If the period for meal is counted as "hours worked" in accordance with the contract of employment or agreement made between the employer and employee, then the period could be deemed "hours worked" when computing the minimum wage under the Bill. I hope Members can take note of the fact that clause 3 does not

intend to set out all the conditions to include "hours worked" for the purpose of computing the minimum wage. Employers and employees may freely negotiate the employment terms and conditions relating to meal breaks, including the duration of meal break and whether it is regarded as "hours worked".

Deputy Chairman, the purpose of my amendment is to elaborate that the definition of "hours worked" will not change the original intent and application of clause 3. The proposed amendment has been discussed in detail in meetings of the Bills Committee.

Before the implementation of the statutory minimum wage, the Government will actively conduct publicity and promotional activities, so that employers and employees can understand better the provisions of the law and their respective duties and rights under the statutory minimum wage system. In our publicity campaign, the promotional materials will list the specific examples in different trades. They are very important, as they will enable the industry to understand the actual operation and application of the provisions concerning hours worked, with a view to determining the statutory minimum wage employees should be awarded.

With these remarks, I hope Members will support the Government's amendment and oppose the amendments of Dr LEUNG Ka-lau and Mr LEE Cheuk-yan.

Thank you, Deputy Chairman.

MR IP WAI-MING (in Cantonese): On the whole, the FTU supports the amendments proposed by Dr LEUNG Ka-lau, Mr LEE Cheuk-yan and the Secretary.

As to the addition of the part concerning "waiting for work", the Secretary seems to have said that the scope of "waiting for work" is rather large, but we consider that the definition of "waiting for work" should have been defined in the employment contract. Very often, the employment contract may restrict the scope of activities of the employee shall engage or the things he does when he is standing by, or he is not allowed to leave Hong Kong, therefore he is subject to a certain degree of restriction. If the employer asks him to work during this

period, he must report duty immediately, therefore we consider this should be included in the hours worked under the minimum wage system.

Deputy Chairman, we once handled a case relating to a group of massage girls working in a sauna house. The dispute was not about on-call hours, but about "4118", that is, a continuous contract. At last, the employer presented the record of working hours and pointed out that the massage girls were not working under a continuous contract, because the employer only calculated the time they provided massage services to customers, as they might not have customers to serve at some time slots, therefore the employer did not count the waiting time. During the waiting period, they often go shopping in nearby places, but they were still waiting for job assignment. Finally, the Court said that as long as they had reported duty, thus it was deemed a standby period and whether or not the employer assigned work to them was the problem of the employer. The Court concluded that those were hours worked, and the judgment was that they were working under a continuous contract.

From this perspective, Deputy Chairman, we consider that during the on-call period, employees are still waiting for the employer's instructions, and once they receive the direction, they have to work immediately. Their activities are subject to some kind of constraint and conducted under the watch of the employer. Therefore, we consider it appropriate to include the on-call time in the "hours worked" clause under the minimum wage legislation.

As to the issue raised by Mr LEE Cheuk-yan on the travelling time from the employee's home to the place of employment which is not the usual place of employment, we consider that amendment appropriate, for very often, the travelling time accounts for a rather long period of time. Although the Secretary said it might be insignificant, we consider that actually accounted for a lot of time, especially to those employees who often go to work abroad or on the Mainland, because the current wording is "not usual", and we consider that a problem. For example, there are employees who need to go to work on the Mainland or travelling to and fro between Shenzhen and Hong Kong. We do see that some employees have to travel to Shenzhen and get some things before they can come back to work in Hong Kong. Therefore, we believe we should support his amendment.

As for the issue of lunch time, Deputy Chairman, the problem is that we do not have any legislation on working hours. As to the question of whether employees should have a paid lunch break, I agree that we should act in accordance with the arrangements under the employment contract. If the contract stipulates that employees should be remunerated for their meal break, then it should be a paid lunch break; if the contract does not specify a paid meal break, then the employees are not entitled to wages during the break. Even jobs within the Government are the same, for Model Scale 1 general grade staff are not entitled to a paid lunch break, and only staff above a certain grade on the Master Pay Scale are entitled to a paid lunch break. Therefore, in the absence of legislation on working hours, I agree that the entitlement to paid meal breaks of employees should be dealt with in accordance with the contractual arrangements.

However, why do we oppose the present Bill which states that when calculating the minimum wage, lunch time is excluded from the calculation? Because we are afraid that it will send a wrong message to the public, and make employees currently enjoying a paid lunch break fear that they will lose the paid lunch break in future, while newcomers will not enjoy the entitlement.

Will this situation be changed after repealing the relevant provision? I agree that this may not be able to change the current situation that some employees are not remunerated for their lunch breaks. From our point of view, eight hours of work should include the so-called lunch break. Although the Secretary or representative from the Labour Department often said in meetings of the Bills Committee that the Employment Ordinance and the proposed Minimum Wage Ordinance would not conflict with each other, we fear that if the relevant legislation is passed, it would send a wrong message, such that some employers may plausibly not to calculate the wages for the lunch break for employees.

Therefore, we welcome the amendment proposed by the Secretary for Labour and Welfare this time around, and we also urge colleagues to support the Government's amendment. We reiterate that the FTU supports all the other amendments. Thank you, Deputy Chairman.

MR WONG KWOK-HING (in Cantonese): Deputy Chairman, before I go on with my speech, I wish to take this opportunity to tell the Secretary that there are many of your colleagues outside this Chamber — they are commonly known as

the "paparazzi". When I came back this morning, I saw that they had no chairs to sit in, and I said, "It is rather tough for you to stand all day long, I had better arrange some seats for you." Now, even though chairs are arranged for them, it seems that they are too embarrassed to sit down, lest that sitting down and not helping you may be tantamount to a dereliction of duty.

Therefore, I wish to tell the Secretary via the Deputy Chairman that perhaps you should tell your colleagues to perform their duties while seated. I do not wish to use the term "paparazzi" to describe them, for it is not too good. They will get tired if they stand up too long, because we may keep on debating for several days. Therefore, I hope the Secretary can tell them to work at ease and instruct them to sit down and continue with their job of marking our names, which I know they are doing.

Deputy Chairman, several Members from the FTU have expressed support for the two amendments proposed by Members. We have also expressed support for the amendments of Dr LEUNG Ka-lau and LEE Cheuk-yan.

As for the reasons of our support, just now my colleagues have already explained them, so I will not repeat here. I just wish to make it clear that the merit of the amendments proposed by Dr LEUNG Ka-lau and LEE Cheuk-yan is the avoidance of disputes in future, and the elimination of some grey areas. This is the biggest reason for our support.

Secondly, it may help to prevent some employers from making use of these grey areas to coerce their employees. In fact, these wage earners do not have much bargaining power, so if they have no bargaining power and add to this these grey areas, they are by and large in an unfavourable position. Furthermore, although the Government said that they may initiate proceedings, as Dr LEUNG Ka-lau said, how much justice can be sought through judicial means? If one has no money, he should not enter the door of any government office, as one should not go inside with only reason on your side but no money, which is usually the case.

So, given this, now we should be careful and prudent in drawing up this piece of legislation, so as to ensure that the disadvantaged workers will not be exploited as a result of the existence of these grey areas. Let us take Mr LEE Cheuk-yan's amendment as an example. I think it makes good sense. Why can

a place of employment that is outside Hong Kong and is not a usual place of employment be taken into consideration? In fact, we have a lot of jobs in Hong Kong, if an employer wishes to force an employee to leave, this is a good means, simply send him to Stanley today and Tin Shui Wai tomorrow, then Aberdeen in the Southern District the day after tomorrow. Should he stick to this job or just resign? In this case, even if he is not dismissed, he can hardly continue. We often receive such complaint cases, and the number is rather great. Therefore, I consider the advocacy in Mr LEE Cheuk-yan's proposed amendment reasonable.

If the Government considers the wordings of the amendment too loose, such as the amendment of Dr LEUNG Ka-lau being too lax, as if everything is included, then the Government is duty-bound to do something. At the Bills Committee stage, upon receiving our views, the authorities might well narrow down the scope by adding more restrictions in the provisions, and that would do. But the authorities were reluctant to do so, so Members have to do that and we have been forced to propose the amendments. Even if the chance of our amendments being passed is rather slim, we still have to propose them. Therefore, under the present circumstances, we must try every means possible to fight for it. We support the amendments proposed by Mr LEE Cheuk-yan and Dr LEUNG Ka-lau.

Thank you, Deputy Chairman.

MR WONG SING-CHI (in Cantonese): The Democratic Party will support the amendments of Dr LEUNG Ka-lau and LEE Cheuk-yan, and even the Government's amendment. I have no intention to repeat what Members have said, but I would like to raise a point concerning the issue of "waiting for work".

Wages are actually paid to workers who have made contribution and done the laborious jobs; they must have made the so-called contribution, or they are simply at work. Should "waiting for work" be considered the same as working? Why "waiting for work" is not regarded as working? Otherwise it should be called rest or sleep. Obviously, waiting for work is just standing by, and if there is any urgent matter, they must start working immediately. Secretary, perhaps you may have to wait for work every day, but if some workers have to keep on working without any break, and you request them to wait for work, they may even fail to get the job done. In the case of a residential care staff member who

has to stand by during night-time, he has to get up at any time, perhaps to send some elderly people to the accident and emergency department or to do other things. Just imagine, even one is waiting for work, do you think that his mental stress is the same as an ordinary person? Under different circumstances, if a person has to wait for work, waiting for work actually means to be ready to work at any time. In this case, it is unfair to deem that he is resting and therefore he should not be paid any wages. For that reason, the Democratic Party supports the amendment moved by Dr LEUNG Ka-lau.

As to the amendment proposed by Mr LEE Cheuk-yan concerning the inclusion of the travelling time from an employee's home to the place of work which is not the usual place of employment, why is it unfair? It must be fair. In a very simple case, especially during the summer holiday, many social work agencies will employ some young people as activity helpers at a monthly salary of \$6,000 or \$5,000. One of the activity helpers may only assist a social worker to deal with cases, and he may sit in the office to wait for people to register; others may have to follow the social workers and go here and there every day to conduct camping activities and the like. If you do not count the time for going out to work, there will be some problems when both persons are earning the same monthly salary of \$6,000. When you calculate the hours worked, the hours worked of that activity helper are different from the other who works in the workplace, it is unfair. A lot of work has to be carried out at the usual place of work, but sometimes they need to work at different locations, and compared with the normal working hours, they will have to spend more time and energy.

Frankly speaking, if he has to work in some remote areas, such as the recent case of a social worker of the Sai Kung District Community Centre he certainly was a very responsible person as he visited the site for an upcoming event during his own vacation leave. However, generally speaking, if social workers have to visit sites for upcoming events, they had better visit the site during the working hours. Although it is better to conduct site visits during working hours, the hours worked will only start to count when he reaches Pak Tam Chung, and then he will work there for two to three hours. After he has inspected the site, he needs to spend two or three hours to return to the office. All in all, his travelling time will not be counted as hours worked once he left Pak Tam Chung. How can this be considered fair? In fact, he has really used the time to work.

Therefore, we have looked at it purely from the perspective of whether workers are treated fairly. Why should we not support this amendment? Therefore, Deputy Chairman, the Democratic Party will support all of the three amendments. Thank you, Deputy Chairman.

MR LEUNG KWOK-HUNG (in Cantonese): Deputy Chairman, what I said earlier on has caused a huge uproar. I said there was no reason to campaign for an hourly rate of \$24, and if that were the case, the minimum wage would be nothing more than a gold-plated chain.

I then heard that the speeches made by many colleagues were irrational. They said that some people had sought to drive a wedge between them and to win votes by attacking them. This is actually not the first time that they made such remarks. When I first joined this Council in 2004, my seat was over on that side of the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB). The lot fell on CHAN Yuen-han in the first draw in 2004 for her to propose a motion on minimum wage for debate. On that day, Mr Andrew LEUNG vehemently accused us of snatching the votes. What we are discussing is not a question of votes, but a question of banknotes. To those of us sitting in this Chamber, banknotes are obtained in proportion to our social status, reward, profit or interests, and there is marginal utility

DEPUTY CHAIRMAN (in Cantonese): Mr LEUNG, we are discussing the Committee stage amendments to clauses 2 and 3. You have to speak in relevance to the question.

MR LEUNG KWOK-HUNG (in Cantonese): You do not know what I am going to say next. By marginal utility, I mean that I believe few in this Chamber are going to enjoy this long overdue protection of a minimum wage. I can assert that to all of us here, whether the hourly rate is pitched at \$33, \$22 or \$24 simply makes no difference, and at least there is a huge gap between my salary and the minimum wage.

On this question, if a minimum wage is determined without any standard working hours as reference, this is primarily problematic in the computations. If it is not known as to how many hours a person should work under the current conditions in society and status of humanity, how can his hourly wages be determined? In other words, if the hourly rate is set at a very low level and if the minimum wage is too low, although they can enjoy the protection of a low level of minimum wage, it would still be difficult for them to make ends meet.

We are talking about working hours now. Indeed, the enactment of legislation on minimum wage certainly has a causal relation with the maximum hours of work. A small move may affect the overall situation. Not only the low-income workers will be affected, though it may be low-income workers who will be affected. Mr LEE Cheuk-yan has already pointed out the reason and that is, there is a conflict between the existing contracts of employment and the new statutory minimum wage. Regarding the original shameful wages before the setting of a minimum wage, working hours are not factored into the calculation due to the absence of a ceiling on hours of work. As a result, many employees — I mean employees with a low income — may not benefit from it and this is where the problem lies. This is why we have to make amends.

What Dr LEUNG Ka-lau has mentioned actually is not a question of minimum wage. How possibly could there be a problem of minimum wage in his profession? What he has mentioned is a question of working hours. So, a small move can indeed affect the overall situation. What Dr LEUNG Ka-lau has said is reasonable and sensible. What is not directed by the employer or what is not work-related should not be counted.

In many sectors of society, employees are subject to the standby arrangement, including foreign domestic helpers. This is also the case with doctors. If a doctor takes up standby duty at the request of his employer and if such duty is specified to be work-related, and if such standby time is not counted, that would be tantamount to exploitation. Doctors are people earning a high income, but if low-income earners are not provided with this protection, that would further aggravate their plights. I think everyone should be able to understand this.

Let me cite an example. If that old man who used to work as a toilet cleaner at \$7 per hour takes up the same job today and if the employer, having

invented all sorts of excuses, tells him to wait at the toilet and perform the cleaning work only when there is work for him to do, what would be his fate? Or, I have taken up a job which required me to work outside the office before. My job was to deliver papers for calculators. My boss may tell me, "Long Hair', you do not have to come to the company to clock in every day. The driver will take you to the destinations and after you have got on the car, you just finish all the delivery work without having to come to the office." Who is going to benefit from this? Owing to the nature of your work, the employer may think that it is meaningless to ask you to come back to the company to clock in and so, you would be asked to go to the place of work direct. This happens to renovation workers as well. I have also engaged in renovation work before. Would you think that a company located in Central or Wan Chai will ask its renovation workers to report duty in the office and then send them to work on Lamma Island? This will not happen. So, with regard to the question raised by LEE Cheuk-yan, who is going to benefit more? Taking a superficial view of the matter, we may ask why, when a person goes to work, the time taken for his journey to work has to be remunerated? If we look at it the other way round, since a person lives in Tuen Mun or Wan Chai, or, disregarding where he lives, if he is required to come to the office first and then he will be sent to work outside, how should his working hours be calculated? Even if his working hours are counted starting from 9 am when he reports duty, he has to get up at 7 am or 7.30 am in order to travel from Tuen Mun to Wan Chai and then he will set off at 9 am from Wan Chai to Lamma Island. Will this journey be also counted? If it is to be counted, similarly, the capitalists have to bear the costs, too.

Many people do not understand what is happening in this world and so, they have questioned why the boss has to pay wages for the time taken by a person for travelling from his home to the place of work. This is actually a problem of the industrial structure of Hong Kong which has never been addressed, and this problem has now emerged as it is necessary to compute the working hours. For instance, if a person is sent to work outside Hong Kong — speaking of this, if even a person earning only \$33 per hour is sent to work outside Hong Kong, that would be very miserable indeed. If a person being paid at an hourly rate of \$33 has to go to Guangzhou for work, that would already be dreadful treatment to them, and in that case, are they any different from Filipino maids? We still do not know whether it will be \$33, and if it will only be \$24 and if a person being paid \$24 an hour is required to go to Guangzhou for work, will anyone be willing to take up such a job? I think nobody will be willing to

do it. So, I am not talking about workers earning the lowest wages. Rather, this discussion arises from the lack of reasonable regulation of the calculation of working hours. This discussion is all about one point and that is, if a person makes earnings by selling his labour, intelligence or skills, his employer, in order to save the time taken by this worker to travel between various places of work, may make him stay at the place, or when the service provided by him is ad hoc in nature, he may be made to stay at the place and this person will certainly remain in a status of work because his labour, skills and intelligence have to be delivered there and then immediately.

If we buy a product, say, a whole piece of Parma ham, which is a commodity, we would certainly pay less if we go to Italy to buy it because we actually travel to Italy and take it back here from Italy, but we are liable for any damage that occurred during the journey. If we treat labour as a commodity, meaning that the person concerned has nothing else to offer apart from his labour, why is it that when he is transporting the commodity for the purpose of sale, he cannot be compensated for making it easier for his employer to obtain the commodity? This is just simple reasoning.

I heard CHAN Kin-po take me to task. The academic standard of this Council is too low indeed. What did I do to incite the people? I have been arguing with reason. If labour is a commodity, I do not see any sensible reason for a buyer to ask the seller to satisfy the former's needs by hook or by crook. Is there any commercial contract as such? No, there is not. So, the discussion arising from the setting of a minimum wage all boils down to the question of why a provision for maximum hours of work for workers is still lacking in Hong Kong. This is really where the problem lies.

We have had heated debates whenever reforms are proposed. As I said earlier, some three decades ago when this issue was discussed here, numerous people had consequently been arrested, teased, ridiculed and accused for stirring up troubles. Today, we can finally achieve it, but our reform still represents a compromise made by distorting humanism to which we are all entitled. This, to me, is heartrending. I heard Mr LEE Wing-tat say cheekily here that they were not advocating confrontation and they were seeking harmony. Do we not feel ashamed that a ceiling on hours of work is still lacking today and so many workers who have worked overtime are hence deprived of overtime allowances?

On this issue, the Government has adopted an attitude of showing neither approval nor disapproval.

Dr LEUNG Ka-lau's amendment is most explicit. This is not permitted without the employer's consent, and this is not permitted either if it is not work-related. If even this is considered a cause of concern, may I ask the Secretary how he can live up to his office? Dr LEUNG Ka-lau has only provided a legal platform for workers to guard against possible dangers. This should be permitted if a scrupulous employer has given his consent and yet, the Secretary still says that this is not permitted. I really do not see any logic in it.

I know that the Government is very cunning, because while votes can be counted in a normal way for Bills introduced by the Government, our amendments are nevertheless subject to separate voting. This is why I said that it is cunning. Some Members asked the Secretary earlier why he would do so. This precisely shows that he is cunning. If he accepts the reasonable amendments proposed by Members, his hand of cards might be exposed when votes are counted. With regard to the amendments proposed by us, such as the one proposed by Dr LEUNG Ka-lau, when an amendment is put to the vote in the sacred, immortal FCs, the amendment can be negated so long as they can control 15 votes, no matter how reasonable the amendment is. This is the ugly thing about the constitutional system in Hong Kong. This also explains why Secretary Matthew CHEUNG is like suffering from early psychosis. It is not the case that he does not understand that even though the approach adopted is to absorb politics into the executive, he, being a government official, should still propose the reasonable amendments suggested by Members, in order to reduce the difficulties at the vote. But why did he not do so? Because the FCs are inclined to supporting the Government and if it is passed ultimately, should the Secretary be held responsible for it? So, in every discussion, this "spectre" of the separate voting system featuring FCs is simply announcing that Hong Kong people are trampled on by small-circle elections.*(The buzzer sounded)*

DEPUTY CHAIRMAN (in Cantonese): Time is up.

MR LEUNG YIU-CHUNG (in Cantonese): Deputy Chairman, with regard to the amendments proposed by Dr LEUNG Ka-lau and Mr LEE Cheuk-yan, although they are on the surface related to the place of work, they are, in fact, mainly about the computation of the number of hours worked. Why are we in the labour sector so concerned about the number of hours worked? I hope the Secretary must understand that there is already the Labour Day in Hong Kong — regrettably, I do not think you can recall for how many times I have told you this — but the Government has never explained the true meaning of the Labour Day. What actually is the true meaning of the Labour Day? It is the spirit of "8+8+8". What does the spirit of "8+8+8" mean? It means eight hours of work, eight hours of rest and eight hours of studies or personal activities. So, this is a very important concept. We hope to have eight hours of work, which means that we attach great importance to the hours of work. But it is a pity that when it comes to two issues, namely, the standby hours and the time spent on travelling to and from a non-usual place of work, such time taken is not counted as hours worked, and this is where the problem lies as we have been fighting for its inclusion in the hours worked. Of course, I understand that people in general think that only the hours actually worked by a person are considered as the hours worked. But we have to look at this seriously. We have only 24 hours a day and we now ask for eight hours of rest, which is a very basic demand, and other than the hours for work, the remaining time is actually meant to be our personal time, such as time for studies or personal activities. If we have spent such time on work but it is not to be counted as the hours worked, it would be tantamount to exploiting us of our time for personal life.

(THE CHAIRMAN resumed the Chair)

We all know that geographically, Hong Kong does not have a vast territory and we do not have to travel a very long distance. But this is not quite so in reality. To some friends of mine who are wage earners, they work from 9 am to 5 pm but few of them leave home for work at 8.30 am as they usually leave an hour or so earlier and it takes an hour or so for them to get home after work. It means that the actual hours of work have been taken up — Ideally, there should be eight hours of work, but it turns out that the travelling time has taken up our personal time, which is entirely against the spirit of "8+8+8" advocated by the Labour Day, and this spirit is still violated even if "eight hours of work" is

upheld. Moreover, what we are discussing today is not just this, as it is even about work. What kind of work? Standby. Standby is like sitting around doing nothing. But as we all know, sitting around doing nothing does not mean that one can do personal things. The worker has to forsake his time and freedom. So, why is such time not counted? Furthermore, the amendment proposed by Mr LEE Cheuk-yan is, I think, most humble. Why is it humble? He referred to the time for travelling to and from a non-usual place of work. We all know that a non-usual place of work means a workplace that we do not usually go. There are a lot of problems with this. One of the problems is that the transport fares may increase, a problem which has long existed. For example, I live in Tin Shui Wai and I normally work in Yuen Long, but if I have to work in Central today, I would have to pay more in transport fare and I cannot ask my boss to reimburse me for it. Generally, there should be no argument over this, not even when I have to pay more than I usually do. But when more time is taken and if such time is not counted, how could this stand to reason?

In fact, I think many workers are not so insatiably avaricious as to only care about fighting for their benefits in terms of the hours worked. Let me cite an example. Just now I was also discussing this with Mr LEE Cheuk-yan. If a worker who lives in Tin Shui Wai and normally works in Central is asked to work in Yuen Long today, which is nearer, do you think this worker will ask his boss to count the additional travelling time? He would be scolded by other people for making such a request, and since the travelling time is shortened and the transport fare is reduced, he simply would not make such a request. From the angle of workers, I think workers are certainly rational, and they surely will not rigidly demand that such time be counted as the hours worked because they do appreciate one thing and that is, so long as they do not need to spend any extra time, they would not wish to mess up the so-called employment relationship. Do you think that asking the boss to pay you for more hours worked is a good and easy thing to do? If you make this request to him, he may pull a long face, and this is not easy at all. Even if this is really written into the law, how many workers will dare claim these hours? It is, in fact, very difficult to do so because we still do not have the right to collective bargaining, and nobody is speaking up for us. If we fight for it by ourselves, it would be wishful thinking to hope for a renewal of our contract, and even if a renewal is not necessary, we might not be given any pay rise.

So, on this issue, it is not easy for workers to be provided with some protection. But we still have to fight for it. Why? We hope to put in place a platform and establish such right and interest. Otherwise, the boss can give his workers whatever direction he likes. If it is really the case that some bosses, according to what some colleagues have said, may even play dirty on their workers deliberately by sending them to work at faraway places all the time in an attempt to make workers quit on their own initiative, we hope that similar cases can be prevented and so, we hope that there can be regulation by incorporating this into the law. But the Secretary has kept on saying that even if this is written into the law, there will really be a lot of grey areas and a lot of disputes. I honestly do not think that this will happen. Frankly, as I said earlier, how often can workers have a chance to argue with their bosses over such things? Even if this is written into the law, they may not dare argue with their bosses, because their job always comes first and this is most important to them. Even if they eventually dispute this with their bosses, they have to resort to the Court for arbitration. Despite uncertainties in the existing legislation, the Court will make a judgment according to established practices or general views. So, I think this is not a problem. It is all because the Secretary does not wish to do so that he cited this excuse, saying that there will be grey areas and disputes. I entirely think that this is just an excuse, which is far from true.

I wonder if the Secretary recalls that back in the 1980s, there was a legislative provision on "relocating a factory across the harbour" in Hong Kong. It was provided that if a worker had all along worked in Kowloon but if his company or factory was relocated across the harbour to Hong Kong Island, the worker could file an application for severance and be reasonably compensated with severance payment. Why was there this provision back then? Why was it repealed later? It is because as we all know, in the 1970s and 1980s it was hard to travel from Kowloon to Hong Kong Island as there was only one cross-harbour tunnel. Although there was a ferry service, it was still hard to cross the harbour and there were great difficulties in respect of time and other aspects. So, this is why there was this provision. In fact, what was the consideration? If a worker had to travel to a more faraway place for work, the transport fares and the time required would mean hardships to the worker and so, the law allowed such workers to apply for severance. Even though this provision was objectively repealed in the end, some of its spirit has been preserved in a way that if a worker who is required to work in a new place of work considers that his normal way of

life will hence be affected, he can file a case in Court on this ground to seek reasonable severance payment. The concept is the same, which covers the impact on a person's life, transport fares, the time spent as well as the journey. I think this concept still applies, but why do we have to abandon this concept today? It really strikes me as strange. The non-usual place of work as referred to by Mr LEE Cheuk-yan is equivalent to a case of "relocating a factory across the harbour", because such relocation does not happen frequently, but suddenly. It is also due to some special needs that a worker is required to work at a non-usual place of work and since this involves time and transport fares, why do we not take this into consideration?

(Dr Margaret NG stood up)

CHAIRMAN (in Cantonese): Dr NG, what is your point?

DR MARGARET NG (in Cantonese): Chairman, I am just trying to secure that prop board.

CHAIRMAN (in Cantonese): Mr LEUNG, please go on.

MR LEUNG YIU-CHUNG (in Cantonese): So, in this connection, I hope colleagues can support these two amendments for the protection of employees. Work aside, they also have their personal life, but as they often have to be on standby, their personal time is thus exploited, or since they have to work in special places, their time which is meant for other purposes is therefore exploited. Why do we not consider this and attach importance to this? I think this is most important.

Lastly, I hope that the Secretary will really bear in mind the spirit of the Labour Day, because on the Labour Day every year, I see the Secretary and the Chief Executive joining the labour sector in proposing a toast to celebrate the occasion. What do we celebrate? We do not only celebrate the day for being a holiday. What we celebrate is more than the fact that it is a holiday for the

enjoyment of the labour sector. Rather, what we celebrate is the underlying meaning and in a nutshell, the spirit of "8+8+8", meaning eight hours of work, eight hours of rest and eight hours of personal life, such as for the purpose of studies. This is most important. These two amendments are precisely an objective reflection of this fundamental spirit and so, I hope Members can support them.

Chairman, I so submit.

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

MR RONNY TONG (in Cantonese): Chairman, with regard to the three amendments under discussion now and the many other amendments to be proposed later, we think that most of them are actually very much well-intended, trying to protect the interest of the labour sector by all means. However, I think we must be very careful with two things. First, we must strike the right balance; second, we must ensure that the law will not be too vague and will not arouse controversies which will render the community quite greatly affected.

Chairman, if we consider the three amendments in front of us now on these two principles, we have come to a view on each of these amendments. First, perhaps let me talk about the amendment proposed by Dr LEUNG Ka-lau. I appreciate the very good intention of this amendment, but it may actually lead to other problems. Let us look at the original Bill. A main purpose of the clause is to provide for the definition of "place of employment" and in respect of "place of employment", the point with the greatest significance in clause 3 is how "the time during which the employee is in attendance" is defined. As such, "place of employment" and "the time during which the employee is in attendance" complement each other and are vitally important. As regards "the time during which the employee is in attendance", Members certainly understand it very well and, put simply, it actually refers to the working time. What time is considered working time? Which place is considered a place of work? These are important definitions that must be made.

Look at the original Bill and we will see that "place of employment" is actually defined to mean that in relation to an employee, any place at which the employee is — this is very broad in scope — in accordance with the contract of employment or with the agreement or at the direction of the employer, in attendance for the purpose of doing work or receiving training.

As for "執行工作" (meaning discharging work) in the Chinese text, it is written in English as "purpose of work" "for the purpose of work" (A Member said "for the purpose of doing work") "for the purpose of doing work". Sorry, I do not have the English text with me, I am sorry. You are right, it is "for the purpose of doing work". This is actually similar to the meaning of "time during which the employee is on-call" as referred to by Dr LEUNG. In the English text proposed by Dr LEUNG, it should be "waiting for work", right?

DR LEUNG KA-LAU (in Cantonese): "Waiting for work" is added.

MR RONNY TONG (in Cantonese): Adding "waiting"

CHAIRMAN (in Cantonese): No dialogues between Members, please.

MR RONNY TONG (in Cantonese): Chairman, my question was directed at you, not him. I beg your pardon.

CHAIRMAN (in Cantonese): Please go on.

MR RONNY TONG (in Cantonese): my question was directed at you, Chairman.

Their meanings are actually quite close. Of course, they represent different degrees, and there is also a difference in the intensity of work. If there is not this amendment, the original definition, which is "for the purpose of doing

work", would, in my view, include "on-call work". But with the inclusion of this definition, it would be necessary to draw a clear distinction between "for the purpose of doing work" and "on-call work". In other words, "on-call work" should actually mean something more than or different from "for the purpose of doing work". But a problem will hence arise. That is, under what circumstances is "on-call work" not intended "for the purpose of doing work"? Will the definition of "on-call work" be expanded to become too broad in scope as a result?

When I had lunch upstairs earlier, I also discussed this with a number of Members (including Mr LEE Cheuk-yan). Let me cite a simple example. If my driver said to me, "Boss, I would like to take leave in July and go to the Mainland for vacation.", I would tell him that he cannot go in July because the Legislative Council is still in session in July, and I will ask him to go in August. In that case, will he be on-call for the whole of July? Because what is written here is "any place", which can include Hong Kong. If I ask him not to leave Hong Kong and take up work in Hong Kong during his leave, "any time" certainly includes not only the time when he works, but also the time from he gets up at seven o'clock in the morning all the way to eleven o'clock at night. Dr LEUNG is shaking his head, and he may have an answer. But I think this is not an impossible interpretation.

I think most importantly, the addition of this amendment will lead to many disputes. For instance, in the example I cited just now, my driver's view may be entirely different from mine. I think this is unnecessary confusion. Because in my view, "for the purpose of doing work" in the original clause has, to a certain extent, actually included "on-call work" as well. So, I think adding this amendment may turn out to be undesirable. I, therefore, consider that at this stage, it is impossible for us to support this amendment.

Chairman, with regard to Mr LEE Cheuk-yan's amendment and the Government's amendment, the key actually lies in the difference in respect of the place of employment which is not a worker's "usual place of employment". I think in comparison, Mr LEE Cheuk-yan's amendment is more worthy of support. The reason is simple, Chairman. If I am a wage earner working in Central every day, but my employer suddenly tells me to work in Kwun Tong tomorrow, I will have to spend an extra hour travelling to Kwun Tong for work. Why is such time not counted as time during which I am "in attendance" and for which wages

should be payable by the employer? So, from this angle, this is entirely reasonable. I also said the same to Mr LEE Cheuk-yan earlier. Having said that, this amendment now proposed by him is not perfect. Why? Because strictly speaking, the employer only has to pay wages for the extra time spent.

Chairman, in the example that I have just cited, if I usually work in Central and the journey takes me half an hour, such time would not be counted. But if my employer asks me to work in Kwun Tong and I have to spend an hour travelling there, meaning that I need to spend an extra 30 minutes, why should the employer have to count this whole hour as time during which I am "in-attendance"? That would be unfair to the employer. Furthermore, if it takes me an hour to travel from Tuen Mun to Central for work, but the employer sends me to Sheung Shui instead for the purpose of work, and as it takes only half an hour for me to go to Sheung Shui, which means saving some time, why should the employer be required to pay wages for the time spent on travelling? I think this seems to be unfair to the employer.

Mr LEE Cheuk-yan has failed to give an explanation to address this point. But does it mean that the Government's amendment is better and so, I should support the Government? I do not think so. Why? If we compare the two amendments, we can see that employers should have the right to make decisions. So, the chance or room for employers to abuse the law is greater than that for abuse by employees. In the example that I mentioned earlier, if the employer considers it unreasonable for him to pay more even though he has saved half an hour in working time for his employee, should the employer actually consider meeting the operational needs by other alternatives? The employer is entirely in a position to make his own decision. There is no way for the employee to influence the employer's decision.

If these are considered unfair to both parties, I would prefer the one which is a little bit unfair to employers. Frankly speaking, the boss should be more generous in any case, for he makes money, while his employees only earn wages. If we compare the two amendments, and taking into account their bargaining power, I think I would consider an amendment acceptable if it is more favourable to employees. For this reason, in respect of the three amendments, the Civic Party will oppose LEUNG Ka-lau's amendment and support Mr LEE Cheuk-yan's amendment. But if Mr LEE Cheuk-yan's amendment is negated, we will support the Government's amendment. Why? The Government's amendment

is still a good amendment. I do not wish to see all the three amendments being voted down, thus ending up with nothing. I think this is a most unacceptable outcome to employees. So, Chairman, let me make it clear here that we may make an about-turn depending on the voting result.

MS MIRIAM LAU (in Cantonese): Chairman, under the Bill, the statutory minimum wage is calculated on the basis of an hourly rate. So, it provides for a clear definition of "hours worked" for compliance by both employers and employees, and this is very important. Clause 3 of the Bill is about hours worked and insofar as this clause is concerned, I wish to particularly highlight the question of whether meal break is counted as part of hours worked.

On this question, the Government has, in fact, provided a clear definition in the original clause 3(2)(a) of the Bill. The clause has also built in flexibility in a way that while the employee's meal break is not to be included in the hours worked, but if the meal break is taken during the period that the employee is doing work in accordance with the contract of employment or with the agreement or at the direction of the employer, it will be included in the hours worked. Surprisingly, the Government may have acceded to the demand of the labour sector and without taking into consideration the actual operation of enterprises, and abruptly decided to delete the original clause 3(2)(a) from the Bill. We are very concerned that this may give rise to problems.

According to the explanation given by the authorities, the deletion of clause 3(2)(a) actually does not change the original spirit of clause 3. It means that a meal break outside the scope as prescribed in the amendment to clause 3(1) will not be counted as hours worked. The Government has all along claimed that this legislation has no intention to negate the arrangements made between employers and employees. So, if meal break is included in the contract signed between an employer and his employee and disregarding in what way a meal break is taken, the employee will be remunerated and be given wages, it will be included in the hours worked. But if it is specified in the contract that meal break is not included, then it will not be counted. Therefore, irrespective of what is set out in the law, the agreement between an employer and his employee will not be affected.

However, this is where the problem lies. As we all know, a vast majority of existing employment contracts do not particularly specify whether or not employees' meal breaks are counted as hours worked. This is especially the case with small enterprises or small shops. The employment contracts signed with their employees do not specify so clearly as to what arrangements are made for lunch break. How is the contract normally written? Even if there is such specification in the contract, it is only written that the employee reports duty at 9 am and finishes work at 6 pm with a one-hour lunch break. That is all. As to whether the lunch break entitles the employee to wages or does not entitle the employee to wages, nobody has ever mentioned this before. As wages are paid on a monthly basis, nobody would bother to figure out whether that hour is paid or not. But a different approach is adopted now, as wages will be calculated on the basis of an hourly rate. Does that one-hour lunch break entitle the employee to wages or not entitle the employee to wages? What is the agreement between the employer and the employee? This is basically not clear.

Speaking of contract, what I have just talked about is written contract, and the case of verbal contract is even more troublesome. Disregarding whether the lunch break that we are discussing now is one hour, 45 minutes or one hour and a half, it is actually determined by the unique situation of the sector. In fact, as we can see in the sector to which Mr Tommy CHEUNG belongs, when it comes to lunch break, it is an established practice in the sector that employees would sit around the table to take their lunch, and that is what lunch break means to them. This is counted as hours worked, and employees also take their lunch at the place of work. Should it be counted as hours worked or should it not be counted? No agreement has been made on this point in the sector before. So, in our view, insofar as meal break is concerned, it would become a grey area if no express provision is made for it.

Since the Government has obstinately insisted on deleting clause 3(2)(a) — In fact, the original definition provided by clause 3(2)(a) is quite clear as it provides that if the employer does not tell the employee to sit at a specified place to have meal, the meal break will not be counted. But if the employer tells the employee to stay at a specified place, and disregarding whether or not the employee is doing work, the employee is made to take his meal at a specified place, that one hour will be counted. We consider this reasonable and clear. But the clause is now deleted and how will this be handled after the deletion?

The only way is for an employer and his employees to enter into new contracts before the legislation on minimum wage takes effect. During the Second Reading debate yesterday, I already pointed out the need for contracts to be signed to address the question of commission. Now, on the question of lunch break, it is again necessary for employers and employees to clarify the position beforehand, or else disputes are bound to arise on whether lunch breaks taken over the past two years were counted or not. Whenever such cases are taken to the Labour Tribunal, many disputes will invariably arise. Mr LEE Cheuk-yan is also smiling on hearing this. He simply knows it all.

After such a case is filed, the labour side will have even greater room for manoeuvre and if no agreement has been made, I believe disputes will arise unless an agreement has been made. We all encourage employers and employees to enter into an agreement in this connection to set out what arrangements should be made. But despite our encouragement, heaven knows how many employers will really do this! But as things now stand, there is nothing we can do. The Government has remained hell-bent on deleting clause 3(2)(a), and it has even said that the deletion would not affect the legislative intent.

Chairman, the labour relations in Hong Kong should be considered harmonious in general, and there has not been any dispute on meal breaks before. I have also mentioned this earlier. But unfortunately, an agreement has to be made with the employee for this reason now. Will their harmonious relationship be maintained after they made this agreement? What if the employee is unwilling to sign the contract? The employer may not think the same way as the employee. All sorts of problems may arise and even if such cases may not necessarily be brought to the labour court in future, it is possible that some changes may occur in labour relations and disputes may arise due to the need to enter into contracts before the enactment of this legislation on minimum wage, thus affecting their harmonious relationship.

The Government has proposed other amendments to clause 3. Under clause 3(1) it is provided that the hours worked by an employee include any time during which the employee is, in accordance with the contract of employment or with the agreement or at the direction of the employer, in attendance at a place of employment, and any time for travelling between the employee's place of

residence and his or her place of employment that is outside Hong Kong and is not his or her usual place of employment. We consider that this clause as amended is reasonable to employees and provides reasonable protection for them, and it is fair to both employers and employees.

Mr LEE Cheuk-yan has proposed an amendment to clause 3 to provide that the hours worked by an employee include the time the employee spends on "travelling between his or her place of residence and his or her place of employment that is not his or her usual place of employment". As I pointed out earlier, the Government's amendment has actually clarified the problem and provided adequate protection for employees while giving regard to the operational flexibility of the sectors. Mr LEE's amendment seems to have really failed to consider the fact that many sectors are actually unique, and changes may often happen to the flexibility of the sectors — although such changes may not occur every day, there may be changes once in a while — their flexibility will hence be restricted. This will greatly undermine the flexibility of these sectors in operation and even the costing arrangement, cost expenditure, and so on. In this connection, I guess the courier industry, the repairs and maintenance industry, and so on, may be affected as a result.

I have been an employer myself. If I ask an employee to go to a certain place one day and if this place is not his usual place of work, the employee will certainly make some requests, such as how the transport fares will be met, or whether there will be certain compensation in time, or when his working hours will start or how other arrangements will be made. In such cases, employees will take the initiative to protect their own rights and interest. Nowadays, employees know very well how they can protect their rights and interests. If what they are asked to do has deviated from their daily work requirements, they will make some requests and do such work only when the employer has acceded to their requests. So, I do not think that employers are certainly able to exploit their employees seriously, causing their employees to suffer losses in terms of hours worked, money, and so on. I think employees nowadays are most adept at protecting their own rights and interests. As for Mr LEE's amendment, the actual outcome may do harm to employees. How will employers react? If the time spent on travelling to a non-usual place of work is to be counted as hours worked, and it will be counted from the time the employee leaves his home to the time he arrives at the destination, the employer will, in order to avoid disputes, tell the employee to come back to the office to clock in first and then go out

again. In that case, what may happen is: While the employee supposedly can go from Tuen Mun to Tsuen Wan direct, but due to some special arrangements, the employer will ask the employee to first come back to the office in Central at 9 am and go to Tsuen Wan after the employee has clocked in. Will this particularly do any good to the employee? The employee may consider this very troublesome.

Moreover, we all agree that the legislation on minimum wage should closely follow the arrangements under the existing Employment Ordinance to avoid creating uncertainties. Under the Employment Ordinance, the hours of work do not include the time spent by an employee on travelling from his home to the place of work. Mr LEE Cheuk-yan's amendment, if passed, may cause confusion *vis-a-vis* the Employment Ordinance. This is my personal view, and perhaps Mr LEE Cheuk-yan can correct me on this point when he speaks later.

Given the various analyses and concerns presented by me, we cannot support Mr LEE Cheuk-yan's amendment.

MR RONNY TONG (in Cantonese): Chairman, I am sorry that I forgot to declare interest when I spoke yesterday. And I also forgot to do so when I spoke and voted today. I now employ some staff and a foreign domestic helper. As I think this involves direct pecuniary interests, I should make a declaration.

MR PAUL TSE (in Cantonese): Chairman, precisely because the Bill covers all industries in a broad-brush manner, a number of problems will crop up in its actual enforcement.

In the course of scrutiny, the Bills Committee highlighted a great many cases and instances of difficulties in enforcement. Seven or eight out of 10 such cases and instances related to various scenarios in the tourism sector, including the time for standby, travelling between various locations, lunch and waiting in overseas places. All these matters will pose difficulties in the tourism sector in terms of making arrangements and adaptation.

Certainly, all this has become something of the past. The Bill today can be passed without undergoing any prudent debate or examination of the cases in

Hong Kong (and even the social conditions in Hong Kong). Motions that seek to amend any material value judgment relating to the Basis Law also require the support of two thirds of the Members for passage. In that case, if the legislation on minimum wage is passed in this way today, I think that this is tantamount to abandoning the cornerstone of the success of Hong Kong society and the freedom treasured by the Hong Kong public. However, now that this matter has come to this stage, I have no choice but to strive to minimize the damage and narrow down the scope of the net, so that the tourism sector can manage to adapt to the situation, albeit barely.

Chairman, Mr LEE Cheuk-yan asked about the essence of the entire piece of legislation just now. It is to mark the hours worked, a practice to which I precisely have the strongest opposition. It is also a practice that is the most difficult for the tourism sector to implement. All employers and employees will experience constant anxiety, having to bear in mind whether or not they need to record the time at a particular moment. Even if an employee is in an overseas country, what should he do? Each time he has returned, will he need to report on such trivial matters as the time of showing which customer to the washroom, switching on the lights for him and receiving complaints? This practice will give various parties a great deal of hassle. Moreover, in case a record has not been made within a certain timeframe, disputes may also arise.

The third point I wish to highlight is how disputes are to be handled when they arise. Some Honourable colleagues have remarked that it does not matter as they can be referred to the Court, the Labour Department or the Labour Tribunal for handling. However, we should not forget that such cases are often very trivial in nature and involve disputes over the facts. The discrepancies in the facts of various cases may also lead to different judgments. Cases truly involving material legal principles may account for a relatively small number, so precedents will seldom be cited. In that case, I am afraid that many unnecessary lawsuits will be encouraged.

Fourth, just now, Mr LEUNG Yiu-chung asked us why we had no respect for the labour sector. That means we should promote the "8+8+8" principle — this is a very good remark, a very good model, too. However, I believe it is difficult for most of the Honourable colleagues present here to adopt "8+8+8" as a goal in their lives. This is probably due to the fact that we have a heavy workload, having to frequently rack our brains in our work. Particularly, the

Honourable colleagues who are barristers sitting on my right and I, as a solicitor and barrister, all do thinking round the clock. In that case, do we need to start recording the time and do the same in respect of our clients' cases? Will the time spent on thinking or flipping through information sheets on some occasions be counted? Of course, there is little point in saying so because it is widely acknowledged that solicitors and barristers charge expensive fees that far exceed the minimum wage. Hence, we are obliged to work that hard.

However, such remuneration and working conditions are absent in certain industries but at the same time, members of these industries are put on 24-hour standby and need to work seven days a week. This is the case when a tour guide accompanies a tour group. During the entire journey, the former needs to take care of the latter's safety, well-being and even happiness, anger, sadness and delight round the clock in an unceasing manner and in all kinds of weather, so as to avoid any complaint being made about his poor attitude due to a momentary lapse of caution. It is a miserable industry, with income not commensurate with efforts. Hence, I emphasize again that I mean no disrespect for the spirit of justice, social justice or the contribution made by the labour sector. Rather, I think that it is actually very improper and inappropriate to make the legislation applicable to the tourism sector in a broad-brush manner.

Regarding the two amendments, as I said just now, I hope to reduce the damage as far as possible. So, I definitely cannot support them.

First, if we have to make any new attempt or test any new medicine, in my view, be it the Government, Members or the general public, they should act prudently or think that actions should be taken prudently, rather than prescribing a heavy and excessive dose of the new drug at one stroke. For these reasons, regarding the practice now proposed by the Government, I agree with Mr Ronny TONG's earlier remark that consideration should be given to how a balance can be struck and the uncertainties be reduced as far as possible.

However, I do not agree with the analysis made by Mr Ronny TONG just now. Perhaps he failed to see the point clearly. The Government's amendment relating to travelling time is actually no different from the past practice because only the time allowed for a meal is discounted and the whole format is changed. However, all along, travelling time basically excludes the time spent by an

employee in travelling to a non-usual place of work within Hong Kong. According to the practice in the past, unless an employee is in a place outside Hong Kong, his I am sorry, I should put it the other way round. The approach taken by the Government is that the travelling time spent by an employee outside Hong Kong will also be counted as hours worked. However, the amendment proposed by Mr LEE Cheuk-yan seems to include the time spent by an employee in travelling to a non-usual place of work in various locations within Hong Kong. Mr LEE Cheuk-yan explained just now that, for example, the places of work of decoration workers varied daily Or, there may be three possibilities. The first type of employees covers those whose places of work vary every day, for example, decoration workers or employees engaging in the promotion industry. The second type includes those who have a fixed place of work, for instance, office staff, and their places of work seldom change or will only change occasionally. The third type of employees covers those who fall in between the first two types. One notable example is the staff of travel agencies, who may have to spend half of the time performing in their companies the so-called "counter duty" of promoting tours and receiving customers, and the other half of the time working in various places. In that case, according to the relevant proposal, should amendments be made to their contracts, so as to include various places in Hong Kong, such as the airport, railway termini, and so on, and even Shenzhen and Guangzhou as their usual places of work? Will all places around the world be considered their places of work? In fact, this is possible. If they have to accompany various tour groups, all places around the world will become places of work for the tourism sector. How should this be dealt with? Hence, if this net is cast so wide, I am afraid our problems will be aggravated.

The second point relates to administrative costs. When there are more and more grey areas or disputes over trivial matters, a greater deal of time will definitely be spent by both employees and employers in doing computations and keeping records of the hours worked. As a result, the time for providing services and performance tasks will be reduced, thus making cost recovery in business operation more difficult. This is another reason why I disagree with the proposal of casting this net too wide all at once.

The report of the Bills Committee contains 12 examples, five or six of which being related to the tourism sector. Among these examples, the third and

fifth examples are particularly relevant to tour guides and employees whom we call the "crew", that is, the cabin crews of airline companies. These examples show that even the original Bill or the amendment now proposed by the Government will already give rise to some grey areas, not to mention further spreading the net to the extent as suggested by Dr LEUNG Ka-lau or Mr LEE Cheuk-yan. In that event, the grey areas will definitely become "greyer". Why?

Regarding standby time, in fact, according to the proposal in the Bill, the definitions of "place of employment" and "hours worked" have a somewhat cyclic relationship. The former can never be made clear because the present definitions of the two expressions have a cyclic relationship. According to the contract of employment, or at the direction or with the agreement of the employer, certain places can become places of work instantly, just like turning stones into gems. As Mr Ronny TONG remarked just now, if I tell my driver to be on standby in July in Hong Kong and wait at home for my telephone call, theoretically, will this constitute a form of "standby"? I dare not say it certainly will, but there are doubts.

When it comes to cabin crews, in order to cut cost, airline companies usually require the whole crew (including the pilot and other members of the crew) to take up flight duties in a certain place. For this purpose, they may need to have a layover for a night (the airline company concerned will certainly provide meals and accommodation). In the course of travelling from Hong Kong to the place in question to take up the flight duties, they are not really at work. However, in order to take up this assignment, duty and piece of work, they have to set off from Hong Kong. Even though the evening in which they arrive at the destination can be considered their personal time, in theory, it is still work-related. Will this period of time be counted as standby time? There are doubts here.

For these reasons, although the Bills Committee had listened to the explanations on these examples — that is, according to the definition proposed by the Government now, such standby time is regarded as personal time, so there should be no problems — I still have great doubts about this. For example, when a tour guide accompanies a tour group to a place outside Hong Kong, theoretically, the so-called personal time and rest time in his room during the journey can be considered his personal time. However, if his employer asks him to provide better services by receiving at any time telephone calls made by

members of the tour group, taking care of them and helping them resolve such problems as disruptions in water and power supply, accidents and illnesses, in that case, even if he is in his hotel room, in theory, this can also be considered standby time because the place in question has become instantly a place of work, just like turning stones into gems. Even if we set aside Dr LEUNG Ka-lau's proposition of "waiting for work" and adhere to the original definition of "place", I think that there are still problems. Therefore, I must emphasize once again that it is not that we do not want to enhance the protection for the welfare of employees in the tourism sector. In fact, both sides hope to do so. However, even employees themselves now think that rendering them protection in this way may make them suffer losses rather than bringing them benefits and it will cause all parties a lot of disputes and hassle. In contrast, they are more inclined to having protection in the form of, for instance, a monthly minimum wage and this may be more worthy of consideration. That said, the tourism sector may find it difficult to compute the minimum wage on the basis of hours worked.

Another issue relates to commission. Hence, I said just now that the tourism sector would encounter all the difficulties brought about by the implementation of a minimum wage, including the issue of hours worked, commission, standby, and so on. All this will present the whole industry with tremendous difficulties and even change its ecology. Certainly, a number of problems already exist in the tourism sector, such as the disputes over commission, tips and holiday benefits. Regarding these problems, in fact, the tourism sector has been racking its brains to deal with them. The inclusion of this proposal will add to the already heavy burden of the whole industry and land it in a more difficult position. Therefore, on the issue of standby time, I am afraid that Dr LEUNG Ka-lau and I are poles apart in our views. I understand that in some industries, this proposal should be adopted in the interest of justice. I absolutely understand the situation of, for example, medical officers. Regarding employees working in homes for the elderly, I also absolutely understand their situation. However, precisely because this piece of legislation has adopted a broad-brush approach that is not flexible enough, I am afraid it will only help you people but hurt us. Therefore, in this regard, a proper balance must be struck in the law and it should be implemented step by step. This is the main reason for my objection.

Another point is about the "8+8+8" principle mentioned by Mr LEUNG Yiu-chung. I actually agree with him, but it has also occurred to me that people

working in the tourism sector actually enjoy some advantages. Very often, there are the so-called fringe benefits (additional marginal benefits). On the surface, its practitioners earn low wages. However, why are people still willing to work in this sector? This is because the job itself can enable them to travel and broaden their horizons at the same time. Or, when a tour guide accompanies a tour group to a scenic spot, although the time is theoretically counted as work hours, he can chat with other people, drink coffee and do some reading. Furthermore, when he accompanies a tour group to do shopping, it may not be necessary for him to provide services. A great deal of time that is originally regarded as the time for work can be spent in taking a rest. Even if he accompanies a tour group for a whole day, he may take a rest intermittently during the journey, thereby achieving a balance. If the rigid pattern of going to work, going off work, having meals, watching movies and shopping is applied to the tourism sector, it is actually very difficult to draw a line among these things. Hence, judging from the entire "package", we have a suitable balance that cannot be achieved by conforming to the "8+8+8" principle. For these reasons, I do not agree with the remark that the operation of the tourism sector can be defined according to this ideal principle.

As for the amendment proposed by Mr LEE Cheuk-yan on travelling time, in principle, I opine that counting the time spent by an employee in travelling between his residence and the place of work within Hong Kong as hours worked will bring the tourism sector great difficulties. In order to reduce cost, it is common for the trade to have group tours set off in Shenzhen or Guangzhou. If the travelling time within Hong Kong were also counted, the trade would face more difficulties. Therefore, according to the broad principles mentioned just now, I do not wish to see the brush paint too broadly too soon. Neither do I wish to see too many controversies or grey areas. I am afraid we have to choose the lesser of two evils. Despite the imminent passage of the minimum wage legislation, which will impact on the tourism sector, I would rather reduce as far as possible the magnitude of its impact and the uncertainties. So, in these circumstances, I will not support these two amendments.

Thank you, Chairman.

CHAIRMAN (in Cantonese): Does any other Member wish to speak? I will first ascertain whether there is any other Member who wishes to speak before

calling upon Mr LEE Cheuk-yan, the Secretary for Labour and Welfare and Dr LEUNG Ka-lau to speak for the second time.

DR LEUNG KA-LAU (in Cantonese): I wish to seek your enlightenment. Before the Secretary makes a speech, will I have another opportunity to do the same? Because I did not finish with my speech just now. Procedure-wise, will I be allowed to speak again?

CHAIRMAN (in Cantonese): Yes, you may. However, after considering the course of the whole debate, I hope Members who propose amendments can, as far as possible, listen to the views of other Members before making a speech. In this way, Members can give a response.

DR LEUNG KA-LAU (in Cantonese): All right.

MR TAM YIU-CHUNG (in Cantonese): I wish to present the views of the DAB on these two amendments and the Government's amendment. The minimum wage law is a new law that covers various industries. It also differs from our usual practice in that computation will be made on an hourly basis. In these circumstances, in counting the number of hours worked, what should be counted and what should not? The Bills Committee has conducted a lot of discussions and the views expressed by Members just now have actually been advanced in the meetings of the Bills Committee. Here are our views. We from the DAB hope very much that labour rights and protection can be improved on an ongoing basis. However, at the initial stage of enforcing the law, I think some time can be given and Members' concerns or areas warranting improvements can be left for the next stage. That said, I hope very much that after the ordinance has come into force, the Government can conduct a review as soon as possible after a certain period of time to identify the areas for improvement, thereby improving the law in question and eventually achieving the objective of according more protection to workers. Thank you, Chairman.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): I now call upon Mr LEE Cheuk-yan to speak again

MR LEE CHEUK-YAN (in Cantonese): First, I would like to respond to the Secretary's remark that for such a significant change, there will be a major difference basically, for I consider the earlier remark of the Secretary somehow exaggerated. My amendment is indeed very humble, but the Secretary said that it was a significant change, a major difference. However, the difference is indeed minor, only that his proposal allows the counting of travelling time to places outside Hong Kong but my amendment allows the counting of travelling time to places within Hong Kong. That is the difference. The Secretary said that my proposal would backfire and bring no benefits to employees. For firstly, if hours worked were to include the travelling time to places other than the usual place of employment of an employee, employers might require employees to report duty at the office every day before going out to work. If it is actually the case, we can do nothing about it, for employees always have to do so, and they can only follow the instruction of employers. However, if an employer really makes such a request, he has to face the problem of efficiency, and he has to find a solution to the problem. For instance, if an employer requires his employee to deliver a document to a certain place at 9 am, whereas the employee only goes to work in the office at 9 am, the employee will have to report duty in the office at 9 am and then go out again. In that case, the delivery of the document will be delayed. I do not think the employer will like to see this. Hence, I hope the Secretary will understand that my proposal will not cause employees any loss, nor will employees suffer because they have to return to the office first. I believe out of the consideration of efficiency, employers will know how to make proper arrangement.

Secondly, the Secretary said that employers might require employees to take more expensive modes of transport in order to get back to office earlier, but I think this is impossible. How can employers exercise macro control over their employees to such detail as to what kind of transport they take? I think it is impossible that the case will go to that extreme. Hence, my amendment is not

so special, and Members do not have to be nervous about it, thinking that it will bring a major change to Hong Kong.

Moreover, Chairman, I hope you will allow me to talk about the amendment of the Secretary, and I have not yet come to the amendment of Dr LEUNG Ka-lau just now. Upon hearing the discussion of many colleagues on the amendment of Dr LEUNG Ka-lau, I would like to make one point. The amendment of Dr LEUNG Ka-lau involves a very important concept, that is, the standby duty must be carried out with employer's agreement or directions. In other words, if the standby duty is not carried out with the employer's agreement or directions, it will not be regarded as standby duty. So, there should be no question of confusing standby time with private time. The Secretary queried earlier that standby time might be mixed up with private time, but this is utterly impossible. Private time is private time. An employer definitely will not give any agreement or direction on the way I spend my private time. If my private time has to be spent in accordance with the instruction and the consent of my employer, it is not my private time, but on-call and standby time. Hence, I urge Members to support the amendment proposed by Dr LEUNG Ka-lau. Come to think about this. It is miserable to be on standby duty, for the arrangement has imposed restrictions on employees and deprived them of their private time. Take the employees at residential homes for the elderly as an example. Since they have to wake up several times every night to take care of the elderly, do you think they can sleep tight? Though they can sleep there, they cannot sleep tight. So, I hope Members can be more sympathetic towards employees, taking into account the great sacrifice they will have to make, and they seem to have lost their own families.

Upon hearing the speech by Mr Paul TSE earlier, I have to get a few points off my chest. He kept saying that the tourism industry is facing all kinds of problems and dissuaded the adoption of a broad-brush approach. He opposed the recording of hours worked for this can hardly be enforced in the tourism industry. Does he mean that the tourism industry wants to get "unpaid meals"? What do I mean by "unpaid meals"? When employees are told to work without getting any pay, employers are taking "unpaid meals". Do they want to do so? I am really disappointed with Paul TSE, for he was speaking for employers in the tourism industry when he expressed his views. Actually, he did make several agreeable remarks, saying that those employees are miserable, for their lives may be made difficult by certain troublesome customers, and they would be complained for failing to provide good service. But as he went on, he took a

sudden turn to demand that working hours not be recorded despite the plight of the employees. He may be loyal to his electors. But since the electorate base of his functional constituency has not yet been extended to cover employees and that only employers are allowed to vote, he took the position of employers only in opposing the recording of hours worked and urged employees not to record hours worked indiscriminately. Earlier, he said that the "8+8+8 day" proposed by Mr LEUNG Yiu-chung was not applicable to the tourism industry, for even if employees had to work outside Hong Kong for 24 hours, they were happy about that, and sometimes they would just be sitting and doing nothing. However, during those 24 hours, or even four to five days, they cannot see their families, which can be regarded as "being cut off from all relatives and friends". Members often think that the time of employees does not have to be treasured, and that only time at work but not waiting time should be counted as hours worked.

However, come to think about this. I earnestly implore Members to think about this. Employees are humans, too. They too have their families and their own lives. Granting the opportunity, they too want to spend their time with their families and friends. However, whenever we come to these issues, Members will say that it is not so miserable to work for 24 hours, for they have time to sleep, to walk around and do other things, so it does not matter even if they are on call. But it should not be like that. I hope Members will think carefully before they speak. How important is the balance of life to a man? What is work-life balance? When employees in the tourism industry have to work outside Hong Kong for four to five days and cannot meet with their families, it is really distressing. They do so not because they want to have fun or broaden their horizons, and they have really made great sacrifices. Hence, I hope Members will appreciate the enormous sacrifice made by employees, and I hope Members will allow them to record the hours worked. They are working in actuality, even though they are on-call, which they actually are, and they have no alternative but to stay there.

Chairman, finally, I would like to talk about the amendment of the Government. Earlier on, Mr Ronny TONG said that he would make a volte-face to support the amendment of the Government. Indeed, he does not have to make a volte-face, for we too support the amendment of the Government, which is not contradictory to my amendment. So, do not worry about that. However, the amendment of the Government is not as comprehensive as mine, and thus I have added some better proposals to the amendment of the Government. One of the

proposals in the amendment of the Government proposes the deletion of the provision on excluding meal breaks, which I think is not useful. As I explained earlier, despite the deletion of this provision, meal breaks will not be included. Meal breaks can hardly be counted in the record of the hours worked, for meal breaks taken by employees cannot be regarded as time taking meal at a place of employment with the employers' agreement or direction, so the time in question can hardly be recorded as hours worked. Again, I would like to clarify this point, for Ms Miriam LAU has also mentioned this issue earlier. Actually, the meal breaks can hardly be recorded, even with the deletion of the provision concerned, it cannot be recorded. The so-called disputes mentioned by Ms Miriam LAU are not related to this Bill, but the contract itself may cause disputes. There may be disputes in future, which should be about whether meal breaks are included, but not that whether meal breaks is counted under this Bill. The Bill has stipulated unequivocally that meal breaks will not be counted, unless employers specify that employees should take their meal in a certain place. In the latter case, the meal break must be counted. I believe Members will consider this fair.

Chairman, finally, I would like to reiterate one point. The CTU supports the amendment of Dr LEUNG Ka-lau, and I hope Members will support my amendment, and then altogether, we continue to support the amendment proposed by the Government.

(Mr Paul TSE raised his hand to indicate his wish to speak)

CHAIRMAN (in Cantonese): Mr Paul TSE, you may speak for a second time.

MR PAUL TSE (in Cantonese): Chairman, what does it mean by speaking for the second time, does it mean that I do not have to raise a point of order or seek clarification, but can just

CHAIRMAN (in Cantonese): You may speak for the second time, but please do not repeat what you have already said.

MR PAUL TSE (in Cantonese): Very good, thank you, Chairman. I surely have to respond to this, for I think Mr LEE Cheuk-yan may have mistaken my meaning earlier, or I have failed to make myself clear. I do not mean that employees engaging in the tourism industry have to give up the so-called "8+8+8 day" and that they have to be cut off from all their relatives and friends. Definitely, there are pros and cons for working in various industries. Employees engaging in the tourism industry are prepared, be it in small or large measure, psychologically to lead tour groups outside Hong Kong, and during the course, they are indeed cut off from all their relatives and friends.

Fortunately, they will get other rewards when they go out. For instance, they may broaden their horizons, and they may have some private time to take a break during their work. As they accompany others to on such tours, they may also tour around and have fun. I would say that this is a kind of reward in exchange or small compensation. I definitely do not mean that they deserve or ask for such treatment and they do not deserve sympathy. I absolutely do not mean that.

Another point is about the recording of hours worked. I mean that the recording of hours worked will cause a lot of nuisance, difficulties and troubles to both employers and employees. I am not saying that employers of the tourism industry will prohibit the keeping of records of hours worked. Actually, employees also consider the method impracticable and troublesome. However, I do not mean that it is unnecessary to provide compensation for their work, but the compensation may be offered in the form of commission, tips or in a lump sum. These methods are better than the general method of counting the trivial number of hours worked and the number of hours of overtime, or even by multiplying the number of hours by a specified factor.

The method of compensation varies from industry to industry, and the tourism industry is different from industries in general. There are pros and cons, as well as merits and demerits, in all issues, and I must stress this point. Besides, one should avoid following the usual perception and consider that the Member from the tourism industry, which is one of the functional constituencies, will surely support employers. Actually, regarding my inclination and response, honestly, I have consulted both the employers and employees before forming such views. They consider that the legislation will have significant impacts on the ecology of the industry, where the losses incurred may outweigh the benefits

brought to both employers and employees. I understand that hardship borne by employees should be compensated, but it should not be compensated and protected in this way. As an alternative, protection can be offered by regulating the distribution of tips and their monthly salaries as a whole, and such compensation can be provided in a lump sum. This is by all means better than the present mechanism, whereby minimum protection is based on the hourly wage or the record kept on the hours worked at all time. I wish to bring forth this view again.

I mentioned one point earlier, but I might have failed to make it clear. Under the present legislation, employers and employees are allowed to enter into new contractual terms, including the usual place of employment. But since the scope of clause 14 mentioned by Dr LEUNG Ka-lau earlier is more extensive — this is copied from the labour laws in the past, and there is the so-called "No contracting out" provision under the Employment Ordinance, prohibiting employers and employees from making secret deals to circumvent the regulation of law Certainly, with these provisions, the laws will be binding, otherwise, the disadvantaged side in an agreement or a bargain will always suffer. I understand this point. However, with the potential effect of clause 14, it will not be easy for employers and employees to enter into secret deals, two-way bargains or agreements with a view to negating certain responsibilities, known or unknown to both sides, which may require further interpretation they become comprehensible. It means that one may fall into the trap of

CHAIRMAN (in Cantonese): Mr TSE, please pause for a while and let me do some explaining. Honourable Members, you all know that at the Committee stage, Members may speak more than once. Members also know that at this stage, the time limit is 15 minutes for each speech. Members are allowed to speak repeatedly for after the delivery of your speech, other Members may put forth some different views, and Members are thus allowed to speak again to respond to those comments. However, if Members keep bringing up new points when he speaks again instead of responding to the remarks of other Members, then the 15-minute time limit will exist only in name.

Members can imagine that if Members speak for a second and third times after speaking for 15 minutes on the first occasion, it will be unnecessary to

impose a speaking time limit of 15 minutes. Hence, I hope Members will by all means organize your remarks on the relevant amendments and present them within the 15-minute speaking time. In that case, Members will not have to put forth new points, which are not mentioned by other Members, when they speak for the second time, and Members will not have to use up all the 15 minutes. In this way, the Committee stage will proceed more smoothly. Mr TSE, please continue.

MR PAUL TSE (in Cantonese): Chairman, thank you for the further reminder. However, in the last discussion on the proposals on the Express Rail Link (XRL), Members had been repeating similar views, and on the contrary

CHAIRMAN (in Cantonese): Mr TSE, the proposals of the XRL were discussed at the meeting of the Finance Committee, and the rules of speaking for the Finance Committee are different from those applicable to the Committee stage. I now call upon Members to pay attention to the procedures of the Committee stage. Now, will you please continue.

MR PAUL TSE (in Cantonese): Chairman, thank you for your further clarification. I am learning new things every day.

Earlier on, I mentioned clause 14 to help me to elucidate my point on the definition of the "usual place of employment", which was put forth by me earlier. Hence, I would like to reiterate one point, that is, it does not mean that everything can be done with mutual consent. I do not wish to waste the time of Members. I now understand the new rules, and I will only speak again when necessary. Thank you, Chairman.

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

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Chairman, I do not intend to speak.

CHAIRMAN (in Cantonese): Dr LEUNG Ka-lau, do you wish to speak again?

DR LEUNG KA-LAU (in Cantonese): I did not have enough time to speak in the first round, sorry. Honestly, I did not have enough time to draft this amendment. I very much agree with Mr Paul TSE, that there are loopholes in the present legislation, and there are also loopholes in my amendment. I very much agree with Mr TAM Yiu-chung that the Secretary should identify the loopholes in the legislation as soon as possible in future and make corresponding improvements to the legislation.

I would like to respond to a number of points first. Just now, Mr Ronny TONG Just now, Mr Ronny TONG Hello, how are you.

CHAIRMAN (in Cantonese): Mr LEUNG, you should face the Chair when you speak. *(Laughter)*

DR LEUNG KA-LAU (in Cantonese): Yes. Regarding my speech in the first round, firstly, Members may not agree with my objective. It does not matter if they disagree with that objective, but it seems that Members agree with that. My amendment seeks to differentiate certain periods of time that should be included as hours worked and others that should not be included. Secondly, if the original clause of the Government can already achieve this objective, then my amendment will be unnecessary. Earlier on, Mr Ronny TONG mentioned the point on employees in attendance for the purpose of doing work, which is the present wordings used by the Government, and he considered that the provision so worded already includes on-call time. If such time is actually included, my amendment will be deemed really unnecessary. The Secretary may not speak again later. I wonder why I have become the last one to speak. The Secretary and the Government are unwilling to say, from start to finish, whether the time during which an employee is in attendance for the purpose of doing work is included as on-call time. He refuses to state so from start to finish.

Moreover, regarding the precedents ruled by the Court, in the cases of the Correctional Services Department and the residential care homes for the elderly, on-call time is not counted as hours worked. This is the reality and court precedents. I said earlier that there are also loopholes in my amendment.

Why? I would like to respond to the situation cited by Mr Paul TSE. Should on-call time be counted as hours worked? A host of factors should be taken into consideration, and some of the factors are related to the degree of autonomy enjoyed by an employee and his entitlement to reward. According to my understanding of the case of tour guides in the tourism industries, if they do not lead tours outside Hong Kong, their basic salaries are relatively low in general. So, it is good that they can lead tours outside Hong Kong, for they will get additional reward for this. If they lead tours outside Hong Kong, customers will tip them at the end of the tour, and thus it is a good thing for them to lead tours. Tour guides want to lead tours outside Hong Kong, for if they do not do so, they will only receive the basic salaries, which is quite miserable for them. In other words, the more tours they lead, the more income they will make. If the time of the whole tour is counted as hours worked, it will meet the requirement of minimum wage. Hence, my amendment will not affect tour guides. As I said earlier, should certain periods of time be counted as on-call time? If the employee has the autonomy to make decisions and he is willing to do so, it should not be a problem.

Moreover, I would like to respond to the Secretary's remark. He said that my amendment would greatly broaden the scope of the definition of "place of employment". Earlier on, the Secretary cited the example of employees on overseas duty visits, and said that all their private time would then be counted as on-call time. He said it was a matter of fact that whether certain periods of time should be included as hours worked. I would like to tell the Secretary that I think private time during overseas duty visits should not be counted as on-call time. I would also like to tell the Secretary that insofar as the time of waiting for work is concerned, if a case is brought to the Court, it will become a matter of fact. However, in the course of law drafting, we have to put in place a set of criteria for the Court, to serve as the basis for handling such factual issues. As I said before, if an employee is in attendance for the purpose of doing work, I think the interpretation of the phrase is very narrow in scope, but it is indeed very clear. According to precedents, "live-in" will not be counted. If the wordings of my amendment are revised to read "on call for work", in the event of disputes in Court, the actual fact will be considered. For instance, if an employee is allowed to walk around to have meals and entertainment most of the time, the issue will be a matter of fact and it has to be left to the Court to decide.

I would like to respond to another point raised by Mr Ronny TONG. He cited an example of a driver earlier, questioning if the driver is not allowed to

return to his hometown because it is busy in July, will the entire period in July be regarded as on-call time? I may explain to him that his driver is entitled to one rest day for every seven days, or two days of holiday after five days of work. If the driver returns to his hometown during the two days of leave, thanks to the convenience of present transportation, he can return to his hometown. But if the driver is not allowed to return to his hometown even on those two days, those two days are indeed on-call time, and he should compensate the driver. I assume that the working hours of his employees start from 9 am and end at 6 am. If he does not allow him to take leave, it means that he disallows the driver to leave the office during the office hours of nine to six. But if the hometown of the driver is close to Hong Kong, say Shenzhen, he may still make a trip to his hometown after going off duty at six. Hence, the definition of "waiting for work" will not be extended to include the case of not allowing his driver to take leave.

Finally, in a nutshell, whether or not this amendment is passed — I believe it will not be passed today — in the days to come, disputes will inevitably arise. I hope that the Secretary and the Government will act in a fair manner, striking a balance between the need to take care of the interest of employees and the practical and operational needs of employers, and make appropriate amendments in future. Thank you, Chairman.

MR RONNY TONG (in Cantonese): I will make some brief clarifications and responses. Chairman, during the scrutiny of the Bill, I had an understanding that the literal meaning given by any one of us, including the Secretary, would not affect the interpretation given by the Court in future. Hence, we can by all means debate on the simple literal meaning of the term, and the final decision will rest with the Court. So it does not mean so much to us when the Secretary says whether or not certain periods of time are included. This is the first point.

Second, I would like to respond to an example cited by both Dr LEUNG Ka-lau and Mr LEE Cheuk-yan. The example is on the situation of live-in employees who have to wake up in the middle of the night to take care of the elderly, and they think there is no reason that those hours should not be counted. Chairman, in our view, those hours should be counted as hours worked. Why? For if employees have to live in because they have to wake up in the night to take care of persons with disabilities or the elderly in the residential homes, it means the employees are in attendance in the residential home for the purpose of work.

If so, they are on duty during those hours and those hours should then be counted. Hence, we consider that the views have been taken on board in the existing wordings of the legislation.

So, Chairman, I hope the people of Hong Kong sitting in front of the television will not think that the Civic Party is so mean that it agrees the time during which employees live in or work at the quarters at night should not be counted as hours worked. Chairman, this is not our view.

CHAIRMAN (in Cantonese): Secretary, do you wish to respond to Dr LEUNG Ka-lau's speech?

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): I do not intend to reply.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by Dr LEUNG Ka-lau be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mr LEE Cheuk-yan rose to claim a division.

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

(During the ringing of the division bell)

CHAIRMAN (in Cantonese): Mr LEE Cheuk-yan, I can only see the hair of the Member sitting behind you, so will you please move the placard in front of you slightly?(*Mr LEE Wing-tat stood up*) I can now see Mr LEE Wing-tat.(*Laughter*) It will be better if you can move the placard slightly so that I can see Mr LEE Wing-tat even when he is seated.(*Laughter*)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by Dr LEUNG Ka-lau be passed.

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

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

Functional Constituencies:

Ms LI Fung-ying, Mr CHAN Kin-por, Dr LEUNG Ka-lau, Mr CHEUNG Kwok-che, Mr IP Wai-ming, Dr PAN Pey-chyou and Dr Samson TAM voted for the amendment.

Dr Raymond HO, Dr Margaret NG, Mrs Sophie LEUNG, Mr WONG Yung-kan, Mr LAU Wong-fat, Ms Miriam LAU, Mr Timothy FOK, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Vincent FANG, Dr Joseph LEE, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Mr IP Kwok-him and Mr Paul TSE voted against the amendment.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Ms Emily LAU, Mr Frederick FUNG, Mr WONG Kwok-hing, Mr LEE Wing-tat, Mr KAM Nai-wai, Ms Cyd HO, Mr WONG Sing-chi, Mr WONG Kwok-kin and Mr Albert CHAN voted for the amendment.

Mr CHAN Kam-lam, Mr LAU Kong-wah, Mr TAM Yiu-chung, Ms Audrey EU, Mr CHEUNG Hok-ming, Mr Ronny TONG, Ms Starry LEE, Mr CHAN Hak-kan, Dr Priscilla LEUNG and Miss Tanya CHAN voted against the amendment.

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

THE CHAIRMAN announced that among the Members returned by functional constituencies, 23 were present, seven were in favour of the amendment and 16 against it; while among the Members returned by geographical constituencies through direct elections, 25 were present, 14 were in favour of the amendment and 10 against it. Since the question was not agreed by a majority of each of the two groups of Members present, he therefore declared that the amendment was negatived.

MS MIRIAM LAU (in Cantonese): Chairman, I move that in the event of further divisions being claimed in respect of the other provisions of the Minimum Wage Bill or any amendments thereto, this Council do proceed to each of such divisions immediately after the division bell has been rung for one minute.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the motion moved by Ms Miriam LAU be passed. Does any Member wish to speak?

MS CYD HO (in Cantonese): Chairman, since I have been a "person with disabilities" in these two days, I can barely manage to return to the Chamber within three minutes. But if only one minute is allowed, I cannot return in time. No matter where I am within the Legislative Council Building, I will not be able to make it. May I ask the Chairman and Members to consider giving me three minutes after the division bell is rung for the first time in every round of voting? As for the second and third time when the division bell is rung, I have no difficulty in making it in one minute.

DR MARGARET NG (in Cantonese): Chairman, I hope you will remind me if my memory about this point is wrong. Recently, it seems to have been stipulated in the Rules of Procedure that if the one-minute rule is set for a certain Bill at the outset, the rule will apply to all the motions in respect of the Bill.

I wonder if it is appropriate to apply the one-minute rule to all items under this motion, for Members have different views on various issues. Particularly when the Committee stage this time around may last for long hours, and some Members who are not quite involved in certain amendments may leave the Chamber and go to places farther away. Chairman, I am not quite familiar with this stage, but I wish to remind Members that it may not be appropriate to apply the one-minute rule this time around.

MR FREDERICK FUNG (in Cantonese): Chairman, I face the same problem as Ms Cyd HO's. I have no difficulty meeting the one-minute rule after I have returned to the Chamber, but it will take three minutes for me to return to the Chamber for the first time. Thank you, Chairman.

MR RONNY TONG (in Cantonese): Chairman, I would like to express my views. Chairman, I am not disabled, but may become so on the way back here. I am not so. Chairman, as many amendments are rather complicated
(*Laughter*)

CHAIRMAN (in Cantonese): Please keep quiet.

MR RONNY TONG (in Cantonese): honestly, many amendments are linked closely, so if Members who have not been listening all the way, they have to catch up immediately on return to the Chamber and decide which amendment they should support and what position they should take. It may somehow be difficult.

CHAIRMAN (in Cantonese): We do not have disabled Members in this Council. (*Laughter*)

MS MIRIAM LAU (in Cantonese): I have to thank the many Members for their active discussion, but we have an extremely heavy agenda today. Instead of spending so much time to discuss this issue Members who have just spoken consider that the motion on the one-minute rule should not be pursued. So, Chairman, I implore your goodself to allow me to withdraw the relevant motion.

CHAIRMAN (in Cantonese): Ms Miriam LAU has requested withdrawal of the motion proposed by her. Does any Member oppose it?

(No hands raised)

CHAIRMAN (in Cantonese): If no Member opposes it, Ms Miriam LAU will withdraw her motion. We will now proceed with the relevant amendment. Mr LEE Cheuk-yan, you may now move your amendment.

MR LEE CHEUK-YAN (in Cantonese): Chairman, I move that clause 3 be amended by deleting the clause and substituting it by a new one.

Proposed amendment

Clause 3 (see Annex I)

CHAIRMAN (in Cantonese): Mr LEE Cheuk-yan proposed that clause 3 be amended by deleting the clause and substituting it by a new one. Before I put to you the question on Mr LEE Cheuk-yan's amendment, I wish to remind Members that if Mr LEE Cheuk-yan's amendment is passed, the Secretary for Labour and Welfare may not move his amendment.

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

(Members raised their hands)

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

(Members raised their hands)

Mr IP Kwok-him rose to claim a division.

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

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

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

Functional Constituencies:

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

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

Geographical Constituencies:

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

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

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

THE CHAIRMAN announced that among the Members returned by functional constituencies, 24 were present, six were in favour of the amendment and 18 against it; while among the Members returned by geographical constituencies through direct elections, 27 were present, 18 were in favour of the amendment and eight against it. Since the question was not agreed by a majority of each of the two groups of Members present, he therefore declared that the amendment was negatived.

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

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Chairman, I move the amendment to clause 3(1) and the deletion of subclause (2).

Proposed amendment

Clause 3 (see Annex I)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clause 3 as amended.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clause 3 as amended stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clause 5.

CHAIRMAN (in Cantonese): The Secretary for Labour and Welfare and Mr LEE Cheuk-yan have separately given notice to move amendments to clause 5.

Irrespective of whether the Secretary for Labour and Welfare's amendment is passed, Mr LEE Cheuk-yan may move his relevant amendment.

CHAIRMAN (in Cantonese): Members may now debate the original clause as well as the amendments by the Secretary for Labour and Welfare and Mr LEE Cheuk-yan jointly. I will call upon the Secretary for Labour and Welfare to speak and move his amendment first.

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Chairman, I move the amendment to clauses 5(2) and 5(5) of the Minimum Wage Bill (the Bill), the contents of which have been set out in detail in the paper circularized to Members.

We propose to amend clause 5(2) of the Bill to clearly state that a payment made to an employee in any wage period for an hour not worked by the employee must not be counted as part of the wages payable in respect of that or any other wage period. In determining whether or not an employee is remunerated at a rate not less than that of the statutory minimum wage (SMW), this is a fair and reasonable practice. It is a technical amendment to drafting that makes clause 5(2) clearer.

Such payments mainly refer to statutory holiday pay, annual leave pay, sick allowance, payment for maternity leave, and so on, payable to an employee.

In addition, we also propose to amend clause 5(5) of the Bill to specify the counting of commission in computing the SMW in respect of a wage period, so as to determine whether or not an employee is remunerated at a rate not less than that of the SMW. Our proposed amendment clearly stipulates the computation of commission in a wage period when it is paid with the prior agreement of the employee, thereby ensuring that both the employee and his employer are able to compute commission payments in a clear and certain manner when determining the former's entitlement to the SMW in accordance with the Bill.

Chairman, the Bills Committee on Minimum Wage Bill has conducted detailed and in-depth discussions on the clauses concerned. After considering prudently the views of members, we have moved the amendments to clauses 5(2) and 5(5), as well as the relevant technical amendment, with a view to reflecting more clearly the policy intent.

Prior to the implementation of the SMW, the Government will actively conduct publicity and promotional activities, so that both employees and employers can gain an understanding of the provisions of the law, as well as their responsibilities and rights under the SMW regime. We will also set out in the publicity materials specific examples that are applicable to various industries to illustrate the application of the wage-related provisions.

With these remarks, I hope Members can support the passage of the amendment moved by the Government.

Thank you, Chairman.

Proposed amendment

Clause 5 (see Annex I)

CHAIRMAN (in Cantonese): I now call upon Mr LEE Cheuk-yan to speak, but he cannot move his amendment at this stage.

MR LEE CHEUK-YAN (in Cantonese): Chairman, my amendment aims to establish a protection regime under which the basic salary is tantamount to the minimum wage. What does this mean? Members should understand that the existing laws provide that the allowance for work or overtime work on holidays or rest days can maybe I put it this way — Chairman, I am sorry — The objective of the entire amendment is to ensure that the allowance for work or overtime work on holidays or rest days shall not be transformed into part of the wages, so that the basic salary shall not be lower than the standard minimum wage. What is the reason for that? Members know that now there is a basic salary and an overtime allowance, and the overtime allowance for holidays may be 1.5 or two times the normal rate. For example, if now a minimum wage is set at \$33 by way of legislation, does that mean the basic wage shall be \$33? No, it does not. It means the basic wage can be \$25, whereas the overtime allowance can be \$40.

Members should remember the concept of shortfall I mentioned. There is no provision in law stipulating that the basic wage must be \$33; it can be \$25 times eight hours, then \$40 times four hours, the overtime allowance, if added together, may be just higher than the minimum wage and in this way, the requirement is met. Therefore, overtime allowance can be calculated as part of the wages. The hourly rate of overtime allowance can be higher than the minimum wage. For example, assuming that the overtime allowance is \$40 and the basic wage is \$7, the overtime allowance can be used to make up for the shortfall and resolve the problem of low basic wage.

The amendment I proposed requests that the basic wage be also stipulated at \$33. Some people said to me that this will not necessarily benefit the employees as that means no overtime allowance will be paid in future. One may say so, but there is one benefit. If no overtime allowance will be paid in future, what does that imply? Workers will be entitled to the basic standard of living they deserve, that is, an hourly rate of \$33, without having to make up for the shortfall by earning more overtime allowance and working for more hours. Hence, even if an employer tells an employee that no overtime allowance will be paid in future and overtime work should be done on a voluntary basis, if the employee finds \$33 sufficient, then he can choose not to work overtime. But this is not the case now. For example, if an employer tells an employee that the basic wage is \$25, and it will only be \$25 if he does not work overtime, and he can pocket \$33 fully only by working overtime, that means the employee must work overtime to make up for the shortfall. In fact, the entire amendment will bring about an outcome, and that is, the basic wage of workers will be protected to a certain extent. The laws of Britain also have this sort of provisions; they have similar requirements under the relevant ordinances.

The Government said that the Bill should adhere to the Employment Ordinance (EO), and given that wages include overtime allowance under the EO, overtime allowance should also be included under the Bill. Nevertheless, in fact there are different practices under the EO. The EO clearly stipulates that severance pay does not include overtime allowance unless the overtime allowance exceeds the wages by 20%. Hence, this is not necessarily the practice under the EO. In the amendment proposed by the Government, as Members can hear the Secretary say just now, clause 5(2) stipulates that the payment to an employee for any period that is not hours worked shall not be counted as part of the wages, so in this case, it is also different from the EO. If my amendment is examined with reference to the entire EO, in fact some of the amendments put forth by the Government may not strictly adhere to the provisions of the EO.

Therefore, I hope Members will support my amendment, so that protection will be offered to workers and they will be paid the basic wage without having to rely on overtime allowance under minimum wage protection. This is not going to affect a lot of people. Frankly, the payment of overtime allowance is not a very common practice in society at present, hence, protection will only be offered to those entitled to overtime allowance, and these people only account for a fraction of employees. As for the majority of employees, given that Hong Kong

has no legislation on standard working hours, they are not entitled to overtime allowance. Members may as well say that our amendment will also pave the way for legislation on standard working hours in future. Should standard working hours be provided for in law in future, it will be very clear that the pay for the work done within the standard working hours should be calculated according to the basic wage or the minimum wage; and the minimum wage as the basic wage will be used to calculate overtime allowance. And the question of whether it should be 1.5 or 1.25 times the basic wage will be deliberated in future. What I can do this time is to strive for having a provision in this Ordinance requiring that the basic wage must comply with this minimum wage protection.

Thank you, Chairman.

MR WONG KWOK-HING (in Cantonese): Chairman, I agree to the amendment proposed by Mr LEE Cheuk-yan. In addition to the implication as mentioned by Mr LEE Cheuk-yan just now, this amendment also has another implication that has not been stated by him. So what is the other implication? His amendment, if passed, can prevent some employers from exploiting the grey areas of this Ordinance and forcing workers to work overtime which is tantamount to extending their working hours. Members must all understand the first part of the reason elaborated by Mr LEE Cheuk-yan just now, and that is, one has to earn more overtime allowance by doing more overtime work, so that a statutory hourly rate such as \$33 can be met when one's total wages are divided by one's working hours. This is what he means.

But by another implication, I mean if it is not clearly defined that overtime work shall not be included, it will allow employers to oppress workers in another way: You want to get this pay, fine, you can work overtime and work on Sundays and holidays to earn the allowances, and if you work all these hours, you will get \$33 by dividing your total wages by your working hours. Actually, in our decades of trade union work, we often accompany workers to take their cases up with the Labour Department. In fact, many cases are related to these problems, and they have kept happening again and again over the past few decades. Therefore, as we are handling this piece of legislation on minimum wage, on this point, I think we should be more cautious and meticulous in order to prevent some unscrupulous employers — here I mean the unscrupulous employers — from exploiting this particular point to bully some workers with no bargaining

power. We are talking about protecting some wage earners who have no bargaining power, competitiveness and say. I think we should consider this issue from this angle. If now we have the opportunity to make such a law and the ability to voice their views for them, we should help these powerless wage earners by defining this provision clearly during the course of legislation, otherwise how will their interests be protected in future? It will be utterly impossible to give them any protection.

Hence, I also call upon Honourable colleagues to support this amendment proposed by Mr LEE Cheuk-yan. Thank you, Chairman.

MR WONG SING-CHI (in Cantonese): Chairman, the Democratic Party supports the views expressed by Mr LEE Cheuk-yan and Mr WONG Kwok-hing. The Democratic Party consistently holds that the objective of legislation on minimum wage is to protect the low-income workers, so that they will be entitled to legitimate rights and interests, including the rights that prevent them from being forced to work for long hours so as to meet the minimum wage level and ensure that there is no non-compliance on the part of the employer. Otherwise it is utterly a deprivation of the rest time of employees in this circumstance.

Hence, if overtime work is counted as part of the pay and hours worked used to calculate minimum wage, some employers may pay their employees at an hourly rate of \$25 for the basic 10 hours of work each day, but in addition to that, the employees have to work another four hours at an hourly rate of \$40, as the employer can comply with the minimum wage requirement only by adding up the pay for all these hours together. Just now, during my chat with Dr Joseph LEE, we had a question: Will these employers break the laws easily? Yes, there are chances of non-compliance by employers. In case an employer is afraid of breaching the law, he will fire those unwilling to work overtime. As a result, workers looking for jobs are obliged to work overtime, and once they do so, it will have impact on their families and other aspects.

Honestly, we really hope that the low-income workers will be protected by a minimum wage, not only for a steady income, but also for the sake of enabling them to spend time at home to take care of family matters. This is what genuine protection for employees is about.

Therefore, the Democratic Party supports Mr LEE Cheuk-yan's amendment. Thank you, Chairman.

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

MR VINCENT FANG (in Cantonese): Chairman, previously, the comments, studies, discussions and even remarks and criticisms in relation to the minimum wage level for the wholesale and retail sector reflect that many people completely do not understand the nature of the sector. The majority of people think that the retail industry means the supermarkets, yet supermarket is only one of the trades in the wholesale and retail sector.

Hence, Chairman, please allow me to brief Members on the characteristics of our sector. As I have repeatedly mentioned in the Legislative Council, the wholesale and retail sector is in fact an industry serving the domestic market, including the commodities and services related to clothing, food, accommodation and transportation. The working hours of this industry is different from the industries frequently mentioned by Members. Take the wholesale market of food (such as chickens, fishes, vegetables, fruits, and so on) as an example, they usually begin to work during the midnight. In addition, in the light of the tough business environment, it is totally impossible for some trades to work on a daily basis. The wholesale trade of live chickens is a most obvious example. Once they begin to work, they may have to work for more than eight hours and the holiday issue is not their subject of concern. Nevertheless, there is a consensus between the employers and employees all along: they will work together whenever there is business, and in times of poor business, they will accommodate each other.

Another industry is the service and sales industry, such as consumer products retailing and beauty services. Honestly, when business is quiet during office hours, do they still open for business? Certainly yes. But after the office hours, there are more shoppers in the street and more people will patronize the beauty services. As for the holidays, they are in fact the golden periods. As such, consumer products retailing generally has longer working hours. The majority of the employees in this industry have to work instead of taking rest on the so-called public holidays. What is the compensation for their additional contribution? They are compensated by commission and overtime allowance.

Our industry is absolutely one that can earn more by working more. This is a fact well understood and accepted by employees as they take up the job.

This explains why the wholesale and retail sector has been supporting the introduction of an industry-based minimum wage and has reservation about an "across-the-board" minimum wage all along, the reason being the characteristics of our sector. Nevertheless, our sector, especially the retail and service industries, can always create plenty of job opportunities. Members may know that recently the Labour Department has opened the Recruitment Centre for the Retail Industry. Moreover, in a job fair held two days ago, the retail industry managed to provide the largest number of job opportunities. Also, the retail industry is always relatively popular among the young people.

In the light of the large number of trades of diverse nature, plus the relatively substantial difference in terms of the income level and efforts involved, it is absolutely not easy for us to stipulate an across-the-board basis for minimum wage calculation for all the trades in Hong Kong. Therefore, given that today Members agree to formulate a minimum wage law, in this case, we need to make choices so as to achieve a balance in the receptibility of various industries.

Consequently, the Liberal Party and the wholesale and retail sector object to Mr LEE Cheuk-yan's proposal on adding a provision to clause 5, such that when assessing whether the hourly rate of an employee is up to the minimum wage level, the allowance for holidays, rest days and overtime hours worked shall not be taken into account.

On the calculation of long service payment or severance pay at present, people agree that additional income such as overtime allowance and commission should be counted as part of the wages pursuant to the EO. We also agree to this as employees have really contributed their efforts. However, in the current discussion on minimum wage, Members think that these components should be taken away. In this case, do Members agree that after the passage of the minimum wage legislation, overtime allowance should be discounted from the calculation of long service payment and severance pay?

I would not accuse Members of adopting a "bad loser" approach. I only hope Members can put themselves in other people's shoes. Our legislation on

minimum wage today aims not to stifle the small employers, but to protect the wage earners from being exploited by unscrupulous employers. Hence, I hope Members can take into account the overall situation.

With these remarks, I object to the amendment. Thank you, Chairman.

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

MR LEUNG KWOK-HUNG (in Cantonese): Chairman, I speak in support of Mr LEE Cheuk-yan. When Secretary CHEUNG Kin-chung approached me for a discussion, I said that there was no need to talk any further as I would certainly support Mr LEE Cheuk-yan. This has nothing to do with the friendship between us. Rather, it is all about his amendment being focused on the flaw-ridden EO. On the conflicts caused by the stipulation of a minimum wage on this basis, he speaks from the position of workers.

Chairman, certainly you will ask: Why should we speak from the position of workers? The reason is very simple, for workers have always been an underprivileged group of people in our social structure. Today, we talk about the plight of low-income workers, and Mr WONG Kwok-hing of the FTU has already spoken on that. Over the 12 years since the reunification, the figures have been showing that the population of poor people and workers has kept rising, and it is only until today that we have this legislation on minimum wage. The reason is that in 2006, regarding the two trades earning unreasonably low wages, that is, the security guards and cleaners, only when their plight had been proved by plenty of detailed information on real-life cases, our Chief Executive said that

CHAIRMAN (in Cantonese): Mr LEUNG, please speak on the amendment to clause 5.

MR LEUNG KWOK-HUNG (in Cantonese): Yes, I was about to say that the amendment

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

MR LEUNG KWOK-HUNG (in Cantonese): has causes and effects. May I ask Mr Vincent FANG why there are conflicts between the EO and the minimum wage now? The reason is that no amendment has been made to the EO for decades, but today we want to introduce a relatively new concept to protect the low-income workers by a uniform wage level. Mr Vincent FANG pointed out that the retail industry or beauty services or other industries offering similar services have a business practice that has been proven effective so far: They have to reach and attract more customers by long business hours. Hence, it is infeasible for them to pay every hour. This is but a distortion of the truth. That is to say, the pay has been diluted all along. If today it is required to offer each worker a certain level of pay, say, \$33 at least, those industries that rely on long working hours and diluted pay in operation will feel the pressure.

Our argument is very simple. For the industries mentioned by Mr Vincent FANG, assuming that a minimum wage is stipulated at \$33, and if each worker works for 10 hours without overtime allowance and the so-called commission, as the Cantonese say: "All money will go into the same account", there should be a figure and a factor for computation. For example, in the old practice, there should be a sum of the employer's expenditure on pay. Under the new practice, all additional income is deducted, and a protected amount can be calculated based on 10 working hours under a new employment contract, and when necessary, the overtime allowance will be calculated separately. There is a formula for computation and the extent of harm is known.

Chairman, I know you will again say that I have digressed from the subject. In fact, this is no digression. The service industry, be it beauty services, retailing or department store, what cost them most is the rent for a shop at a hot spot. A shop at a hot spot makes their cost structure

CHAIRMAN (in Cantonese): Mr LEUNG, you have repeated this point many times. Please speak on the amendment now.

MR LEUNG KWOK-HUNG (in Cantonese): Those people do not know what I am talking about Do you only want me to say "I support Mr LEE Cheuk-yan"

CHAIRMAN (in Cantonese): You have already elaborated your point.

MR LEUNG KWOK-HUNG (in Cantonese): Then you tell me, what is my point? What am I going to say next? Can you predict that?

CHAIRMAN (in Cantonese): Mr LEUNG, I am obliged to remind you not to digress from the subject.

MR LEUNG KWOK-HUNG (in Cantonese): That means you have no idea of what I am going to say next. What I am going to say next is "Brilliant Chairman", which is out of your expectation, I guess.

CHAIRMAN (in Cantonese): Please speak on the amendment to clause 5.

MR LEUNG KWOK-HUNG (in Cantonese): Simply put, if the business difficulties of a certain industry are caused by the enormous expenditure spent on attracting customers or providing convenient operating premises to customers, and that industry is obliged to balance its cost by extending the working hours of the workers, how come this responsibility should be borne by the workers who earn a living by toil? If the original EO was problematic, who should be responsible for that? It should not be something as LI Peng said: The Chinese side should be responsible. The Government should be responsible. If Members think that the EO formulated long ago is unable to protect employers in this new era, and it would be particularly so when a minimum wage is implemented, they should request the Government to amend the EO. However, in Conference Room A, I once asked the Secretary if it was possible to amend the EO. He said no, as it is the foundation stone proven effective for decades. Take house construction as an example, if the original foundation stone can

support a weight of 5 000 tons, now there is a plan to build a new house weighed 7 000 tons or 2 000 tons more on it, and if the foundation stone is not strong enough for that weight, do you not need to strengthen the foundation stone?

What Mr LEE Cheuk-yan said is but some fair words for those constantly working overtime without proper compensation, how come it would lead to consequences and accusation by certain people? If Mr Vincent FANG finds any part of the original EO or the existing legislation on long service payment inappropriate, say, the employee side has repeatedly pointed out that the Mandatory Provident Fund should not be allowed to offset the payment, why do you not propose any amendment?

Chairman, you told me that I should advance arguments on law from the angle of law. This I agree. What is law? The foundation of law is all about whether or not there is justice. Any amendment to a Bill should be based on whether justice has been upheld. If the legal basis of the labour laws used to oppress compatriots under colonial rule is found failing to meet the existing needs, the Government is duty-bound to amend it. When we set a minimum wage to protect the low-income workers according to international standards, this conflict should not be exploited to allow this unreasonable phenomenon to continue. This is exactly an example of "a small move leading to a chain of reactions".

Chairman, I know you have no idea of what I am going to say next. You may not like my speech, and perhaps the Council thinks I am wasting time, but this is not the case. I have attended the parliamentary debates of other countries. Those speakers seldom tell legislators not to speak on certain things like what you did to me. The speech I delivered in the Irish Parliament was about economic

CHAIRMAN (in Cantonese): Mr LEUNG, please speak on the amendment to clause 5.

MR LEUNG KWOK-HUNG (in Cantonese): Noted. I have sympathy for Mr Vincent FANG who speaks on behalf of his sector today. That sector does not

have a solid foothold in the six major industries and the four pillar sectors; it is only a subsidiary sector related to domestic consumption. When the domestic consumption market fails to afford the high costs, Mr Vincent FANG should actually consult his trade and request the Government to facilitate their operation by removing the barriers and restrictions imposed on businesses. He should not instigate those employees who do not need minimum wage protection originally when we intend to protect the low-income workers. The majority of the workers do not need such protection.

When this issue surfaced and Mr LEE Cheuk-yan wanted to do them justice, what happened is exactly "a small move leading to a chain of reactions". In fact, insofar as minimum wage protection is concerned, Members all know that there is no need to talk about this issue. If you make a ruling, you would have ruled that this issue should no longer be discussed at the outset to avoid causing complications. The problem is, we do not have a system of working hours, our allowance system for overtime work is not clearly defined and our calculation of commission is unclear. Hence, my conclusion is very simple: I support Mr LEE Cheuk-yan's amendment.

I would like to give the Government a advice. During this debate on minimum wage, I have been repeatedly reminded by the Chairman because of the outdated EO. Chairman, can you please tell the Secretary, I implore him to examine afresh the existing EO, table the disputes stemming from the legislation on minimum wage to this Council for reference or take the initiative to amend those laws.

Under the so-called separation of powers at present, Chairman, no matter what amendment I propose to you, you will either reject my proposal, or ask for permission from the Chief Executive, and it will be a "no" if the Chief Executive says "no". The EO is untouchable because of Article 74 of the Basic Law. Chairman, I am a very humble person indeed, and as I am not allowed to speak, what I say now is only a few words in fairness to

CHAIRMAN (in Cantonese): Mr LEUNG, please speak on the amendment to clause 5.

MR LEUNG KWOK-HUNG (in Cantonese): the amendment triggered by this has generated these problems. Many people say I am doing this in a bid to win voter's support. What makes you think I will run in the next Legislative Council election? The employer side will remind us every time that the existing EO or labour legislation fails to protect workers. The reason for me to say something in the interest of righteousness here is that I do not want to fail those who receive civic education by watching the meetings of Legislative Council — now we do not have civic education, we only have Liberal Studies. Their teachers once said to me: "Mr LEUNG, you should speak more, we have no idea how to teach." Chairman, I have been performing my duties fully so as to make the younger generation in Hong Kong understand the injustice in our society, and this injustice is caused by the extreme inequality between employers and employees in society. Unfortunately, this extreme inequality is showcased in this Council every Wednesday.

Chairman, I know you are running out of patience. I am not going to use up the 15 minutes, so I will conclude my speech right away. I firmly support Mr LEE Cheuk-yan's amendment. Thank you, Chairman.

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

MR LEE CHEUK-YAN (in Cantonese): Given Mr Vincent FANG's speech just now, I wish to make a quick response. I do not know why he suddenly became so excited towards the end of his speech. He said my proposed amendment would kill the small business operators. But I consider it a very minor amendment indeed and that is, the basic wage of workers should be equivalent to minimum wage. In fact, the level of minimum wage that we are talking about is merely a most basic safeguard for the workers' livelihood. Even if their basic wage reaches the level of minimum wage, it can barely sustain their living. Therefore, it is not an excessive demand.

Moreover, he talked a lot about the business of the retail industry just now. I wish to respond by providing some statistics from the Census and Statistics Department (C&SD) so that he will know who actually is the culprit causing the business difficulties of the retail industry. According to the statistics of C&SD, wages only account for 9.1% of the overall earnings of retail businesses, that is, out of \$100 they earn, only \$10 goes to the workers. Then where does the

remaining \$90 go? Everybody knows that it all goes to the rent. The burden of cost has nothing to do with the workers. But you are saying that this humble request of the workers will kill the small business operators when in fact the culprit is those large consortia and big landlords. Why are you not complaining about them?

I also wish to talk about another set of figures. Even if the level of minimum wage is set at \$33, how much increased earnings the retail business has to rake in in order to meet the additional cost? That figure has already been calculated and the increase is merely 0.4%, that is, if earnings can increase by 0.4%, it would be enough to cover the minimum wage of \$33. The increase is only 0.4% which is just a very small rate. Let us think about it, how easy can that be? Let us think about it, once the economy turns around, everyone in Hong Kong is willing to spend and when the earnings of the retail industry can increase by 0.4%, it would be enough to meet the \$33 level. Why is that not possible? Why is it going to be fatal? I want to clarify this point and hope Members can support this humble request of mine.

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

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Chairman, the Government objects to Mr LEE's relevant amendment. Given that the calculation of "hours worked" has taken into account the work and overtime work done on holidays and rest days, hence the allowance earned from such should also be counted when assessing whether the pay for an employee is up to the minimum wage.

Members are very clear that the definition and the provisions on statutory minimum wage should adhere to the EO, including the definition of wages under the EO, by all means. Unless otherwise provided, wages means all remuneration, earnings, allowances, of course including overtime pay, however designated or calculated, capable of being expressed in terms of money, payable to an employee in respect of work done or to be done under his contract of employment. Simply put, the pay falling under the definition of wages under the EO shall be considered as wages under the Minimum Wage Ordinance. The

same principles are also applicable to the handling of allowances for work done on holidays, rest days and overtime hours. I would like to emphasize that the eventual Minimum Wage Ordinance should be compatible with the EO by all means to ensure that the laws are consistent and facilitate enforcement.

Currently, employees' statutory interests under the EO are calculated on basis of the definition of wages having regard to the actual nature instead of the designation of the reward earned so as to protect employees. When assessing whether the wages paid to employees are less than the SMW, if there are provisions otherwise on a sum of money falling within the definition of wages, consideration must be given to whether that sum of money is clearly defined. This is a crucial point. We hold that if the definition of that sum of money under the Minimum Wage Ordinance is inconsistent with the definition of wages adopted to calculate employees' statutory interests (including the pay for statutory holidays and annual leave and severance pay) under the EO, it would lead to confusions and unnecessary labour disputes. At the same time, it may have negative impacts on the administrative work of small and medium enterprises and even give rise to abuses.

According to the existing EO, the calculation of severance pay shall take into account overtime pay amounting to 20% of the average monthly salary. However, according to Mr LEE Cheuk-yan's amendment proposed just now, if overtime pay is excluded from the calculation of SMW, it will certainly lead to confusions and labour disputes. In addition, if the legislation stipulates that employers shall not regard the relevant allowances as part of wages when calculating the minimum wage, it may discourage employers from making this sort of pay to employees and eventually undermine employees' interests. Hence this could be a drawback to them.

In this case, from the perspective of fairness, rationality and clarity, we find the proposed amendment inappropriate. Therefore, I implore Members to object to the relevant amendment. Thank you, Chairman.

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

(Members raised their hands)

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

(Members raised their hands)

Mr LEE Cheuk-yan rose to claim a division.

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

CHAIRMAN (in Cantonese): The question put is on the amendment moved by the Secretary for Labour and Welfare. No matter whether this amendment is passed or not, Mr LEE Cheuk-yan can move his amendment later on.

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

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

Mr Albert HO, Dr Raymond HO, Mr LEE Cheuk-yan, Mr Fred LI, Dr Margaret NG, Mr James TO, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Mr LEUNG Yiu-chung, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Wong-fat, Ms Miriam LAU, Ms Emily LAU, Mr Andrew CHENG, Mr Timothy FOK, Mr TAM Yiu-chung, Mr Abraham SHEK, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr Frederick FUNG, Ms Audrey EU, Mr Vincent FANG, Mr WONG Kwok-hing, Mr LEE Wing-tat, Dr Joseph LEE, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong, Mr Ronny TONG, Ms Cyd HO, Dr LAM Tai-fai, Mr CHAN Hak-kan, Mr Paul CHAN, Mr CHAN Kin-por, Mr CHEUNG Kwok-che, Mr WONG Sing-chi, Mr WONG Kwok-kin, Mr IP Wai-ming, Mrs Regina IP, Mr Paul TSE, Dr Samson TAM, Mr Alan LEONG and Miss Tanya CHAN voted for the amendment.

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

THE CHAIRMAN announced that there were 46 Members present and 45 were in favour of the amendment. Since the question was agreed by a majority of the Members present, he therefore declared that the amendment was passed.

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

MR LEE CHEUK-YAN (in Cantonese): Chairman, I move the addition of subclause (2B) to clause 5. It is fine if Members can repeat what they have just done.*(Laughter)*

Proposed amendment

Clause 5 (see Annex I)

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

(Members raised their hands)

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

(Members raised their hands)

Mr Andrew LEUNG rose to claim a division.

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

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

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

Functional Constituencies:

Dr Margaret NG, Ms LI Fung-ying, Mr Paul CHAN, Mr CHEUNG Kwok-che and Mr IP Wai-ming voted for the amendment.

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

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Ms Emily LAU, Mr Andrew CHENG, Mr Frederick FUNG, Ms Audrey EU, Mr WONG Kwok-hing, Mr Ronny TONG, Mr KAM Nai-wai, Ms Cyd HO, Mr WONG Sing-chi, Mr WONG Kwok-kin, Mr Alan LEONG and Miss Tanya CHAN voted for the amendment.

Mr CHAN Kam-lam, Mr TAM Yiu-chung, Mr CHEUNG Hok-ming, Mr CHAN Hak-kan and Mrs Regina IP voted against the amendment.

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

THE CHAIRMAN announced that among the Members returned by functional constituencies, 24 were present, five were in favour of the amendment and 19 against it; while among the Members returned by geographical constituencies through direct elections, 23 were present, 17 were in favour of the amendment and five against it. Since the question was not agreed by a majority of each of the two groups of Members present, he therefore declared that the amendment was negatived.

CLERK (in Cantonese): Clauses 6, 7, 11, 15, 16, and 17, the heading of Part 5, the cross-heading immediately before clause 18, and clauses 18, 20 and 21.

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Chairman, I move the amendment to clause 6(2), the details of which have already been set out in the paper circularized to Members.

We propose to amend the drafting of clause 6(2) so as to specify clearly that the Bill does not apply to a person who is engaged under a contract of apprenticeship registered under the Apprenticeship Ordinance. While the amendment will clarify the provision and make it more readily comprehensible, it will not affect the relevant policy intent of the Bill.

With these remarks, Chairman, I hope Members will endorse the amendment. Thank you.

Proposed amendment

Clause 6 (see Annex I)

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

MR LEUNG YIU-CHUNG (in Cantonese): Chairman, may I seek your consent to move under Rule 91 of the Rules of Procedure that Rules 58(5) of the Rules of Procedure be suspended in order that this Committee may consider clauses 2 and 6, the heading of Part 5, the cross-heading immediately before clause 18 and clause 18 together with the new heading before new clause 21B and new clause 21B.

CHAIRMAN (in Cantonese): I hope the Committee on Rules of Procedure will examine in future whether this procedure can be dispensed with. As only the President may give consent for a motion to be moved to suspend the Rules of Procedure, I order that Council do now resume.

Council then resumed.

PRESIDENT (in Cantonese): Mr LEUNG Yiu-chung, you have my consent.

MR LEUNG YIU-CHUNG (in Cantonese): President, I move that Rule 58(5) of the Rules of Procedure be suspended to enable the Committee of the whole Council to consider clauses 2 and 6, the heading of Part 5, the cross-heading immediately before clause 18 and clause 18 together with the new heading before new clause 21B and new clause 21B.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That Rule 58(5) of the Rules of Procedure be suspended to enable the Committee of the whole Council to consider clauses 2 and 6, the heading of Part 5, the cross-heading immediately before clause 18 and clause 18 together with the new heading before new clause 21B and new clause 21B.

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

(Members raised their hands)

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

(No hands raised)

PRESIDENT (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the motion passed.

Council went into Committee.

Committee Stage

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

CLERK (in Cantonese): New heading before Trade Boards Ordinance
new clause 21B

New clause 21B Trade boards and minimum
wages.

CHAIRMAN (in Cantonese): Mr LEUNG Yiu-chung has given notice to move an amendment to clause 2 in order to amend the definition of "employee", an amendment to clause 6 in order to add subclause (2A), an amendment to the heading of Part 5, the deletion of clause 18 and the cross-heading immediately before the clause, as well as the addition of the new heading before new clause 21B and new clause 21B.

CHAIRMAN (in Cantonese): If Mr LEUNG Yiu-chung's amendments to clauses 2 and 6, the heading of Part 5, as well as clause 18 and the cross-heading immediately before the clause are passed, he may later on move the addition of the new heading before new clause 21B and new clause 21B. Besides, he may also move the consequential amendment to the long title.

CHAIRMAN (in Cantonese): Mr LEUNG Yiu-chung, you may now move your amendments.

MR LEUNG YIU-CHUNG (in Cantonese): Chairman, I move the amendments to clauses 2 and 6, and to the heading of Part 5, and the deletion of clause 18 and the cross-heading immediately before the clause.

Chairman, the main objective of my proposed amendments is to retain the Trade Boards Ordinance (TBO) so as to maintain the statutory power of the Chief Executive in Council to determine normal working hours and fix overtime rates, and to make consequential amendments to the TBO so as to avoid any conflicts with the Minimum Wage Ordinance.

Under section 4 of the current TBO, a Trade Board shall have the right to determine the normal number of hours of work per week or per day in a certain

trade, and the minimum rate to apply in respect of work in excess of the normal working hours, that is, the so-called "overtime rate" in the TBO. If the TBO were repealed as proposed by the Government now, it would be tantamount to revoking the statutory power of the Government to regulate working hours. This is a major change in policy and I think the Government is trying to take the easy way out by not conducting any prior public consultation. Neither has it discussed the matter with the Panel on Manpower of the Legislative Council nor the Labour Advisory Board. Therefore, I consider that the TBO should be retained before the Government introduces a comprehensive law to regulate working hours.

Chairman, my proposed amendments specifically contain the following:

- (1) to delete clause 18 of the Bill so as to retain the TBO;
- (2) to add clause 6(2A) so as to specify that the Minimum Wage Ordinance does not apply to a person to whom a Government notification made by the Chief Executive in Council under section 2(1) of the TBO applies;
- (3) to add clause 21B so as to amend section 2 of the TBO to specify that the general minimum time-rate fixed under that Ordinance shall not be less than the hourly wage rate specified in the Minimum Wage Ordinance. If the hourly wage rate is increased such that the increased hourly wage rate exceeds the general minimum time-rate, the general minimum time-rate shall automatically be increased in a rate equal to the increased hourly wage rate; and
- (4) lastly, to make other consequential amendments, including the definition of "employee" under clause 2 and the heading of Part 5.

Chairman, when we discussed the issue of the non-usual place of work earlier on, I already mentioned an important concept, that is, working hours. Insofar as working hours is concerned, we have been stating to the Government repeatedly that the stipulation of minimum wage alone would not be effective and helpful to the workers without regulating working hours. We have also mentioned just now that on average, an employee may need to spend at least one

to two hours on travelling time every day. For some, it may be as much as three to four hours, and it is quite common indeed. If the travelling time is so long, then our working hours will not conform to the "8+8+8" principle as I just said, that is, eight hours of work, eight hours of rest and eight hours of private activities or learning. It would be extremely tormenting for the workers if such time were added to their normal working hours. Take for example the work of security guards. We all know that one single shift is 12 hours. If they have to stay on for an additional 15 minutes both before and after each shift, it means that they have to work 12.5 hours. If we add an average of two hours of travelling time to that, it will make more than 14.5 hours in total. There are 24 hours in a day and for these workers, they are away from home almost 14 to 16 hours a day. When they get home, they will barely have eight hours or less to themselves after relaxing for a while and then take a shower and eat something. I do not think it is a human way of living because their private life is exploited.

I have talked about this in this Council before. Once, a man who worked as a security guard waited for me in front of the Legislative Council Building. When he saw me, he asked me to do a simple thing for him, that is, to petition the case of security guards in this Council. When I asked him what it was, he said their working hours were too long and it was unbearable. I said I was aware of the problem and promised to reflect their plight. He said I had to reflect their plight and then went on to explain his situation. I asked him what was the problem and what was his job. He said he was a security guard and each shift lasted for 12 hours. When I said it was generally like this for security guards, he replied that it was exactly why the problem was so serious because whatever job he changed, the working hours would always be 12 hours. Together with the travelling time, he would only have limited time when he got home. He then said that it was all the more miserable because he could not be a husband to his wife. When I asked him what did it mean, he said he was just too tired after work and went to sleep right away instead of fulfilling the basic duty of a husband. He sounded like joking when he said that, but it was no joke. He was really very miserable, and he had to deal with the problem.

Chairman, I think it is miserable for workers to work long hours. The 12-hour shift of security guards is relatively fine compared to some workers who have to work for as long as 13 or 14 hours. What kind of life is that? I really do not understand. Once a shipboard cargo handling worker told me that he had

to work for 72 hours on end. When he needed a break, he could only sneak off to rest in a corner on board for two to three hours before going back to work. I do not know how the employer feels about this. When a worker is so tired at work, how can he maintain the quality of his work and effectively serve his customers? I think the employer really needs to think about this question.

Some employers may think that by making their employees work longer hours, they can achieve savings in staff cost and earn more. I hope they can abandon this short-sighted way of thinking because this is not always the case. When the working hours of employees are reasonable, they will not feel tired. When they can maintain their vitality, they will be in good tempers and serve the customers better and work better. As a result, the employers may earn more. Hence, I think it is pathetic if we do not properly deal with the problem of long working hours.

When was the TBO, which I cited earlier on, enacted? It was enacted in the 1940s. I do not know if it is because England is a relatively democratic country and has higher regard for the well-being of the people that such a law was enacted in Hong Kong. In consideration of the low income earned by workers during an economic downturn, the TBO specifies that the Governor shall have the right to establish a trade board to determine a minimum wage level so that the workers can maintain a reasonable level of living. In addition, the TBO provides that if the trade board considers the working hours of workers unreasonable, it shall have the right to determine the normal hours of work and overtime rates. The overtime rate refers to, say, 1.5 times of normal wage so that the workers can get additional compensation for additional work done. This is better than getting nothing for overtime work at all.

But unfortunately, although the Secretary always says he cares about the workers, he has sought to repeal the TBO now, which is equivalent to lifting the regulation on working hours and overtime work. So how can he protect the workers and understand their plight? The labour sector has always pursued this matter with the Government, maintaining that working hours and wages should be dealt with together and not separately. But unfortunately, as we discuss the amendments to the Minimum Wage Bill today, there is nothing about working hours and hence, there is no regulation at all. As it stands, it is allowed under the law to make employees work overtime without any limit. But working

overtime does not mean that the employees can get any compensation. So how can this make our society harmonious as stated by the Chief Executive?

Nowadays, the Government keeps talking about two things. First, the workers must upgrade their skills through more training. Second, we should encourage more parent-child education and parents must spend more time with their children. These two things are always advocated by the Government. But can the workers do so? Who does not want to upgrade his skills so as to earn more? But who has the time to receive training? I remember once watching a programme produced by TVB, about a worker in the catering industry. Finishing work at about 2 am, he would study until about 4 am. Then, he would go home and sleep a while before going to work again at about 10 am. This is not made up by me. It is what the TV programme said. And the truth is, there are indeed people who study like this. I am neither lying nor exaggerating. I think the Secretary understands the situation very well for he has been in charge of labour matters for a very long time. He must understand these situations very well. Can he bear to see these situations where workers have to study after work, then go to work again after study, and study again after work? Does the Secretary find this kind of life acceptable?

The Secretary has also been in charge of education and he must understand that if parents have more time with their children, it will have a positive impact on the children's development. Nowadays, many children may not fare well in both academic studies and conduct. But they may lack the care of either their father or mother, or even both in the family. When the Secretary was the Director of Education, he always said parents had the responsibility to take care of their children. But the question is how the parents can fulfil this responsibility. How can they do so when they have to work such long hours? It is not a matter of the parents not wanting to do so, but how they can do so? We keep saying that there are many problems facing the next generation, such as drugs, truancy and lack of concentration in class. Many students even fail all subjects in the Hong Kong Certificate of Education Examination. We cannot pretend that these problems do not exist and do nothing about them. We must deal with them directly. But how? Do we just rely on schools? The schools would say it is not the problem of schools alone, for parents also have their responsibility. Do we take the problems to the Education Department or the current Education Bureau? Apart from schools, parents have a responsibility, and families have a responsibility. If parents have to work 13 hours a day, how

can they fulfil their responsibility at home? However, the Secretary tells us today that this existing power of the authorities has to be revoked. He surrenders, does nothing at all and totally ignores the problem of long working hours. How can he do that?

When we resumed the Second Reading debate on the Bill, many from the labour sector said that the Minimum Wage Bill would be passed today. But we also cautioned the Secretary against thinking that he was home and dry, because there were still many issues to deal with. I remember many Honourable colleagues mentioned the regulation of working hours as our next target. In fact, Honourable colleagues, we do not have to do it the hard way. Why wait until the next round to regulate working hours? It would suffice if the TBO is retained. If the TBO is retained, the Government will have the power of regulation. Also, the Secretary would not have to work so hard because he has nothing to worry about after the Bill is enacted today. He can then go free, relax and take a vacation in the summer. And we do not have to work so hard.

It would suffice if the Secretary can call on other Honourable colleagues to support my amendment. We will all be happy. Yesterday, Mr LEE Cheuk-yan said that if the minimum wage level was set at \$33, it would be like becoming the champion. I believe the most important thing is to pass this amendment. This is about the regulation of working hours, another important demand that the labour sector has been fighting for. It is equally important. I hope we can be tied champions. Apart from achieving the target of \$33, we can also regain the regulation of working hours. We are not being greedy. Honestly, we are not greedy because this is just a basic demand that we have been fighting for years. I hope Honourable colleagues can support my amendment to retain the TBO.

Chairman, I so submit.

Proposed amendments

Clause 2 (see Annex I)

Clause 6 (see Annex I)

Heading of Part 5 (see Annex I)**Clause 18 (see Annex I)****Cross-heading before clause 18 (see Annex I)**

CHAIRMAN (in Cantonese): Members may now debate the original clauses, Mr LEUNG Yiu-chung's amendments to them, and the proposed new clause jointly.

MR IP WAI-MING (in Cantonese): I speak on behalf of the FTU in support of the amendments proposed by Mr LEUNG Yiu-chung. Just now, Mr LEUNG Yiu-chung said that he hoped the Secretary could enjoy an overseas vacation. But, Mr LEUNG, in terms of working hours, I do not think the Secretary has set a good example because he always works overtime. I think he should set an example himself by finishing his work within office hours.

In fact, we have basically the same view on the Trade Boards Ordinance (TBO). If my memory is correct, before our discussion on the Minimum Wage Bill (the Bill), that is, before the launch of the Wage Protection Movement, Mr KWONG Chi-kin and Miss CHAN Yuen-han, both Legislative Council Members of the FTU in the last term, as well as Mr WONG Kwok-hing had all considered the option of invoking the TBO to deal with the issues of minimum wage and standard working hours. However, the Government has always maintained that the TBO was enacted a long time ago and it has never been invoked in the past 60-odd years since 1940. Moreover, the Government also proposes that as the TBO has now become obsolete, it should be repealed on this occasion of the enactment of the Bill. I am deeply puzzled as to why the Government has never invoked a law that was enacted for more than 60 years. Who should be responsible for this? I think the Government should review the whole matter.

We think that the Government's present proposal has a covert objective because the TBO only deals with two things, that is, minimum wage and working hours. But now the Government is trying to repeal the TBO in the course of

stipulating a minimum wage. As the TBO is also related to working hours, how can it be discarded so easily? Ultimately, I think it is the Government which is most wasteful because firstly, it has never put something that is already there to use; and secondly, it tries to throw away something that is still useful without a backward glance. Why is the Government always so wasteful? I think a lot of time must have been spent on the enactment of the TBO by the legislature back then. Therefore, the time spent should not be wasted. We consider that it is irresponsible of the Government to dismiss the whole thing so easily.

Moreover, Secretary, we mentioned in our speeches yesterday that the Government should start dealing with the issue of working hours. In fact, just like the previous amendment, we consider that holiday premium should not be counted as part of wages for the purpose of determining whether the remuneration to an employee meets the statutory minimum wage (SMW) requirements because by including holiday premium, employers can make employees work longer hours. This would actually cause workers losses because even though there is SMW, they effectively have to work much longer hours.

Secretary, last Sunday, we helped drivers of the Hong Kong Tramways Workers Union negotiate with Hong Kong Tramways over an ongoing dispute in relation to working hours. Upon rescheduling its services, Hong Kong Tramways has made changes to the rostering system of the drivers. According to the new roster, the working hours of tram drivers will increase from eight hours a day previously to 10 or even 12 hours a day. Moreover, Hong Kong Tramways has adopted the undesirable practice of "leaving the field" from the catering industry, meaning that drivers have to take unpaid rest lasting up to six hours between calls of duty. For example, a driver who starts work at around 6 am will "leave the field" at about 11 am. Then he resumes duty at about 5 pm before ending his shift after 9 pm. His working hours will be more than 10 hours a day, almost 14 hours. The drivers have to devoted all the time to the company and work just like slaves. A driver has rightfully complained that in the past, he would work eight hours a day and leave at 2 pm or 3 pm to pick up his daughter from school. Then he would go to the market and prepare dinner for the family. As his wife usually finishes work at about 6 pm, the couple can both work and make a modest living while maintaining family life. However,

with the sudden and unilateral decision of the company, the drivers now have to work as many as 14 hours a day. As this driver put it, if he had to work until eight or nine in the evening, who would take care of his daughter? If he left his daughter alone at home and if any accident happened, the Secretary would ask the police to arrest him and charge him for leaving his child unattended at home. If that happens, who will fend for the workers?

Therefore, we do not consider it appropriate that the TBO should be repealed lightly as proposed by the Secretary. As we see it, section 4 of the TBO is related to working hours. It also deals with the issue of overtime pay by specifying that if the Chief Executive in Council considers that the overtime situation of a trade is excessive, an overtime rate may be determined. In other words, that legal basis is already there. Secretary, we hope that the TBO can be retained to deal with such problems as overtime work, excessive working hours and overtime rates in certain trades or industries. Why should the existing legal basis be abolished?

In the long run, Secretary, under what circumstances will we give our consent to your proposal? When you give us a piece of legislation regulating working hours. However, I do not think the Government has the courage to legislate on standard working hours so soon. Nonetheless, we will keep on fighting even though I have no idea how long we have to wait for our next success.

Why did I say yesterday that I was filled with emotions in the discussion on minimum wage? Because, as I always say, the battle for labour rights has to be fought for years, sometimes even decades. Of course, I hope that the fight for standard working hours will not take too long. But until we have a specific law on standard working hours, we will not accept the repeal of the TBO which can temporarily deal with the issues of working hours and overtime rates, as proposed by the Administration. We hope the Secretary can seriously consider our suggestion and pluck up his courage to either accept or consult again the views of the labour sector on the legislation on standard working hours. Much has been said about the problems caused by long working hours, and I really hope the Secretary will properly address this issue.

With these remarks, Chairman, I support the amendments.

MR WONG KWOK-HING (in Cantonese): Chairman, I speak in support of the amendments proposed by Mr LEUNG Yiu-chung to retain the existing Trade Boards Ordinance (TBO), which I think is appropriate.

I noted that when speaking on the resumption of Second Reading debate on the Minimum Wage Bill (the Bill), the Secretary called the Minimum Wage Ordinance (the Ordinance) to be enacted a "balanced way". However, the proposal under the Bill to repeal the TBO is exactly the opposite to what he said as it has disrupted the "balanced way". I consider that the TBO must be retained because its original intent is to allow the Administration to determine wage rates and working hours for certain trades if considered necessary. The Government's proposal to repeal the TBO in the context of introducing a statutory minimum wage (SMW) means that a piece of legislation that is originally available, ready for implementation if necessary, desirable in the long term as well as comprehensive, will be abolished. I consider this course of action unacceptable and contrary to the "balanced way" as professed by the Secretary.

Chairman, as a result of the impact of the financial tsunami on Hong Kong in the past decade or so, together with the Government's lead in contracting out services, the wage level of uncompetitive non-skilled workers has become increasingly low while their working hours have become increasingly long. In the past decade or so, low wages and long working hours have become synonymous with local labour, showing that market forces regulating wages and working hours have become dysfunctional. As a result, many disadvantaged workers who have lost their competitiveness and bargaining power suffer from exploitation.

The enactment of the Ordinance today has in fact only addressed the problem of hourly wage. That is all. When we attended residents' meetings, we received many complaints from residents in the neighbourhood and workers. And we have explained to them clearly that this law can only solve some of the problems and not all, particularly as wage and working hours are related and the issue of standard working hours has yet to be resolved. Under the circumstances, while we hope to conclude the legislation on minimum wage soon, the issue of standard working hours remains outstanding. As this is another major problem in our society, we need to bring about changes in this regard.

Hence, our request for retaining the TBO is totally justifiable, reasonable and legitimate because the legislation already exists and we are not re-enacting it. As Members are well aware, it is a difficult task to re-enact a piece of legislation as we may have to meet two or three days in a row but still cannot complete the legislative process. Given that the TBO is an existing law relating to working hours and its powers can be readily invoked by the Government if necessary, why then should it be repealed? It is absolutely unnecessary. It will be more difficult to enact new legislation when problems arise in future.

Therefore, if the "balanced way" is to be maintained, the TBO should be retained. The Government's proposal to repeal the TBO merely shows that it is not maintaining the "balanced way". Instead, it is lopsided towards the interests of the business sector. The Government has neither learnt from the lesson of its governance mistakes in the past decade or so nor reflected on this issue. I feel deeply sorry about this.

Chairman, many workers living in remote new towns have to face immense difficulties caused by low wages and long working hours. Moreover, as a result of the Government's unbalanced town planning, they have to move to new towns in order to live in public rental housing. They have to travel a long way by bus or railway for work and the heavy burden of transport costs has taken a toll on their livelihood expenses. For the time being, I will concentrate on working hours and put the issue of wages aside. The workers have told me that they can hardly see their children and this illustrates their plight very clearly. While the Government is promoting family-friendly policies and parent-child relationship, we witness many family tragedies happening in remote new towns. That is why the Government has to promote harmony in families. If the parents just don't have time to look after their children, help with their studies or even chat with them, how can these social problems and tragedies be addressed? The Secretary is also responsible for social welfare. I remember a few weeks ago, he was in this Chamber seeking our support for additional provisions for the care of mentally ill persons. In fact, there are many related social problems and family tragedies which are invariably caused by family problems left unresolved or unattended to. If these problems are left unresolved because of the long working hours of the workers, should the Government be concerned? Should the Government take actions to address the issue?

Considering the above, I think the Government should not promote family-friendly policies and harmony in families on one hand but repeal the TBO

on the other hand. This will only give us the impression that the Government is schizophrenic. To put it more bluntly, it talks the talk but does not walk the walk. Therefore, I hope the Secretary can consider our request.

Moreover, the Government is also saying that workers should upgrade their skills and seek self-enhancement by life-long learning. But if their working hours are excessively long and there is no regulation at all, how can they study or undergo training? If they have to work more than 15 hours a day, they will be too tired to do anything when they go home. Therefore, I hope the Secretary will consider the voice of us who represent the grass-roots workers.

Just now, Mr IP Wai-ming complimented the Secretary on being diligent and hardworking. But I hope the Secretary can stop being so diligent and hardworking in this regard, and stop lobbying for Members' support to repeal the TBO. If he is not so diligent in this regard, the wage earners in Hong Kong will be able to live happily and enjoy their work while having more time to spend with their children and for self-enhancement. Therefore, I am calling on the Secretary from another angle, hoping that he will stop his frantic lobbying in this regard so that our voting preference, which reflects the voice, demand and aspirations of grass-roots workers, can prevail.

Chairman, as I see it, there is no conflict between retaining the TBO and introducing an SMW. They are in fact compatible and not mutually exclusive. It is absolutely not the case of just one but not the other. Since they are not mutually exclusive, why can they not co-exist?

I hope the Secretary will answer our questions, that is, why they cannot co-exist? What harm will the co-existence of the two ordinances bring to the Government? What harm will the co-existence of the two ordinances bring to the business sector? Will the co-existence of the two ordinances make it easier to resolve the problems in future? I have put forward these three questions and let's see if the Secretary will respond later. If he can reply these three questions, I will support his proposal to repeal the TBO. This is my challenge to the Secretary. As long as the Secretary can reply these three questions, I will support his proposal to repeal the TBO later. I think the people listening to the radio or watching TV now all want the Secretary to reply to these three questions. I now put these three questions to the Government publicly for it to answer.

Chairman, I consider it necessary to retain the TBO. For the past 60-odd years, it has been kept in the statute book. If the business sector worries that it might increase their operational costs or bring about negative impact to the economy, nothing has been affected in these 60-odd years of its existence. If there is any impact, I invite the Government to answer the fourth question: If the TBO has been retained for 60 years, why can it not be retained even longer? Logically speaking, why is it not possible and what are the consequences? This is the fourth question.

Regarding Mr LEUNG Yiu-chung's amendments, I now challenge the Government with four questions. If the Government can put forward some arguments that I cannot refute, I am willing to revert my position and support the Government.

With these remarks, Chairman, I support Mr LEUNG Yiu-chung's amendments.

MR WONG SING-CHI (in Cantonese): Chairman, the Democratic Party supports the amendments proposed by Mr LEUNG Yiu-chung to retain the Trade Boards Ordinance (TBO). I guess the reason why the Government wants to repeal the TBO — I do not know whether it is really so, Mr WONG Kwok-hing — the TBO has been in Hong Kong's statute book for 70 years but it has never been put to real use and the Government has never invoked the powers under the Ordinance. As such and with the implementation of minimum wage now, the TBO has to be repealed. Why is that so? Because as Members have just mentioned, the problem of regulating working hours remains outstanding and the TBO has become an eyesore because the Government does not know when it will embark on the regulation of working hours. That is why the Secretary is very worried that he has to work even harder than he is now. Secretary CHEUNG, Mr IP Wai-ming just praised you for working hard but according to my calculation, workers who are remunerated at the rate of minimum wage have to work 250 hours a day in order to earn as much as you do. Come to think of it, the difference is indeed astronomical. If there is no minimum wage, the situation is even worse. They have to work 250 hours in order to earn as much as you do. But you just have to do a little in order to safeguard the rights of these workers in respect of the regulation of working hours. What is so wrong about it?

Chairman, old things are not necessarily bad. They can do good also. I still remember vividly the foreign expression spoken by you and the Chief Executive in this Chamber the day before yesterday. I cannot repeat that expression because it is French. A plague with that French proverb was hung there for a very long time but I have never witnessed its use in the Legislative Council before. However, that expression was put to use on that day reminding some of us that "evil to him who evil thinks". Chairman, such an old expression can be put to use anytime. Secretary CHEUNG, the existence of the TBO shows that the need for safeguarding the work conditions of employees in respect of either their wage level or working hours had long been recognized as early as 70 years ago. This old wisdom has been there all along, comparable to that foreign expression. Therefore, why the Government has to abolish it? I reckon even though that old saying was removed from up there, the Chief Executive and the Chairman can still put it to use. However, I do not know how the Secretary is going to deal with the regulation of working hours.

We have always maintained that for local workers, the problems with their working conditions lie with low salary and long working hours and this has in turn made their lives difficult, particularly in respect of their family lives. We have heard about many cases of domestic violence and one of the causes is the long working hours of our workers who are too tired to properly play their roles in the family. Chairman, some Members have already made our views known to the Secretary today and we know that Mr LEUNG Yiu-chung's amendments are unlikely to be passed. Nonetheless, I hope the Secretary can initiate the discussion about regulating working hours in the future so that workers in Hong Kong can live in peace and work in contentment without being exploited and abused by the employers. The Democratic Party will support the amendments proposed by Mr LEUNG Yiu-chung.

MR LEE CHEUK-YAN (in Cantonese): Chairman, before I move on to the subject under discussion today, I would appeal to the Secretary for paying attention to occupational safety and health. Because as I have observed, it seems that he has not had his meal yet, nor has he gone to the restroom. We do not want the Secretary to become a bad example of neglecting occupational safety and health. As we know, we are discussing standard working hours today. Apart from standard working hours, the Hong Kong Confederation of Trade Unions (HKCTU) is also fighting for lunch and resting period. I hope that the

Secretary can act as a good example, otherwise I may need to call the Labour Department now and ask them to come and check the working environment here, and see if the employer here has overlooked the Secretary's safety and health. I hope that he can take some time and have his lunch as soon as possible, as I believe that he can still hear my speech inside the Dining Hall.

Chairman, the HKCTU is absolutely supportive of the amendments moved by Mr LEUNG Yiu-chung today. It is because conservation is the trend at the present moment, and we can take it as a kind of conservation. This law, which was enacted in the 1940s, should be retained. However, what is the genuine purpose of retaining it? If the Trade Boards Ordinance (TBO) only deals with the part of minimum wage, it is not important if it is repealed, as it can be replaced. Nevertheless, the most crucial point is that it contains a provision which states that the Chief Executive in Council can set standard working hours and overtime payment for low-waged occupations. There is indeed such a provision, and we have to retain this provision.

In fact, as we can recall, this provision had been quoted when Dr LEUNG Ka-lau moved a motion on legislating for standard working hours earlier in this Council. I remember clearly that the motion on legislating for standard working hours moved by Dr LEUNG Ka-lau was passed in the end. If we think that this motion can be passed, why can we not support Mr LEUNG Yiu-chung's amendments? It is because Mr LEUNG Yiu-chung's amendments are also about standard working hours. He simply hopes that there can have standard working hours and overtime payment. Therefore, my view is that this is existent already under the TBO. Many people say that after fighting for \$33 per hour, the HKCTU will fight for legislation on standard working hours. But in fact, this is existent already.

In order to legislate for standard working hours, we of course need to enact legislation which can keep up to changes in society. Although the provision concerned was made in the 1940s, if the Government is willing to use it, it can also be applied at present. The worst part is that the Government is unwilling to invoke the provision. The Government is turning a blind eye to the plight of the workers, and to their need for family-work balance. We always criticize the Secretary or Mr Donald TSANG for promoting family-friendly environment. As I recall, it seems that they are promoting happy family. How can they be happy? When they have to work for 10-odd hours a day and cannot go back

home to see their children, how happy can they be? This actually is destroying the family. If we are to attain a family-friendly environment, I think we really need to retain and apply the TBO by acceding to a very basic and minimal request of the workers, namely standard working hours.

Chairman, I have to point out another area from which we have to learn a lesson. There is another legislation which has been repealed, and I feel so regrettable now. In fact, I was cheated by the Government then. Why would I be cheated by the Government? Which legislation was that? The Factories and Industrial Undertakings Ordinance contained a provision on women working overtime. At that time, the ceiling of women working overtime in factories was 200 hours, and the Government intended to repeal that legislation. Back then, it told me that there were no more factories — that was true, and it was deplorable that there were no more factories at that time — even if we retained that legislation, it was also useless. That is truly the fact. However, I feel regrettable on second thought. Even if the existing legislation is useless, we still have to retain it so that society knows that there is such a standard, a standard of maximum working hours. There was a ceiling for women's working hours back then. It is regrettable that the legislation was repealed then. Therefore, no matter what, I do not hope to repeal the TBO, as I have learnt a lesson last time by removing from the statute book the restriction of capping the number of working hours at 200. This runs contrary to both the principle and the spirit. I do not want to act against the spirit in this incident.

Therefore, Chairman, I am absolutely supportive of Mr LEUNG Yiu-chung's amendments. I also appeal to Members for their support for Mr LEUNG Yiu-chung's amendments. I would also appeal to them for voting against the question that clause 18 should stand part of the Bill. This is tantamount to retaining the legislation. But if you support Mr LEUNG Yiu-chung's amendments, it will be nicer, as Mr LEUNG Yiu-chung's amendments will keep the part that should be kept and discard the part that should not be kept. However, if this is not viable in the end, I would rather retain the whole Ordinance. It is not bad to retain it. Although there is a piece of better-conceived legislation on minimum wage, there still will not have any problems. Hence, I appeal to Members for supporting Mr LEUNG Yiu-chung's amendments, and opposing the Government's proposal of incorporating clause 18 into the Bill. Thank you, Chairman.

MR LEUNG KWOK-HUNG (in Cantonese): Chairman, when it comes to the Trade Boards Ordinance (TBO), I have very strong feelings personally. In regard to whether the TBO is applicable to Hong Kong, I have sought a judicial review and I lost the case in the end.

I have no idea whether Ms CHAN Noi-heung, who applied for judicial review together with me, has a chance to watch television today. On that day, Mr LEUNG Yiu-chung withdrew in the last minute. Although he has withdrawn from the lawsuit, he is doing something good today by trying his best to retain a piece of legislation which may only be paying a little bit of lip service to the labour.

Early this morning, I mentioned that the TBO was enacted in 1940 to offset the legislation on minimum wage. We all know that calculation is needed in minimum wage. Working hours and wages are twins. If the number of working hours is not safeguarded, workers are still not sufficiently protected even if there is a minimum wage, especially in the case of overtime work, or whether there should be higher payment for overtime work. We can even move a step further by not talking about money. If the boss asks you to work overtime, do you dare not to work overtime? Without statutory working hours, there is no room for an employee to argue against the boss's request.

I work at the West Wing of the Central Government Offices and I can see that many civil servants work until late at night. I have no idea whether they will be paid for their overtime work or they simply do not dare to leave as their bosses have not left. If they work under Secretary Matthew CHEUNG, they are even more miserable. Neither do they dare to go to the restroom nor do they dare to have meals. That is unbelievable indeed.

What is so outdated about the TBO? In fact, there is a court verdict on it. What is the most regrettable is that it is originally a matter of legislation. That means the legislature can make or amend legislation through people's representatives with people's mandate in order to reflect the actual development of society and the temporary consensus of the community. However, it did not do so. Therefore, the TBO, which was enacted to replace the Minimum Wage Ordinance enacted in 1932, can be retained until today. We can see that the Government does have various ways to deal with legislation that has no substantial effect.

Chairman, your goodself had experienced the chaotic situation here which lasted three days and three nights in 2006. Why did it happen? It is because the Government relied on the outdated Telecommunications Ordinance, and Donald TSANG arbitrarily misinterpreted the essence of legislation, thinking that the executive order made by the Chief Executive could replace legislation and that legislation could be enacted by the executive authorities. We can see that things have changed. What is the story about? It is that the Government adopts different attitudes towards some useless laws or some existing laws which have never been invoked.

Firstly, we all know that the ordinance on collective bargaining is very short-lived. It was passed at the end of June before the reunification. However, in mid-July, I protested upstairs in the Public Gallery against the suspension of the ordinance. Chairman, you sat here in the Chamber as a Member of the Provisional Legislative Council then. I do not know the vote you had cast, but the legislation was repealed subsequently.

In regard to legislation which realized the most important right of international labour movements, and which also contained the stipulations of the United Nations International Covenant on Economic, Social and Cultural Rights (ICESCR), the Government made use of a fully appointed legislature to suspend it before repealing it altogether. The whole process took only three months. If the SAR Government or the previous British-Hong Kong Government was truly brave enough to face the reality, why did it not scrap the legislation earlier as it had never be invoked or, as the Government Counsel in my lawsuit pointed out, the penalties in this legislation were too light and were not applicable? Why did it have to suspend and repeal a piece of legislation passed by the previous Legislative Council which merely aimed to give workers the right to collective bargaining? It only lasted four months. Is it not a reflection of the stance of a class, or an indication of absolute power and absolute corruption? Since all 60 Members of the Provisional Legislative Council were appointed, it was a picture of absolute power and absolute corruption.

At present, as Members in the Chamber are divided into two halves, the situation is less savage. Members will not be summoned by the Chief Executive, as if underlings being quickly summoned by the gang leader for an uprising, to scrap a piece of legislation which carries epoch-making significance

to the Hong Kong workers, confers them the right to collective bargaining and requires employers to consult workers before employment terms and conditions can be changed. Chairman, this is the first point.

Secondly, the Interception of Communications and Surveillance Ordinance enacted in 2006, with which Mr James TO was very concerned, was also passed before the reunification. However, it had never been invoked after being signed and was even repealed afterwards. The reason was that this legislation was not viable. Nevertheless, the Secretary for Justice seems to have fallen asleep. He does not amend the legislation which is not proper enough but just puts it into the fridge. Can this working attitude be regarded as reasonable? Finally, Donald TSANG has to face an embarrassing situation. He said that he would use an executive order to replace legislation. This would serve as a substitute and he was to confirm that. However, he lost in all three trials and he had to ask a favour of the court for not implementing the court decree for six months. It is shameful indeed.

CHAIRMAN (in Cantonese): Mr LEUNG, please focus on the subject matter.

MR LEUNG KWOK-HUNG (in Cantonese): I am now talking about the history of this legislation and this is relevant. You may also remember that. The Government has different ways of dealing with this kind of legislation in different periods of time. It is incumbent for us to monitor the Government. Today, the Government has told a lie. I have wasted a total of \$1 million for obtaining these three pages of court verdict. In the Courts of three different tiers, Mr Justice Michael HARTMANN, Mr Justice Geoffrey MA — he will soon become the Chief Justice of the Court of Final Appeal (CFA) — and Mr Justice Andrew LI, the incumbent Chief Justice of the CFA, said that while the TBO was existent, Mr LEUNG and his lawyers could not prove the unwillingness of the Chief Executive in doing his part. Since the Chief Executive had been trying to promote the Wage Protection Movement for two years and had undertaken to introduce the legislation on minimum wage when the Movement came to no avail, this judicial review was therefore not justified. Their grounds are that the scope of immunity enjoyed by the Chief Executive under the Ordinance is very wide-ranging. When he knows that the wage level of a particular occupation is miserably low, he will invoke this Ordinance or resort to other means. And

today, he is adopting other means. Therefore, in the TBO, the part concerning the miserably low wage level can be deleted. Then, should the Government do something when the working hours of an occupation were despicably and shamefully long? The TBO does not only cater for minimum wage. Secretary, have you ever asked Mr WONG Yan-lung? How can you do that so hastily?

I would like to ask your advice, Chairman. Is the Government saying the right thing? At present, we do not have legislation to cap the number of working hours of more than three million workers in Hong Kong. Chairman, when I was arrested in 1977, I mentioned about working hours and advocated a three eight-hour system. For more than a century, we have been advocating the three eight-hour system on the Labour Day. Why does a metropolitan city like Hong Kong, which has signed the ICESCR, not even have the minimum protection for workers? Dr LEUNG Ka-lau is also wasting his efforts as that will be vetoed at a blow under the split voting system. The split voting system and functional constituencies are just like cancer which will distort everything normal under the sun.

As a Legislative Council Member, Mr LEUNG Yiu-chung needs to do the one and only thing, and that is, to put this on record for the purpose of upholding justice. If anything should happen, we will spend another \$1 million for a judicial review. Finally, the Government may say that it will launch a movement to restrict working hours. If the situations in certain trades are undesirable, it will restrict the number of working hours. Does it have to be like that, Chairman? Although I do not dare spending another \$1 million on a lawsuit, who knows if Mr Ronny TONG will offer free service in a lawsuit? If the TBO is repealed, how can a judicial review be possible? Is the Government destroying the roots and the branches so that they will not sprout again? It is just like what eunuch CAO Shao-qin said in the movie *Dragon Inn*. He said he would kill their children and grandchildren so that they would never sprout. The TBO is a well-intentioned ordinance which was enacted under a reform inevitably introduced by the British colonialists after the World War and has been existent for 70 years. The Government simply gives a little right to the Hong Kong people today, maybe \$24 per hour, and it is meant to brush aside everything.

Chairman, is that fair? What goes around comes around. It is just like the political reform package. If the Democratic Party thinks that it has to

support the revised District Councils (DC) package, it just gives its support. Why does it also give its support to the proposal concerning the Chief Executive? Has it ever thought about that? You need to be logical even when you tell a lie. Chairman, do not blame me for being too irritated. I think if you take my seat, you will also be irritated. I remember what you said earlier, as I pay much attention to what you said. In 2006, you said with a smile that minimum wage was actually a political issue. You are right. The issue today is a political issue. Today, the SAR Government thinks that the situation is unbearable and really has to do something. It even procrastinates until today. We really have to celebrate the passage of the revised DC package.

Chairman, this is a political issue. I ask the SAR Government again. Does it think that in retaining the TBO, it will have a legal responsibility to introduce legislation for the situation when the working hours are shamefully long? Does it attempt to kill it with a stroke because it does not want to take this responsibility? Chairman, this is not righteous. Even if I can reprove it for 15 minutes, this is not enough. If anyone argues any further here, I will press the button and reprove it once more. Thank you, Chairman.

MR RONNY TONG (in Cantonese): Chairman, political reform is not a dress, and neither is the law. You cannot casually apply the law when you like it and discard it when you do not like it. The Ordinance that we are discussing right now has been passed through normal procedures. It has got its legal status and has its fundamental meaning. We cannot say that this Ordinance has to be repealed because it has never been enforced.

Chairman, on this issue, some of my opinions actually differ from those of Mr LEUNG Kwok-hung. Of course, I do not recall whether he had discussed with me when he applied for a judicial review. I cannot remember clearly. However, while he lost his case in the judicial review, it did not mean that the Ordinance was useless and should be repealed. Chairman, the difference between this Ordinance and the judicial review applied by Mr LEUNG Kwok-hung lies in the fact that this Ordinance empowers the Government — the Chief Executive in particular — to safeguard the workers in terms of working hours. This power is actually imposing a responsibility onto the Government.

Chairman, if the Government does not enforce the law or carry out its responsibility, it is the Government and not the Ordinance that is wrong. Someone may say that the Ordinance is wrong and can be repealed. However, this Ordinance is right. Chairman, why do I say that it is right? It is because not only is this Ordinance, as I mentioned earlier, passed after going through normal legal procedures and thus has its vested legal status, but at the same time, it is also in line with the constitutional obligation of the Government. Chairman, of course, I am referring to Article 36 of the Basic Law which clearly stipulates that the welfare benefits of the labour force shall be protected by law. The International Covenant on Economic, Social and Cultural Rights (ICESCR) mentioned in Article 39 shall be implemented through the laws. Article 7 (d) of the ICESCR clearly states that there shall have proper compensation for rest reasonable limitation of working hours. In other words, standard working hours are a kind of basic labour rights that shall be constitutionally protected and safeguarded by law. This legislation, which has not been enforced for a few decades, has actually realized the obligations required by the Basic Law. If the Government does not enforce it, it is the fault of the Government. The Government should not try to cover up its own or the Chief Executive's dereliction of duty by repealing this Ordinance.

Chairman, Dr Margaret NG just asked me whether this issue had been discussed in the course of deliberation. Frankly speaking, we have convened quite a number of meetings and I really cannot remember clearly the response of the Secretary during our discussion on this issue. However, after thinking hard, I still cannot think of a good reason to agree with the opinion of the Secretary. It seems that the Secretary only said that since this Ordinance had not been enforced for a long time, he would rather repeal it.

I also mentioned earlier why this viewpoint was totally wrong and was also in breach of the constitutional obligation and spirit on the part of the Government. The Secretary may also think that since the minimum wage will be set, standard working hours are no longer necessary. This concept is also wrong, as our minimum wage is calculated by hourly wage. If standard working hours are not safeguarded under the law, we have actually done half of the job. For the other half of the job, we may not be able to finish during this term and have to continue with the work in the coming term. However, this does not mean that this Ordinance has to be repealed because we have not finished our job.

Chairman, how do you know that the next-term Chief Executive will not be far more responsible than the incumbent Chief Executive? Besides, the Chief Executive in 2017 may be returned by universal suffrage, and he may think that this is what should be done. He will then exercise his power pursuant to this Ordinance to safeguard the rights and interests of the workers. Then why should we deprive him of this kind of power?

Chairman, I think that the Secretary has not given us any convincing justification, and I also think that the proposal of scrapping the TBO is both illogical and against the constitutional spirit. Therefore, Chairman, we definitely support the amendments of Mr LEUNG Yiu-chung and oppose the question that clause 18 should stand part of the Bill.

DR MARGARET NG (in Cantonese): Chairman, I am not going to talk about the content of the Bill and will discuss simply from the angle of procedural justice.

Chairman, I notice that Part 5 of the Bill reads "Repeal and Consequential Amendments", which means that the proposal of repealing the TBO is only regarded as part of the consequential amendments, and this is not in line with proper procedure. Chairman, we have dealt with a lot of legislation, and there are cases where an old law is replaced by a new one. For instance, the Arbitration Ordinance that we have recently dealt with is originally a piece of local ordinance, and it consists of certain parts. Since the Government is of the view that we should follow the international approach of arbitration, it has adopted a kind of model law to replace the old approach. In the process, it has repealed the existing — that is, a new ordinance is passed while the old ordinance is repealed at the same time. Our usual way is to carry out a process of repeal. For example, abolishing the estate duty, which just came into my mind It is about estate duty, and actually, many ordinances in relation to wills have been repealed. We also have to formally and properly propose the repeal of them and state clearly that this is an act of repeal, which should not be casually taken as a consequential or technical provision of transitional nature. This is not a technical provision. If we propose to repeal an ordinance in such a technical

way, Chairman, frankly speaking and in a more serious manner, we can say that this is out of order and should be rendered null and void.

Therefore, Chairman, if the Administration intends to repeal a certain ordinance, it has to say, "I intend to repeal such and such ordinance". It will then have to seriously conduct a consultation on the ordinance that is meant to be repealed so that everyone can set their hearts at ease. It can then replace the old ordinance with a new one. However, it seems that the Administration has not gone through this process. What is more, after listening to the speeches of various Members, I learn that the content of the Trade Boards Ordinance (TBO) is not identical to that of the Minimum Wage Bill. We can say that under certain circumstances, the approach of "repeal and consequential amendments" under Part 5 can be adopted. One such circumstance is when the provisions of the new bill that is to be passed stipulate practices that are different from past practices, and the consequential amendments aim to forestall the following situation: two pieces of inconsistent legislation on the same subject exist at the same time as the old ordinance is not repealed and an inconsistent new ordinance has already come into operation. Although we will follow the common law principle of *lex posterior derogat priori*, meaning a more recent law always prevails over an inconsistent earlier law, we still have a lot of ways to handle the issue. Nevertheless, the Government adopts this approach for the sake of legal clarity.

Therefore, if the approach of Part 5 is adopted, it can only make the law clearer technically, but cannot be used to substantially repeal a piece of legislation. Therefore, even if Members think that the TBO is dysfunctional and is useless, and even it is actually like that, I still have to appeal to Members in this Council for supporting Mr LEUNG Yiu-chung's amendments for the integrity of the legal procedure.

Chairman, why are we so insistent? It is because we normally trust the Government in regard to these technical amendments. When it says that the amendments are consequential to the wording or content of some provisions in the bill, we will not scrutinize each and every such clause to check whether the consequential amendments really serve such purposes. We will not do so. It is because we trust the words of the executive authorities that such amendments are

not substantial amendments, just consequential amendments. However, if the Government is so cunning or disrespectful of the procedure in dealing with the issue, our work will be more difficult in future. Since there may be a lot of amendments consequential to a particular clause, it is not possible for us to scrutinize each and every such consequential amendment afresh.

Chairman, I cannot say that this is totally out of order and is null and void. If that is the case, we should have pointed it out when we started the deliberation. Therefore, although I cannot take it to the very extreme, we still think that this approach is not proper. Hence, I urge all Members to support Mr LEUNG Yiu-chung's amendments.

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

(Mr LEUNG Kwok-hung raised his hand in indication)

CHAIRMAN (in Cantonese): Before I allow Mr LEUNG Kwok-hung to speak again, does any other Member wish to speak?

(Mr Paul TSE raised his hand in indication)

MR PAUL TSE (in Cantonese): Chairman, I will speak, but I need some time to prepare. If I can speak after Mr LEUNG Kwok-hung, this will be fine.

CHAIRMAN (in Cantonese): I can only act according to the Rules of Procedure. If a Member does not make any indication when he can speak, once the time has passed, I cannot allow him to speak.

(Mr LEUNG Kwok-hung raised his hand in indication)

CHAIRMAN (in Cantonese): Mr LEUNG Kwok-hung, this is your second time to speak. Mr LEUNG, I need to remind you, and I have already made this remark when Mr Paul TSE spoke earlier. The arrangement of allowing

Members to speak again is not for Members to have unlimited time to express their views, but for facilitating the conduct of debate among all Members during the Committee Stage. Therefore, please do not repeat what you just said. Please also refrain from bringing out some new viewpoints which have not been mentioned by other Members earlier.

Mr LEUNG, this is your second time to speak.

MR LEUNG KWOK-HUNG (in Cantonese): Chairman, in fact, my speech will be very brief.

Firstly, Mr Ronny TONG has just said that the TBO was not wrong, it was the Chief Executive who was wrong. The TBO is actually very loose already. The Governor in Council or the Chief Executive in Council can instruct a Trade Board to set the working hours and the wage level when the wage level of a certain trade is regarded to be miserably low or the working hours of a certain trade are regarded to be shamefully long. This is the original idea.

Why do I need to make such a statement? It is because the Government Counsel represents the Government. In all three trials, the Government Counsel had emphasized that: firstly, the discretionary power of the Chief Executive is enormous. He can do it or not to do it, and can choose not to follow the way provided in the TBO, only if he has other means to deal with the requirement of the Trade Board, that is, the situation where the working hours are shamefully long or the wage level is miserably low cannot occur.

Therefore, after the judgment delivered by the Court of Final Appeal (CFA), the obligation that the Government has to carry out pursuant to the TBO is already very wide and vague. My point is that if we look at minimum wage again Why will there be such an issue at this stage? It is because the Government knows that under the TBO, it has to explain to the entire community whether and how it should exercise its discretionary power. This was first pointed out by Mr LEUNG Yiu-chung in the Legislative Council and was mentioned again in the judicial review.

What I have to say today is: Why do we have to retain the part pertaining to the shamefully long working hours? It is because in the future, similar situation will occur. When we

CHAIRMAN (in Cantonese): Mr LEUNG, you are repeating the content of your speech earlier. I allow you to speak for the second time. But please strictly comply with the Rules of Procedure and do not repeat what you just said.

MR LEUNG KWOK-HUNG (in Cantonese): No, Chairman, let me explain. I actually want to convince the Secretary.

CHAIRMAN (in Cantonese): You have mentioned that point earlier. I do not believe that repeating your argument will make it more convincing. Please make good use of your time to speak.

MR LEUNG KWOK-HUNG (in Cantonese): I understand.

Therefore, I think that what Mr LEUNG Yiu-chung said today is logical. When a government repeals an ordinance while making some consequential amendments, it definitely has an objective. However, since the Government has not given any explanation, I explain for it now and let me guess the motive of the Government. In fact, the Secretary has the responsibility to be accountable and to respond to the questions directed to him by Legislative Council Members in the course of enacting legislation. Is it his intention that the Ordinance which should not be scrapped originally has to be scrapped in one go now? However, when adopting such an unrefined method to scrap it, is the Government trying to confuse the issue? In fact, the issue of shamefully long working hours has already been discussed by this Council on many occasions, and we have already expressed our views during the motion debate.

I would like to reiterate that since the CFA has already made a final judgment on the legislative intent in the entire legislating process in the past, and the Government is well aware of its responsibility under the TBO, I would like to ask the Secretary

CHAIRMAN (in Cantonese): Mr LEUNG, you are repeating your speech.

MR LEUNG KWOK-HUNG (in Cantonese): I am asking the Secretary for his opinion.

CHAIRMAN (in Cantonese): You are repeating your speech.

MR LEUNG KWOK-HUNG (in Cantonese): I have to ask the Secretary: Are they afraid that if the TBO is retained, the Chief Executive will not be able to cope with the situation even though he enjoys wide-ranging discretionary powers, and thus are forced to take out a so-called substitution option as in dealing with minimum wage? If that is true, I need to remind all Members that if you agree with what the Government does today, you are helping the tyrant to do evil and adding insult to injury by helping the Government to bully the workers who have to work for shamefully long hours every day.

CHAIRMAN (in Cantonese): Mr LEUNG, I believe that you have already made your viewpoint very clear. Please give way to other Members.

MR LEUNG KWOK-HUNG (in Cantonese): It is because I have no confidence in my own wisdom. I want to say it for a few more times so that everyone can understand. I am not saying that you are stupid. You are smart, and so is the Secretary.

CHAIRMAN (in Cantonese): Mr LEUNG, I believe that if you sit down, you may think of 10 more questions to ask the Secretary.

MR LEUNG KWOK-HUNG (in Cantonese): It does not matter. You just think what you like. I only want to ask one question and hope that the Secretary can answer. Because you have to understand, Chairman, if I ask a question to

which the Secretary does not respond and then Members cast their votes, that will not be nice. If he responds to the questions, I will feel convinced. If he refuses to give a response, frankly speaking, is it not downright outrageous?

CHAIRMAN (in Cantonese): After listening to what the Secretary had said, Members naturally will get to know how things stand.

MR LEUNG KWOK-HUNG (in Cantonese): I understand. I know what you are saying. No, I actually do not know what you are driving at. But I have no other means because you have more authority.

CHAIRMAN (in Cantonese): Dr Margaret NG requests to speak for the second time.

DR MARGARET NG (in Cantonese): Chairman, I only want to make an elucidation as to the ordinance in relation to estate duty that I mentioned earlier. That ordinance is the Estate Duty Ordinance. Thank you, Chairman.

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

MR PAUL TSE (in Cantonese): Chairman, I have to apologize again. Since I had to deal with a case concerning a bus driver being slapped in the face, I had to urgently leave the Chamber. I was thus unable to listen to the previous speeches of Members. I have to apologize for any omission or repetition in my speech.

Chairman, I understand that we are discussing the Trade Boards Ordinance (Cap. 63) (TBO). I love as well as hate the Ordinance, because according to my logical thinking and analysis, the TBO is a lifeline of the Government for passing the Minimum Wage Bill this time. How does it exercise its lifesaving function? The Government and the Secretary for Justice seem to be solely relying on the TBO as the legal basis to support that they have not violated Article 5 of the

Basic Law. Otherwise, Article 5 of the Basic Law has obviously set a higher threshold that forbids the legislation on minimum wage.

According to the Government, the TBO has been included in the statute book of Hong Kong since 1940. Although the TBO has never been invoked, this can be regarded as laws already in force when the Basic Law was passed in 1990; in other words, minimum wage of a transitional nature is allowed. Therefore, I have some views towards the TBO. The TBO itself is extremely stale and outworn, as it has never been invoked since 1940. I have no idea whether my colleagues have ever read the provisions therein. Some of them are rather alarming or awkward. For instance, section 2(3) reads, "Women shall be eligible as members of Trade Boards as well as men" — the two sexes are treated under this approach and from this angle.

Besides, section 5(5) reads, "On any prosecution of a person for failing to pay wages at not less than the minimum rate, it shall lie on that person to prove that he has not paid wages at less than the minimum rate." I was very shocked after reading this provision. How can it be possible to place the burden of proof on the defendant? I am afraid that if this provision is invoked, it will immediately be attacked. In accordance with the existing provisions in the Basic Law and the Bill of Rights, I am afraid that this kind of provisions, which require the defendant to prove his innocence, definitely does not meet our general standard for justice.

It is obvious that these provisions are the products of the so-called bygone era. I have just gone through the TBO roughly, and am not sure whether the TBO contains many other obsolete provisions of this kind, so much so that amendments to the TBO are virtually impossible. Besides, I do not totally understand why Mr LEUNG Kwok-hung would say that the TBO has given the Chief Executive a hard nut to crack. As a matter of fact, if the TBO has conferred such wide-ranging powers to the Chief Executive, the Chief Executive in Council can do a lot of things, and, on the contrary, can also not do a lot of things. I do not quite understand why we would allow the Chief Executive to have such wide-ranging powers to set so many restrictions on any occupation. Therefore, I have more reservations about it.

Putting aside the gender and burden of proof problems in the wording of the TBO, I think that the direction of the TBO is rather appropriate in providing wage protection according to the actual situations of various trades and industries when necessary. On the contrary, I have great reservations about the across-the-board approach under the existing Minimum Wage Bill. Therefore, as I said earlier, I love and also hate the TBO. Anyway, since the Minimum Wage Bill will be passed by a majority vote today, and it seems that public views are also in favour of it, if necessary In fact, we passed a motion two weeks ago and we hope that the Government can positively consider conducting some follow-up work on standard working hours. In my opinion, since we have such a chance, we can scrap this loophole-plagued Ordinance which was made during the bygone era and has never been invoked, instead of keeping it inside a mouldy drawer. I think this is worth supporting, unless Dr Margaret NG, with better reasons, points out that this is obviously against the law or violates our usual practice. However, judging from her speech earlier, unless I have missed some points, it seems that she is not taking it to the very extreme. She only said, "Is it not very proper?" If that is so, I think that we should not insist on impeding the repeal of this obsolete legislation in one go. This is my view.

Thank you, Chairman.

DR JOSEPH LEE (in Cantonese): I really am not too familiar with the Trade Boards Ordinance (TBO). I have formed a view while listening to the speeches of Members and which was also confirmed by other colleagues: Not only does the TBO cover minimum wage, but it also covers the issue of working hours. Of course, Members have many different views towards the TBO.

I have been listening to Members' speeches and find that I have a role to play. On the legislation on minimum wage, this is the first time that I speak. I find that on this issue, I am playing a balancing role, and I do not know whether this is good or not. I can be regarded as a third party or an observer to balance the situation.

If the Minimum Wage Bill can be enacted, and the TBO, which is related to minimum wage, has been put aside for such a long time, I think that it definitely should be repealed. However, if we hastily repeal the TBO which also regulates working hours, and there is not any legislation at present to regulate working hours, loopholes will appear in the legal system of Hong Kong. I am worried that there will be no legal basis to rely on when such a need arises.

Of course, the other side of the view (or maybe the Government's view) is that if the TBO is repealed, the issue can then be discussed again when promoting legislation on maximum working hours in future. In my opinion, if, by that time — I have no idea what the time will actually be, and there are only two more years in my remaining term — the Government has really formed that idea and come back to the Legislative Council for discussion, will that be a more appropriate time to repeal the TBO? By that time, Hong Kong should have a set of comprehensive legislation which regulates wages as well as working hours, and the TBO is really outdated and should be thrown away. I try to contemplate and strike a balance along this logic. Based on this consideration, I will support Mr LEUNG Yiu-chung's amendments.

Thank you, Chairman.

CHAIRMAN (in Cantonese): Dr Margaret NG requests to speak again.

DR MARGARET NG (in Cantonese): Chairman, I would like to respond briefly to Mr Paul TSE's earlier speech on whether the Trade Boards Ordinance (TBO) should be repealed.

Chairman, I did not mention in my speech whether the TBO should be repealed. Chairman, I do not mean that this old law should not be repealed, but if we decide to repeal this existing legislation, we have to do so according to the established legislative procedure because the act of repeal is itself a legislative procedure, thus requiring that the procedure for repealing old legislation must be followed, rather than resorting to this simple approach to achieve the purpose in Part 5. Normally, we will set out the ordinance so that Members know what is to be repealed.

Chairman, let me cite a simple example. The Bill contains some so-called consequential amendments. If we discover that those amendments in fact are not consequential but are newly added items, we will exclude them. This does not mean that those items need not to be amended, nor does it mean that we have decided beforehand those parts should not be repealed. We should not confuse repeal procedures and procedures for making consequential amendments. This is because if we are to repeal a piece of legislation, we have to go through steps such as whether there should be a consultation exercise.

Therefore, Chairman, I am not saying that I think the TBO is sound and must be retained. No, I do not mean so, though it is highly likely that after discussion, I may think that it cannot be repealed in its entirety. I hold that if it is to be repealed, there is a procedure for repeal. If the procedure is to be followed, it should not be repealed in Part 5.

Thank you, Chairman.

CHAIRMAN (in Cantonese): Mr Paul TSE requests to speak again.

MR PAUL TSE (in Cantonese): Chairman, I would like to thank Dr Margaret NG for clarifying her point. I can understand.

She is saying now that she does not intend to speak for this obsolete Ordinance, that is, she is not supporting the idea that the TBO has some merits that are worth retaining. Second, she is also not saying that there are definitely obstacles or faults involved in so doing. She is only of the opinion that since it has to be repealed, it should be done better and more fully.

If that is the case, it does not mean that it cannot be done legally, only that there can be a better way of handling. I believe we often encounter this problem. Actually, the best way may really be to list out and repeal the provisions one by one. The TBO is not that lengthy, and it does not contain a lot of provisions. As regards Dr Margaret NG's view that the provisions should be set out for Members' reference, I would think that should it not be our own duty to look at what the provisions of the legislation are, before voting for or against

the amendments? If we are to make changes to a piece of legislation, should we not have the duty to study it ourselves, or should we be spoon-fed and be shown each and every one of the provisions? Of course, everyone has his way of doing things. Some Members may not be lawyers. They do not want to waste time and would just like an easy way out.

Nonetheless, before saying such words, I think we are duty-bound to take a look at what in fact is to be repealed, before deciding whether or not to give our support. If right from the start, she is of the opinion that repealing the TBO in this manner is not right, should she propose relevant amendments to repeal the TBO? Or should certain provisions be retained? Instead of pointing out at the last minute that this way of repealing the TBO is not right, and there may be a better way of doing it. I think this is somehow not to say that it is wrong, but which is better? Anyway, I do not think this is the reason for allowing this obsolete Ordinance to continue its existence.

MR LEE CHEUK-YAN (in Cantonese): Chairman, I would like to make one point. We have all along advocated that the TBO should not be repealed, and this idea is not brought up at the last moment. I have over and again expressed in the Bills Committee that the TBO should not be repealed, so, there has actually been sufficient discussion. However, the Government has not heeded our opinion. Now, the only choice left for us is to propose an amendment so that the relevant clause will not stand part of the Bill.

DR MARGARET NG (in Cantonese): Chairman, I do not want the bickering to continue indefinitely. I just want to make some elucidation here.

First, I have in fact gone through the TBO. The Government is adopting a "bad loser" attitude. We know what the content is.

I said earlier that Members of this Council have expressed much opinion on the content of the TBO during the debate, and I need not repeat their arguments. I would therefore only concentrate on the proper procedure in my speech. Chairman, to me, legislative procedure is very important because only when we follow the formal legislative procedure will it be really democratic and civilized.

Hence, Chairman, I am not saying now that I have not gone through the entire ordinance, and I need someone to hold me by the hand and show me the provisions one by one; I am only describing the general approach for repealing provisions to achieve the purpose.

I wish the Administration will not always think that it can get away just like that. When Members point out that there is something wrong procedurally, it should reflect on what is going wrong.

Chairman, I am not a member of the Bills Committee, and I have not taken part in the scrutiny of the Bill. Hence, I flipped through the report of the Bills Committee just now to verify in particular whether there has been sufficient discussion on the provision. The situation seems to be that despite objection from many members, the authorities have not drawn up the provision on repeal according to the established practice.

Chairman, if members of the Bills Committee are also concerned about this old Ordinance, and if after reading it, every one of them considers that having it repealed would not be a problem, it is okay then — excuse me, although I still insist on following the procedure — but this is not the case, as the issue was actually controversial at the Bills Committee. Since there is disagreement over whether or not the TBO should be repealed, and the authorities are not proceeding with the appropriate procedure, I would think that the way the SAR Government is tackling the issue is very questionable. I request that this be put on record. I wish Secretary WONG Yan-lung would take a look at it because I am aware that he lays much emphasis on getting the Government do the right thing, in a manner consistent with the spirit of the rule of law. Thank you, Chairman.

MR PAUL TSE (in Cantonese): Chairman, I would like to respond to the point on the spirit of the rule of law mentioned by Dr Margaret NG just now. If she is ready to point out that what we are doing now is against the law, I will give it a second thought. However, if she does not mean this, and is only saying that there can be a better way, I remain of the opinion that this issue should not be escalated to this level, and there is no need to make such extreme remarks.

Second, Mr LEE Cheuk-yan said they are not in favour of repealing the TBO. In that case, I would like to ask Mr LEE Cheuk-yan: is he in favour of the provision that I mentioned earlier, which reads "women shall be eligible as members of Trade Boards as well as men"; or does he accept that the provision that puts the burden of proof on the defendant should remain intact, without any changes made to it? You are in favour of retaining the TBO, but have you really gone through the details? Which provisions are practical? Which ones are not? Otherwise, if you want to keep the entire legislation while opposing some of the provisions, I would think that this seems a bit irresponsible. I am still of the opinion that if it is not ostensibly impractical from the legal point of view, there is nothing inapt of this approach.

MR TAM YIU-CHUNG (in Cantonese): Chairman, as we are having such a heated debate on this issue, let me also say something.

As far as I remember, at that time, it was due to political reasons, seems to be because after it came to power, the Labour Party met with criticisms that it had done a poor job in Hong Kong over labour rights, that Britain enacted this legislation. However, there was a contingency in place, and that is, when implemented, there must be the consent from the then Governor in Council before it could be invoked. That is the reason why this piece of legislation has been shelved for decades without being invoked.

I remember that when we were heatedly discussing the issue of establishing a minimum wage, Mr KWONG Chi-kin, the counsel of the Hong Kong Federation of Trade Unions, once thought of bringing up this legislation for it to make a comeback to help resolve the issue of minimum wage, only to discover that it was technically impractical, necessitating the enactment of new legislation. Thus, when discussion at the Bills Committee reached this stage, some members really proposed to shelve this legislation because some parts are already not let it be shelved for the time being. However, if the part on minimum wage is to be resolved, this legislation in fact is of no use, because there are already new legislation and others. Nonetheless, even if this legislation is shelved, the lead, after all, has to come from the executive, and there must be the consent of the Executive Council and the Chief Executive before it can be invoked. Moreover, even if it is to be invoked, it cannot be directly invoked. Lots of other measures are required. Retaining this legislation only serves a symbolic purpose.

To me, even if this legislation is repealed for the sake of enacting the minimum wage legislation, certain parts of it, for instance, standard working hours as mentioned earlier, can still be achieved afterwards through other avenues. If this legislation is retained, is it conducive to our endeavour? I am not quite convinced. Thus, whether consequential amendments should be made or whether the legislation should be repealed for the enactment of the minimum wage legislation, the DAB does not see much problem in it.

MR LEE CHEUK-YAN (in Cantonese): Mr Paul TSE mentioned me earlier. I am also left with no choice, and I am also not happy with some parts of the legislation. For example, regarding the fine of \$50, I also do not want the fine to be just \$50. If it is a responsible government, it should properly amend the legislation, rather than simply repealing it. Hence, I greatly support that the Government should propose amendments to the TBO. If I have the opportunity to propose a Member's Bill to make amendments, the situation will be very much different. Unfortunately, I do not have that power. Therefore, if you ask me if I am fully satisfied with all the provisions, my answer is in the negative, but I am all the more against repealing it. Mr TAM Yiu-chung said just now that retaining the legislation but not invoking it is also useless, but if it can be invoked, it is not useless. So, it is very important that the legislation is retained for invocation at any time. We hope that the legislation can be invoked soon so that Hong Kong workers may have standard working hours. Thank you, Chairman.

MR ABRAHAM SHEK: I am a member of the Bills Committee. During the meeting of the Bills Committee, I have spoken against the repeal of the Trade Boards Ordinance. The Administration's explanation was that this Ordinance had been dormant for 70 years and was outdated. Once again, I cannot agree that the Administration's approach is the most suitable approach for the repeal of this Ordinance. What is in front of us is a piece of legislation, and we should keep it updated to meet our needs, instead of simply repealing it completely. Repealing the aforementioned provisions will create a legislative gap in the area of working hours in Hong Kong, and is against the legislative spirit of this Bill. I sincerely hope that the Administration will avoid this kind of malpractice in enacting future legislation.

Thank you.

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Chairman, the Administration opposes the amendments proposed by Mr LEUNG Yiu-chung.

With respect to clause 18 of the Minimum Wage Bill (the Bill) which proposes the repeal of the Trade Boards Ordinance (TBO), I wish to make a clarification here. The issue had been discussed at the Legislative Council Bills Committee on the Minimum Wage Bill and there were papers which put on record that discussions had been made on this issue. And in the relevant Legislative Council Brief, it is announced that the Administration intends to repeal the TBO. The reason is that since the enactment of the TBO in 1940, it has remained dormant for 70 years. The Government has never invoked the powers vested by the TBO. We have never invoked or used them.

In addition, many of the provisions in the Ordinance are outdated. As Mr Paul TSE has rightly pointed out earlier, there are a few points that are antiquated and with respect to some legal issues such as adducing evidence, penalties and so on, they are likewise obsolete. Also, the public is now excited about the latest developments and that is, there will be a cross-sector legislative attempt to impose a minimum wage and so there will not be any need for trade boards to determine minimum wages. That is to say, there will not be a situation whereby a certain type of work will have a low wage. It is against this background of a new set of surroundings that the TBO is found to be seriously lagging behind the times. It can be said to be an antique. It is completely antiquated. We consider that there is a need and it is the right time to repeal it.

As for working hours, our position on this is clear. And that is working hours should be determined by employers and employees entering into a contract of employment. I would think that with this new development, plus the fact that numerous problems do exist in the TBO, it is time that something should be done about it. However, I am aware that Members are concerned about what would happen if working hours are regulated. I agree with Mr TAM Yiu-chung that if working hours are to be regulated, new laws will certainly have to be enacted for that purpose, instead of using an Ordinance which was passed 70 years ago and has never been used. Britain's relevant ordinance was repealed in the 1980s. The Ordinance we have in Hong Kong is really an antique item and we have never used it. We consider that since there are new developments, and even if

working hours are to be regulated, the TBO should not be used as a basis. This is not going to work. New legislation has to be put in place by that time.

I hope Members can see that we have no secretive motive behind this and we do not want to confuse and deceive. Our intention is honourable. We think it is the right time to repeal the TBO. We have no conspiracy whatsoever. I have said just now that if we can do a good job in establishing a minimum wage and when there is room for discussion and a consensus is formed in society that a step forward should be taken in establishing standard working hours, then we have to enact new legislation. We cannot use the TBO. This is something we all know.

Chairman, I hope Members can see our intention and that they can be convinced that we are fully justified in doing so. And there is no conspiracy whatsoever on our part in repealing the TBO.

I implore Members to oppose the amendments. Thank you, Chairman.

CHAIRMAN (in Cantonese): Mr LEUNG Yiu-chung, do you wish to speak again?

MR LEUNG YIU-CHUNG (in Cantonese): Anything which is 70 years old is certainly an antique. It is precisely because it is antique that it has got to be something good and bad about it. The bad thing about it is that it is too old. But the good thing about it is that it has got some value. What is its value? It is something which cannot be done by this Bill but the old law can, and that is to regulate working hours. This is a very important idea.

The Secretary keeps on telling us that old things should be scrapped. But why does he not introduce a new law to replace it like the Minimum Wage Bill (the Bill) that we are discussing right now? Secretary, you have not introduced any new law. If you do so, we will certainly welcome it. The question is, you have not done it. We are thrilled that you have introduced this new Bill to the Legislative Council. All Members who spoke yesterday were thrilled. Who in the labour sector is not happy about it? We are extremely excited because a new law will replace an old one. But unfortunately, you tell us today that this Trade

Boards Ordinance (TBO) should be repealed. Then please introduce new legislation. Have you done that? No.

Chairman, the Secretary has just said that we should leave it to a later time when there is room for it. But why can discussion not be held this time? This law has two parts, that is, minimum wage and the regulation of working hours. Why is it that only minimum wage is discussed today but not working hours as well? Is the Secretary not delaying it and hoaxing us? Please tell us.

Secretary, this is not a course of action that really tackles the problem. You keep on saying that the old should be repealed. You are talking like Mr TAM Yiu-chung that the issue should be left to a later time and it should be worked on when there is a need for it. When we talk about the future, it is as unrealistic as an empty talk. What exactly does "the future" mean? How long should we wait? We have been waiting for such a long time. I said yesterday that when I returned to Hong Kong in 1978, there were already talks on establishing a minimum wage and after a lapse of 33 years, a ray of hope has finally dawned on us. Shall we wait for another 33 years? Can I make it? I do not really know. Chairman, I really regret so much. The Secretary should not have said such things.

Moreover, the Government should know that as we talk about minimum wage, we can see loopholes in the establishment of a minimum wage. One such loophole is that the employer can keep on asking the employees to work overtime. And when the employees have worked overtime, the employers do not have to double their pay. When employers keep on asking the employees to work overtime, this is serious exploitation in disguise. But the Secretary pretends that he does not see it. I feel very upset about it. Chairman, Secretary CHEUNG is different from other Secretaries because he used to be the Commissioner for Labour. He is very familiar with labour issues. He took part in a lot of trade union functions. On occasions like anniversaries, he would definitely show up. He would talk to workers and he knows very well what they think. He knows about the plight of the workers. Now that when he is the Secretary for Labour and Welfare, he concentrates on one aspect, and refrains from working on other areas of concern. Why? This is something we regret so much about.

Some Members have said earlier that the TBO is superfluous and it has never been invoked for so many years. The Secretary has also said in his reply that the TBO has never been invoked.

Chairman, if I were a representative of the Government, I would be too ashamed to say that. The Secretary seems to feel honoured in the face of the fact that the TBO has never been invoked. I do know how he can have told us such a shameful fact.

Secretary, it does not matter if you have never invoked the TBO because you have forgotten it. But I said yesterday that I had reminded you in this Chamber before the reunification, but you seemed to have ignored our reminder. In the end, I was forced to file an application for a judicial review together with LEUNG Kwok-hung and another worker. You should have remembered that incident. But still you did not care and only drag the matter on. It was only when Donald TSANG ran for the Chief Executive election and he needed sufficient subscribers that the TBO was mentioned again. How pathetic this is. And you are never short of words in defending that the TBO has been in existence for so many years and has never been invoked, so it should be repealed. What is the logic behind it? What is the justification? How can you face up to the demands of the labour sector for so many years?

I was moved with happiness yesterday because we can have this Bill at last. But today I am moved with sorrow. This is because workers have to work long hours to support the living of their families and they themselves. But our Government pretends that it does not see anything. We talk about community health and caring for the mental health and emotions of each person. But what is the use of talking about this? It is useless. They are empty talks and unrealistic hopes. When we work so many hours a day, how can we have the time to talk about these things? Do we still have the luxury to talk about harmony in family, parenting, skills upgrading and such stuff? Secretary, please show us how. The only way is when we are out of work and as we undergo retraining, then we will have the time to do these things. Do we have to wait until we are out of work before we can do these things, have the time to spend with our families and have our skills upgraded? Is this the option left to us?

I know full well that the TBO is plagued with problems. This is something everyone knows. I also know about it too well. No one will believe that a law passed 70 years ago is still perfect. Even the Bill to be passed today has got a lot of problems, not to mention a piece of legislation enacted 70 years

ago. Of course there are problems in it. Where do the problems lie? The question is that not only is it old but more importantly, Chairman, both the colonial government in the past and the SAR Government at present seem to have put it into the fridge and do not care about it. It is like frozen. This is where the crux of the problem lies.

In view of the above problem, why can the Secretary talk so boldly today? I fail to understand. And on top of this, there are Honourable colleagues who defend the colonial government and the SAR Government and insist that the TBO should be repealed.

Chairman, I do not want to waste our time. I just want Honourable colleagues to understand that with respect to this Bill, we have to remind the Government that the problem pertaining to working hours remains unresolved. I hope that the Government can introduce new legislation soon to replace the old one, instead of doing nothing after this Bill is passed. This is the main reason why I propose the amendments today.

So if Members really want to see workers live in dignity and be well cared for, I hope they can support my amendments and retain the TBO in order that the Government can be compelled to introduce a new piece of legislation to replace it as soon as possible.

Chairman, I so submit.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendments moved by Mr LEUNG Yiu-chung be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mr LEUNG Yiu-chung rose to claim a division.

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

CHAIRMAN (in Cantonese): The question now put is: That the amendments moved by Mr LEUNG Yiu-chung be passed.

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

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

Functional Constituencies:

Dr Margaret NG, Mr CHEUNG Man-kwong, Ms LI Fung-ying, Dr Joseph LEE, Mr CHEUNG Kwok-che, Mr IP Wai-ming and Dr PAN Pey-chyou voted for the amendments.

Dr Raymond HO, Dr David LI, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Wong-fat, Ms Miriam LAU, Mr Timothy FOK, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Mr CHIM Pui-chung, Prof Patrick LAU, Dr LAM Tai-fai, Mr Paul CHAN, Mr CHAN Kin-por, Mr IP Kwok-him, Mr Paul TSE and Dr Samson TAM voted against the amendments.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Ms Emily LAU, Mr Frederick FUNG, Ms Audrey EU, Mr WONG Kwok-hing, Mr LEE Wing-tat, Mr Ronny TONG, Mr KAM Nai-wai, Ms Cyd

HO, Mr WONG Sing-chi, Mr WONG Kwok-kin, Mrs Regina IP, Mr Alan LEONG, Mr LEUNG Kwok-hung, Miss Tanya CHAN and Mr WONG Yuk-man voted for the amendments.

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

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

THE CHAIRMAN announced that among the Members returned by functional constituencies, 28 were present, seven were in favour of the amendments and 21 against them; while among the Members returned by geographical constituencies through direct elections, 28 were present, 20 were in favour of the amendments and seven against them. Since the question was not agreed by a majority of each of the two groups of Members present, he therefore declared that the amendments were negated.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the heading of Part 5, the cross-heading immediately before clause 18 and clause 18 stand part of the Bill.

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

(Members raised their hands)

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

(Members raised their hands)

Mr LEUNG Yiu-chung rose to claim a division.

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

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

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

Dr Raymond HO, Dr David LI, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Mr Timothy FOK, Mr TAM Yiu-chung, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong, Mr CHIM Pui-chung, Prof Patrick LAU, Ms Starry LEE, Dr LAM Tai-fai, Mr CHAN Hak-kan, Mr CHAN Kin-por, Mr IP Kwok-him, Mr Paul TSE and Dr Samson TAM voted for the motion.

Mr Albert HO, Mr LEE Cheuk-yan, Mr Fred LI, Dr Margaret NG, Mr James TO, Mr CHEUNG Man-kwong, Mr LEUNG Yiu-chung, Ms Emily LAU, Ms LI Fung-ying, Mr Frederick FUNG, Ms Audrey EU, Mr WONG Kwok-hing, Mr LEE Wing-tat, Dr Joseph LEE, Mr Ronny TONG, Mr KAM Nai-wai, Ms Cyd HO, Mr Paul CHAN, Mr CHEUNG Kwok-che, Mr WONG Sing-chi, Mr WONG Kwok-kin, Mr IP Wai-ming, Mrs Regina IP, Dr PAN Pey-chyou, Mr Alan LEONG, Mr LEUNG Kwok-hung, Miss Tanya CHAN and Mr WONG Yuk-man voted against the motion.

Dr Priscilla LEUNG abstained.

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

THE CHAIRMAN announced that there were 56 Members present, 26 were in favour of the motion, 28 against it and one abstained. Since the question was

not agreed by a majority of the Members present, he therefore declared that the motion was negatived.

MR LEE CHEUK-YAN (in Cantonese): Chairman, may I seek your consent to move under Rule 91 of the Rules of Procedure that Rules 58(5) and (7) of the Rules of Procedure be suspended in order that this Committee may consider new clause 3A and new Schedule 3A together with clauses 2, 5, 6, 7, 11, 15, 17, 20 and 21.

(Mr LEUNG Kwok-hung walked in the passageway of the Chamber)

CHAIRMAN (in Cantonese): Mr LEUNG Kwok-hung, the meeting is still in progress.

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

Council then resumed.

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

MR LEE CHEUK-YAN (in Cantonese): President, I move that Rules 58(5) and (7) of the Rules of Procedure be suspended to enable the Committee of the whole Council to consider new clause 3A and new Schedule 3A together with clauses 2, 5, 6, 7, 11, 15, 17, 20 and 21.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That Rules 58(5) and (7) of the Rules of Procedure be suspended to enable the Committee of the whole Council to consider new clause 3A and new Schedule 3A together with clauses 2, 5, 6, 7, 11, 15, 17, 20 and 21.

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

(Members raised their hands)

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

(No hands raised)

PRESIDENT (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the motion passed.

Council went into Committee.

Committee Stage

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

CLERK (in Cantonese): New clause 3A

Days worked

New Schedule 3A

Conversion multiplier.

CHAIRMAN (in Cantonese): Mr LEE Cheuk-yan has given notice to move amendments to clause 2 to make consequential amendment to the definition of "employee" and to amend the definition of "minimum wage", as well as to add the definitions of "days worked", "minimum daily wage rate", "live-in domestic worker" and "conversion multiplier" and amend a punctuation mark. He also intends to move the addition of subclause (2A) to clause 5, amendments to clause 6(3), the addition of subclause (2A) to clause 7, the addition of subclause (1A) to clause 11, amendments to the heading before clause 15 and the addition of subclause (1A) thereto as well as consequential amendments to

subclause (2), the addition of subclauses (2A), (2B) and (2C) to clause 17, amendments to clause 20(1) and the addition of paragraphs (4A) to (4D) to subclause (2), amendments to clause 21, and the addition of new clause 3A and new Schedule 3A.

CHAIRMAN (in Cantonese): If Mr LEE Cheuk-yan's amendments to clauses 2, 5, 6, 7, 11, 15, 17, 20 and 21 are passed, he may later move the addition of new clause 3A and new Schedule 3A.

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

MR LEE CHEUK-YAN (in Cantonese): Chairman, I move the amendments to clauses 2, 5, 6, 7, 11, 15, 17, 20 and 21.

Chairman, the theme right now is everybody should be entitled to a minimum wage and live-in domestic workers should also be protected. We all know that one of the exemption clauses of the Bill is to exclude live-in domestic workers from the Bill. In my opinion, this is a total contravention of a very important principle held by the Hong Kong Confederation of Trade Unions (HKCTU) and that is, every kind of legal protection should be extended to everyone and all workers should be able to enjoy it. We should not consider the race or gender of the workers and the principle we should hold is that workers, irrespective of their race, gender, trade and occupation, should all enjoy the protection of labour laws, including the protection of a minimum wage that we are presently deliberating on. Come to think of it, why should live-in domestic workers be exempted in particular? These people have left their native countries and come here to work in Hong Kong. Whenever mention is made of foreign domestic helpers, we admit that they have a contribution to our economy. We admit that for many wage-earners, they have given the duty of caring for families to these foreign domestic helpers so that they can go out and work. This is of tremendous contribution to the Hong Kong economy.

Why should we exclude them from the protection of a minimum wage? There are of course some reasons for that. And I have given thought to a very important reason why they are excluded and that is, it is difficult to calculate their

working hours. For domestic duties, when should their working hours start? It could be 24 hours a day and from morning till night. So it is hard to make the calculations. Hence this is the reason why they should not be included in any law on minimum wage.

Then what are my amendments? I have also taken into account Members' views. So I try to include them into the law by way of a daily wage rate. If we include them into the law by way of a daily wage rate, we are in effect offering them protection in law while not calculating their working days in terms of hours. Why is this piece of legislation so important to the protection of foreign domestic helpers or live-in domestic workers? First, we do not want to set a very undesirable precedent and that is there is a group of people who are not protected under a piece of legislation which aims at protecting workers. Actually, there has already been a very bad precedent and that is the Mandatory Provident Fund Schemes Ordinance which does not protect domestic workers. Now the domestic helpers, be they foreign or local, do not have any mandatory provident funds. This is an extremely bad case. We do not want to have more such precedents. This is because if such precedents are set, there may be a possibility that labour laws in future would be divided into two parts. We think this is totally wrong. The principle is that legislation should provide protection to everyone. So it is our opinion that such a bad precedent should not be set.

Second, it will cause discrimination. Most of the live-in domestic workers are female and they are foreign. Hence two kinds of discrimination are involved. That is, indirect discrimination on the grounds of sex and race. It was in last year that the Race Discrimination Ordinance was enacted. What we are doing now is clearly discriminating against them and excluding them from the law. This is blatant discrimination. This is something which I cannot accept. So the method we propose has taken into account the worries which many people have and that is, we have changed the calculation of their wage into a daily rate. Come to think of it, it is already bad enough if they are to stand by 24 hours a day and if we do not calculate their working hours and even say that they must be excluded from the law, I think we are doing them great injustice. This is something that no civilized society will do to make the working conditions of live-in domestic workers so unbearable. And the arguments raised by the Government are all unjustified.

Another argument as to why they should be excluded is that they have a range of in-kind benefits. We know that they have air passage, free meals,

accommodation and insurance. All these are paid by the employers. But if it is due to these in-kind benefits that they should be excluded, then I can say that many employees in Hong Kong do have in-kind benefits too. Should they therefore be excluded as well? So this is never a ground. I am not saying that in-kind benefits should not be considered, but if they have got these in-kind benefits, then this factor should be considered when enacting a law on minimum wage. This is because if meals and accommodation are paid by the employers, they can save certain expenses in these respects. Hence when formulating a law on minimum wage, this factor can be considered.

Another reason why the Government thinks that they should be excluded is that they have already got a minimum wage now and so they do not need another one. It is true that they have a minimum wage now and it is a protection given by our immigration policy. But this is a minimum allowable wage (MAW). It refers to a monthly wage. There is another problem about this. Members should recall that clause 14 of this Bill stipulates that a contract of employment that purports to extinguish or reduce any right, benefit, or protection conferred on the employee by this Ordinance is void. If foreign domestic helpers are not included in the scope of minimum wage, then as the pay of foreign domestic helpers is currently \$3,580, can an employment contract of a monthly salary of \$2,000 be concluded? Not necessarily impossible. But the answer from the Government is definitely no. The reason is because of immigration policy and not the right to conclude contracts. If the contract signed states that the monthly salary is \$2,000 and a civil action is instigated in the Court, saying that the employer does not pay \$3,580, the employee may lose the case. This is because the contract states that it is \$2,000 and it is a civil contract. However, if the Government presses a charge that this is a contravention of the Immigration Ordinance, then the case would be lost in a criminal action. But in terms of civil law, it is not certain that the worker will get a pay of \$3,580. In such circumstances, if they are not protected, even though the MAW is \$3,580, it is not certain whether this would be recognized by the Court or whether the employee who has been paid less than \$3,580 a month can recover the shortfall. So the reason why we want to include foreign domestic helpers into the scope of protection is because we can see that if they are included, this would clearly be a statutory protection.

Another reason why we want to include them into the scope of protection is that this pay level of \$3,580 is set under a situation of a black-box operation

behind closed doors. Then what will happen in future? The effect is that instead of setting a minimum wage level by the Government behind closed doors, the minimum wage level will be determined by the Minimum Wage Commission (MWC). The daily wage rate — I stress again that it is a daily wage rate — will be determined by the MWC which comprises workers, employers, public officers and academics. In this way they can consider some objective factors. In the past, the Government did not consider any objective factors. Members should recall that the Government once collected a levy of \$400 from the employers of foreign domestic helpers, then the wage of foreign domestic helpers was slashed instantly by \$400. This is clearly a hoax. How come there is such a nice coincidence and how come the amount is \$400 in both cases? This is of course playing with the figures. On one hand, there is a levy of \$400 in respect of foreign domestic helpers, while on the other hand the wage of foreign domestic helpers is reduced by \$400. The sum of the levy is offset by the wage cut. This move is entirely unjustified. We have asked the Government many times in the Bills Committee to produce the justifications over the past 10 years on how this MAW was determined, that is, how this minimum wage of \$3,580 was set. But all along the Government has failed to provide the figures and data. So in conclusion, this kind of minimum wage protection in the form of a monthly salary cannot really protect the foreign domestic helpers. This is why we hope that they can be included in the scope of protection offered by this law.

There is also a view that if the statutory minimum wage is applicable to live-in domestic workers, would this cause an increase in their monthly salary to a level as high as \$8,000 or even \$10,000, such that most families will find it hard to afford? This kind of comments is really scaremongering. Why? This is because once they are included in the scope of protection, the MWC would recommend a wage level that is affordable to most families. The MWC will not recommend a wage level that most families cannot afford, for the fact that this is a total contravention of the principle of setting a minimum wage, that is to say, to maintain an appropriate balance in order to minimize the loss of jobs. This factor is already set out in the Bill. So I have to consider in my amendments the impact on the economy and other aspects. We therefore believe that the MWC will take all factors into consideration and it will not set a wage level which most families find unaffordable.

I would also like to raise another point. Many Members say that a monthly salary of \$8,000 or \$10,000 is impossible. But as I have said earlier, since there are many in-kind benefits for these domestic workers, such benefits should be deducted in determining the wage level. I am sure this will be done. When all these factors add up, it will not affect the current employers. It is only that there will be a slight improvement in the protection given to the employees. For the employees, the area that should be improved is that if there is any increase in the hourly wage, there should also be a corresponding change in the daily wage rate. The only difference could be that wage increase is made only once a year. Other than that, there is no difference at all.

Then what are the specific details? First, a daily wage rate is adopted. Second, the number of days worked should be counted. The daily wage rate multiplied by the number of days worked will be the wage for a wage period, for example one month. This is as simple as that. The conversion multiplier which I have proposed is an idea which may confuse Members a bit, but this conversion multiplier is only a technical method. When the hourly wage rate is multiplied by a conversion multiplier, this will be equal to the daily wage rate. The two actually are not related. Then how would it be done in future? The MWC will first determine a daily wage rate, say \$145. If the hourly rate is \$33, it will be \$145 divided by \$33 and that is 4.4. Then, the conversion multiplier is 4.4. So the daily rate is pre-set first. The two are not related. Members should not think that when I use \$33, I would have known beforehand that the conversion multiplier is 6, 7 and so on. Actually, the daily rate is pre-set, then the formula will be used for calculation. The two are not linked. It is only that there will be an hourly wage and a conversion multiplier in the law. If the hourly rate is increased every year, but the conversion multiplier is not, then it will mean that when the hourly rate is increased by 5%, the daily rate will also be increased by 5%. This is because the conversion multiplier remains unchanged. But there can also be a situation where the two will change. If it is the view of the MWC that the two should be adjusted, then it will make a decision on that. If it is thought that there is no need for a change, then as the hourly rate is increased, the daily rate will increase by the same magnitude. This is how the mechanism works.

Members should therefore know that in sum, I am only including the foreign domestic helpers into the protection offered by the law in terms of a daily wage rate. This should not pose an additional and heavy burden on the

employers. This is because in future it is the MWC which will determine the level of the daily wage rate. I am sure this will not make a big difference from the current wage level of \$3,580. It is because the MWC will also consider the factor of affordability. So all in all, an important principle in this law is to include them in the scope of the law.

Chairman, I would also like to explain the various technical amendments. First, I seek to amend clause 6(3) to repeal the provision which does not apply to live-in domestic workers and to specify the provision on the minimum hourly rate. In other words, clauses 3, 5(2), 7(2), 8, 17(1) and 17(2) do not apply to live-in domestic workers.

Second, clause 7(2A) is added to provide that the minimum wage for a live-in domestic worker for a wage period is the amount derived by multiplying the total number of days worked by the live-in domestic worker by the minimum daily wage rate. Clause 3A is added to specify that the days worked by a live-in domestic worker in a wage period include any day on which the live-in domestic worker is, in accordance with the contract of employment or with the agreement or at the direction of the employer, doing work or receiving training, irrespective of the number of hours the live-in domestic worker is doing work or receiving training on that day. Clause 2 is amended to add the definitions of "live-in domestic worker", "days worked", "conversion multiplier" and "minimum daily wage rate" which is defined to mean the wage rate derived by multiplying the prescribed minimum hourly wage rate by the conversion multiplier. I have also proposed consequential amendments to the definitions of "employee" and "minimum wage". Clause 11(1A) is added to stipulate that the Chief Executive may ask the Minimum Wage Commission to make recommendations about the value of the conversion multiplier. Clause 15 is also amended to provide that the Chief Executive in Council may, in consideration of the recommendations made by the MWC, specify or adjust the value of the conversion multiplier by notice published in the Gazette. In addition, clause 20 is also amended to provide that employers of live-in domestic workers shall keep a record of the number of days worked by live-in domestic workers, but they are not required to keep a record of the number of hours worked. Other consequential amendments include amendments to clauses 5, 17 and 21 and the addition of Schedule 3A. These are all amendments of technical nature.

Chairman, in sum, I hope Members can lend their support to all the amendments. This is because these amendments will not bring any heavy burden to the employers while they can ensure that foreign domestic helpers can enjoy equal rights as the local workers. As I have said yesterday, I believe Hong Kong is a civilized society and I am glad that justice has finally come. However, justice as it is now is not complete but flawed. It is flawed because certain people are excluded. This is totally unacceptable to us. I hope Members can support the inclusion of these people into the scope of protection offered by this law. Thank you, Chairman.

Proposed amendments

Clause 2 (see Annex I)

Clause 5 (see Annex I)

Clause 6 (see Annex I)

Clause 7 (see Annex I)

Clause 11 (see Annex I)

Clause 15 (see Annex I)

Clause 17 (see Annex I)

Clause 20 (see Annex I)

Clause 21 (see Annex I)

MR WONG KWOK-HING (in Cantonese): Chairman, on behalf of the Members representing the Federation of Trade Unions (FTU), I wish to put forward our views on the amendments moved by Mr LEE Cheuk-yan.

With respect to Mr LEE's amendments, we can only abstain from voting for the following reasons:

First, while it cannot be denied that foreign domestic helpers have made certain contributions to Hong Kong, ever since the importation of foreign domestic helpers to Hong Kong, a minimum allowable wage (MAW) has already been in force under the Immigration Ordinance and that is currently \$3,580 a month. Moreover, they live in their employers' homes, and as we know, they also have some in-kind benefits. On top of that, the travelling expenses to and from their places of origin are borne by the employers. As they have already a minimum wage pursuant to the Immigration Ordinance, should they be included in the new Minimum Wage Bill at this stage? I would think that we should discuss that point and this has nothing to do with discrimination.

Furthermore, with respect to the minimum wage for domestic helpers, if there is really a need for a review or adjustment, we should consider views from all quarters, and we should urge the Government to set up a review mechanism and a discussion forum to collect information. This will enhance the remuneration package of foreign domestic helpers. We can identify the areas that we should work on so that they can be paid a better salary. This is the first reason why we will abstain from voting.

Second, Mr LEE Cheuk-yan's proposal will, in effect, change the monthly payment regime currently applicable to foreign domestic helpers to an hourly payment regime, under which their hourly wage rate is multiplied by the number of days worked. As there has not been any extensive consultation on the mechanism of conversion multiplier, I am afraid that such a new mechanism may entail a lot of problems. What are the views of all stakeholders? There may not be sufficient consultation and discussion.

Third, the general employers of foreign domestic helpers in Hong Kong are not heads of enterprises and companies. As we know, many of these employers of foreign domestic helpers are in fact wage-earners themselves. This is a practical point. How can this issue be handled in a better way between the employers and employees? With respect to this, trade unions in Hong Kong have discussed the issue, and representatives from unions of foreign domestic helpers have also attended meetings to voice their opinions. This is an issue that is a concern of the labour sector in Hong Kong and developments of the issue are being closely monitored. The FTU adopts an open attitude towards Mr LEE Cheuk-yan's proposals. Our intention is that foreign domestic helpers should not be included in the Minimum Wage Bill for the time being and more time should

be spent on listening to views. This will enable us to consider the issue in a holistic manner. We believe this is the proper way to go about it.

Hence the four Members from the FTU will abstain from voting. Thank you, Chairman.

MS MIRIAM LAU (in Cantonese): Chairman, while reading newspaper earlier, I came across an article by LAM Chiu-wing, a member of the media, on the minimum wage for foreign domestic helpers (FDHs), which I would like to share with Members. He pointed out that (and I quote): "It is heard that Filipino maids are striving for a minimum wage and ten-hour work a day. This means that our maid should get up at 7 am, take my three daughters to school and work until 5 pm, when she can call it a day. If she is asked to cook for the dinner, overtime payment will be involved Filipino maids, under the protection of minimum wage, will have their wage rise to \$5,000 or so. At that time, I (that is, LAM Chiu-wing) will have to dismiss her" (end of quote).

The brief remarks of LAM Chiu-wing speak precisely the minds and worries of the overwhelming majority of the employers of FDHs. Will a minimum wage lead to a substantial wage increase for FDHs? When an employer is back home from work and asks his FDH to do household chores, does he need to pay her overtime allowance? It is believed that many employers of FDHs will possibly be in a state of dilemma at that time.

The Administration's figures indicate that there are about 250 000 FDHs in Hong Kong at present, and they are currently entitled to a minimum allowable wage of \$3,580. However, if FDHs are to fall under the protection of the Minimum Wage Bill, an association for FDHs has inferred that on the basis of a minimum hourly wage of \$33, ten-hour work a day and 365 work-days a year, after deducting accommodation, meals and such miscellaneous items as water and electricity, the net wage will be \$4,849, which represents a substantial wage increase of 35.4%.

However, we should not assume that employers of FDHs are all well-off and are able to afford a substantial wage increase, a view which may be held by some friends in the labour sector. In fact, among the 220 000 employers of FDHs, 18% of them (about 40 000) are earning less than \$20,000 monthly.

Obviously, if every household has to fork out an additional monthly expense of nearly \$1,500, how can it be affordable to these families, which are earning less than \$20,000 a month?

There is more of a concern that once employers of FDHs find it unaffordable, it will lead to a massive layoff of FDHs, which will in turn give rise to many side-effects, particularly to those working couples who need to have their children or parents being taken care of at home. If a working couple dismiss their FDH, one of them, usually the wife, will have to quit the job and attend to domestic duties at home on a full-time basis. Their quality of life will decline as a result of having one less breadwinner.

The Government's figures indicate that between 1998 and 2008, the labour force participation rate of women aged 25 to 45 has increased from 66.5% to 76.6%, with a median monthly income of around \$10,000. However, if the minimum wage is to cover FDHs, it is feared that the trend of history will be reversed to the effect that fewer women will be engaged in economic activities, thus causing an impact on the economy and competitiveness of Hong Kong.

This is by no means scaremongering. Between late August and early September last year, the Liberal Party randomly interviewed by telephone 560 members of the public who employed FDHs. It was found that the problem was more serious than imagined: if the minimum wage for FDHs was to rise from the current \$3,580 to \$4,800, which was the level desired by FDHs, as many as 52.7% of employers would dismiss their helpers as they would find it unaffordable. If calculated on this basis, it is estimated that around 110 000 FDHs will have to head home prematurely. What Mr LEE Cheuk-yan perceives to be an improvement to the livelihood of FDHs may turn out to be a disservice done out of good intentions, breaking the dream of many FDHs hoping to work in Hong Kong, and denying them a chance to improve their quality of life.

Hong Kong Employers of Domestic Helpers Association Chairman Mr Joseph LAW has also pointed out that among the 220 000-odd employers of FDHs, one fourth to half of them will dismiss their helpers out of financial reasons. Professor HO Lok-sang of the Department of Economics of Lingnan University has also estimated that 100 000 FDHs will become unemployed.

These are actually very much in line with the findings of the Liberal Party's survey.

As such, FDHs are unable to benefit from it; members of the middle class are forced to give up their jobs; and society also has to suffer from the negative impacts of a dwindling labour force as well as cutbacks in competitiveness and national income. Such an all-lose situation is probably the last thing anyone would like to see.

And from an operational point of view, it is widely known that it is very difficult to define the working hours of live-in FDHs due to their long standby hours and the multifarious nature of domestic duties. It is basically unrealistic that employers are required to keep a record of the hours worked by FDHs.

Moreover, the existing basic employment terms for FDHs have all along been stated in the standard employment contract specified by the Government. Employers are obliged to offer to FDHs a series of in-kind benefits, such as free accommodation, free meals, free medical benefits and free passage to and from their places of origin. If the expenses on accommodation and meals are to be arbitrarily quantified, it is feared that there may not be any objective standard, and that even more arguments may arise.

Therefore, as regards the amendments proposed by Mr LEE Cheuk-yan to put live-in domestic workers under the scope of the statutory minimum wage, it is really difficult for the Liberal Party to give its support. Even though a minimum wage is to be prescribed by way of a daily wage rate, it will still be calculated as a single working day, irrespective of the number of hours worked on that day. The Liberal Party believes that this will not help dispel worries but will complicate the matter.

For instance, in calculating the minimum daily wage, Mr LEE Cheuk-yan has proposed to multiply the minimum hourly wage rate by a conversion multiplier which is to be recommended by the Minimum Wage Commission and decided by the Chief Executive in Council, in order to derive a minimum daily wage rate. However, on what basis should this multiplier be determined? How can disputes be avoided? A basket of questions involved remain unanswered.

All in all, FDHs are by no means slaves, especially when they work night and day to take care of the daily living of many Hong Kong people. They really deserve credit. I also believe that many of the families with FDHs actually cherish their relationship with FDHs and will treat them well. However, in view of the availability of a minimum wage mechanism for FDHs which offers them appropriate protection basically, as well as a set of exclusive assessment criteria for the wage of FDHs, the Liberal Party believes that there is really no need to start all over again and create complications, as this will make employers worried and put the "rice bowls" of FDHs at stake.

With these remarks, Chairman, I oppose the amendments proposed by Mr LEE Cheuk-yan.

MR RONNY TONG (in Cantonese): Chairman, for the whole issue of minimum wage, the amendments with regard to domestic workers have made us feel most embarrassed, as this can be said to be a situation where loyalty and filial piety cannot coexist. In principle, in terms of logic, and from the perspective of basic labour rights, we on one hand fully agree that domestic workers should be treated equally in law, and their wage should also be subject to the protection of minimum wage. But from another point of view, in terms of employment conditions and working environment, this special type of work is immensely different from all other types of work in Hong Kong.

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

First, I would like to respond to what Mr LEE Cheuk-yan said just now. If domestic workers are to be exempted from this legislation, does it amount to discrimination, or even an act of racial discrimination? Deputy Chairman, we cannot agree to this view, because when it comes to racial discrimination, it will be considered so only when different treatments are given under the same circumstance. If we are talking about an orange and an apple, I think that this may constitute neither discrimination nor racial discrimination. Deputy Chairman, I certainly have considered whether the so-called compromised solution as proposed by Mr LEE Cheuk-yan is the way out. As regards this issue, the Civic Party has disputed about it for a long time internally. But eventually, I think that despite the very good intentions in the solution proposed

by Mr LEE Cheuk-yan, but in practice, it may not be able to achieve the outcomes expected by all.

Deputy Chairman, why do I say so? This is because the amendments are mainly based on setting the wage of domestic workers as a daily wage, that is, an approach that takes the daily wage as the calculation basis. According to the currently proposed amendments, the daily wage is to be derived through the mathematical equation of a conversion multiplier. When moving the amendments earlier, Mr LEE Cheuk-yan explained that this so-called conversion multiplier equation was actually to convert an hourly wage into a daily wage through a conversion factor, that is, a conversion multiplier, before arriving at the daily wage.

To a certain extent, it seems to be a trick that deceives oneself and others. Why? As regards this equation, a conversion multiplier will only be available when a domestic worker is assumed to work for a certain number of hours a day, otherwise there will be no way to do the calculation. Even though the calculation is not done in this way, attempts will also be made by the domestic worker or the employee to derive the number of hours worked through the conversion multiplier. Taking a step backwards or pessimistically speaking, if such an amendment still falls short of the request of domestic workers, litigations involving judicial review will be inevitable. If this is the case, the judge will ask the involved parties how the figure is derived, which is very difficult to say. They cannot pluck a term called "conversion multiplier" out of thin air on the ground that the number of working hours is unavailable. This is impossible. If the number of working hours is said to be 10 hours, nine hours or eight hours, the Court will make a judgment on this basis.

However, Deputy Chairman, this is not the biggest problem. The biggest problem is whether there will be more disputes between employees and employers if a particular number of hours is derived. Let us imagine that the outcome of the calculation is 10 hours. After 10 hours, if the domestic worker is asked to walk the dog or give a glass of water to the employer, will he say, "Sorry, I can only work for 10 hours", and even request overtime allowance? I think that this not only fails to solve the problem, but may also give rise to more disputes. Many Members said earlier that in the light of the distinctive working pattern, it is difficult to make comparison with the general types of work that take the hourly wage rate as the calculation basis.

Deputy Chairman, the most decisive factor is the following: if, at present, there were no minimum allowable wage for FDHs, we would have tended to support the relevant amendments. But this actually is not the case. Through administrative measures, a minimum allowable wage for FDHs has been set for compliance by all Hong Kong people. Of course, this is not a statutory minimum wage, just as what many Members and Mr LEE Cheuk-yan explained earlier. However, a certain level of protection is at least available, instead of having no protection at all. I think that instead of spending so much time on the discussion of this Bill, more time should be devoted to considering carefully how this unique type of work should be handled. As administrative measures have been in place to protect minimum wage, and revision is made every year to ensure increments, there is no need to adopt an approach which may lead to more disputes and troubles. I would rather think that we have sufficient room to tolerate the situation in the hope that through continuous discussion and more extensive consultation, we can come up with a solution which is better than the amendments proposed by Mr LEE Cheuk-yan.

In this regard, the Civic Party usually does not resort to abstention when it comes to legislative amendments. But frankly speaking, we really cannot support the amendments, nor can we strongly oppose them. Therefore, we will abstain from voting on the whole set of related amendments.

But before I sit down, I have to tell the Secretary that we deeply hope that this issue can be settled. One major contention about this issue is the setting of a minimum wage for domestic workers through administrative means. This arrangement is not acceptable. I very much hope that the Secretary and the HKSAR Government will not relax their efforts in this respect, and will continue, along with stakeholders from all quarters and the general public of Hong Kong, to pursue a solution that is better than the current one.

Deputy Chairman, regrettably, we cannot support Mr LEE Cheuk-yan's amendments.

MR WONG SING-CHI (in Cantonese): Deputy Chairman, as regards the relevant amendments, my position is more or less the same as that stated during the Second Reading debate.

In principle, the Democratic Party agrees that the statutory minimum wage should take effect to the fullest extent and should also cover all eligible workers, including live-in domestic workers. However, it has been a habit in the community of Hong Kong that, for a long period of time, many of the employers from different classes have employed these live-in domestic workers for years. The job nature of live-in domestic workers is quite unique, about which Mr LEE Cheuk-yan has spoken at length earlier.

Deputy Chairman, you criticized in your earlier speech that the approach proposed by Mr LEE Cheuk-yan will pose financial difficulties to many in the middle class. Mr LEE Cheuk-yan has in fact taken this issue into account, so his proposed amendments are precisely intended to maintain the situation where people are used to employing live-in domestic workers, only that more can be done with regard to rights protection.

I fully understand the viewpoints from which Mr LEE Cheuk-yan proposes the amendments. I believe that he does not intend to make current employers of domestic workers fork out additional thousands of dollars all of a sudden beyond their affordability.

The Democratic Party is actually in a dilemma. Although the minimum wage should cover all eligible workers, we believe that domestic workers are unique. Putting them under the coverage will possibly give rise to the scenarios which were mentioned by the Deputy Chairman earlier. I believe that Mr LEE Cheuk-yan has in his mind the same scenario, that is, many domestic workers lose their jobs while many employers of live-in domestic workers in the middle and lower classes have to take up domestic duties, thus really putting them in a dilemma.

Under such a circumstance, the Democratic Party believes that there is no way to include live-in domestic workers in the soon-to-be-enacted Minimum Wage Ordinance. But the question is that at this moment, this is our own assessment only. The Government or some organizations should join forces to look into how live-in domestic workers are to be covered by the Minimum Wage Ordinance, as well as the impact of implementing the legislation on society. I believe that the authorities should do some assessment on this point so as to consider ways to protect live-in domestic workers in the time to come, be it through minimum wage legislation or other channels.

Just as what Mr LEE Cheuk-yan said earlier, while his proposed amendments are really purposeful and wise, it turns out that loyalty and righteousness cannot coexist. It is not that loyalty and filial piety cannot coexist, as Mr Ronny TONG has put it earlier, as it does not involve filial piety here. Both are intended to make current live-in domestic workers know that the Legislative Council cares about them. Mr LEE Cheuk-yan's amendments have their own merits.

As regards the amendments proposed by Mr LEE Cheuk-yan, I would like to point out that putting the technical aspect aside, the issue of wage should first be addressed. As a matter of fact, we know that at present, live-in domestic workers, especially foreign domestic helpers (FDHs), not only face the problem of wage. Admittedly, there are some unscrupulous employers who break the law by deceiving and even exploiting domestic workers in terms of wages. But I am of the view that these problems cannot be addressed through the legislation on minimum wage. It should be addressed through enforcement by the Government.

Second, a contract is involved when these live-in domestic workers or FDHs are employed under the current immigration policy. Mr LEE Cheuk-yan pointed out clearly earlier that while a contract could be signed, there might involve cases of criminal offences. In fact, I believe that even though some clauses in the contract have been laid down in accordance with the Immigration Ordinance, they may be unreasonable. I am aware that some amendments have been made recently. For instance, in the previous standard contract, the food allowance for live-in domestic workers or FDHs was only \$300 a month. If no food was provided, these workers have only \$10 to spend a day on meals in that month. Such clauses make people query why Hong Kong people are so mean and why this is the case.

Therefore, as regards the issue of live-in domestic workers or FDHs, I believe that it should not be tackled merely by means of the legislation on minimum wage, rather, enhanced measures in other channels should also be used, such as specifying their working hours or working conditions. As regards accommodation, I once heard that some domestic workers had to sleep on the bathtub. This may be nonexistent at present, but if there is, members of the public can provide us with information. We should help FDHs fight for their rightful interests in these aspects.

Nevertheless, it seems difficult for us to tackle the issue of live-in domestic workers through the legislation on minimum wage. Even though we support Mr LEE Cheuk-yan's amendments, it does not mean that the other problems faced by live-in domestic workers can be solved. Irrespective of whether we support Mr LEE Cheuk-yan's amendments or not, we also need to keep up our effort in protecting FDHs or live-in domestic workers against exploitation in the time to come.

Deputy Chairman, it is very difficult for the Democratic Party to support the amendments proposed by Mr LEE Cheuk-yan, not on the ground that I do not agree to the ideas or sentiments behind Mr LEE Cheuk-yan's amendments, but out of worries that the proposed clause may have other implications which we have not yet thoroughly assessed.

Mr LEE Cheuk-yan proposed earlier that the Minimum Wage Commission (MWC) would consider the idea of converting the hourly wage into a daily wage, but the composition of the MWC is precisely what we are doubtful of. Is this a reasonable practice to let them tackle it? I am dubious about it. This is of course what we are worried about.

Another issue is about the conversion multiplier. After the calculation by Mr LEE Cheuk-yan, as regards employers, it may mean an extra payment of \$300, that is \$3,880 a month, which is deemed affordable. But will it be extended to other work types, thus resulting in different scenarios? For example, a doctor needs to keep on working for three or five days non-stop — it may not be a public hospital, but a private one — The employer may propose the adoption of a conversion multiplier, such that he can work for 24 hours non-stop. Will such a scenario happen? That is, the hourly wage is converted into a daily wage and further converted into the number of hours worked. I do not know whether such a scenario will arise. I cannot think of any concrete example right now, as I have neither put enough thought to nor explored the solution proposed by Mr LEE Cheuk-yan in sufficient detail to think of other live-in work types with scenarios similar to those of live-in domestic workers.

Of course, this occurs in the legislation on minimum wage. But will this practice of conversion become a mechanism for some employers to exploit other workers? I really do not know, but I am just worried about whether this will happen. If we are to face another battlefield as a result of this, it is difficult to

imagine. Although Mr LEE Cheuk-yan and I have been standing on the same front on numerous labour affairs, there is a feeling of helplessness as the Democratic Party can do nothing but abstain from voting on Mr LEE Cheuk-yan's amendments. Even though Mr LEE Cheuk-yan's amendments cannot be passed, I deeply believe that those Members who are making every effort to fight for workers and the grassroots will still work together in future for these live-in domestic workers, particularly FDHs, to protect their interests and safeguard them against unfair treatment — such as protection in terms of working hours and other substantive protection — Let us continue to work together.

Therefore, I hope that firstly, Mr LEE Cheuk-yan will not mind that we are not supporting his amendments. Secondly, I also hope that live-in domestic worker unions or FDH unions, who are watching us outside this Chamber, can understand that as a matter of fact, Members still care about their rights and interests. Although we fail to achieve further protection for them through this Minimum Wage Bill, we will continue to give further advice to and exert more pressure on Secretary Matthew CHEUNG or Secretary Ambrose LEE in future, so that the Government will provide more comprehensive protection for the rights of live-in domestic workers or FDHs. I hope that all parties can make the effort together.

I so submit. The Democratic Party will abstain from voting on Mr LEE Cheuk-yan's amendments. Thank you, Deputy Chairman.

MR LEUNG YIU-CHUNG (in Cantonese): Deputy Chairman, the labour sector lends its unreserved support for the concept of "workers without borders" mainly because we are all wage earners. We should be treated fairly, justly and reasonably, and free from unreasonable exploitation. At the same time, we should also uphold our dignity, especially one regardless of races. Therefore, I hope that Members can attach importance to the concept of "workers without borders". Under capitalism, although it is difficult to require Members to accept this concept, we have to hold fast to it, hoping that Members will understand it some day.

Anyway, as regards the discussion on the Minimum Wage Bill today, I feel very regrettable, because the Government has totally brushed aside the issue of live-in foreign domestic helpers (FDHs). Of course, by brushing aside, I do not

mean that the Government has not discussed this issue at all. What I mean is that it has not tackled the issue by incorporating it into the Bill, which is most regrettable.

Today, I have heard the remarks of many people that they will either abstain from voting on or vote against the amendments proposed by Mr LEE Cheuk-yan when his amendments are put to vote. The significance lies in the question of which approach of determining the wage level is considered reasonable, such that existing employers will find it affordable. Members are considering the issue from this perspective. The issue is worth discussing, which I will not object to. But there is a more important issue that the Government has not tackled, that is, it seems that the wage of FDHs is currently determined by a three-person committee under the Labour Department (LD). This is a genuinely closed-door practice without consulting the stakeholders. This is what I feel very regrettable about. I really feel very regrettable that, even at this very moment when the Bill is about to be enacted, the Government still has not thought of how such an opaque and unfair practice should be tackled but resorted to maintaining the *status quo* instead.

Even though Members do not agree to the calculation approach proposed by Mr LEE Cheuk-yan, why should the MWC not be allowed to determine the minimum wage of FDHs? As a matter of fact, Members also understand that the Immigration Ordinance has specified the minimum wage for FDHs. The question is that the current method of determination is neither open nor transparent, but we just allow it to exist. This is what I find hard to understand. I believe that the Secretary has done nothing in this respect. He can resort to the calculation approach currently adopted by the LD for discussion by the MWC, or ask the MWC to devise a new mechanism. Members of the MWC are responsible for devising a new mechanism, and the calculation method of which can be different from that for local workers. This issue can be taken into account. However, I find it inappropriate for the government officials to determine the minimum wage on their own. Moreover, the practice that the level of minimum wage is determined by the LD on its own is not subject to any regulation, nor is there any criterion as regards the frequency of wage determination. They will do it as they please, which is arbitrary and unregulated. However, if this is determined by the MWC, it will turn out differently. We will discuss another controversial issue later, that is, the issue

on how frequent should the level of wage be reviewed. Be it biennially or annually, there is at least an opportunity for review and a rule to follow. However, the current practice of the LD is unregulated and is only dictated by those at the top. They will do it whenever they like. To put it not so nicely, no one can force them. I feel very regrettable about this.

On the other hand, many people doubted Mr LEE Cheuk-yan's proposal of using daily wage as the calculation basis. Some even query whether this proposal will give rise to other legal proceedings. As a matter of fact, irrespective of whether LEE Cheuk-yan has proposed the usage of daily wage rate or not, FDHs can always initiate legal proceedings at present, as they have no idea how the Administration arrives at their minimum wage. Why is it that local workers can be remunerated on an hourly basis, whereas FDHs are not given a single definition and are only subject to the will of top officials? This alone may give rise to legal proceedings.

We cannot keep our hands off the issue just for the sake of avoiding legal proceedings. On the contrary, the most optimal solution in my view is for the MWC to devise a new mechanism for discussion by all parties. This is the best approach. I believe Mr LEE Cheuk-yan is not of the view that his calculation method is perfect. As regards this calculation method, I am sure that he is trying his best to identify some room for manoeuvre that can be reasonably explained in order to arrive at such a formula. Although Mr LEE Cheuk-yan did not put it in words earlier, I believe he is well aware that this calculation approach has been derived out of a lot of constraints, just like the situation where we had the opportunity to propose a private bill previously. Just like the bill that I once proposed to restrict the increase in public housing rentals, there are of course many drawbacks in the private bills we have proposed, but the question is that this has to be the case when the initiative is taken by us rather than the Government. Of course, we are not being irresponsible. As we do not have as many resources as the Government, there will be drawbacks in the product. We do not want to act perfunctorily, and we will do whatever we can. Just as the formula proposed by Mr LEE Cheuk-yan today, we have done as much as we can to strike a balance. If the calculation is based on an hourly wage, Members may have no idea how to calculate the number of working hours, nor whether the hours are counted when one is called up to work while sleeping. So, these scenarios are all taken aside, and the calculation will only be based on a daily

wage rate. This is an attempt to accommodate Members' views as far as possible or balance the different views of Members. But Members found his proposal difficult to support, albeit not bad an approach. I am rather disappointed about this.

The most important viewpoint to be addressed eventually is how the Government perceives this issue. This is the most important point. What we need to discuss is how the Government tackles the issue.

I have asked the Government why this cannot be discussed by the MWC so as to allow members to draw on collective wisdom and come up with a mechanism. Why cannot the two practices run in parallel? The two practices are running in parallel at present. It is only that the work currently conducted by top officials behind closed doors is to be tabled for discussion by the MWC, and that a mechanism is to be conceived by a group of members appointed by the Government. This is believed to be a better way of doing it. Moreover, many mechanisms have been in place to put them under regulation. I personally think that this makes the best of both worlds, but the Government has done nothing and just leaves it as it is. Just like what has been discussed with regard to working hours earlier, it either keeps its hands off or remains indifferent to the Trade Boards Ordinance as it pleases. I hold that such a practice is rather shameless, which I think is unacceptable. I hope that Members can think about the issue seriously. We all believe that there should neither be racial discrimination nor sexual discrimination, but at the same time, there should also be no particular discrimination against certain job types. Why cannot we thoroughly consider ways to provide them with reasonable protection, while they are offering services to us and making a contribution to society? This is what we request.

Deputy Chairman, I support Mr LEE Cheuk-yan's amendments, and I hope that other Honourable colleagues can support him rather than abstaining from voting.

Deputy Chairman, I so submit.

MRS REGINA IP (in Cantonese): Theoretically, Mr LEE Cheuk-yan's arguments seek to pursue equality, equal treatment and fight against racial or sex discrimination. In fact, similar arguments were already presented to me by the

labour affairs group of the Justice and Peace Commission of the Hong Kong Catholic Diocese and some foreign domestic helpers (FDHs) as early as last year. Theoretically, I understood their views, but I told them very frankly that I could hardly support them because the actual situation was greatly different from the theory.

In fact, the job nature of FDHs is very unique, which is different from ordinary workers in the sense that FDHs are employed by families and they work in families. FDHs are actually given special protection. Deputy Chairman, you should also know that FDHs were the first group of people to be protected by contracts, and they also enjoy a minimum wage. As mentioned by a number of colleagues just now, employers are responsible for providing them with food and round-trip air tickets. However, no one mentions the fact that, according to employment contracts, employers have to care for them should they fall ill. I believe their treatment is unique in Hong Kong. Even civil servants are not accorded with such treatments — they have to join the queues for medical consultation. A former female secretary of mine had to wait two years for a "balloon angioplasty". In the end, she spent more than \$200,000 on a surgery performed in a private hospital.

I was told by some FDH employers that there were many other burdens they had to bear for employing an FDH to work at their homes. For instance, after their arrival in Hong Kong, some FDHs are found to have infected contagious diseases or AIDS, and some of them are even found to be pregnant. As employers are prohibited from discriminating against pregnant employees, the former have to take care of the latter. Apart from these, some FDHs are found to be suffering from critical illnesses. The Secretary will certainly advise me that the FDHs may go to the hospitals under the Hospital Authority for medical treatment. However, employers will have to take care of their FDHs if the latter prefer having a specialist to examine whether there are abnormal cells in certain parts of their bodies. Therefore, in comparison, it can be said that workers other than FDHs are being discriminated against by the SAR Government. Am I right?

Earlier in the meeting, I heard many Members say that FDHs work very hard. Just now, the Deputy Chairman quoted Mr LAM Chiu-wing in saying that some FDHs had to take care of three children who go to school in the morning and help them with packing their schoolbags and bathing in the evening, and even

prepare a late-night meal before they could go to bed. Of course, some of them work very hard. However, I know many FDHs who are responsible for caring for two dogs only. I am also an FDH employer. However, as I am not home very often, there is nothing much for her to do. I instruct her to buy organic vegetables because I want to have a healthy diet. Finally, it is she who eats the vegetables, because very often I am not home. Therefore, the job nature of FDHs is really unique. It is very difficult to generalize. Like me, my Filipino maid goes to Bowen Road for jogging when she is free. She has become a member of the middle class in Hong Kong, too.

Of course, we know that the places where some FDHs live are very small. However, this is also something that is really happening to Hong Kong people. The places where most Hong Kong people live are very small, too. As pointed out by Mr LEUNG Yiu-chung just now, the working hours of Hong Kong people are very long. It can even be said that the working hours of some men are so long that they cannot possibly be a husband. This sounds really miserable. Long working hours are actually something Hong Kong people must face in their daily lives. Both government officials and Members of this Council have to work long hours. This is particularly so for elected Members like us. We dare not take long holidays and leave Hong Kong for two to four weeks, as what government officials or civil servants do. This is because we might not be re-elected once we fail to keep close contact with our voters.

Hence, from a practical angle, we will fail to take into consideration the special characteristics of this type of work should we forcibly impose a minimum wage or the conversion multiplier, as proposed by Mr LEE Cheuk-yan, on FDHs. I believe even the Deputy Chairman is aware that there is specialized law to regulate domestic helpers in Singapore and Taiwan. However, domestic helpers are being regulated in Hong Kong solely by the Employment Ordinance. In fact, it is already outdated to do so. Employing domestic helpers may also involve other troubles and disputes. I have also heard of a lot of these troubles and disputes. I believe the Deputy Chairman has also heard of a lot of such troubles and disputes. For instance, disputes involving FDHs have to be dealt with by the Labour Tribunal. As the Labour Department and the Labour and Welfare Bureau were tilted towards the employees' side, employers were defeated in most of the cases. Furthermore, many FDHs who have stayed in Hong Kong for a long time know how to exploit legal loopholes. They know that, by filing

complaints against their employers, they will be allowed to stay in Hong Kong and switch jobs.

Besides, there are many other problems, too. Let me cite the benefits of FDHs as an example. The holiday package they enjoy is actually the best in Asia. When many middle-class families asked me why FDHs, being Catholics, should be given a day-off on certain Chinese traditional holidays, such as the Ching Ming Festival, I told them I had no idea, too. FDHs simply do not have such tradition and need, though I do not oppose FDHs being given such treatment. I can only say that, in terms of holidays or wages, the treatment received by FDHs in Hong Kong is the best in the whole of Asia.

Therefore, from a practical angle, we do not actually discriminate against FDHs. In terms of health care protection, we can even say that the Government is discriminating against local workers, including civil servants and Members of this Council, because we are given medical protection amounting to only \$25,000 a year. I will have a big headache if I am suffering from critical illness. Furthermore, I have also heard some FDH associations say, including at public hearings, that their hourly wage could be brought higher to, for instance, \$30 or \$33, to be in line with the hourly wage received by local workers. I remember it very well that an FDH organization has once said that Hong Kong needs them. Of course, Hong Kong needs them, and they have also made enormous contributions, too. However, I have been told by many middle-class employers that should the monthly wage of FDHs be increased to more than \$4,000 or \$5,000, they will quit their teaching posts and go home to take care of their families. I believe many FDH associations have over-estimated the affordability of society. They might even price themselves out of the market and ruin their careers.

Deputy Chairman, after considering these two aspects, I think that many things are theoretically very good, that is, we should strive for equality and fight against discrimination. However, having regard to Hong Kong's actual social environment and the fact that the treatment accorded to FDHs is pretty good, I cannot possibly support Mr LEE Cheuk-yan's amendments.

I so submit.

DR PRISCILLA LEUNG (in Cantonese): Deputy Chairman, the discussion on the enactment of the Minimum Wage Bill has dragged on for a long time. I hope the passage of the Bill will be good news to Hong Kong. Hence, the actual situation of employers and employees must be taken into consideration during the implementation and formulation process. I absolutely do not hope to see that the Bill, after enactment, will lead to racial confrontation. As stated by me yesterday, I do not hope to see people seeking a judicial review after the enactment of this piece of legislation. Of course, this is not something we can control. I am saying this only out of goodwill.

I would like to add that the relationship between foreign domestic helpers (FDHs) in Hong Kong and Hong Kong people is very close indeed. In particular, our next generation might bond even better with the FDHs working at their homes than their close relatives. I have this personal experience — sometimes, I have to persuade my children, through the FDH working at my home, to do something because the relationship between them is very close. Therefore, as pointed out by some colleagues yesterday, we must not treat them as our servants. Instead, we should treat them as our friends or family members. The quality of FDHs working in Hong Kong has an honourable record. I remember very well that a very poor FDH returned an envelope containing hundreds of thousands of dollars found in the trash to her employer. Because of all this, Hong Kong people, especially people employing FDHs at home, should really appreciate and thank FDHs for the contributions they made to Hong Kong families, especially working women in Hong Kong, for nearly two decades. I find it absolutely necessary to bring this up.

However, most of the employers who are capable of employing domestic helpers are not rich, for rich people may spend more than \$10,000 to employ better ones. Many of the employers I mentioned earlier are wage earners themselves — by that I mean both the husband and the wife are the breadwinners. They have to employ full-time domestic helpers, especially when they have children, to help take care of their children in the evening because they have to go to work the next morning.

In connection with this issue, I remember when discussion was brewing last year over whether exemptions should be granted, I conducted a questionnaire survey in Whampoa and Mei Foo. Of the 1 000 or so questionnaires issued at that time, several hundreds were completed in a matter of several hours. The

response of women who had FDHs at home was very positive when they heard this question. Normally, their response to ordinary subjects was far from positive. Neither would they express any interest. However, many of them expressed concern over this issue. I also understand that that this issue seems to give rise to some impressions that we do not want to see, and that is, some FDH associations might think that they are being discriminated against by Hong Kong people.

This is why I have to examine very carefully the actual situation of ordinary families in Hong Kong. The actual situation is: Most families employ one FDH, but a small number of families employ two FDHs because there are a couple of children in the families. Even if some women stay at home, they might still not be able to take care of all their children. For ordinary middle-class families that employ one FDH, if wages go up from \$4,000 to \$5,000, the increase of \$1,000 can be used to pay for textbooks, books or interest class fees. According to the calculations made by a number of colleagues earlier, it will cost them more than \$10,000 to employ two FDHs, when minimum wages, food, accommodation and air tickets are taken into account. This is why, starting from last year, when the enactment of legislation on a minimum wage has not reached this stage, an intimate friend of mine had slashed the number of FDHs from two to one when the employment contract of one of the FDHs expired. Some people would also choose not to employ FDHs anymore. The number of these cases has continued to rise, because everyone seems to have lost confidence. I dared not predict the outcome of the judicial review when I was asked whether or not exemptions would be granted. They do not want to dismiss their FDHs half way through, and so they prefer taking proper measures in advance. This is really not too good.

This proves that I am right in thinking that enacting legislation on a minimum wage, especially for domestic helpers, must be handled very carefully, because it could be a double-bladed sword. There is every possibility for the problem of a double-bladed sword to occur. For FDHs, they believe that they can then enjoy more benefits. However, FDH associations might do harm despite their good intentions. While they ought to strive for equality, after they succeed in doing so, they might actually see a lot of their friends returning home after losing their jobs.

The problem in reality is whether we can use another approach, rather than enactment of legislation, to complement the inadequacies of existing legislation. For instance, I believe something can be done about the future guidelines on minimum wage. In fact, on the education front, employers of domestic helpers should be reminded or encouraged to suitably provide their domestic helpers with bonuses, if they can afford to do so. I have done something like this. After reducing the number of FDHs from two to one, I have to learn how to appreciate her when she has to handle additional workload when we have visitors. Sometimes, I would give her extra holidays. In fact, a good relationship is important to humans, especially to domestic helpers. Furthermore, we must not keep an eye on our FDHs or check if they are watching television when we go to work in the afternoon. Perhaps we also need to make some balanced work-rest arrangements to limit the number of their toiling hours to eight. Employers having this mentality will not make excessive demands, or else there will be confrontation or even hatred. This is not very good.

In this regard, it appears that adopting incentive policies might suit families employing domestic helpers better and be more compatible with Hong Kong's reality than imposing mandatory requirements through enacting legislation. This will also mitigate the impact of minimum wage on many ordinary families having a stable income. In this regard, if some FDH associations or FDHs hear our comments or an interpreter is available, I very much hope that FDHs can understand that their work is highly appreciated by us.

Insofar as this issue is concerned, we hope to encourage employers in Hong Kong to strive to do better and, coupled with this relatively successful policy, create a win-win situation for domestic helpers and most of the families which have employed FDHs. Thank you, Deputy Chairman.

MR TAM YIU-CHUNG (in Cantonese): Deputy Chairman, the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) considers it reasonable for the Government to decide to exempt live-in domestic workers from the scope of the legislation on minimum wage.

Live-in domestic workers have indisputably made enormous contributions to Hong Kong's economic development. In particular, they relieve local women

of the work of caring for their families, thus enabling them to join the workforce. We can see that the relationship between families employing live-in domestic workers and live-in domestic workers is extremely close, because they are like family members living under the same roof. Two days ago, I heard a colleague say that he had to dine out in the evening, and the occasion turned out to be the birthday of his FDH, an Indonesian domestic worker. He even made a special effort to browse the Internet to find out if there was any Indonesian restaurant in the neighbourhood, and then his entire family went to the restaurant to celebrate the birthday of the domestic helper. It is imaginable that the domestic helper is being treated like a family member.

We understand that the distinctive working pattern of live-in domestic workers has rendered them very different from other workers protected by a statutory minimum wage. However, even though they are treated differently, I do not think there are discrimination problems. Under the minimum wage systems implemented in other countries, such as Britain, live-in domestic workers are not covered. As regards the issue of making it mandatory to pay live-in domestic workers a statutory minimum wage, the Government and some organizations have already pointed out many drawbacks of doing so during the scrutiny of the Bill. I would like to emphasize that the reasonableness of a system depends on whether it is compatible with social reality. Hong Kong's minimum wage system is established for the purpose of protecting the livelihood of Hong Kong people. Therefore, the minimum wage rate should eventually be pegged to the living standard of local people. In Hong Kong, the vast majority of live-in domestic workers come from abroad. Although the wages they earn in Hong Kong are often spent on the expenditure of their families abroad, a mandatory minimum allowable wage system has already been put in place in the 1970s, for the purpose of protecting their entitled incomes. Moreover, this system has all along been proven effective. Therefore, even if there are discrepancies between the minimum wage earned by live-in domestic workers and local workers, we do not think that their benefits are being exploited.

In fact, there is a certain degree of difficulty to quantify the in-kind benefits, such as accommodation or food, received by live-in domestic workers at their employers' homes with an objective standard according to the proposal. Therefore, I think that there is technical difficulty with Mr LEE Cheuk-yan's amendments of making conversion calculations. For instance, every family has its own living environment. While some houses are very big, some FDHs have

to share a tiny place with an entire family or even sleep on the floor. Therefore, it is sometimes very difficult to calculate.

I would like to cite an example. A couple of days ago, I came across a young couple during a meeting-the-public session. I was told that the wife was pregnant and her expected date of delivery was approaching. I was also told that they had recently employed an FDH but found out, after her arrival, that she had absolutely no knowledge of English. Although she often said "yes", she actually did not understand anything. They complained to the relevant agent that the FDH, who originally claimed to speak fluent English, had absolutely no knowledge of English and could only express herself with body language. Sometimes she could not express herself with body language and she acted just like a deaf and dumb person. However, the agent said there was nothing it could do. If they wished to dismiss the FDH, they would have to give her one month's dismissal notice and air tickets before it could get them another FDH. Of course, the couple were very frustrated. Firstly, they would have no domestic helper to help them. Secondly, they would suffer substantial losses because they had already paid the agent and, if they wished to employ a new FDH, they would have to give one month's payment in lieu of notice and pay for the air tickets. It is evident that the price they pay is not small. I also wish to tell the Secretary here that these agents might need to be regulated. Otherwise, if the FDHs cannot fit into the families as expected, both the FDHs and the families will suffer.

Another situation in reality is that most of the families employing live-in domestic workers at present are sandwich-class families, and their financial situation is not very good. Therefore, raising the wages of FDHs substantially will impose an enormous financial burden on these families. In my opinion, whether they can continue to employ these domestic helpers is a very big question. It has been predicted by a number of FDH associations that many women would prefer giving up their jobs in order to take care of their children at home. Should this really be the case, we are afraid that we will see harm long before we see benefits. The job opportunities of live-in domestic workers might be reduced substantially, and FDHs will suffer eventually. As regards whether live-in domestic workers should be put under the minimum wage system, the general attitude of Hong Kong people is very clear according to the views we have received. This morning, I received an email from a member of the public, and it reads, "Many wage earners in Hong Kong have to work to support their

families, and so they have to employ foreign domestic helpers to help take care of their children, their elderly and vulnerable family members at home. Have Members of the Legislative Council taken us, a group of sandwich class wage earners, into account when they propose, in the Legislative Council Chamber and in the name of kindheartedness and justice, enacting legislation to protect the minimum wage of foreign domestic helpers?"

Although these are the grievances of a member of the public, these grievances might carry a certain degree of representativeness. Of course, I do not necessarily consider every word he used to be very appropriate, but still, his view reflected how he felt, because our amendments might have an impact on them and cause them difficulty. The DAB has also mulled over this issue. We disagree that the statutory minimum wage should cover live-in domestic workers. Thank you, Deputy Chairman.

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

MR LEUNG KWOK-HUNG (in Cantonese): Deputy Chairman, I speak in support of Mr LEE Cheuk-yan's amendments. In fact, the spirit of his amendments is very similar to that of the Bill. How much do foreign domestic helpers (FDHs) actually earn after conversion? The answer is a variable. In other words, the conversion formula is algebraic. If the Government's current plan of assigning the Minimum Wage Commission to determine the wages of local workers for reference by the Chief Executive before implementation is considered to be appropriate or logical, I cannot see why Mr LEE should be considered illogical.

The problem lies in the existence of a variable in the conversion formula, that is, the hourly wage rate. This should be comparable to the wage earned by Hong Kong workers protected by a minimum wage. In other words, if the wage level is to be set at \$25, then the variable will become 25. In fact, there is a formula which can calculate the amount of wages FDHs should earn after conversion. Since there is a conversion formula, it is incorrect for Members to say that there are conversion problems. As regards the question raised by some members of the public concerning whether Members had taken the sandwich class into consideration, Members are actually duty-bound to tell the sandwich

class not to worry because the hourly wage rate does not have to be \$33. According to my understanding and from my contact with FDH unions, even if the hourly wage is set at \$33, and this figure is multiplied by 10 hours minus employers' expenditure, FDHs should earn \$4,800 a month in accordance with their calculation.

However, this does not apply to all FDHs. According to Mr LEE Cheuk-yan's current proposal, this level can definitely not be reached. I have heard many different views. Dr Priscilla LEUNG, for instance, expressed great gratitude to her FDH, who is living with her family under one roof and helps taking care of her son and those elderly family members of whom either she is not able to take care or does not have the time to take care. But how can gratitude be quantified? Deities must descend to the earth before people believe in them. In the beginning, there were only religious doctrines, but no religious icons. Things had to change because no one believed in deities. As a result, there came Jesus' shroud and the face of Jesus. There are also stained glasses in Orthodox. I share this story with Members because gratitude can be quantified in terms of money. According to the calculations done by some FDHs, even if their wages are increased, they can only earn \$3,900 or \$4,000 a month, only \$400 more than their present wages. Our gratitude means \$10 a day. There will not be much money left after buying a copy of Apple Daily every day. Buying one more apple every day will definitely use up all the money.

When we are talking about the contributions made by FDHs to Hong Kong, when we are trying to pacify them with praises, \$400 is considered by holy spirits descending to the earth to be excessive. I advise Members not to praise FDHs. Members might as well directly point out that, like black slaves in the olden days, they have a price. Why should Members praise them? In the end of the day, it is not considered worthwhile to give them an extra \$400. In fact, FDHs insist on fighting for an extra \$400 because the Government has done something very unjust by taking some of their wages to subsidize vocational training. However, the Government can argue that it had merely asked employers to pay tax, and that it was just a coincidence that the minimum wage of FDHs was simultaneously lowered. Deputy Chairman, these FDHs, who left their homes and came to work here, have made so many contributions, as pointed out by Members just now. Under the financial crisis, many workers in Hong Kong have become unemployed. Such unemployment, which should be considered structural

unemployment, is attributed to the Government's and the businessmen's indulgence in the "trickle-down effect" as well as the speculative activities in the property and financial markets. The Government, businessmen and employers should be held responsible for the failure to train up our workforce. Why should people at the lowest stratum of society be sacrificed? I have come into contact with FDHs. In fact, there are very few people who reach out to them, why? This is because protests staged by FDHs will not be covered by newspapers, even if the number of protesters reaches several thousand. They are actually Falun Gong of the Philippines. Their processions, regardless of the number of their participants, will not be reported. In fact, they have shared with us their grievances — what they want is dignity. Just now, Mr TAM Yiu-chung said that FDHs are not covered in Britain. However, he must understand that the treatment received by FDHs in Britain is more humane. They will not be asked to perform so many tasks, nor will they be woken up late at night. My mother used to be a domestic helper. How were domestic helpers treated by the British? It is a kind of one-person operation for the domestic workers, meaning that one worker has to do all the household chores, that is, washing, ironing, cooking, tidying rooms, and so forth. Even doing all the work brings only a little extra money. My mother used to work in this sort of one-person operation. She worked so hard that she broke down in tears and could not even manage to go out to buy groceries. She became nearly blind because she did not have fish to eat for a long time.

Today, although FDHs are not required to work so hard, many of them work in this sort of one-person operation. Have Members ever seen two FDHs sharing work? The subject for debate today is not about how much FDHs should earn, because we can see from the current conversion formula that the Minimum Wage Commission will have the final say, and the wages of FDHs should be pegged to the minimum wage received by local workers. Therefore, it is meaningless for people to say that there will be conversion problems because the outcome is uncertain. If this is the case, the Government's legislation should not be passed because of its uncertainty. What will happen if the minimum wage is set at \$40?

Deputy Chairman, we all praise and glorify a minimum wage here today. In fact, many Members already know that there are sufficient votes in support of the setting of a certain rate as the minimum wage. According to their

calculations, they have already figured out \$33 and \$22, with \$27 or \$28 being the median. Since the Liberal Party proposed a minimum wage of \$24, the discussion can come to a close satisfactorily by adding \$2. However, if \$26 is adopted for the sake of conversion, FDHs might have their wages reduced. How can we let them down?

How many FDHs are being employed in Britain? Do the British feel that they have to thank their FDHs in the way suggested by Members? They are more clear-cut than we are. Instead of expressing gratitude, they prefer paying more wages. Do they still need to say "thank you"? Insofar as this issue is concerned, the League of Social Democrats (LSD) will definitely support LEE Cheuk-yan.

The second issue I wish to bring up is that many sandwich class people, and even people living in my housing estate, employ Indonesian or Filipino maids. Though they might criticize me, and even splash water or other stuff at me, after hearing what I say in this Council today, I cannot help but speak here. Their problems are also social problems — a sick and elderly retiree has no idea what to do when he realizes that his son cannot support him. I have raised many questions about residential care homes for the elderly here, and these questions were also answered by this Secretary. When Members say that Filipino maids should accept such a low wage, may I ask Members what about local people working in residential care homes for the elderly and receiving low wages? Many elderly people have to rely on CSSA to pay for the costs of living in private hostels because they cannot get a place in subsidized hostels. Will the parents of the sandwich class people have a chance to enjoy such service? In other words, do the employees of these hostels, who are working very hard in the hostels and counting on CSSA recipients, not deserve a pay rise?

Members, I know that every one of us is selfish. I am selfish, too. When I saw some commodities sold at a cheaper price in a Filipino shop, I would buy them promptly. This can already be regarded as a kind of exploitation, because Filipino workers receive low wages in the Philippines to produce these cheap commodities to be sold in Hong Kong in bulk. We are actually exploiting them when we buy these commodities. This was what "commodity fetishism" meant by Karl MARX — we bought these commodities because we could not see the relationship. Not only would I buy these commodities, I would also be unwilling to pay 50 more cents. Whose pocket will the money go? That is

enough. How could you treat someone living with you under one roof and caring for your children and parents in that way? For a price which is just enough to buy a copy of *Apple Daily* and an apple, we have to fight among ourselves today. It is all nonsense to tell them that "I am actually grateful to you".

Honourable Members, the internal problems of our society, the family problem of women having dual roles and the problem of some women working as bartenders to make up for the \$1,000 their husbands should have earned, are our own problems. Why do we openly express our gratitude to FDHs in this Council but then they are excluded in the end?

In a pending case called "poisoned bread case" that occurred in Hong Kong, a foreigner, also an advocate of British colonialism, died after eating poisoned bread. I believe this was done by someone whom he knew. Today, you hurt the feelings of FDHs. Will you be benefited if FDHs do not devote themselves to their work? When we condemned local capitalists and consortia for being too calculative and looking down upon workers, saying that they would be subject to retribution, would we not be subject to retribution as well?

Deputy Chairman, what has been said here today is like what is written on the banner displayed by the Hong Kong Federation of Trade Unions outside: "Support a minimum wage; Give me back my dignity". It is talking about dignity, not money. No one knows how much money he will get. It is tragic that some of our female colleagues treat other women workers in this manner. In particular, their parents, like my parents, are also workers. I think this is the greatest tragedy — they want others to suffer in the same way as they do. Therefore, I cannot but support Mr LEE Cheuk-yan's amendments.

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

MR FREDERICK FUNG (in Cantonese): Deputy Chairman, both the Hong Kong Association for Democracy and People's Livelihood (ADPL) and I consider the existing wage policy unfair to foreign workers. In particular, the wage system for foreign domestic helpers (FDHs) was not dealt with during our discussion on the Minimum Wage Bill. Such an attitude is obviously unreasonable, unfair and indifferent. This is unacceptable.

As Members know, our decade-long fight for a minimum wage has finally borne fruit. With the turning of a new page and emergence of a new world, labour should be rewarded. Both members of the public and the Government agree to such change. Over the past decades, we have been lobbying the Government and the business sector that toiling workers should receive wages which should be reasonably sufficient for them to support themselves and their families. Do FDHs not need to support themselves and their families?

Of course, Members may argue that employers have already provided for FDHs' living by providing them with food and accommodation. According to the figures cited by Mr LEE Cheuk-yan earlier, if the conversion multiplier is adopted, the issue of providing food and accommodation has actually been taken into account. At present, the monthly wage of FDHs is approximately \$3,500, or below \$4,000 if the conversion multiplier is adopted. When it comes to the minimum wage of local workers, assuming that their hourly wage rate ranges from \$24 to \$33, the monthly wage of local workers will range from approximately \$5,500 to \$7,000, which is higher than the FDH's monthly wage of below \$4,000. The difference, ranging from \$2,000 to \$3,000, is probably attributed to the expenses on food and accommodation.

Deputy Chairman, what is the origin of a minimum wage? It is originated from a pecuniary relationship under which someone pays another person to perform certain specified tasks. In other words, someone pays another person for his labour or wisdom to serve him or her. Why do Hong Kong people treat Hong Kong people and non-Hong Kong people differently? I cannot see why there should be a different set of value or value judgment. My comments will offend many Hong Kong people. However, there will be no fairness, justice and reasonableness should we fear offending others on every occasion.

In fact, I started to employ an FDH when a Filipino maid was hired during my wife's pregnancy and our baby was expected to be delivered in three months' time. The Filipino maid had worked for us for 10 years after my son was born, watching him grow up and advance from a nursery school to a kindergarten and then a primary school. Why must I employ a Filipino maid? Both my wife and I go out to work. Without a Filipino maid, it is simply impossible for us to care for our child. If one of us chooses not to go out to work, there will be one less person contributing to the labour force. In particular, both of us are highly

educated. If possible, we should continue to work, whether for the sake of earning money or paying back to society.

I can tell Members that, when my Filipino maid left, my son cried terribly for a couple of days. After she left, my son cried every night for six whole months. My son's affection for her is thus imaginable. However, her monthly wage is only \$3,580, while the monthly wage of local workers ranges from \$7,000 to \$6,500 or \$6,000. I really have no idea how I can find someone in Hong Kong to substitute my Filipino maid, who could work for us and stay overnight at our home. Moreover, her relationship with my son was so good. Children are very direct. If they are not treated well, not only will they not cry when the maid leaves, but will even kick the maid out of the house. Affection will naturally grow if a child is treated well. This was evident when my Filipino maid left. This is why I think that our Filipino maid has made enormous contributions to us.

I would like to say it again that the contributions have nothing to do with affections. It all begins with a working relationship, and this relationship — regardless of race, and whether the workers are local or non-local — is regular, though the rewards are not the same.

Deputy Chairman, three years ago, I hired another Filipino maid to take care of my mother. Though she has turned 97 years old this year, she is reluctant to stay in a home for the aged. In fact, we have pursued this matter many times at meetings of the Panel on Welfare Services. When elderly persons reach a certain stage, it is indeed impossible for us to take care of them. One of the reasons is that my wife and I have to go out to work. Another reason is that we really have no knowledge of how to provide for their subsistence, including helping them to go to the toilet, take a bath and move around. Sometimes, if the position is not right, we might hurt the muscles and bones of the elderly. Before their arrival in Hong Kong, Filipino maids or FDHs usually have already acquired some knowledge in this regard. Moreover, they had learnt how to care for the elderly. To a certain extent, she is not only a servant, but also a very considerate domestic carer.

Under such circumstances, why will there be different values? I really cannot figure out the reason why. I hope pan-democratic Members can consider the matter from a new angle. At least, we, the 23 of us, should cast the same vote because we uphold democracy, convictions, values and equality.

Deputy Chairman, at present, FDHs come to work in Hong Kong under the Immigration Ordinance and their minimum allowable wage is \$3,580 a month. Furthermore, when the employment contract is renewed every two years, the Government may adjust the wage level. In fact, this amount is not entirely reasonable. First, how is it determined? This is also a minimum wage because we cannot pay a lower amount. Such being the case, there are two sets of minimum wage in Hong Kong, one for local people and another one for FDHs. This is pretty obvious, only that the wages are elaborated under different laws. As a result, it is said that this has nothing to do with this piece of legislation, and there is no inequality, unreasonableness and discrimination. But, in essence, this is downright discrimination. As these wages are both considered to be minimum wages, why are they different?

Secondly, we will discuss later the issue about the frequency of reviewing the minimum wage. The review frequency might be set at once every two years, possibly for the sake of balancing the requirement for FDHs to sign a two-year contract. During these two years, wages cannot be increased or reduced. At present, wage earners in Hong Kong often discuss pay increases with their employers every year. It is very likely that the amount of minimum wage received by FDHs under the Immigration Ordinance will not be the same as the amount of minimum wage to be set in the future. I believe it is very likely that there will be two different minimum wages. Second, even though an adjustment can be made every two years, it is very often that adjustments are not made at all. This is different from the treatment received by wage earners in Hong Kong. This is the second point I wish to raise in connection with the unreasonable treatment received by FDHs.

In fact, Deputy Chairman, there are 200 000 to 300 000 FDHs serving many families in Hong Kong. Of course, some Members said that they could not give their support because some middle-class people had raised objection. Their argument is the same as the argument advanced by representatives of the business sector during the discussions on minimum wage. Why should we insist on fighting for a minimum wage? In fact, we have been insisting on our fight not for just one day or one year, but for 30 years. Today, however, some people are saying the same thing to the FDHs to stop them from fighting and persuade them to accept their low wage.

Deputy Chairman, I do not enjoy criticizing other people and I do not know how to do it. I only wish to express my views and feelings. More than

200 000 FDHs have come to Hong Kong to help so many families, making it possible for the couples in these families to have the opportunity to pay back to society with their knowledge. Without FDH's assistance, at least one person in every family cannot go out to work. Secondly, although quite a number of FDHs will flout the law and regulations, as this has already been reported in newspapers, more than 200 000 families are still employing FDHs because, basically, the performance of the vast majority of FDHs is satisfactory, and their domestic services have made them very popular. The relations between FDHs and their employers are not simple labour relations. I treat the FDH in my family almost like my family member. My son even sees her as his second mother, in addition to his own mother. This is how relations are being built. I hope Members can consider supporting Mr LEE Cheuk-yan's amendments.

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

(No Member indicated a wish to speak)

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Deputy Chairman, the Government opposes Mr LEE Cheuk-yan's amendments concerning live-in domestic workers.

The policy objective of the Minimum Wage Bill (the Bill) is very clear, which seeks to provide for a statutory minimum wage (SMW) at an hourly rate to prevent employees from receiving excessively low wages.

An hourly computation approach is adopted in defining an SMW, so as to ensure that employees' pay is commensurate with the number of hours worked, with wages not lower than the SMW level. Due to live-in domestic workers' distinctive working pattern, their working hours can hardly be determined. Therefore, this category of employees should be exempted from the Bill. However, exempting live-in domestic workers does not mean that they are subject to excessively low wages, for they can enjoy in-kind benefits, such as free accommodation, savings on travelling expenses, free food or food allowance in lieu. I have made this point very clear earlier on. Generally speaking, foreign domestic helpers (FDHs) can receive \$740 as food allowance in lieu. As for

local live-in domestic workers, some employers may also make such arrangement for them. Therefore, their actual remuneration is not just reflected by the level of wages. As a matter of fact, they can enjoy a higher amount of disposable cash than other non-live-in workers.

I will further elaborate on the justifications for exempting live-in domestic workers from the Bill later. First of all, I wish to state that Mr LEE Cheuk-yan's amendments are neither a desirable policy, nor are they feasible in practice.

Mr LEE's amendments seek to include live-in domestic workers under the coverage of the Bill by adopting an hourly computation approach in defining an SMW.

Specifically, his amendments are to provide a minimum daily wage rate calculated from the hourly SMW rate with a conversion multiplier. According to his proposal, the minimum wage for a live-in domestic worker for a wage period is the amount derived by multiplying the total number of days worked by the live-in domestic worker in the wage period by the minimum daily wage rate.

Mr LEE Cheuk-yan's amendments have run counter to the basic principle of our policy formulation, which is really undesirable. The Bill does not seek to stipulate a daily SMW rate for the general workforce or any category of employees, nor does it seek to require that employees can only obtain a daily SMW with a certain number of hours worked.

On the other hand, if a daily SMW rate is included hastily in the absence of any regulation on hours worked, it will be extremely difficult to determine the level of that minimum daily wage rate. The calculation involved is merely a wild guess, which is not arrived at by adopting a data-based approach.

In fact, at present, the nature of work of and the number of hours worked each day by each live-in domestic worker may vary, depending on the needs of the employer's family. Moreover, free accommodation and free food usually enjoyed by live-in domestic workers may also vary from one worker to another, meaning that they can have very different daily wages in real terms. Mr LEE Cheuk-yan proposes to provide a minimum daily wage rate calculated from the hourly SMW rate with a conversion multiplier. However, what is a conversion multiplier? The amendments have neither mentioned nor given any account on

it. Does it refer to a percentage of or a formula on the hourly SMW rate? We have no idea at all. If it is a percentage, how should it be determined? What is the basis of determining it? If it is a formula, what factors should be taken into account? How should we consider these factors? And what is the weighting of each factor? All these questions are left completely answered.

Mr LEE Cheuk-yan's amendments have run counter to the major policy objective of the Bill that an hourly computation approach should be adopted. Worse still, he has not given any explanation on the determination and operation of this conversion multiplier which is extremely crucial. The Government considers this proposal absolutely unacceptable.

Moreover, with such a conversion multiplier, it is easy for live-in domestic workers to compare among themselves their overall remuneration, including in-kind benefits, given by their employers. This will aggravate the opposition between employers and employees, which is not conducive to social harmony. Furthermore, even though there is a clear and feasible basis for putting the conversion multiplier into practice, if a daily SMW rate is calculated from it, a separate review mechanism, which is completely different from that for stipulating the hourly SMW rate, should be adopted. If both of them are included under the same ordinance, there are bound to be confusions on the review mechanism, giving rise to disputes. This is also undesirable.

I would like to implore Members to oppose all amendments relating to live-in domestic workers moved by Mr LEE Cheuk-yan, so that the Government can exempt them from the Bill.

Deputy Chairman, I wish to give a very brief account on the justifications for exempting live-in domestic workers from the Bill. In fact, I have made a detailed elaboration earlier on. Let me give an explanation in gist again.

As I have pointed out during the Second Reading debate on the Bill just now, having carefully considered all relevant factors and circumstances as well as the views of stakeholders, the Government proposes to exempt all live-in domestic workers, local or foreign, from the coverage of SMW. This is a practice which is most suitable to cope with the situation in Hong Kong. The proposed exemption of live-in domestic workers is made mainly in view of their distinctive work pattern and enjoyment of in-kind benefits not available to

non-live-in workers. I have to stress once again that such exemption does not involve any sexual or racial discrimination. In fact, I have to take this opportunity to thank all FDHs, who are important members of our workforce, for making contributions to Hong Kong.

Taking FDHs as an example, as we all know, apart from free accommodation, the Government has also required employers to provide them with basic terms of employment, such as free food or food allowance in lieu, free medical treatment — Mrs Regina IP has told us very clearly that it is "absolutely free" — and free passage to and from their places of origin. As early as in 1973, long before our discussion on minimum wage, the Government had stipulated a minimum allowable wage (MAW) to safeguard the interests of FDHs. Although it is only an administrative measure, employers who pay an amount that is below MAW, which is currently set at \$3,580, commit an offence of defaulting wages under the Employment Ordinance (EO) and are liable to criminal sanction. As a matter of fact, the Labour Department has intensified its effort to combat underpayment of wages in recent years, particularly against employers of FDHs. An employer, who committed an offence of underpayment of wages to an FDH, was sentenced to imprisonment for nine months initially. After lodging an appeal, the imprisonment was reduced to three months. There are cases in which employers are really sentenced to imprisonment. And quite a number of employers are liable to suspended sentence and payment of fines. In view of this, I wish to reiterate that we attach great importance to safeguarding the interests of FDHs. Apart from wages, all FDHs, same as local employees, are entitled to all statutory benefits under the EO, including various kinds of leaves and benefits.

What I have just mentioned is the principle that we should take into account in exempting live-in domestic workers from the Bill. Moreover, it is worth noting that during our consultation over a period of time, some stakeholders have expressed grave concerns about the actual impact brought about by including live-in domestic workers under the SMW regime. For instance, they have to stop employing live-in domestic workers owing to the increased cost. It is highly possible that either a working spouse (more likely the wife) will be forced to leave the workforce and stay home to take care of the family. In Hong Kong, 228 900 households, which is indeed not a small number, have employed 278 900 FDHs at present. In case there is anything wrong, a considerable number of households will be affected. Therefore, we should not overlook the opposition that may arise. According to the statistics

provided by the Census and Statistics Department, during the past decade, the labour participation rate of women aged 25 to 45 has risen from 67.6% in 1999 to 77.3% in 2009, showing that more women have come out to work in the labour market. In face of the ageing population in Hong Kong, we should be mindful of any measure that may reduce the labour participation rate of those within the economically active age brackets. We should deal with it cautiously.

Based on the above reasons, the Government considers that exempting live-in domestic workers from the coverage of SMW is a practice which is most suitable to cope with the actual situation in Hong Kong. On the contrary, I consider Mr LEE's amendments not feasible.

Deputy Chairman, I wish to reiterate that the Bill seeks to provide for SMW at an hourly rate rather than a daily rate. Due to the distinctive nature of work, it is very difficult to calculate the number of hours worked by live-in domestic workers. And in view of the unique employment term that they can enjoy in-kind benefits, they can have very different wages in real terms, making it impossible to calculate the conversion multiplier proposed by Mr LEE in an objective manner. Mr LEE's amendments can hardly cope with the distinctive situation of live-in domestic workers. Worse still, he fails to give any details on the proposed conversion multiplier. We consider it extremely inappropriate to replace an hourly rate with a daily rate and multiply it with an unknown conversion multiplier. If the amendments are endorsed, they cannot be put into practice, which will definitely arouse strong opposition in society.

Deputy Chairman, with these remarks, I implore Members to vote against Mr LEE Cheuk-yan's amendments. Thank you.

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

MR LEE CHEUK-YAN (in Cantonese): Deputy Chairman, the Secretary has said at the end of his speech that such situation is very unique. Given that it is difficult to calculate the number of hours worked and in-kind benefits are involved, I propose to adopt a daily rate so that live-in domestic workers can be included under the SMW regime. If the number of hours worked can be calculated easily, I can simply adopt an hourly rate across the board. However,

precisely due to the two questions put to me, I have made every effort to come up with a proposal, so as to ensure that the legislation can not only cover all scenarios but also deal with specific cases.

You all challenge my proposal of setting a conversion multiplier, wondering how it works. In fact, when discussing with the Government, I have no intention to suggest a conversion multiplier originally. My argument is very simple. If one case is calculated at a monthly rate while another case is calculated at an hourly rate, I need not suggest a conversion multiplier. Perhaps, you may ask me why I do not calculate it at a monthly rate. It is because if I do so at the very beginning, I can, of course, stipulate it in the Bill. However, in that case, I will have to amend a number of provisions under the Employment Ordinance (EO), for many of them are stipulated at a daily rate. Therefore, if I wish to make such amendments, I have to deal with many provisions under the EO. I have considered this point. Originally, I intend to calculate it at a monthly rate. To be frank, I have to thank the Legal Adviser, for he is the one who tells me that I can adopt the concept of conversion multiplier. But how do I come up with such a concept? In fact, this is merely a mathematical calculation. From the very beginning till now, I have mentioned it time and again, hoping that all of you can listen to me carefully. We should stipulate a daily rate first and then divide it by an hourly rate, so as to arrive at a conversion multiplier. We should start the calculation from a daily rate rather than a multiplier. It is because if we set a multiplier first, how can we do the calculation? Should we multiply \$33 by four, five or six? You may have no idea on how to do the calculation, neither do I. However, if the daily rate is \$147, we can divide it by \$33 and arrive at a multiplier of 4.4. But does it mean that the number of hours worked is 4.4? The answer is no. In fact, the number of hours worked is already outside the scope of consideration. I wish to make it clear at one go, hoping that all of you can stop alleging that it is very difficult to put the conversion multiplier proposed by me into practice. On the contrary, it is very simple. All we need to do is to ask the Minimum Wage Commission (MWC) to set a daily rate and then do the conversion.

(THE CHAIRMAN resumed the Chair)

The Secretary has criticized that such a practice will be very confusing. In fact, it is not confusing at all. Moreover, he has also mentioned that there is no objective data to justify it. In fact, this is not the case, either. Over the past years, he has alleged repeatedly that there is objective data to justify the minimum wage of \$3,580 stipulated by him. I have requested him to provide such data. However, he is reluctant to do so. I always ask him to provide me with such data, but he simply turns me down each time. If there is objective data to justify the minimum wage of \$3,580 proposed by the Government, he should provide the data to the MWC, so that they can also have some objective data to follow. This can definitely be done.

Therefore, I have responded to this question which is indeed technically feasible. In fact, this is also a practice that we should adopt. However, Chairman, after listening to what all Members have said, I can draw up a simple conclusion. Mr Ronny TONG has just mentioned that "loyalty and filial piety cannot coexist". In my opinion, it is more accurate to put it as "loyalty and righteousness cannot coexist". We, the Hong Kong Confederation of Trade Unions (HKCTU), have chosen "righteousness" instead of "loyalty". What does "loyalty" mean? It refers to blind loyalty. As mentioned by the Hong Kong Federation of Trade Unions (FTU) just now, it is very difficult to deal with two categories of employees, namely wage earners and FDHs. I have no alternative but to choose

(Mr WONG Kwok-hing stood up)

CHAIRMAN (in Cantonese): Mr WONG Kwok-hing, do you have any question?

MR WONG KWOK-HING (in Cantonese): I just wish to make an elucidation.

CHAIRMAN (in Cantonese): Mr WONG, if you wish to make an elucidation, you have to wait until Mr LEE Cheuk-yan has delivered his speech.

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

CHAIRMAN (in Cantonese): Mr LEE Cheuk-yan, you may continue.

MR LEE CHEUK-YAN (in Cantonese): You may clarify later, as you have really said so just now. This is a question relating to not only ordinary employers but also wage earners. And how can we deal with the relationship between employers and employees? There are two groups of people. I just wish to tell you how I deal with them. As a matter of fact, all of them are employees. But I consider that there should be righteousness. On the other hand, I do believe that wage earners, being employees, should also understand that there should be righteousness. It is because we all regard FDHs as our family members. As they are so important, I think we will not treat them badly. What am I arguing about? We are focusing on another issue. Chairman, I find it most unacceptable that quite a number of Members are making wild guesses on the wage of FDHs if my amendments are passed. I have no idea how they can come up with such figures. For example, LAM Chiu-wing has mentioned that I propose to set the wage of FDHs at \$5,000 and the number of their working hours at 10. Have I ever put forth such proposals here? Ms Miriam LAU has just quoted LAM Chiu-wing as so saying. I do hope to tell LAM Chiu-wing that I have never proposed to set the wage of FDHs at \$5,000 and the number of their working hours at 10.

Frankly speaking, it seems that "Brother LAM" does not like the protection on working hours very much. I also consider it unfair. FDHs have to work for 12 hours, 14 hours and even 16 hours. We should think about this point. After all, this Bill is not about working hours. Therefore, I have brushed this point aside and accepted it reluctantly. I just wish to include FDHs under the coverage of the Bill. I have never proposed to set their wage at \$5,000. As for the figure of \$4,800 as mentioned by Ms Miriam LAU, it is a figure derived by FDH organizations on the assumption that they have to work 10 hours a day. I have also told FDH organizations that it is very difficult to justify such an assumption, for they do not work for just 10 hours a day. Therefore, it is meaningless to make a guess at \$4,800.

Therefore, all these figures are simply their wild guesses. As what a Member has just mentioned — I cannot remember if it is Frederick FUNG, we really have no idea whether the SMW rate will be set at \$24 or \$33 at this stage. I have no idea about it, either. I think the Minimum Wage Commission, after making reference to all statistics, will set it at a comparable level according to the Government's established practice. Anyway, I do wish that there is some difference. In future, if the hourly rate can increase, the daily rate can also increase, so that all of us can have wage increment. That is what I wish. Moreover, it is also a fairer practice, which can give workers legal protection. In case one wishes to have litigation at the Labour Tribunal, he needs not lodge it according to his contract of employment. Rather, he can do so in accordance with the legislation concerned. This will also be fairer. Therefore, Chairman, after putting forth all their viewpoints, I hope Honourable Members can understand that my amendments are not scourges at all, for it is absolutely unfair to treat them in this way.

Chairman, I have done my utmost, hoping that Members can support my amendments.

MR WONG KWOK-HING (in Cantonese): I wish to make an elucidation as Mr LEE Cheuk-yan has misquoted what we have said. We, the FTU, have never mentioned anything about "dealing with" the two categories of employees. We have only pinpointed that when dealing with this issue, Mr LEE Cheuk-yan should take into account the relationship between employers and employees. Thank you, Chairman.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendments moved by Mr LEE Cheuk-yan be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mrs Regina IP rose to claim a division.

CHAIRMAN (in Cantonese): Mrs Regina IP has claimed a division. The division bell will ring for three minutes.

CHAIRMAN (in Cantonese): The question now put is: That the amendments moved by Mr LEE Cheuk-yan be passed.

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

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

Functional Constituencies:

Mr CHEUNG Kwok-che voted for the amendments.

Dr Raymond HO, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Wong-fat, Ms Miriam LAU, Mr Timothy FOK, Mr Abraham SHEK, Mr Tommy CHEUNG, Dr Joseph LEE, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Prof Patrick LAU, Dr LAM Tai-fai, Mr CHAN Kin-por, Mr IP Kwok-him and Dr Samson TAM voted against the amendments.

Mr CHEUNG Man-kwong, Ms LI Fung-ying, Mr IP Wai-ming and Dr PAN Pey-chyou abstained.

Geographical Constituencies:

Mr LEE Cheuk-yan, Mr LEUNG Yiu-chung, Mr Andrew CHENG, Mr Frederick FUNG, Ms Cyd HO, Mr LEUNG Kwok-hung, Mr Albert CHAN and Mr WONG Yuk-man voted for the amendments.

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

Mr Albert HO, Mr Fred LI, Mr James TO, Ms Emily LAU, Ms Audrey EU, Mr WONG Kwok-hing, Mr LEE Wing-tat, Mr Ronny TONG, Mr KAM Nai-wai, Mr WONG Sing-chi, Mr WONG Kwok-kin, Mr Alan LEONG and Miss Tanya CHAN abstained.

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

THE CHAIRMAN announced that among the Members returned by functional constituencies, 23 were present, one was in favour of the amendments, 18 against them and four abstained; while among the Members returned by geographical constituencies through direct elections, 30 were present, eight were in favour of the amendments, eight against them and 13 abstained. Since the question was not agreed by a majority of each of the two groups of Members present, he therefore declared that the amendments were negatived.

CLERK (in Cantonese): Clause 5 as amended.

CHAIRMAN (in Cantonese): As amendments to clause 5 moved by the Secretary for Labour and Welfare have been passed earlier by the Committee of the whole Council, I now put the question to you and that is: That clause 5 as amended stands part of the Bill.

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

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clauses 7 and 21 stand part of the Bill.

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

(Members raised their hands)

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

(No hands raised)

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

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Chairman, may I seek your consent to move under Rule 91 of the Rules of Procedure that Rule 58(5) of the Rules of Procedure be suspended in order that this Committee may consider new clause 2A together with clauses 2, 6 and 17.

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

Council then resumed.

PRESIDENT (in Cantonese): Secretary for Labour and Welfare, you have my consent.

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): President, I move that Rule 58(5) of the Rules of Procedure be suspended to enable the Committee of the whole Council to consider new clause 2A together with clauses 2, 6 and 17.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That Rule 58(5) of the Rules of Procedure be suspended to enable the Committee of the whole Council to consider new clause 2A together with clauses 2, 6 and 17.

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

(Members raised their hands)

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

(No hands raised)

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

Council went into Committee.

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

CLERK (in Cantonese): New clause 2A	Exempt employment.	student
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Mr WONG Yuk-man, as the meeting is in progress, please keep quiet.

CHAIRMAN (in Cantonese): If the Secretary for Labour and Welfare's amendments to clauses 2, 6 and 17 are passed, he may later move the addition of new clause 2A.

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

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Chairman, I move the amendments to clauses 2, 6 and 17, as set out in the paper which has been circularized to Members, so as to extend the exemption for "student intern" and include the exemption for "work experience student".

In response to the views put forth by the Bills Committee on Minimum Wage Bill (the Bills Committee) during the scrutiny of the Minimum Wage Bill (the Bill), the first category of CSAs is to extend the exemption for "student intern" under the Bill, so as to cover those students who are Hong Kong residents pursuing full-time non-local education programmes at undergraduate level or above.

At present, the Bill only provides exemption for students undertaking internship in Hong Kong which is arranged or endorsed by an education institution specified in Schedule 1, and such internship should form a compulsory or elective component of the requirements for the award of the academic qualification of a full-time locally-accredited programme provided by that education institution.

In the course of discussion, quite a number of members of the Bills Committee have pointed out that it is very common for Hong Kong students to study in universities abroad, including those in the Mainland and Macao. At present, there are also Hong Kong students pursuing full-time education programmes at undergraduate level for the award of non-local academic qualification in Hong Kong. If the education institutions arrange or endorse internship that should be taken by these students in Hong Kong as a compulsory component of the requirements for the programme, these student interns should also be exempted. This is what many Members have requested at the Bills Committee.

After thorough consideration, the Government has accepted suggestions put forth by Members and some stakeholders to amend the definition of "student intern" under the Bill, so as to extend the exemption to those who are Hong Kong residents pursuing full-time non-local education programmes at undergraduate level or above. However, exemption for non-local education programmes is confined to the award of academic qualification at undergraduate level or above. It is because education systems around the world are different, and there are no standardized criteria to define "post-secondary level" or "diploma, certificate". If the scope of exemption is extended to cover all non-local education programmes at post-secondary level, it will be very difficult to confirm or verify whether the internship concerned is in compliance with the conditions of exemption. Comparatively speaking, it is easier to verify education programmes at undergraduate level or above.

The second category of CSAs is to extend the exemption to cover "work experience student" undertaking internship which is not curriculum-related. This has also responded proactively to the suggestion put forth by Members and some stakeholders, so as to prevent SMW from affecting internship opportunities for these students.

The scope of exemption for "work experience student" covers students enrolling in full-time locally-accredited programmes at post-secondary level and Hong Kong residents pursuing non-local full-time education programmes at undergraduate level or above, irrespective of whether the internship is curriculum-related and whether there is involvement of the education institution in arranging the internship. In order to strike a balance between providing internship opportunities for students and avoiding abuse and replacement of other employees, such exemption is subject to two basic conditions. First of all, the "work experience student" is below 26 years of age at the beginning of the employment; and secondly, the employment is for 59 consecutive days or less and such exemption is limited to once in a calendar year for each intern employee.

As for the age restriction, we set it at 26 years of age or below, mainly because we have made reference to the age limit applicable to applicants for the Financial Assistance Scheme for Post-secondary Students, which is implemented to assist those students with financial difficulties to pursue self-financing programmes at post-secondary level. We believe that this has covered most of the full-time post-secondary students. Regarding the exemption period for the employment of 59 consecutive days or less, reference is made to the threshold under the Mandatory Provident Fund (MPF) Scheme that employees engaging in an employment lasting 60 days or more have to join the MPF Scheme.

In order to extend the definition of "student intern" and add the exemption for "work experience student" under the Bill, we have also proposed some consequential amendments, including the amendment to the definition of "student intern" under clause 2. The proposed new clauses include: first of all, the definitions of "work experience student", "non-local education programme" and "exempt student employment" under clause 2; and secondly, the transitional provision under clause 17(3), so as to stipulate clearly that any period of employment that precedes the commencement of the Bill shall not be taken as "exempt student employment".

Moreover, I will move to add the new clause 2A "exempt student employment", so as to stipulate the frequency and duration of exemption for "work experience student". I will also move an amendment to item 12 of Schedule 1 to the Bill, so as to include all bodies established under section 6(2)(h)

of the Vocational Training Council Ordinance into the list of education institutions specified in Schedule 1 to the Bill.

Chairman, after discussing the above proposed amendments in detail, the Bills Committee is broadly in support of them.

With these remarks, I hope Members can support the above amendments. Thank you.

Proposed amendments

Clause 2 (See Annex I)

Clause 6 (See Annex I)

Clause 17 (See Annex I)

MR WONG KWOK-HING (in Cantonese): Chairman, regarding the Government's amendments, the FTU has received views from many trade unions. The labour sector is very concerned about the word "extend". How can we regulate it in future? In particular, the Government has proposed to regulate the situation by stipulating two conditions: 26 years of age and 59 days. This is indeed meaningless. Precisely due to the condition that the employment should be for 59 days or less, many companies, in order to avoid making MPF contributions, will resort to short-term employment. We are very concerned that local grass-roots workers can hardly keep their "rice bowls" because of the Government's practice of extending the scope of exemption. Therefore, the four Members from the FTU will abstain from voting on these amendments. Thank you, Chairman.

MR LEE CHEUK-YAN (in Cantonese): Chairman, the HKCTU will vote against these amendments. Why? In fact, what are we discussing now? To what extent should the Government extend such exemption? If undergraduates have summer jobs, provided that they are below the age of 26 and work for 59 days or less, employers are not required to employ them at the minimum wage. That is the case. How come it can put forth such a proposal?

As a matter of fact, the condition that the employment is for 59 days or less is an extremely poor guideline set by the Labour Department. Why should the threshold be set at 59 days? It is because employers will not be required to make MPF contributions. It is simply asking all employers in Hong Kong to become unscrupulous employers. With such a provision, it has set an example to show employers how to avoid making MPF contributions. This is already sufficient for us to challenge it. How come it can ask employers to avoid making MPF contributions by setting the threshold at 59 days?

After setting a threshold at 59 days, a very ridiculous phenomenon will emerge. In future, undergraduates can take up any kind of summer jobs, rather than internship, so long as such employment is for 59 days or less. In the course of our discussion, we have all along been talking about internship. But in the end, the new clause 2A is not related to internship at all. Rather, it is related to work experience student, alleging that he may gain work experience, irrespective of its nature. It is not internship relating to the programme or curriculum taken by him. So long as he comes to work, it does not matter whether it is a summer job or not. He can obtain the minimum wage. Will undergraduates work at McDonald's? Secondary school students who work at McDonald's can obtain the minimum wage, but undergraduates cannot. Of course, you may say that undergraduates will not work at McDonald's and thus, there will not be a situation whereby the wage of undergraduates is lower than that of secondary school students. However, such situation is legally permitted. How come the entire legislation can be so ridiculous? Secondary school students can have protection when taking up summer jobs, whilst undergraduates have no protection at all.

Why will such a ridiculous situation occur nowadays? In fact, the Government's amendments are superfluous. Why? During our discussion at the Bills Committee, what are we concerned about? Many Members are concerned about how to deal with overseas students who come back to Hong Kong for internship. If there is a minimum wage, no one will employ them. I have explained time and again that there are two reasons for such a situation.

First of all, if he comes back to Hong Kong and asks his uncle, "Uncle, I wish to work in your company. Can I work as an intern?" His uncle may allow him to do so. But they are not restricted by any employment contract. In fact, there is no employment contract at all. It is not a must to enter into any

employment contract for internship. They need not sign any contract of employment for internship. His uncle says, "You can work in my company and undertake internship with this staff. You can show up or not as you like, so long as you let him know. You can undertake internship with him but no wage will be provided. Anyway, I will give you some travel or meal allowances." There is no employment relationship between them, and thus, he will not be protected under the legislation on minimum wage. There is no problem at all. I do not understand why you say that it is such a big deal, complicating a simple thing. Where does the problem lie? Indeed, it is unnecessary to impose any regulation.

As some people have expressed their concerns, I am willing to make a concession. You say that overseas What is the situation originally? Curriculum-related internship arranged by universities in Hong Kong can be exempted. I agree that such exemption should also be applicable to curriculum-related internship arranged by overseas universities. So long as there are documents for verification, the intern may say, "Uncle, I come back to Hong Kong for internship as this is a requirement of my university." I think there is nothing wrong, for it is really related to internship. Even though I think such regulation unnecessary, you can be rest assured that I will take it.

To my surprise, the Government proposes to add clause 2A. Originally, I have no queries in this regard. Regarding student interns in clause 2, if the Government amends the definition of interns to include overseas students, just like what it has been stipulated at present, there will not be any problem. However, the new clause 2A provides that exemption from minimum wage can be granted if the employment is for 59 days or less and the employee is below 26 years of age. I absolutely object to it. Therefore, I oppose clause 2A not because I object to internship, nor do I object to aligning the treatment for students from overseas universities with the treatment for those from local universities.

You may wonder why the Government is so silly to add clause 2A. I have heard of the logic put forth by the Government at the Bills Committee. As they have no way to verify the evidence provided by overseas students who come back to Hong Kong that their employment is curriculum-related, they cannot enforce it and decide to exempt them. Indeed, only Administrative Officers can come up with such an idea, complicating a simple thing. As they cannot enforce it, they

simply let them go. They are really brilliant! How come they can come up with such an idea?

As a matter of fact, even though they cannot enforce it, students have their certificates in hand. Employers can simply present such certificates and the problem is not on their side. Some people assume that employees may cheat employers. But I really wonder if there is any employee who comes back to Hong Kong with a letter from his university for internship and cheats an employer, only because he does not wish to obtain the minimum wage. Such situation will never occur. In view of this, such amendments are superfluous. I have told the Government that it can simply allow overseas students to come back to Hong Kong and seek employment themselves. There is no need for it to verify their documents or enforce any legislation. It can take actions in case of any complaint. In fact, there will not be any complaint. It is because with mutual agreement, if a boss allows a student to undertake internship, he can present the evidence. Is there any problem at all? But now, a lot of problems arise simply because of the addition of such a superfluous provision.

Therefore, Chairman, I hope we can object to this provision. I cannot find Honourable colleagues from the FTU here now. I wish to ask if they can vote against it. It is because what we are discussing is clause 2A, which is not the one relating to overseas universities. We are merely discussing clause 2A. I hope Members can object to this provision and vote against these amendments. Thank you, Chairman.

MR WONG SING-CHI (in Cantonese): Chairman, I will not speak too much as Mr LEE Cheuk-yan has revealed all the problems. In the course of discussion within the Democratic Party, I have suggested exempting undergraduates undertaking internship abroad that is not related to their programmes from the scope of SMW.

Mr LEE Cheuk-yan has made it very clear just now. For example, there are two students working at McDonald's; one is a Secondary Five student while the other one is an undergraduate. The Secondary Five student may ask the undergraduate about his wage. The undergraduate says that his hourly rate is \$18. The Secondary Five student is very puzzled and asks the undergraduate why there can be such a situation, for his hourly rate is \$33. The undergraduate replies that it is because he is studying in a university. The hourly rate of

undergraduates is \$18 whilst that of secondary school students is \$33. This is a contradiction. Dr LAW Chi-kwong, a former Legislative Council Member, when chatting with me, has said that it is indeed unnecessary to make this provision. His argument is very simple. If an undergraduate takes this job, he needs not tell his employer that he is studying in a university and can receive an hourly rate of \$33 as well. There is no problem at all. In view of this, making this provision is merely forcing undergraduates to show evidence when they work and receive a pay below the minimum wage. Ultimately, not much can be done.

Indeed, it is quite meaningless to make this provision. If universities require students to take up jobs which are not related to their programmes, they can ask employers to issue evidence upon completion of such jobs. In doing so, it is sufficient for universities to assess the work experience gained by students. Is it necessary to make this provision? If employers know that they are undergraduates, they will give them a wage below the minimum wage. Why? It is simply to gild the lily.

During the scrutiny of the Bill, we consider that clause 2A is absolutely unnecessary. Those undergraduates who wish to gain some work experience during their summer holidays can only get a job with a pay below the minimum wage. In fact, they have to face a lot of difficulties after graduation. If they have to put up with such a humble situation during internship, what experience can they gain then?

The Secretary may argue that those studying in accountancy may work for a prestigious law firm. They do not mind working for it even without any pay. There is no problem at all. I wish to challenge him. Given that undergraduates can learn a lot from these law firms, accounting firms and even large-scale institutions which are so prestigious and have ample resources, why can they not give these students a higher wage? The minimum wage is already very humble. Why do these firms still have to suppress it, offering a pay below the minimum wage? Those students have obtained academic qualifications and completed secondary education. When working for these firms, they may not simply be learners. Rather, they can make use of what they have learnt in secondary schools and universities and even other experiences to make contributions to these firms. Under such a situation, why can they not get the minimum wage? I consider it quite unreasonable. Therefore, Secretary, I hope the Government

can re-consider it and respect undergraduates. Although they have genuine needs to take up these jobs, they should be respected. What is wrong with that? Therefore, the Democratic Party will vote against the Government's amendments.

MR ANDREW LEUNG (in Cantonese): I speak in support of the amendments. In fact, a few Honourable Members including me, Mr Jeffrey LAM, Mrs Regina IP and Mr IP Kwok-him have touched upon the issue at the meetings of the Bills Committee. It is because young people, especially those below 26 years of age, have a very high rate of unemployment, and youngsters especially university students can gain valuable experience through summer jobs.

I would like to share my experience. My daughter returned to Hong Kong during the summer vacation, and she kept looking for jobs, even those without pay, as she would like to gain valuable experience this way. My daughter could be cited as an example: she returned to Hong Kong after completing Secondary Five, and she asked people to introduce her to law firms for internship training; as she became more and more interested later on, she eventually became a barrister just like the five Honourable Members sitting in front of me. She also worked as a student intern during the summer vacation. Though she was not required by her education institution to do so, she had done so all along.

Mr WONG Sing-chi has just left the Chamber. It is really interesting for him to say that law firms that are well-off should pay the interns wages. As it turns out, there is a very interesting rule within the sector. If the five Honourable Members sitting in front of me want to offer pupillage training, there will not be any employment contracts and they need not pay any wages. Instead of getting paid, my daughter even had to pay for her own expenses when she worked with the law firms. On the first evening, her pupil master asked her to work overnight on a case he had just received; she gave me a call and asked me what she should do. I told her to work overnight as requested as it was most important for her to be able to endure hardship. It was really desirable for she could gain some work experience.

Hong Kong must train up more talents because manpower training is crucial in the 21st century. As the Chairman of the Vocational Training Council (VTC), I have 50 000 students and many of them have to undergo training during the summer vacation as a component of the programme requirements. After these students have completed training, their teachers notice in the next academic

term that they have completely changed insofar as work or vision is concerned. I would like to encourage more tertiary students to look for work experience so as to gain more life experience, which will be helpful to their search for jobs upon graduation. Their employers, especially large companies, will write them recommendation letters and their new employers will know at once that they have worked in large companies before.

Chairman, this is really interesting: I read a newspaper report last week about mainland university students paying for the opportunities to work with companies that they yearned for and they were even ready to work there without pay. It was because they would gain some experience and their curriculum vitae would indicate that they had worked with good companies, which would facilitate their search for jobs in the future.

In foreign countries, especially in those Michelin three-star restaurants, many people paid for a chance to peel potatoes in the kitchen for three years for the sake of learning how to cook. Doing so actually brings advantages. Certainly, if university students only want to make money, so long as they do not indicate that they are university students, they will then be able to enjoy protection under the minimum wage regime.

As a matter of fact, when the VTC asks an employer to offer a position to a trainee, the employer frequently asks if there is an employment relationship between them. I asked this question at a meeting of the Bills Committee, and I got a very clear answer that there is an employment relationship so long as the employer pays the employee wages. It is unnecessary to create such a trap so that the enthusiastic employers may inadvertently contravene the law because such contravention will result in imprisonment. If the VTC asks an employer to offer a position to a trainee but the employer will be imprisoned for one to two years later, no employer will ever do so in the future.

Hence, we think the amendments are not intended to bring benefits to employers but to university or tertiary students instead as they will be given more opportunities to gain experience through internship. Since they will have better curriculum vitae, they will be able to find better jobs in the future.

Chairman, I so submit.

MRS REGINA IP (in Cantonese): Chairman, I support the Government's amendments and I would like to thank the Secretary for accepting many of our views after the Bills Committee's deliberations. At meetings of the Bills Committee, I opposed the original provisions because the scope of which is very narrow. As the Secretary has just said, the scope just includes student interns from eight to 10 local education institutions specified in Schedule 1, completely ignoring — as the Secretary has mentioned — universities in Macao, the Mainland or foreign countries. Many people have also asked why we should discriminate against the education institutions outside Hong Kong.

Secondly, a more important point is that, after listening to the speeches of Mr LEE Cheuk-yan and Mr WONG Sing-chi, I think that they have focused on providing wage protection for these interns lest they should be exploited and given wages even lower than the statutory minimum wage (SMW). Mr WONG Sing-chi has also said that there will not be cases similar to that of McDonald's because the students basically do not need to indicate that they are university students.

However, they may have neglected that we not only need to provide wage protection for university students, we should also give them the opportunities to learn and gain experience. If some university students have entered high-paid industries, they will be paid very highly during internship. I can give a practical example: a year three university student worked as a summer intern with Goldman Sachs, and he earned \$70,000 a month; his package also included round-trip air tickets. Nevertheless, he worked from 8.30 am to 5.30 am on the following day. Anyway, his wage was much higher than the SMW. Yet, why are some university students willing to endure hardship? They would like to gain some experience. Whether they work with Goldman Sachs, or work in law firms without pay as Mr Andrew LEUNG has just said, they will gain some experience.

Summer jobs are not offered only by the commercial sector such as law firms, accounting firms and investment banks. For instance, some political parties or think tanks may also offer summer jobs, but we simply cannot afford to pay the SMW. According to the Government, this kind of work may not necessarily be incorporated into the scope of the Employment Ordinance, and lawyers often tell us that there is a mixture of law and facts. Yet, there is uncertainty. If university students, especially those majoring in political

science, public administration, international relations and sociology, work as interns in such institutions as think tanks or political parties or groupings, we are not sure whether we have fallen into the trap of evading the SMW. In that case, many of these organizations will refrain from providing summer internship places for these university students, thereby adversely affecting their learning?

From the perspective of providing opportunities for students to learn and gain experience, I consider the amendments necessary. I therefore support the Government's amendments. Thank you, Chairman.

MR IP KWOK-HIM (in Cantonese): I would like to thank the Secretary for moving the amendments after considering the deliberations of the Bills Committee.

The remarks just made by Mr Andrew LEUNG and Mrs Regina IP are about one of the aspects that I really want to discuss. As to another aspect, I have handled a few cases that lodged complaints to or sought assistance from us. These cases involved Hong Kong students studying in Australia. Some of them studied architecture, and they returned to Hong Kong during the summer vacation — Prof Patrick LAU is present and I believe he knows that well — they would like to have the opportunities to undergo internship training in Hong Kong. If they do not come back, they can certainly undergo internship training in Australia. However, in that case, they cannot spend time with their family during the vacation. Therefore, they have returned to Hong Kong for the summer vacation. However, under the provisions of the original Bill, they cannot work as interns in Hong Kong as only local university students have the opportunities to undergo internship training while other university students do not.

I strongly oppose this point as this will deprive the rights of these Hong Kong people to internship. Even though they can undergo internship training in Australia, they will not be able to spend time with their family members. I know that the labour sector has responded very strongly; they have requested for protection and they are against exploitation. This is pleasant to listen to but we should know that, as some Honourable Members have just said, the construction, accounting and legal sectors do not want to have summer interns because supervising and assisting them to learn do incur some costs. Even if the students are willing to pay for their own expenses in receiving internship training, it will

not be feasible under the labour legislation. If employers regard these students as employees but they have not taken out insurance for them, there will be serious problems in case of accidents. For this reason, Hong Kong students are not given the opportunities to learn. I wish to emphasize that I have handled many such cases.

I find it difficult to accept the following point that Members have just mentioned: if university students want to make money, they might as well work at McDonald's. I have just heard that secondary students can be protected under the SMW regime while university students cannot; and if university students want to make money, they might as well work there. Yet, these university students do not aim at making money and they just want to absorb experience. It would be unfair to say that this will enable people of higher education level or with higher requirements to exploit others by offering lower wages, and to benefit therefrom. If Honourable colleagues understand these professionals, they will know that it is definitely more difficult to supervise these interns than supervising those who wash dishes or deliver meals. Thus, I implore Honourable colleagues including members of the labour sector to seriously consider taking care of these students and giving young people the opportunities to undergo internship training. Thank you, Chairman.

DR PRISCILLA LEUNG (in Cantonese): Chairman, I would like to call upon Honourable colleagues not to use such strong wordings as malice, exploitation or discrimination, or advocate conflicts insofar as this legislation is concerned.

I personally think that this legislation may not be comprehensive enough, but, to be fair, the amendments before us right now are results of thorough deliberation of concepts raised by members of the Bills Committee at various meetings. I also support the amendments. It seems that Members are worried that the amendments are discriminatory against university students who have contributed a lot to the organizations in which they work. I do not rule out the possibility that young people will be able to make some contributions, but, they are just learning after all. I have handled many such cases and we are just thinking of ways to allow these students to gain some work experience during the summer vacation. This may not necessarily be related to academic credits or the sector that the students intend to join because some students may be taking double degree programmes. Some of them may want to work as assistants at

Members' offices; there are university students and also some secondary school leavers among them. Some have even asked for assistance through their parents, and they are willing to work without pay because they just want to gain some work experience. There are quite a number of students like that.

An Honourable colleague has just referred to the situation on the Mainland, and I know that there is a similar situation in the United Kingdom, that is, parents would like their children to gain more positive work experience. What is the work experience? Although Honourable colleagues have mentioned law firms, there are actually many other organizations, and such students can even gain some work experience at interior design companies or television stations. Many employers are willing to absorb these university students without any work experience, but we have also received responses about some university students' bad temper and intolerance; they may even rebuke their employers and supervisors the other way round. This is a process of growing up. If an employer is willing to give instructions to a student, the student will gradually become mature and understand what employment is all about. Employment is really very important to a person's development; a student can be overweeningly arrogant at home or in universities as he can assess teachers, yet, he has to obey certain rules when he is employed, which will help him understand the working world. This is a very valuable experience, and it may even help him understand how to conduct himself in the future.

Why do we encourage that students should gain such work experience? Let us consider another situation: realistically speaking, employers nowadays, especially the good ones, start picking future employees sooner and sooner. If year two university students fail to undergo summer internship training in better organizations, they will very likely lose the opportunities to work with good organizations in the future because interviews have already started during the summer vacation. During the interviews, the employers not only consider the academic results of the students, they will also consider whether their temperament and socialization skills make them suitable for the organizations. If they are considered suitable, the students would have received invitation letters after completing the second year's summer internship training, specifying that they would be invited to work with the companies upon graduation in the fourth year and also stating their salaries. Employers absorb suitable employees in the course of internship training. They may not absorb those who are excessively

brilliant. As for those who are less competent, through observations in the course of summer internship training, they may find the students suitable for other duties.

I think these are very natural and valuable experiences for some young people. So, I really hope that young people will not consider this as exploitation at all, and I do not hope that many with the best intentions young persons may think that they are making contributions in the course of work, but, they are just asked by the companies to make photocopies. Some companies are even unwilling to ask student interns to make photocopies, why? It is because some confidential information may be involved. The companies concerned may have to deploy another person to watch the interns when they make photocopies. However, they may later have the opportunities to attend meetings with clients in the company of colleagues because the companies may have noticed through observations that these students can maintain secrecy and have good temperament. When trust is gradually established, they will be given the opportunities to become involved in different aspects of work.

The students should strive to gain experiences through working because it is not necessary for anyone in the world to impart experiences to you. Why should these people take the trouble to coach you? They themselves are very busy, therefore companies that are willing to arrange internship training for students really need to pay a price, and they need to designate staff members to act as mentors to supervise and guide these students. The companies will be held liable for any information faxed on papers with their letterheads. Hence, mutual understanding is essential. As a token of mutual understanding, first of all, we should not frequently For example, an organization employs a university student who simply wants to gain some work experience and is not working to earn academic credits; pressure will be created if inadvertent contravention of legal provisions will bring about criminal offences. For this reason, those who are very busy will not want to waste time on these summer interns, and their personnel departments may have to deploy some staff members to supervise and look after these summer interns.

After making this provision, I think some organizations may absorb more such summer interns when their capacity allows, otherwise, they may just employ one or two summer interns because they still need to take a lot of legal liabilities into account. The statutory minimum wage regime is not a trifling matter and it involves criminal liabilities. If the issue is not properly dealt with, the

employers may get into trouble for no reason. Thus, we hope that a less stringent provision can be made and members have expressed differing views at meetings of the Bills Committee.

Furthermore, some organizations actually pay the students a few thousand dollars as honorarium while some others are not paying them. Also, some organizations will employ senior secondary and Secondary Five students and they have specified that the students are just volunteers. The Government should remind employers, especially in relation to summer jobs that require the students to work from nine to five every day, that they should specify in writing that the students concerned are volunteers. Otherwise, queries may be raised as to why these students, though reporting for duty every day, are not paid. Such written specification may avoid unnecessary disputes in future in case of legal proceedings or in case of worsening relationship due to conflicts over trivial matters.

On the basis of the above, I call upon Honourable colleagues to support the amendments. Thank you, Chairman.

MR JEFFREY LAM (in Cantonese): Chairman, I support the amendments. I do not want to repeat what we have said but I agree with the remarks just made by Mr Andrew LEUNG, Mrs Regina IP, Mr IP Kwok-him and Dr Priscilla LEUNG.

We frequently talk about manpower training and we stress that young people should be given the opportunities for upward mobility; however, we cannot get things done by merely talking. How can we give them the opportunities to receive training, to learn and achieve upward mobility? We can realistically and practically give them the opportunities through internship training. Even if young people are receiving university education and taking the programmes offered by a certain faculty, they can only learn from books. There is an ancient saying that, "Reading ten thousand books does not give one as much benefit as travelling ten thousand miles". As we all know, from the ancient times till now, we may not fully understand each and every sector and operation in society by reading books only. Therefore, it will be very desirable for our society and young people to give these students or young people more opportunities to receive internship training.

Chairman, since universities and higher education institutions ask members of the Hong Kong General Chamber of Commerce to provide university students with internship opportunities every year, we provide hundreds of internship places to these university students each year. During this summer vacation, we the Economic Synergy also provide dozens of university students with the opportunities to work as summer interns. Basing on our experience in the past, when these interns and university students complete internship training and continue studying at the education institutions, they will have realized that the internship training is very helpful to their learning, studies and even absorption. It is because they are not studying mechanically, and they understand that the actual situation is sometimes a bit different from what is portrayed in the books, hence, they can handle matters in a flexible manner. We think that these internship opportunities can really help young people start to understand things properly.

If we request that the legislation should be used to monitor or regulate these industrial and commercial organizations, we cannot give the students these opportunities because we need to pay a lot of money for the provision of such opportunities. As Mr Andrew LEUNG has just stated, these opportunities cannot be purchased with money. The industrial and commercial organizations providing these learning opportunities are not asking these students to do a lot. In general, these organizations will arrange for them mentors who are fairly experienced, occupying a pivotal position in the companies and taking up many important duties such as overseas marketing work in import and export companies, mould design in the manufacturing industry or production scheduling. The employees must be experienced enough to handle such work, and a product cannot be manufactured by just basing on a product sample and sketchy design. As I have just said, it will be very desirable for us to give university students taking certain subjects internship opportunities during the summer vacation.

Chairman, we originally suggested that all these young people should be given such learning opportunities during every summer vacation. Nevertheless, some Honourable colleagues have raised opposition and they have pointed out that the employment is currently for 59 days and once in a year for each intern employee, and the same employer cannot employ the same summer interns the second year. To avoid disputes, we do not intend to argue any more in this regard. We can hardly ask a student taking a subject to learn different things during each summer vacation. Of course, learning about different knowledge areas would be advantageous. Furthermore, the companies providing these

opportunities do not have the intention of employing low-cost workers. Some Honourable colleagues have very often talked about the conspiracy theories and pinpointed the business sector; but I absolutely disagree with them. We frequently say that we should train up talents and provide opportunities, but, merely talking would be useless; we really need to put what we said into practice and provide the relevant opportunities in order to give young people hope and internship opportunities.

Chairman, I repeat that I support the amendments. I so submit.

MR RONNY TONG (in Cantonese): Chairman, I mentioned when I spoke yesterday that one of the decisive principles was striking an appropriate balance.

Chairman, regarding an appropriate balance, there will certainly be some contradictions between the protection of labour interests and other considerations. We have just voted down the amendments relating to foreign domestic helpers, and we have precisely made our choices under the principle of striking a balance.

Chairman, we are going to support the amendments. What some Honourable colleagues have said gives me an impression that they seem to understand not very well or they fail to carefully explore the original intention and scope of the amendments. Chairman, the original intention of the amendments is not to protect the interests of ordinary workers but to protect the future masters and pillars of our society, to give them the opportunities to equip themselves and prepare well for their future career development, thus, it has an extremely narrow scope. Chairman, in fact, before the Government has proposed the amendments, the scope of the original provisions is even narrower. However, during the scrutiny of the Bill, many Honourable colleagues and I have asked the Secretary to extend this exemption to other education institutions and universities outside Hong Kong. The reason is very simple: some of our children — I believe the children of the Secretary may be included — are "compelled" to pursue further education in universities or education institutions outside Hong Kong, and it will be unfair if they are not exempted. I would like to thank the Secretary for accepting our suggestions.

Chairman, as I have just said, the scope of the amendments is very narrow. If we take a look at the definitions, we will notice that not all working students will be exempted. These students should be undergoing internships arranged or

endorsed by education institutions in connection with accredited programmes. Second, if the students are undergoing internships in other organizations in Hong Kong, their work should be a compulsory or elective component of the requirements for the award of the academic qualification to which the programme leads. The third restriction is that the employment is for 59 days or less and the exemption is limited to once in a year for each intern employee. In other words, the employment should not last more than 59 days, and a student cannot enjoy such exemption twice in a year.

Chairman, you will understand the case when you note that the scope is so narrow and the restrictions are so stringent. Some Honourable colleagues have just said that it will be unfair to other workers if they work at McDonald's. Chairman, the student will not be given exemption unless he is taking a degree programme relating to fast food chains or another degree programme specifying that he must take up a certain type of work in a fast food chain. Frankly speaking, if the specified work type requires him to work at the front of the store, he cannot wash dishes or perform cleaning duties. Also, if the specified work type requires him to perform cleaning duties, he cannot work at the front of the store. My understanding is that the scope of the amendments is actually very narrow.

Chairman, viewing from another perspective, though this is fair to the students, it may be unfair to ordinary workers. I acknowledge this point. Chairman, in other words, during the summer vacation in particular, if students want to take up summer jobs, they may be more competitive than other ordinary workers because ordinary workers are paid the minimum wage while students are not. It may be a bit unfair to those employed on a short-term basis during that particular period. Yet, Chairman, this is exactly what I have just said, that is, we must strike an appropriate balance, and we must make appropriate choices when there are two different interests, considerations, conflicts or contradictions. In this connection, the Civic Party has made our choice and we think that we should accept that it may be somewhat unfair to ordinary workers within a certain period, and we would rather give the future masters of our society favourable opportunities so that they can equip themselves and contribute more to society in the future.

Chairman, the issue requires choices to be made and the Civic Party will support the amendments. Furthermore, I would like to add that this is not a provision conceptualized by the SAR Government, and there are similar or identical provisions in other places and countries under their minimum wage

laws. Hence, this exemption is absolutely not exploiting the interests of local workers deliberately. So, I think we should support the amendments.

MS MIRIAM LAU (in Cantonese): Chairman, concerning the exemption for student interns, I am really glad that the Government has listened to Honourable colleagues' views including those expressed by the Liberal Party, and has decided to propose further extending the scope of the exemptions. The proposed exemptions will apply to an intern employee who is a Hong Kong resident, regardless of whether he is taking a local post-secondary course or pursuing full-time non-local education programme at undergraduate level, and regardless of whether he is undertaking internship training related to his course, in spite of the fact that the time during which the student is exempted is rather limited.

The Liberal Party strongly agrees that the scope of exemption should be extended as we think that internship is very important to young people. The internship period is right between the time he studies in a university and the time when he starts working in society. Although he is not fully tested in or challenged by society, he has stayed away from the protection of his education institution, and started or attempted to enter the real commercial world to learn through personal experience.

Chairman, I have been a lawyer for 33 years and I have recruited quite a large number of interns. When I ran my own law firm in the past, one or two young persons asked to receive internship training in my law firm each year. These young persons might be law students at universities and some others were not law students but they were interested in learning through the experiences of working at a law firm. They normally did not ask for wages, and they told me that I did not need to give them wages as they just wanted to learn something. Of course, I ought to pay for their meals and travelling expenses, thus, I normally paid them small amounts taking into consideration the circumstances.

I would like to say that these young people cherished the opportunities to participate in the work of commercial or professional organizations in the real world through which they could absorb relevant experiences. Nevertheless, it is a great pity that, as I heard some Honourable colleagues said at the meetings of the Bills Committee, these tertiary students might fight against other people for jobs at McDonald's if we exempted those who worked as interns. It was distressing for me because I had never thought that the tertiary students who

worked as interns in my law firm would fight against other people for jobs to sell McDonald's hamburgers, and it seemed to me that these Honourable colleagues were humiliating those youngsters. I hope that members of the labour sector would have the breadth of mind to give young people more learning opportunities to help them establish more solid foundations and accumulate richer experiences so that they would be better equipped when they start working in society in the future.

The employment is for 59 days probably out of the Secretary's concern for the labour sector because these interns may snatch the jobs of ordinary workers if the internship employment for the whole year is exempted. However, 59 days almost make two months and the period is a bit short. Can a review be conducted if the internship programmes will continue to be implemented, and we really have confidence that these interns are actually learning but not snatching the "rice bowls" of ordinary workers or McDonald's workers?

I am also troubled by another point, that is, only tertiary students will be exempted at present. Actually, I know some parents of Secondary Six or Secondary Seven students, and they have expressed to me their wish that their children would not hang around during the vacation, and they could stay at places where they might be subjected to certain restrictions. They asked me if their children could work and learn at my law firm; I received quite a number of such requests.

When these students started working at my law firm, they contributed very little to the office, but, they somehow absorbed some experiences by going through the files and exchanging views with colleagues in the working environment. Yet, it is a great pity that the current internship programmes have not included these students.

If the internship programmes will continue to be implemented, the minimum wage regime can be implemented smoothly in society and the labour sector does not resist these interns, I suggest that a review should be conducted to consider whether the internship programmes can be extended further so that young people can really gain more experiences or undergo more training at an earlier stage, which would be beneficial to them. Thank you, Chairman.

MRS SOPHIE LEUNG (in Cantonese): Chairman, I have to speak in this discussion session. I agree very much with the arguments just made by Honourable colleagues but I wonder why we cannot broaden our perspectives when we discuss the minimum wage issue. Why do we frequently measure others against certain criteria?

Chairman, I do not want to stir up any more arguments here, and I just want to cite an example. A Hong Kong student realized that he was very interested in computer and information technologies when he was aged fifteen and a half, and he knew that there was a special extra-curricular course with classes lasting three weeks during the Christmas holidays, so, he submitted an application. However, his application was rejected because he was too young. At last, he submitted an application in his father's name and his father attended the classes with him. He eventually completed the course but his father learnt nothing as very novel knowledge was imparted throughout the course. After a period of self-learning, he applied to a company for working there without pay during the Easter vacation, and he really worked at the company as an intern after he had painstakingly implored his employer. He worked as an intern there for two to three weeks during the Easter vacation, and he worked there again during the summer vacation. He underwent internship training there for a total of two years, and when he was 18 years of age and had completed all secondary courses, he worked in the Silicon Valley for a year without pay. He worked without pay for a whole year in the United States where the payment of a minimum wage was very important. This person pursued his career development in the Silicon Valley after he had graduated from university, and he is now very successful.

He is a Hong Kong resident; we should have the breadth of mind to encourage young people this way. Why should we narrow down the scope to such an extent? If we are of one mind and work together in tackling the issue of course, we may not be able to encourage young people to pursue the academic knowledge they like and make such achievements under our education system. Let us think about this: the young person in the example I just cited made up his mind to take the course during the Christmas holidays, and strived for the opportunities to undergo internship training during the Easter vacation and the summer vacation. Nonetheless, the relevant provision simply does not allow students to undergo internship training for three times within one year, and things will become more difficult if they are not tertiary students. What should be done?

I hope the Secretary would have the determination to allow further discussions by us on this issue in the future. I also hope that all Honourable colleagues will not look at the issue through tinted glasses. Honourable colleagues put on tinted glasses whenever they discuss this issue and they fail to understand the situation; they are just guessing what others will do because their perspectives are not broad enough.

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

(No other Member indicated a wish to speak)

CHAIRMAN (in Cantonese): If not, I now call upon the Secretary to speak again.

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Chairman, I will just briefly make a few points in response.

First of all, I thank Honourable Members for the remarks they have just made. They have affirmed our efforts to extend the scope. Actually, the credit goes to all Honourable Members present because the idea is conceptualized by all of them and it is the fruit of their wisdom; we have just prudently given the idea further considerations.

I understand the worries of the labour sector and I think we can strike a balance this way. On one hand, we will give tertiary students more internship opportunities; on the other hand, we will ensure that the interests of workers will not be undermined. We have mechanisms in place such as the 59 days' rule and some other restrictions. We ask a student to obtain an affidavit to prove that the internship is the only internship that he has undergone within a year instead of allowing him to undergo internship training for another 59 days after 59 days' employment. Hence, we will be able to ensure that the exemption will not be abused.

I thank Honourable Members again for their efforts and we have precisely achieved this result after drawing on our collective wisdom. Thank you.

CHAIRMAN (in Cantonese): Mr Albert CHAN, do you wish to speak on the amendments?

MR ALBERT CHAN (in Cantonese): I am a bit late as I have just entered the Chamber. Chairman, I would like to discuss this issue from the perspectives of concept, rationale, logic and history. In delivering their speeches, many Members think — I do not want to say that Members are unscrupulous employers or that they view student summer internships with the mindset of the early 19th century capitalist system of apprenticeship — that as students only want to gain work experience, it is already a great favour to be offered internships. Students are already very lucky to be employed as interns, so how can they still ask for any salaries? If that is the case, why do we not model on the system of apprenticeship in the 19th century in which the apprentice not only had to pay for learning the relevant skills from their mentors but also had to do the laundry, sweep the floor or even clean the toilet? It was what happened during those days, and my father did not receive any salary for learning tailoring skills from his mentor. Although apprentices were provided with accommodation, they had to do plenty of tasks for very low wages. They had to stay in apprenticeship at least for a few years and could only receive income after they had finished their apprenticeship. We might as well resume the system of apprenticeship in the 1980s. Now, it seems that companies are already doing students a great favour and being very generous by offering them summer internships because they have not compelled the students to take up internships, just that students ask for them. In that case, it is better for those companies not to employ these students. I think it is an insult to the students, and based on this concept, students are not treated as human beings at all. Instead of making no contribution at all, students do make contribution to these companies, even though they are only on internship or learning there. If Members think they do not make any contribution, they might as well be tasked with cleaning the toilets.

Chairman, originally I did not intend to speak on this issue because we will basically lose in the voting later. However, I was indeed infuriated after listening to the debate following this logic, which seems to have brought us back to the system of apprenticeship in the early capitalist society or the pre-war Chinese society over a century ago. Honourable Members, and particularly Honourable Members representing the business sector, it is indeed an insult to those students.

After graduating from secondary school, I became an apprentice studying marine engineering in Canada back in 1974. At that time, the school arranged for us to work on board a vessel, with a monthly payment of as much as CAN\$600. It was in 1974, and I was just an apprentice, that is, a "cadet engineer". During the six months' work on board the vessel, we were guided by mentors and engineering staff and provided with meals and accommodation. We worked for eight hours per day, while other people worked longer hours. We did not know how to do the tasks at all, but there were people to teach us. Even if nothing is to be said about Canada, the situation is the same in various places all over the world. Many renowned academic institutions and universities offer summer internships for their students, stating clearly that they are internships for students to gain work experience. The Starbucks also offers internships for secondary school students to enable them to get a taste of work. However, they also pay the interns a certain minimum wage. Some students, who are only 16 years old, not even reaching the age of 18, also have to engage in internship. Honourable Members, what exactly are you talking about?

We are now talking about a minimum wage rather than the market wage of a university graduate working as a manager. Some people may not be able to receive an hourly wage of \$33, and some only get an hourly wage of \$28 or even as low as \$24. Why is an hourly wage of \$33 too high for undergraduates undergoing internship, as if it was a great favour and a very generous contribution on the part of the employer? Now, some of these students may not even be able to get an hourly wage of \$33. Yet, they are undergraduates! Please look at this world with a clear mind.

I think these Honourable Members are indeed from affluent families. Let me tell you that many undergraduates undergoing internship hope they can earn a meagre income to support their own living, and not everyone is as rich as these Honourable Members are. For many students, the income they earn by working as interns will not only serve as the daily expenses for the summer but also the basic living expenditures after school resumes. This is their lifeline. Therefore, do not assume that they will only use their income as leisure expenses. For Honourable Members, their own children and the children of their friends and relatives are also rich people, but they should not assume that all young people and students are as rich as they are. What is the problem of paying these students slightly higher wages? Assuming that the hourly wage is some \$20 to \$30, the monthly salary will only be about \$4,000 to \$5,000. Honourable

Members, may I ask what difficulties there will be for employers to employ undergraduates to work in their companies for a monthly salary of only some \$4,000 to \$5,000? Will this cause the companies to go bankrupt? How many undergraduates have they employed?

Chairman, the League of Social Democrats (LSD) considers this exemption extremely unacceptable. We think that logically speaking, the definitions of undergraduates and work are too rigid, and the treatment rendered to these students is very inhumane because on internship, they have to fulfill certain requirements, including those in skills, abilities and performance.

Chairman, I am not a member of the Bills Committee. The exemption for students undergoing internship was not proposed by the Government at the beginning, and it was only proposed after the scrutiny of the Bill had been completed. I am sure someone must have made some lobbying or promotion efforts behind. The Government must give an account of the rationale behind and explain who will be affected financially. What is in question now is not a huge amount of expenditure. As I said just now, students' income is also part of the minimum wage arrangement.

Therefore, Chairman, I do not wish to make strong accusations any more, but I have already analysed the issue from the perspective of logic, historical development and concept, and I strongly hope that Members who maintain that they are correct will come forward and argue their case. Why exactly is it unfair to employ undergraduates with a monthly wage of \$4,000 to \$5,000 in accordance with the minimum wage arrangement? I hope they can respond to it.

Chairman, I oppose the Government's amendments.

MR IP KWOK-HIM (in Cantonese): Chairman, first of all, I would like to make an elucidation in respect of Mr Albert CHAN's remark. I have made great efforts to promote internship opportunities for students in professional architectural, accounting and legal firms, and I strongly support this idea. I am not a tycoon, and I hope Mr Albert CHAN will refrain from making such a groundless accusation.

Besides, he also mentioned that some people have conducted lobbying behind the scene, but nothing like this has happened. Among the complaints

handled by me, the people concerned badly needed the internship opportunities. I am glad that a debate is conducted on this issue, but please do not speculate on the views of other Members or other people. One only has to express one's viewpoints, and there is no need to be so furious and agitated. Thank you, Chairman.

MR WONG TING-KWONG (in Cantonese): I think Mr Albert CHAN's remark just now has confused right and wrong. I remember that since 2000, the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) has been organizing a Mainland summer internship programme known as "A further step into a new world" ("進一步的天空") for tertiary students in Hong Kong every summer holiday. The programme has subsequently been extended to Hong Kong, and some legal and accounting firms have also provided internship opportunities for them. Under this programme, students are able to benefit much from the summer internships which last for over a month. Organizations offering these student internships give much thinking to the programme, and the relevant staff members are like mentors, patiently providing guidance and advice to the students. I think Mr Albert CHAN's remark just now was most unfair. He said someone had inflicted an insult on students. However, I think it is him rather than us who has done so. This very remark of his is already an insult to students. The students are both eager to learn and aspiring, yet their request for internships has been described as so money-oriented. It is true that diligence and thriftiness should be encouraged, and I also respect people with such qualities, but one should refrain from pinning the same label on everyone like what he did just now. Thank you, Chairman.

(Mr LEE Cheuk-yan, Mr Ronny TONG and Mr WONG Yuk-man raised their hands to indicate their wish to speak)

CHAIRMAN (in Cantonese): I will call upon Mr LEE Cheuk-yan to speak first, to be followed by Mr Ronny TONG and Mr WONG Yuk-man. Members please do not repeat your previous remarks.

MR LEE CHEUK-YAN (in Cantonese): Chairman, I would only like to give a response instead of repeating my remarks. The issue has been distorted.

Actually, I only want to raise a simple question: How can students undergoing internship be differentiated from students taking up summer jobs? They can hardly be differentiated from each other. If I am to differentiate them, it is very simple — I admire the attitude adopted by students in their learning and internships mentioned just now — I have mentioned repeatedly at meetings of the Bills Committee that under the existing arrangement, genuine internships may not necessarily constitute employment. In the absence of any employment relationship, the issue of a minimum wage will not exist at all. It is as simple as this. Why do we have to argue so furiously over it?

On the contrary, I wonder why students undergoing internships are not differentiated from students taking up summer jobs. I oppose not differentiating the two simply because there is no reason why summer jobs should be excluded from the minimum wage regime. It is absolutely not justified. Students undergoing internships are excluded because internships are excluded; and internships are excluded because genuine internships may not necessarily constitute employment. In considering the two in the same context, Members originally intended to help students undergoing internships, but it turns out that students taking up summer jobs are exempted out of the blue. It is this, rather than the argument about tycoons taking care of the children of fellow tycoons, that I find unacceptable. This is not my point. My point is that we should reasonably differentiate the two under the legislation, so that students taking up summer jobs and students undergoing internships will be put under different categories. I hope Members will oppose the amendments because the Government has now put them in the same context, thereby excluding summer jobs from the minimum wage regime out of the blue. We consider it most unacceptable indeed.

MR WONG YUK-MAN (in Cantonese): Regarding the amendments, I have indicated earlier that I will definitely oppose it because the three of us have laid down a series of guiding principles in respect of the various amendments today, and I have also written down the reasons for opposing each amendment. Originally, I really did not intend to speak. However, after observing the situation throughout the debate, I had a growing feeling that something had gone wrong. You are distorting the facts and twisting the arguments. A falsehood repeated a hundred times will not become the truth, Buddy, right? We have made it very clear at meetings of the Bills Committee that students undergoing

internships and students taking up summer jobs are different, and work arranged in connection with an accredited programme should be dealt with separately, as long as it does not constitute employment.

Yet, what we are talking about now is: First of all, give them some photocopying tasks, which is a learning opportunity. Then, if their performance is satisfactory, bring them along to meetings. What are you talking about, Buddy? Undergraduates possess knowledge and expertise and have received high education. Their education is funded by public money. Some of them have received education in local universities, not to mention those who have received education abroad, right? They are individuals with dignity. Just now, someone said enduring hardship is the most vital part of learning. What theory is this based on? It is now the 21st century, Buddy. Since you intend to introduce legislation on this matter, you should lay down the requirements clearly. Are students not human beings? I insist on saying so. This is obviously your line of logic. You insist on putting people under different classes, do you not? The rationale is this simple, why do we have to argue over it?

Chairman, originally I did not intend to speak, but now I will read out my speech from the beginning to the end. This is the four-page speech I have prepared, and 15 minutes is just about the right amount of time, so let me read it out from the beginning. It is well substantiated, neither groundless nor nonsense, and it also contains reproaches against the Government. I think everyone knows clearly that this is an initiative to legislate for a minimum wage to bring the entire working population under the coverage of a piece of minimum wage legislation. It is as clear as this. So, what is so peculiar about it? Now, you are saying that a student should already regard himself very lucky to have an opportunity to work as an intern for a barrister, and so he should not ask for any wage. Has anything gone wrong? How can you say that anyone who has an opportunity to work as an intern will become rich and prosperous in future? The prospects differ for different professions, right? Therefore, the rationale is actually very clear. I really do not understand why we have to argue over it, and that was why I did not intend to speak originally.

Actually, today or over the past few days, I have been expecting that this debate on legislating for a minimum wage will be of a considerable quality. What we are talking about now are ideologies, an argument between Mr Socialist and Mr Capitalist, and how to strike a balance between the rightist and leftist

views. In a capitalist society, legislating for a minimum wage to protect the rights and interests of employees is an idea with a slightly leftist tinge. How can a balance be achieved in a rightist society led by a rightist government and a rightist legislature? Members representing the labour sector and the leftists are accused of trying to curry favour with electors and deceive votes from them. Buddies, your argument is a disparagement of the people. Hong Kong is a society with free flow of information. Are the people not capable of making their own judgment? Can Members of this Council representing the labour sector or advocates of somewhat leftist social policies gain popularity through sensational appeals and deceive votes by holding populist thoughts? Those people who failed to secure votes are criticizing people who are fighting for the interests of the labour sector for deceiving votes. What is the logic behind?

CHAIRMAN (in Cantonese): Mr WONG Yuk-man, please focus on the amendments.

MR WONG YUK-MAN (in Cantonese): It is related to the subject, Buddy, because it is where the falsehood lies, right? They said something about gaining votes by deception. Can the people be so easily deceived, Chairman? If they can be deceived so easily, you will not be able to take up this position. The reason is this simple. We expect a debate of quality. You represent the interests of the business sector, you act out of capitalist considerations, and you aim at promoting the economic development of Hong Kong, right? You talk about the trickle-down effect, right? Go ahead and talk about it! Explain why unemployment will arise and how the rights and interests of the disadvantaged groups will be undermined as a result of the legislation on a minimum wage. State your case! Justify your argument! We can also state our case, right? The truth will become more evident through intense debate, and this legislation will be passed in the end. I said yesterday that it was already meaningless to continue to argue whether legislation on a minimum wage should be introduced

CHAIRMAN (in Cantonese): Mr WONG Yuk-man, please focus on the amendments.

MR WONG YUK-MAN (in Cantonese): Those of you who took an opposition stance have now been compelled to support them.

CHAIRMAN (in Cantonese): What we are debating now is the amendments concerning "work experience students".

MR WONG YUK-MAN (in Cantonese): There are still 10 minutes left. In that case, I will simply read it out.

The economy has improved, but the wage level of undergraduates has not. There are 70 summer job vacancies under the Joint Institution Job Information System so far this year, and over 40% of them offer a monthly salary of \$5,000 or less, and three of them even offer a monthly salary as low as \$2,000. Some companies support the recommendation of Member of the Legislative Council Mr Tommy CHEUNG by employing undergraduates as public relations assistants at an hourly wage of \$20. The labour sector criticized some enterprises for treating undergraduates as cheap labour. However, business associations consider this wage level reasonable, arguing, on the contrary, that it will not be conducive to students' accumulation of work experience if employers will not be able to provide low-paid internship opportunities to them after the implementation of the minimum wage regime next year.

Chairman, how about this? I have not finished reading it, and I hope you can give me an opportunity to finish it. There is still a little time left, and I will not take up the whole of the 15 minutes. Besides, the meeting tomorrow will be held overnight. Just that someone has infuriated me, and there was nothing I could do about it. As they criticized my pals, I certainly had to jump out immediately in defence, "Buddy". I must run and hurry myself back, right?

Why should summer internships for undergraduates not be covered in the minimum wage regime? And they have also refused to provide a clear definition for internship, right? This is an attempt to create ambiguities, which is where the crux of the matter lies, Chairman, right? This is the Government's problem, and it still dares to move the amendments. Yet, it is afraid of Mrs Regina IP, and so it has agreed to extend the scope to overseas students. We are the only ones the Government is not afraid of, right? It is only afraid of

Members from the business sector and the pro-establishment faction. Why should it be afraid of us? There are only a few of us. If not for the four Members from the Hong Kong Federation of Trade Unions (FTU), would we be able to legislate for a minimum wage? Buddy, the DAB opposed it in the past, and so did the Democratic Party. Just now, the entire Democratic Party abstained from voting on the amendments relating to foreign domestic helpers, right? Just talking about it will induce fury in me.

As there is still some time left, I will continue, and I can speak again, Chairman, right? Now, we have to strike a balance. But what you are doing now is not striking a balance but only rebuking the others. You keep accusing us for launching rebukes, but are you not firing rebukes at us now? Are you not rebuking those of us who protect undergraduates' rights and interests? Besides, the provisions do not apply to secondary school students. How strange! Internships for secondary school students are covered under the minimum wage regime. Are there any secondary school students up there? Yet, internships for undergraduates are not covered. Is it not strange? Is it not all because of such a Government, right? That is all.

MR RONNY TONG (in Cantonese): Chairman, I know Mr Albert CHAN's remarks just now may not necessarily be targeted at my previous speech, but neither do I know whether he was in the Chamber when I made my speech.

Chairman, insofar as experiences of not receiving minimum wage protection as a student is concerned, I believe I do not compare unfavourably with anyone in terms of the amount of such experiences. When I was studying at university, I worked in a bar, and at a point I had to get up at half past three o'clock early in the morning to do dish-washing work. I also worked in a restaurant, taking up duties such as carrying and unloading cartons of goods. I also had the experience of doing all kinds of manual labour, yet I never enjoyed minimum wage protection.

Chairman, I absolutely understand that students need protection in work. However, we are now discussing two exemptions. The first one is for training which forms a compulsory component of the relevant programme. Another one is for temporary training which lasts 59 days, so that students can gain work experience in summer. Regarding these exemptions, I have already mentioned

in my remarks just now that they are available under the legislation of other places. I do not believe that these places intentionally deprive students of the right to a minimum wage.

Chairman, I think we have to strike a balance in this regard, just that we may have different considerations in doing so. Chairman, we consider the amendments acceptable.

DR PRISCILLA LEUNG (in Cantonese): Chairman, Mr Albert CHAN invited those of us who support the amendments to speak and debate with him. Actually, I do not know whether he has listened to the speeches because he was late and has just entered the Chamber. I think we have already made many things public, and we do not intend to keep the justifications secret. At meetings of the Bills Committee, we even suggested that the Government should mull over the proposal. There is no need for us to hide anything, and neither do we have any particular motives behind. I think we have formed our views based on the situation of our work place and the needs we are aware of, and we genuinely care for young people. Therefore, please do not keep saying that our proposal aims at exploiting and discriminating against young people.

I would like to respond to Mr LEE Cheuk-yan's remark that there would not be any problem if no employment is involved. I do not know how he perceives the issue of curriculum vitae. For people who work for their relatives or uncles, can their work experience be included in their curriculum vitae if no employment is involved? If a person casually approaches a relative or an uncle actually, undergraduates or young people hope that they will have work experience which can be included in their curriculum vitae or recognized officially. We think young people can gain experience through work.

Just now, Mr WONG Yuk-man specifically actually, I think he was referring to the example I cited — young people should take up photocopying tasks at the beginning of their work life, and when the employer or the supervisor considers their work performance satisfactory, they may be allowed to attend meetings. Why cannot they take up photocopying duties? I was once tasked with photocopying at work, and now I have to make photocopies myself from time to time. What is so special about photocopying work? Why cannot young people be tasked with it at the beginning of their work life? We also took

up summer jobs and engaged in work such as assembling plastic flowers. Why cannot they go through such hardship? What is the problem of photocopying work? By assigning them such work at the beginning, we can observe whether they can take up duties which may be relatively boring. Actually, this is a kind of training, and I do not think that requiring young people to take up such work is discrimination against them.

Besides, I think there is no need to play up the issue to one of "Mr Capitalist and Mr Socialist". I think the three Members of the League of Social Democrats need not be overly humble, and their influence is actually evident to all. Just that from the situations of our work place, we can see that many young people need to make use of their summer holiday to gain work experience. They really do not purely work for money. They can work at a McDonald's restaurant or other restaurants, but they all the more need to find a job which may help them find a better job position after graduation. I have made this point just now, but I do not know whether they could hear it. Actually, four to five colleagues have made this point very clear, and we also said it would give them an opportunity to attend an interview. Very often, instead of only looking at the number of doctoral degrees or undergraduate degrees an applicant has, the employer also has to observe the temperament, personality and interpersonal skills of the applicant, so as to consider whether the applicant is suitable for his company based on an overall impression. Therefore, an applicant really has to make much effort to secure a job.

I forgot which Honourable colleague raised the question of whether it would be very difficult for an employer to pay a wage of a few thousand dollars to employ an employee and whether it was a huge amount of money. This is not where the problem lies. First, not every organization has the obligation to employ young people, and organizations have the freedom of choice; second, not every organization can make special arrangements to take care of these young people. I am not saying that young people are incapable, but can they accomplish their tasks in these organizations completely on their own? For young people without any work experience, they may make mistakes in whatever task they undertake, not to mention tasks assigned to them at work, and they need guidance and advice. This is a process. Otherwise, why is it necessary for employees to undergo a probation period? Therefore, do not always reinforce such hostile sentiment, as if all the people intend to victimize the youth. I think I have had enough of it. This is not an issue of "Mr Capitalist and Mr Socialist",

but how actually, besides local universities, many other universities also hope to help more young people, so that they can pursue a path according to their own interest when they actually work in society. Unlike what you have imagined, we do not seek to victimize and discriminate against the youth, and come up with some strange ideas about the so-called secondary school students, undergraduates because they are different. What we are talking about now are jobs taken up by undergraduates during their studies.

We did not only refer to barristers just now. I also mentioned that television broadcasting companies may also provide student internship opportunities, and so may interior design firms. Therefore, we are not only referring to barristers, and Members should not see this issue from such a narrow perspective. Sometimes, too many comments about classes may really be boring. Why do we not talk about something new? We should look at the issue from each other's position. I think I have had enough of it, so please do not use such kind of "playing up" stunt to deal with the amendments. We have participated in the discussion of this issue. Actually, this issue has been discussed so much that it has become a bit boring. Therefore, it is better for us to make a decision now. Those who support the amendments may express their support, while those who oppose them may simply do so.

Chairman, I so submit.

CHAIRMAN (in Cantonese): Mr LEUNG Kwok-hung, are you in the Chamber?

MR LEUNG KWOK-HUNG (in Cantonese): I am.

CHAIRMAN (in Cantonese): Why does it seem that you are playing hide and seek with me on purpose?

MR LEUNG KWOK-HUNG (in Cantonese): I rarely "log on" to the Internet (上網)⁽¹⁾, and seldom do I adopt a "playing up" stunt (上綱). I do not have to

(1) Logging on to the Internet ("上網"), adopting a "playing up" stunt ("上綱") and "showing grave concern" (上心) are a word play on the Chinese character "上".

"log on" to the Internet, and neither do I have to adopt a "playing up" stunt. Actually, what is the whole problem about? This problem was raised by certain Members of this Council. They have come across many Hong Kong people returning to Hong Kong after studying abroad. As these people do not want to waste time, they would like to gain work experience in certain organizations. As they are already able to gain work experience, organizations which offer them work experience will actually incur "losses". So, how can they still ask for wages? It is this simple.

These organizations consider it a hassle to pay wages to these people and be subject to the minimum wage requirement. Hence, gone are the internship opportunities of people who study abroad and intend to come back to Hong Kong to make good use of their holiday. It is this simple. What can one learn in 59 days? A lawyer has to work under a mentor for more than 59 days. He has to work, but he is not paid, because it is obviously an apprenticeship system, which is a necessary component of his learning process.

What we are talking about now is a situation in which a youngster who is from a middle-class family and studying abroad returns to Hong Kong for holiday and works for 59 days in a company run by his parents' friend. This is actually a small-circle problem. Many Members hold the view that if this does not constitute employment, his CV will be of no use. So, he has to tell the others that it is employment. In a capitalist society in which workers in employment are hailed, only workers in employment are valued. Frankly, students of SOCRATES were immediately inspired with wisdom after listening to his teachings. Then, why would an educated person requires proof of experience? He will have it when he works.

Now, this small-circle problem has been expanded to this issue. Let us look at it from the perspective of the large circle. In order to provide convenience to people in the small circle, people in the large circle may be victimized, so I am definitely not adopting a "playing up" stunt, and neither am I "logging on" to the Internet. I am "showing grave concern" (上心).

If people really come from such a class and think that they must include in their curriculum vitae work experience in renowned organizations or professional bodies, they may simply spend some money to make it happen. Or the students' parents may make a secret deal by buying someone a \$20,000 bottle of red wine

as a gift, so that he will know what to do, and he can even pay wages to the students concerned.

The League of Social Democrats (LSD) is concerned that if convenience is provided to the small circle, students who genuinely take up part-time jobs will be affected and will suffer losses after the passage of the legislation. I am not agitated now. I am all rational and logical, and our argument is substantiated. These students simply come from a different class. Some students live in public housing estates in Hong Kong and are unable to pursue their studies abroad. Take my student neighbour as an example. He is enrolled in an associate degree programme, not without great difficulties, because his parents have to work very hard to pay his tuition fees. He also hopes that he will be protected under the law when he takes up summer jobs.

Mr Ronny TONG, who has multiple skills and talents, is certainly different. He can make a living by playing the guitar or doing many other things. He is one of a kind, and he is talented. We are talking about the majority, not the minority.

Therefore, Chairman, I cannot draw a simplistic conclusion here. Does this Council belong to the majority or the minority? Is it a club or an institution which seeks to reason and act for the interest of the public who elect Members by voting? I seldom have meals upstairs, and I just ran into you today by accident while I was looking for Dr Margaret NG.

I do not like small circles. I definitely agree that certain people who possess wealth and fame would regard themselves as exceptional. These people think that it would not be a problem for them to take care of the small circle, and if the large circle is affected as a result, then, sorry. The LSD is only speaking for the large circle. What is the problem of being agitated? Chairman, if you do not believe it, please take a look at the situation of the young people in the community.

I also care for young people from the middle class. Why? Most of the people who grew up together with me have become members of the middle class. They employ Filipino maids and arrange for their children to study abroad. What schools do they go to? Oxford. I did not go to university. I studied at Cattle Depot, the one in Kowloon City. Do not worry. It has nothing to do

with the Cultural Revolution. There is now a phobia of the Cultural Revolution. This Cattle Depot is in Kowloon City.

Let us reason about it. You people from the small circle, you respectable people, if you have the money to send your children to study abroad, please let them have fun elsewhere! Let them gain some understanding about life through other means! Why do you insist that they should only do things which are worthwhile? They need to buy air tickets to come back, and they should not waste time. They can work in the companies run by a family friend. It does not matter whether they take up photocopying work or clean the toilets, as long as they are employed for 59 days. What kind of education is it?

Chairman, there is no one to guide me. If I like studying or learning a certain skill, I will really put great efforts in it. They arrange for their children to study in Australia or the United States and send them to top universities, and when they return, you have to find big shots through personal connections to produce good curriculum vitae for them. What are you teaching your children? Deception? If they really want to learn, why do they insist on putting it in their curriculum vitae? Chairman, I have paid attention to your background. Back then, you graduated with first-class honour, and you were asked to stay in the University of Hong Kong to study mathematics. You were unwilling to do so because you had the nation in mind and the world in view, and in order to pursue your goal, you did not take up the studies. This is what high ambition is all about. Give me a first-class honour degree and I will go deep into mathematics, even if I do not have my mind on it. It simply does not work this way. Today, you have achieved great success.

Members of the middle class adopt a utilitarian approach in arranging for education for their children. They insist on getting the most out of their own possession. I also know of some British nobles

CHAIRMAN (in Cantonese): You seem to be adopting a "playing up" stunt.

MR LEUNG KWOK-HUNG (in Cantonese): I am only going up Jing Yang Gang to fight a tiger. I am going uphill and fighting a philistine tiger. Chairman, British nobles do not teach their children this way. They will ask

their children to wander around the world, travel in Europe, buy a train ticket, carry a backpack, meet some girls, drink wine and talk to the sage. When they rebuke the sage, the sage will smile and say, while lighting a pipe, that the young simply do not know the way the world really is. The sage will not say, "How dare you rebuke reputable elders like me!" No, it does not go this way. When SOCRATES was rebuked, he would not lose his temper and make disgraceful remarks.

I am really going up Jing Yang Gang, and I am fighting the prejudice of the middle class. In the mind of the middle-class people, how would there be children of the proletariats? Their children are already studying abroad and need not wait in a queue for admission into the most prestigious local educational institutions, like what Chairman Jasper TSANG did back then. Their children have long gone abroad, and they still insist on stipulating such a provision to enable their children to concoct deceits when they return by claiming the experience of working for their family friends, who are powerful and influential people. I really cannot agree to it. I understand their love for their children, but they have to love their children in a proper way. I have repeatedly said in this Council that the problem of the middle-class people is they are too much of a philistine, and so their children will just be like them.

Chairman, I would like to announce, loud and clear, on behalf of the LSD, that we do not discriminate against the middle class, but we oppose the discrimination of the middle class against the proletariats. We care for the children of middle-class people very much, and we hope they can have the world in view and the nation in mind and learn more, instead of not knowing what they are doing while studying abroad and seeking fake work experience through remote, personal connections when they return. I think it is most inappropriate to introduce legislation for such fake work experience, thereby making it impossible for the proletariats' children who are enrolled in associate degree programmes in Hong Kong to earn money. You must have studied "sine" and "cosine" in mathematics. You can simply read it as "sin" because it is an original sin, a kind of insidious sin. People commit this sin not because they wish to do so. Rather, they commit it out of their prejudice.

Chairman, I am beginning to get agitated, and so it is time to wrap up. I can tell Members that the debate today shows that we can see the world in a drop of water. One's argument and world view determine one's way of thinking.

Why do you have to think? Because how you see the world determines how your children see the world; and how you see the world also determines how your spouse sees the world. That is the way it is. The case today is an illustration of how the already privileged upper-middle class in Hong Kong recklessly strives to seek a small personal gain under this legislation at the expense of victimizing the children of the masses in poverty. This is an authentic lesson on class education. Even if one does not engage in any struggle, and even if class struggle does not exist, one has to understand the conflicts between classes, right?

Chairman, I can see that you are very impatient, but I have to say: You are from a not so well-off family. Did you succeed because you enjoyed these favourable conditions?

CHAIRMAN (in Cantonese): Mr LEUNG, please go back to the amendments concerning "work experience students".

MR LEUNG KWOK-HUNG (in Cantonese): Sure, I respect your value of education as reflected by your refusal to be a philistine in order to pursue your goal when you studied in the University of Hong Kong back then. I wish you happiness in life. If you continue to do so in the future

CHAIRMAN (in Cantonese): Please go back to the amendments concerning "work experience students".

MR LEUNG KWOK-HUNG (in Cantonese): your work experience is you

CHAIRMAN (in Cantonese): Mr LEUNG, please go back to the amendments.

MR LEUNG KWOK-HUNG (in Cantonese): I will stop here. I cannot commend you, even though I want to. Now that you talk to me like this, I will

not pay tribute to you anymore. I have to behave myself now. I hope you will deal with this matter impartially.

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

MR PAUL TSE (in Cantonese): Chairman, I am afraid I would not feel comfortable if I do not speak out because Mr LEUNG Kwok-hung has adopted a "playing up" stunt by turning a minor amendment into an issue of class conflict.

I myself grew up in So Uk Estate and lived there until I was 17 years old. Subsequently, through my own efforts, I went to Australia to pursue my study. When I left Hong Kong, I had only AUS\$2,000 and thereafter, I had to fend for myself and work in a host of jobs. My experience was similar to that of Mr Ronny TONG. I am not going to talk about that now. I only wish to focus on my work experience after returning to Hong Kong.

I certainly am not a member of the middle class or any class above it, nor did any uncles give me any opportunities. I read law and accountancy and hoped that I could have the opportunity to return to Hong Kong to do an internship during the summer vacation. I wrote a lot of job application letters. It so happened that at that time, there were still quite a lot of law firms that were willing to recruit some happy-go-lucky young interns who had few qualifications, so as to let young people have a try. I was lucky enough to be able to work in a fairly reputable law firm in Hong Kong and the wage was \$100 per week at that time. Thereafter, I had the opportunities to be acquainted with various legal professionals, including solicitors, barristers and intellectual property experts. After graduation and returning to Hong Kong, I also practised as a barrister prior to that, I had taken up some summer jobs and subsequently, I also went through barrister pupillage.

Chairman, I believe we have to distinguish between jobs that offer manual labour for money and those that give one the opportunities to gain exposure to and an understanding of the operation of an industry. These two are different in nature. I also took up some summer jobs in Australia in kitchens, restaurants or factories. I also worked as taxi driver and bus driver. You name it and I have

worked in it. In those jobs, one sells one's manual labour for money and they had nothing to do with my future work. Regarding these jobs, a minimum wage may be suitable because they are simply jobs involving manual labour. In contrast, if the nature of a job is a kind of training, in particular, professional training and it costs the employer money and takes him time to teach you and let you gain exposure, in fact, this will benefit you and is a kind of training. For this reason, this kind of work is different. If restrictions are imposed even on this kind of opportunities and they are subject to the minimum wage regime, I am afraid this will amount to doing a disservice out of good intentions.

Chairman, we belong to different social circles but I am afraid Mr LEUNG Kwok-hung is only familiar with his own social circle. I am also familiar with his social circle because I also came from it, only that I have got out of it. Therefore, on all matters, he must not always do a disservice out of good intentions, allowing the so-called class conflicts in his own circle to put him in a bind. The reason for Hong Kong's success is that a lot of people, just like me, have got into small circles from big ones. However, we achieved this through our own efforts, not because we have uncles to help us or because we are people in the so-called middle class or rich people. It is purely because we are willing to strike out on our own, willing to try and willing to learn. Back then, I benefited from this kind of opportunities and I also hope that the younger generation will continue to have such opportunities and benefit from them, instead of enacting legislation that may deprive young people of the opportunities to learn and to get into those circles.

Chairman, many Honourable colleagues will perhaps say that some people in the upper class and the middle class or some professionals are too far removed from the general public. In fact, we can look at this from two perspectives. Some people may be too far removed from the general public in another sense. They do not know that in the process of moving up the social ladder, it is actually necessary to make efforts and sacrifices. Perhaps let me not talk about professionals. Even for writers — I believe there are also such people in your party — initially, they also contribute articles free of charge and they have to do so in the hope of distinguishing themselves. This is also the case for any trade. At an early stage, no matter how confident you are in yourself, when no opportunities are available, you would be willing to accept a wage that is lower

than that in the labour market. You will even try and have a go without receiving a cent.

Therefore, a lot of people would work as volunteers. They may aspire to a career in politics or joining a certain trade. In fact, this is very commonplace thinking. We hope to put in place a more flexible mechanism to enable people with the aspiration, who are not petty and who are not concerned with immediate returns but long-term ones, to take these opportunities to scale upwards. Hong Kong's success depends on this kind of opportunities, and I hope that we can continue to provide such opportunities to young people.

Thank you, Chairman.

CHAIRMAN (in Cantonese): Dr Priscilla LEUNG, speaking for the third time.

DR PRISCILLA LEUNG (in Cantonese): Chairman, with Members like "Long Hair", the legislature is really a happier place. In fact, he is very good at pleasing people, particularly the Chairman.

It is now almost 10 o'clock but probably because Members have watched the World Cup football matches a lot, they are now more wakeful than ever. I think Mr Albert CHAN may find it boring

CHAIRMAN (in Cantonese): Dr LEUNG, you are now speaking for the third time. Please try not to make comments irrelevant to the subject.

DR PRISCILLA LEUNG (in Cantonese): Chairman, I am going to say something highly relevant to the subject.

CHAIRMAN (in Cantonese): The comments you made just now were totally irrelevant to the subject.

DR PRISCILLA LEUNG (in Cantonese): Since the Chairman could allow "Long Hair" to say so many words of praise, it is really not too much to allow us to say a word of praise or two.

I want to say that Mr Albert CHAN perhaps finds it boring, so he wants to listen to more views from Members. First, "Long Hair" kept saying that the amendments were designed for a group of middle class people whose children were studying overseas. I have also taught in universities. In Hong Kong, 50% of university students grew up in public housing estates and among the students whom we helped in looking for internship or gaining work experience, many of them were sub-degree students and they also came from poor families, so we support the amendments.

First, I am sure that I definitely am not doing this purely for the sake of overseas students who return to Hong Kong. However, in order to accord fair treatment to all people, if those people studying in universities overseas are also young people who grew up in Hong Kong, why can we not include them as well? It is for this reason that the amendments seek to extend the coverage.

Second, as the saying goes, "Reading ten thousand books does not give one as much benefit as travelling ten thousand miles". The amendments propose a time limit of 59 days. Students' summer vacation lasts two to three months and many students would make a pleasure trip overseas after completing their internships. Many Hong Kong students would do so after earning a little income and I also favour doing so very much. I even think that Hong Kong people should not admire or criticize socialism or our Motherland indiscriminately in their air-conditioned rooms. For this reason, after graduating from university, I went to China to study as a postgraduate with a budget of \$75 per month. I also joined those "poor people's tour groups" and refrained from spending a single cent during the whole summer vacation. We set off from Beijing and resorted to various ways to get by for a month. We were also the type who believed that "reading ten thousand books does not give one as much benefit as travelling ten thousand miles". We grew up this way. It is not true that we do not understand, only that we believe many young people in Hong Kong come from the grassroots and as a teacher, I have to help them — my kids have not yet grown up, so I am not doing this for the sake of my own kids who return from overseas — many young people want to have something for their curriculum vitae and a good work record to facilitate job hunting. They only want to get

opportunities for upward mobility, so this is not a class conflict. Why is it necessary to look at everything from the perspective of class conflicts? Society does not necessarily have to function in such a way.

Is it really necessary to always look at Hong Kong society from the perspective of class conflicts? I also once lived in a socialist country for a period of time to understand first-hand the socialism that I once believed deeply in. I believe that we should not look at everything from the perspective of class conflicts. I think the operation of society should be characterized by care and understanding and in proposing the amendments, we aim to care about young people, rather than discriminate against and exploit them. I wish to clarify this point.

Chairman, I so submit.

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

MR ALBERT CHAN (in Cantonese): Chairman, ideology and political theories are the basis of thinking, that is, if one adopts a certain theoretical basis, one will have a certain pattern of thinking and certain value judgments. For this reason, if we look at the amendments from the class perspective and from a certain theoretical basis, we can see the core of the problem. Why is it necessary to look at the amendments from the standpoints and interests of different classes and the conflicts among them? It is because from the perspective of class conflicts and interests, it can be seen that the entire amendments brought most benefits to young people from rich families. If a minimum wage is set, under the protection of the legislation, young interns without money who are doing the same type of jobs will be protected by a minimum wage, so that their basic needs can be met.

I have already pointed out when speaking for the first time that in Hong Kong, many young people have to make use of the two months of summer vacations to earn a basic income to support their living

CHAIRMAN (in Cantonese): Mr CHAN, you are speaking for the second time. Please try your best not to repeat what you have said.

MR ALBERT CHAN (in Cantonese): I understand, Chairman. It is because when some Members responded to my comments just now, they totally ignored the importance of this issue. I only wish to stress that if the legislation cannot protect those in need, this is a policy of class discrimination leading to an outcome of discrimination, as a result, people in the proletariat or low-income classes are victimized.

Chairman, I have, on many occasions, pointed out in debates and discussions that in the British-Hong Kong era, in the formulation of many policies, there were detailed policy papers to analyse the effects of the policy concerned on certain social groups. However, in recent years, particularly after TUNG Chee-hwa had left office, since many policies were formulated hastily, no comprehensive and full assessments were made when making policy analyses and all parties only made comments from their own positions, social circles and life experience. First, I wish to point out to Mr Ronny TONG that just now, I was not targeting his remarks at all when giving my responses, so I hope he will not pigeonhole himself.

When many Members spoke, they said that they came from the working class and that they had some positive experience, so they had a fairly good understanding of this matter. I remember that ZHOU En-lai and KHRUSHCHEV had a very well-known debate. When discussing communism and capitalist roaders, KHRUSHCHEV said something rather discourteous about China, so ZHOU En-lai said rather pointedly and satirically, "You and I have both betrayed our classes". KHRUSHCHEV came from the working class and ZHOU En-lai came from the capitalist class. This is to satirize KHRUSHCHEV for betraying the proletariat, whereas ZHOU En-lai worked for it.

CHAIRMAN (in Cantonese): Mr CHAN, please do not stray too far. Speak to the question.

MR ALBERT CHAN (in Cantonese): Chairman, I am responding to the comments made by some Members that they came from such and such a class. I only wish to point out that it is not necessarily the case that people coming from a certain class will surely work for that particular class. The Democratic Party had a debate about a minimum wage in 1999 and at that meeting, I accused

certain Members of betraying the class that they came from and this led to heated exchanges between Prof Anthony CHEUNG and me on the airwaves.

CHAIRMAN (in Cantonese): Mr CHAN, please speak to the question.

MR ALBERT CHAN (in Cantonese): Chairman, I only wish to make one point, that is, such is the impact. Of course, Members have their own judgments but we cannot turn a blind eye to and deny the impact of the legislation on socially disadvantaged groups and poor students. If interns are also entitled to a minimum wage — we are talking about a minimum wage, not the market wage because the pay of university students surely is not just \$4,000 or \$5,000 per month — so a minimum wage is designed to provide basic protection. If students on internship are not given any protection, this is tantamount to depriving them of their rights.

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

Secretary for Labour and Welfare, do you wish to speak?

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

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

(Members raised their hands)

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

(Members raised their hands)

Mr Albert CHAN and Mr WONG Kwok-kin rose to claim a division.

CHAIRMAN (in Cantonese): Mr Albert CHAN and Mr WONG Kwok-kin have claimed a division. The division bell will ring for three minutes.

(The division bell rang)

CHAIRMAN (in Cantonese): It is now almost 9.30 pm but the remaining Agenda is still very long. Therefore, I will suspend the meeting at close to 10 pm or soon after 10 pm. Will Members please try to make good use of the remaining time. The Council will resume at 9 am tomorrow.

CHAIRMAN (in Cantonese): The question now put is: That the amendments moved by the Secretary for Labour and Welfare be passed.

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

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

Dr Raymond HO, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Mr Timothy FOK, Mr TAM Yiu-chung, Ms LI Fung-ying, Mr Tommy CHEUNG, Ms Audrey EU, Mr Vincent FANG, Dr Joseph LEE, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr CHEUNG Hok-ming, Mr Ronny TONG, Prof Patrick LAU, Ms Starry LEE, Dr LAM Tai-fai, Mr CHAN Hak-kan, Mr Paul CHAN, Mr CHAN Kin-por, Dr Priscilla LEUNG, Mr IP Kwok-him, Mrs Regina IP, Mr Paul TSE, Mr Alan LEONG and Miss Tanya CHAN voted for the amendments.

Mr Albert HO, Mr LEE Cheuk-yan, Mr Fred LI, Mr CHEUNG Man-kwong, Mr LEUNG Yiu-chung, Ms Emily LAU, Mr Frederick FUNG, Mr LEE Wing-tat, Mr

KAM Nai-wai, Mr CHEUNG Kwok-che, Mr WONG Sing-chi, Mr LEUNG Kwok-hung, Mr Albert CHAN and Mr WONG Yuk-man voted against the amendments.

Mr WONG Kwok-hing, Mr WONG Kwok-kin, Mr IP Wai-ming and Dr PAN Pey-chyou abstained.

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

THE CHAIRMAN announced that there were 50 Members present, 31 were in favour of the amendments, 14 against them and four abstained. Since the question was agreed by a majority of the Members present, he therefore declared that the amendments were passed.

CLERK (in Cantonese): Clause 17 as amended.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clause 17 as amended stands part of the Bill.

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

(Members raised their hands)

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

(No hands raised)

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

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

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Chairman, I move the second reading of new clause 2A.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clause 2A be read the Second time.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): New clause 2A.

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

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Chairman, I move that new clause 2A be added to the Bill.

Proposed addition

New clause 2A (see Annex I)

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clause 2A be added to the Bill.

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

(Members raised their hands)

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

(No hands raised)

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

MRS REGINA IP (in Cantonese): Chairman, may I seek your consent to move under Rule 91 of the Rules of Procedure that Rule 58(7) of the Rules of Procedure be suspended in order that this Committee may consider new Schedule 1A together with clauses 2, 6 and 16.

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

Council then resumed.

PRESIDENT (in Cantonese): Mrs Regina IP, you have my consent.

MRS REGINA IP (in Cantonese): President, I move that Rule 58(7) of the Rules of Procedure be suspended to enable the committee of the whole Council to consider new Schedule 1A together with clauses 2, 6 and 16.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That Rule 58(7) of the Rules of Procedure be suspended to enable the committee of the whole Council to consider new Schedule 1A together with clauses 2, 6 and 16.

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

(Members raised their hands)

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

(No hands raised)

PRESIDENT (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the motion passed.

Council went into Committee.

Committee Stage

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

CLERK (in Cantonese): New Schedule 1A

Types of Disabilities of
PWD.

CHAIRMAN (in Cantonese): Mrs Regina IP has given notice to move amendments to clause 2 to make consequential amendment to the definition of "employee", and the addition of subclause (6) to clause 6 and consequential amendment to clause 16, as well as the addition of new Schedule 1A.

If Mrs Regina IP's amendments to clauses 2, 6 and 16 are passed, she may later move the addition of new Schedule 1A. Besides, if Hon Mrs Regina IP's amendment concerning the definition of "employee" is passed, the Secretary for Labour and Welfare needs not move amendment to the definition of "employee" in clause 2 because the Secretary's proposed amendment has already been included in Hon Mrs Regina IP's amendment.

CHAIRMAN (in Cantonese): Mrs Regina IP, you may move the amendments to clauses 2, 6 and 16.

MRS REGINA IP (in Cantonese): Chairman, I move the amendments to clauses 2, 6 and 16 as set out in the Agenda.

My aim in moving the amendments is to exempt persons with disabilities (PWDs) in the category of mental handicap from the minimum wage regime by way of adding a subclause under clause 6 of the Bill to revise the coverage of the legislation. Apart from PWDs with types of disabilities specified in the original Bill and the Government's amendments, PWDs with types of disabilities specified in new Schedule 1A are also exempted. The new Schedule 1A has specified a type of disability, which is mental handicap.

Chairman, I find it very difficult to secure Members' support for my amendments and their reaction is rather lukewarm. There are several reasons and the first one is a matter of principle. Many Honourable colleagues of the labour sector and those of the League of Social Democrats said that they oppose any exemption as a matter of principle, as in the case of interns discussed by us

just now. They do not want any exemption that would broaden or curtail the scope of a minimum wage.

Others hold that there is no need to move the amendments because a productivity assessment mechanism applicable to PWDs has already been provided for in the Bill. Since they have a trial period of four weeks, their productivity can first be assessed by professionals before the percentage of minimum wage that they can receive is determined. Since this mechanism is applicable to mentally handicapped persons, there is no need to give them any exemption.

Some other Honourable colleagues consider the scope of exemption too broad. In fact, this is by no means the case. Mentally handicapped persons, to whom I suggest that exemption be given, belong to one of the categories of PWDs. Of course, some Honourable colleagues asked why special treatment has to be accorded to mentally handicapped persons. I wish to point out that according to the part of Interpretation in clause 2 of the Bill, " 'PWD' (殘疾人士) means a person who holds a valid Registration Card for People with Disabilities issued by the Central Registry for Rehabilitation established by the Government". There are 10 other categories of Registration Card for PWDs and the people concerned can belong to one category of disabilities or more than one category of disabilities. Mental handicap is one of the categories. Other categories of disabilities include hearing impairment, visual impairment, physical handicap, speech impairment, mental illness, autism, visceral disability/chronic illness, attention deficit/hyperactivity disorder, and specific learning difficulties.

Some Honourable colleagues maintain that since the Bill has already provided for an assessment mechanism to assess the productivity of PWDs and let them receive wages that correspond more closely to their performance, so as to prevent some employers from refusing to hire them because of the need to pay a minimum wage, why is it necessary to add another exemption? I wish to point out that mentally handicapped persons are different from other PWDs. Many PWDs, such as the hearing impaired, visually impaired and even the physically handicapped, can actually have very stable performance after receiving appropriate training and they can even be no different from able-bodied persons. Mr CHONG Chan-yau is a case in point. Even if they are not as competent as

Mr CHONG Chan-yau, many of them are capable of performing 50% or 70% of the duties in a very stable manner but this is not so for mentally handicapped persons. My office has also hired a mentally handicapped person and very often, mentally handicapped persons experience great emotional instability and it is very difficult for them to find jobs. Moreover, they often change jobs. In fact, employers who are willing to hire these mentally handicapped persons are definitely kind-hearted employers. The parents of these mentally handicapped persons — not the mentally handicapped persons themselves because their cognition cannot help them find work — hope that they can find work and it is not the wages that they care about. Rather, they want their children to have the opportunities to learn to adapt to society and even to be rehabilitated. Kind-hearted employers hiring them actually have to take many complementary measures at the work place. Everyone has to be very patient and caring to these mentally handicapped persons in order to accommodate them, make arrangements and take special complementary measures at work. To their parents, having the opportunity to integrate into society is more important than earning a minimum wage.

Chairman, I move the amendments because some parents of mentally handicapped persons have told me that without this exemption, these mentally handicapped persons have to go through productivity assessment procedures but it would be very difficult to find out their working capacity through an assessment lasting only a few hours. This is because they are emotionally unstable. These mentally handicapped persons may feel very excited all of a sudden when meeting strangers, or they may feel fearful. Therefore, it is very difficult to assess their work performance through one or two assessments. If wage disputes arise due to these work assessments, employers hiring them will be unwilling to continue to do so. In fact, I also got news that some kind-hearted employers, in order to avoid trouble and disputes with the parents of these mentally handicapped persons over wages or the assessment procedure, have already issued notices to the effect that they would no longer hire mentally handicapped persons.

For this reason, Chairman, how many people would be affected? Mentally handicapped persons account for 2% of the population and their number stands at about 80 000. However, they are classified into the severely mentally handicapped, the moderately mentally handicapped and the mildly mentally

handicapped. The severely mentally handicapped would not go out and work at all and it is really difficult to assess the number of those who actually work because they change jobs very often, so it is actually very difficult to help them find work. For this reason, the number of people affected is very small, so it is difficult for me to find support in this Council. Many Honourable colleagues did not even have much patience in listening to my explanation. Chairman, I can only say that in moving the amendments, I am doing so on behalf of the most socially disadvantaged group in society. In the eyes of many respectful Honourable colleagues, their request may be very insignificant but to their parents, this is very meaningful because it is already very difficult for their children to find a job. They really do not want their children to go through an assessment mechanism, and subject them to further torments.

Chairman, although I have tried to canvass for votes, I know that only a small number of Honourable colleagues are sympathetic towards this most socially disadvantaged group and are willing to support my amendments. However, on behalf of them, I request those colleagues who have turned down my request to reconsider this humblest request made by the parents of the most socially disadvantaged group. I hope that these Members can support my amendments with the greatest sympathy.

Thank you, Chairman.

Proposed amendments

Clause 2 (see Annex I)

Clause 6 (see Annex I)

Clause 16 (see Annex I)

DR PAN PEY-CHYOU (in Cantonese): Chairman, the relationship between PWDs and a minimum wage is actually quite complicated. The disabilities that we talk about usually refer to the relatively stable physical disabilities suffered by some people over the long term or some mental defects that affect the lives of the people concerned.

When it comes to a person's life, work is a part of life. In fact, disabilities do not necessarily impact on work. Although a person may suffer from disabilities, they may not necessarily impact on his work. I can cite two examples. For example, if someone who lost one or both of his legs has a high level of education attainment, he can still undertake sedentary work. If the sedentary work undertaken by him does not require a great deal of physical exertion, his working capacity can be more or less the same as that of an able-bodied person.

In contrast, another example is ex-schizophrenic patients. His illness affects his cognition and in particular, it affects his ability of execution. By the ability of execution, I mean how he organizes work, deals with and solves problems, that is, how to arrange work properly and then carry it out. Their ability in this regard is seriously impaired. For this reason, ex-schizophrenic patients may perform tasks very slowly and the results are also crude and incomplete. At the same time, due to the influence of their illness, they may not be able to withstand pressure and may also experience difficulty in getting along with others.

Therefore, we can see that PWDs can actually be divided into two types. In the first type, the disabilities have little impact on work and it is only necessary to make appropriate choices in order to find suitable jobs. A minimum wage is absolutely applicable to this type of people because it can precisely guarantee their income and ensure that when their working capacity reaches the standard attained by people in general, they can receive reasonable wages.

As regards the second type of PWDs, disabilities have quite a great impact on their working capacity. To these people, apart from being a way of making a living, more importantly, work can also be a tool of rehabilitation. Through work, these people can gradually establish their own life pattern and because they can generate income through work, they can build their confidence and self-esteem. Therefore, this is actually a fairly effective tool in rehabilitation. Through work, they can also have contacts with the world, get acquainted with people and enhance their independence. If no exemption is given or no amendment is made to the legislation on minimum wage, these people will often be impeded in looking for work.

To a certain extent, mentally handicapped persons fit my description of the second type of people. At present, there are about 450 000 PWDs in Hong Kong and mentally handicapped persons account for 80 000 of them. As Mrs Regina IP said, nowadays, they can obtain proof that they are mentally handicapped. The employment situation of mentally handicapped persons is actually a cause for serious concern. A survey found, and a newspaper also reported recently, that the success rate of mentally handicapped persons in finding work was only as low as 5%. A public opinion survey also found that among various PWD types that the respondents were willing to hire, the physically disabled fared the best, followed by the mentally disabled, and mentally handicapped persons came last. Many people actually have a lot of concerns about hiring mentally handicapped persons to work for them.

Not only do mentally handicapped persons have difficulty in finding work, they also have little chance of joining rehabilitation programmes. We know that day centres or sheltered workshops are rehabilitative facilities used frequently by mentally handicapped persons but at present, a lot of people are waiting for their turn to use such facilities and it takes a long time before they can do so.

The parents of mentally handicapped persons have expressed their concern and I think that, as Mrs Regina IP said, this is understandable. They have great difficulty in finding work and their opportunities of rehabilitation are also very limited. The parents of mentally handicapped persons hope very much that their children can have employment opportunities and often, such employment opportunities are provided by volunteer groups, charitable organizations or social enterprises operated by charitable organizations. It can be said that these employers really have a heart. They do not mind the troubles and are not going after money. Rather, they hope that through work, opportunities can be given to mentally handicapped persons. Therefore, employment opportunities for the mentally handicapped are really limited. In view of this, we think that it is understandable for the parents of mentally handicapped persons to feel concerned and request that exemption be made in this regard.

Mentally handicapped persons are emotionally unstable and they do not know very well how to get along with other people. While they are working, if some strangers suddenly tell them that assessments on their working capacity have to be made, I believe this would scare them out of their wits. Even a

normal person who has just taken over a new post would feel apprehensive if someone says all of a sudden that assessments on their working capacity have to be made, not to mention a mentally handicapped person. Under the influence of tense emotions, the performance of a person will naturally fall below his usual standard and they may even be unable to perform tasks that they should have been capable of performing.

For this reason, in fact, parents of mentally handicapped persons hope very much that the flow chart is often like this: Mentally handicapped persons join day centres and through this service, they come into contact with staff members for a long period of time and the staff members can gain an understanding of their working capacity. The staff members then refer them to employers who are willing to offer them employment opportunities. In this scenario, the arrangements are made smoothly. Even so, when mentally handicapped persons initially find themselves in a new working environment, they also need a long period of time to adapt gradually. Since mentally handicapped persons have a limited understanding of the things happening around them, it would take a particularly long time for them to adapt. Since it is already so difficult to find work for mentally handicapped persons, naturally, their parents want to keep them from being disturbed.

For this reason, on the views expressed by Mrs Regina IP, we are very sympathetic and believe that this demand made by the parents of mentally handicapped persons really deserves our serious consideration. However, the amendments moved by Mrs Regina IP also give rise to some new problems. I wish to talk about two of them here. The first problem is that there are also many other types of PWDs whose needs are similar to those of mentally handicapped persons, for example, the ex-mental patients mentioned by me just now. The working capacity of ex-schizophrenic patients is also greatly compromised. They also have a very limited ability in adapting to new settings and they are very fearful of social interactions. They are also very sensitive to other people's remarks. Therefore, in a new work setting, after going to work for a couple of days, ex-mental patients are often unwilling to continue to do so and it is only after repeated urging that they will be willing to work for a few days. They are afraid of new posts and if someone in the work place gives them too much pressure, they may even suffer relapses. Therefore, ex-mental patients are one of the types.

The second type is mentally handicapped persons, whom I talked about just now. Some of them are born with defects in brain development while some of them originally have normal brain functions. However, due to traffic accidents or other brain diseases, their brain was damaged, thus leading to low intelligence. This being so, should this type of people also be included?

The third type is mental problems among children, such as autism or Asperger's disorder. The language ability of this type of people is seriously affected and so are their social skills. If they are made to learn to work in a post, some of their abilities may be more or less the same as normal people but on the whole, it is difficult for them to handle even ordinary jobs. It can be said that their problems are the same as those of mentally handicapped persons. If mentally handicapped persons are exempted, should this kind of people also be exempted?

Having said all these, here lies the thrust of my speech: If we have to consider giving exemptions, should we not consider this matter in greater detail? Perhaps when scrutinizing this Bill in the 30 meetings convened, we should spend more time if more time is available for scrutiny, by now, perhaps we can have a set of better-conceived amendments.

Another even bigger issue is that, as I said just now, PWDs can be divided into two types and in the first type, the disabilities have little impact on their working capacity and it is possible to accommodate these disabilities. This type of PWDs hopes very much that they can be covered by the legislation on minimum wage. If exemption is granted to one type of PWDs, for example, to mentally handicapped persons, the first type of PWDs will feel threatened because as PWDs, they do not wish to see another group of PWDs receive wages below the minimum wage after going through assessments. If we further single out a portion of the PWDs from this group of PWDs and tell them that they do not even have to go through assessments, do we have to take into consideration the fear experienced by those PWDs who are convinced that a minimum wage would give them protection and who feel that they are being treated unfairly?

Therefore, in this regard, after careful consideration, we believe that given the present situation, we really cannot support the amendments moved by Mrs Regina IP. However, we think that this is not the end of the issue. Even after

passing the Minimum Wage Bill, we still have to continue to follow up the needs of PWDs in employment and wage protection. We have to pay attention to whether or not the employment opportunities for PWDs are compromised in any way. In addition, we believe that regarding PWDs, be they mentally handicapped persons or other types of PWDs, the Government has the duty to strengthen the employment support for them. We hope that the Government can step up its efforts in providing training or job placement, and help them in a more proactive manner. Furthermore, it has to step up communication with three parties, that is, with organizations hiring PWDs, the parents of PWDs and PWDs themselves, so as to understand the actual situation. Only in this way can we do the job well and bring about the greatest improvement to the employment problems experienced by PWDs.

I so submit.

SUSPENSION OF MEETING

CHAIRMAN (in Cantonese): It is now two minutes to 10 pm and three Members have indicated their wish to speak. I believe that there is still some time to go before the debate on the amendments can be concluded and voting conducted. For this reason, I have decided to declare the suspension of the meeting at this juncture.

Members should have received notice that after consulting Members, I have decided that the meeting will resume at 9 am sharp tomorrow, and the meeting will continue until all the unfinished business on the Agenda has been dealt with. The meeting is now suspended.

Suspended accordingly at one minute to Ten o'clock.

Annex I

MINIMUM WAGE BILL

COMMITTEE STAGEAmendments to be moved by the Secretary for Labour and Welfare

<u>Clause</u>	<u>Amendment Proposed</u>
2	<p>(a) In the definition of “employee”, by deleting “or (4)” and substituting “, (4) or (5)”.</p> <p>(b) In the definition of “employee with a disability”, by deleting “has been assessed under Schedule 2” and substituting “is stated in a certificate of assessment that has effect for the purposes of section 8(1)(b)”.</p> <p>(c) In the definition of “student intern”, by deleting everything from “means” to “for which” and substituting –</p> <p style="padding-left: 40px;">“means –</p> <p style="padding-left: 80px;">(a) a student undergoing a period of work arranged or endorsed by an education institution specified in Schedule 1 in connection with an accredited programme being provided by the institution to the student; or</p> <p style="padding-left: 80px;">(b) a student resident in Hong Kong and undergoing a period of work arranged or endorsed by an institution in connection with a non-local education programme being provided by the institution to the student,</p> <p style="padding-left: 40px;">for which”.</p> <p>(d) In the English text, in the definition of “wages”, by deleting the full stop at the end and substituting a semicolon.</p>

(e) By adding –

““assessment-opting PWD” (選擇受評估殘疾人士) means a PWD who, in accordance with section 3A(2) of Schedule 2, has elected to have an assessment made under that Schedule of his or her degree of productivity in performing the work required under the contract of employment;

“exempt student employment” (獲豁免學生僱用) – see section 2A;

“non-local education programme” (非本地教育課程) means a full-time programme of education which leads to the award of a non-local academic qualification which is at the level of degree or higher;

“option form” (選擇表格) means a form referred to in section 3A of Schedule 2;

“work experience student” (工作經驗學員) means a student who –

- (a) is enrolled in an accredited programme; or
- (b) is resident in Hong Kong and enrolled in a non-local education programme,

and who is engaged under a contract of employment at the beginning of which he or she is under the age of 26 years.”.

New By adding –

“2A. Exempt student employment

A work experience student and his or her employer may agree to treat a continuous period of up to 59 days during the contract of employment (“the current contract”) as a period of exempt student employment if –

- (a) no period during another contract of employment to which the work experience student was a party and that commenced in the same calendar year as the current contract was a period of exempt student

employment; and

- (b) the work experience student provides to the employer before the commencement of the current contract a statutory declaration (or copy of a statutory declaration) made by him or her verifying the fact set out in paragraph (a).”.

3(1) By deleting everything after “wage period” and substituting –

“include any time during which the employee is, in accordance with the contract of employment or with the agreement or at the direction of the employer –

- (a) in attendance at a place of employment, irrespective of whether he or she is provided with work or training at that time; or
- (b) travelling in connection with his or her employment excluding travelling (in either direction) between his or her place of residence and his or her place of employment other than a place of employment that is outside Hong Kong and is not his or her usual place of employment.”.

3 By deleting subclause (2).

5(2) By deleting “for an hour (or any part of an hour) not worked” and substituting “for any time that is not hours worked”.

5(5) (a) By adding “(1),” after “subsections”.

- (b) By deleting “in a wage period after the first 7 days of that period, or within 7 days after the end of a wage period,” and substituting “, with

the prior agreement of the employee, at any time after the first 7 days of a wage period but before the end of the 7th day immediately after that period”.

- (c) By adding “under the contract of employment” after “otherwise payable”.

- 6(2) By deleting “or (2A) of that Ordinance” and substituting “of that Ordinance or who is engaged under a contract of apprenticeship registered under the Apprenticeship Ordinance (Cap. 47)”.

- 6 By adding –

“(5) This Ordinance does not apply to a work experience student during a period of exempt student employment.”.

- 8(1) (a) In paragraph (b), by deleting “provided under section 5 of Schedule 2; and” and substituting “referred to in section 5 of Schedule 2;”.

- (b) By adding –

“(ba) for an assessment-opting PWD who continues to be employed to do the same work for the same employer, until the end of the day on which the assessment of his or her degree of productivity in performing that work is completed under Schedule 2, the hourly rate that is the percentage specified in the option form of the prescribed minimum hourly wage rate; and”.

- 8(2) (a) By adding “who has undergone a trial period of employment” after “PWD”.

- (b) By deleting “of a trial period of employment” and substituting “of the trial period”.

8 By adding –

“(4) Schedule 2 also provides for determining the percentage of the prescribed minimum hourly wage rate that is applicable to an assessment-opting PWD until the end of the day on which the assessment of his or her degree of productivity in performing the work required under the contract of employment is completed under that Schedule.”.

10(2) In paragraph (b), by deleting everything after “public officers” and substituting –

“of whom –

- (i) not more than 3 must be persons who, in the opinion of the Chief Executive, have knowledge of, or experience in, matters relating to the labour sector;
- (ii) not more than 3 must be persons who, in the opinion of the Chief Executive, have knowledge of, or experience in, matters relating to the business sector; and
- (iii) not more than 3 must be persons who, in the opinion of the Chief Executive, have knowledge of, or experience in, a relevant academic field; and”.

10(3) By adding “and, in appointing members under subsection (2)(b) and (c), the Chief Executive may have regard to the need for there to be a balanced number of members appointed under each of the subparagraphs of paragraph (b) of subsection (2) and under paragraph (c) of that subsection” after “Chief Executive”.

11 By deleting subclause (1) and substituting –

“(1) The main function of the Commission is, when required

by the Chief Executive to do so, to report to the Chief Executive in Council its recommendation about the amount of the prescribed minimum hourly wage rate.”.

11(4) In the English text, by deleting “recommendations” and substituting “recommendation”.

13 By deleting the clause and substituting –

“13. Report of Commission

(1) The Chief Executive must require that a report under section 11(1) is made at least once in every 2 years.

(2) The Chief Executive must, as soon as practicable after receiving a report made under section 11, cause a copy of it to be published.”.

17 By adding –

“(3) For the purposes of section 2A, no account is to be taken of any period of employment that precedes the commencement of that section.”.

20(1) By deleting the proposed section 49A(3)(ea) and substituting –

“(ea) if the employee is an employee within the meaning of the Minimum Wage Ordinance (of 2010) and the wages payable to the employee in respect of any wage period are less than the amount specified in the Ninth Schedule (or the amount that bears the same ratio to that amount as the length of that wage period bears to the month in which that wage period falls, calculated where that wage period falls in more than one month

according to the number of days of that wage period falling in each particular month), the total number of hours (including any part of an hour) that are hours worked by the employee in that wage period;”.

20(2) (a) By adding –

“(3A) Despite subsection (3), subsection (1) must also be taken to require an employer to keep –

- (a) for an employee to whom the Minimum Wage Ordinance (of 2010) does not apply because of section 6(4) of that Ordinance, a document (or copy of a document) issued by an institution showing that the period of work is arranged or endorsed by the institution in connection with a programme being provided by the institution to the employee that is of a kind covered by the definition of “student intern” in section 2 of that Ordinance; and
- (b) for an employee to whom the Minimum Wage Ordinance (of 2010) does not apply because of section 6(5) of that Ordinance, the statutory declaration (or a copy of the statutory declaration) provided by the employee under section 2A(b) of that Ordinance and a document (or copy of a document) issued by an institution showing that the employee is at the commencement of the employment enrolled in a programme being provided by the institution that is of a kind covered by the definition of “work experience

student” in section 2 of that Ordinance.”.

(b) By adding –

“(5) The Commissioner may, by notice published in the Gazette, amend the Ninth Schedule.

(6) For the purposes of subsections (3)(ea) and (4), “hours worked” (工作時數), “wage period” (工資期) and “wages” (工資) have the same respective meanings as in the Minimum Wage Ordinance (of 2010).”.

New By adding immediately after clause 21 –

“21A. Ninth Schedule added

The following is added –

“NINTH SCHEDULE [s. 49A]

MONETARY CAP ON KEEPING RECORDS OF HOURS WORKED

per month”.”.

23 (a) By renumbering the clause as clause 23(2).

(b) By adding –

“(1) Schedule 5 to the Disability Discrimination Ordinance (Cap. 487) is amended by renumbering item 1 as item 4.”.

23(2) (a) By deleting “to the Disability Discrimination Ordinance (Cap. 487)”.

(b) By deleting –

“Part III Only a person”

and substituting –

“1. Part III Only a person”.

(c) In the proposed item 1, by adding a full stop after “Ordinance (of

- (a) who on or after the commencement of section 8 is seeking to be engaged under a contract of employment; or
 - (b) the terms of whose contract of employment are to be varied on or after that commencement as to the kind of work to be done under that contract.”.
- (b) In section 2(1), by adding “before commencing employment or before a variation of the terms of his or her contract of employment as to the kind of work to be done under that contract is due to take effect,” before “agree”.

- (c) In section 2(1), in the Chinese text, by adding “的安排” after “工期”.
- (d) By adding –

**“3A. PWDs employed before commencement
may opt for an assessment**

(1) A PWD who –

- (a) was employed immediately before the commencement of section 8;
- (b) continues to be employed to do the same work for the same employer; and
- (c) is employed at an hourly wage rate that is less than the first prescribed minimum hourly wage rate,

may, before the effective date of the first prescribed minimum hourly wage rate, elect to have his or her degree of productivity in performing the work required under the contract of employment assessed under this Schedule.

(2) An election is made by the employee signing an option form and giving it to his or her employer as soon as practicable after signing it.

(3) An option form must –

- (a) be in the form approved by the Commissioner;
- (b) specify the hourly wage rate (“the current contractual rate”) at which the PWD is then employed; and
- (c) specify the percentage of the first prescribed minimum hourly wage rate that the current contractual rate represents.

(4) The employer must countersign the option form before the effective date of the first prescribed minimum hourly wage rate and give a copy of it to the employee as soon as practicable after doing so.

- (5) This section is subject to section 4(5) of this Schedule.

3B. Other employees may opt for an assessment

(1) An employee who is a PWD (other than a PWD to whom section 2 of this Schedule applies who has chosen to undergo a trial period of employment or a PWD who is an assessment-opting PWD) may at any time, if he or she chooses to do so, seek to have his or her degree of productivity in performing the work required under the contract of employment assessed under this Schedule.

- (2) This section is subject to section 4(5) of this Schedule.”.

- (e) In section 4, by adding before subsection (1) –

“(1A) This section applies to an assessment under this Schedule with respect to the following employees –

- (a) a PWD who has chosen to undergo a trial period of employment under section 2 of this Schedule;
 - (b) an assessment-opting PWD;
 - (c) a PWD covered by section 3B of this Schedule who has chosen to have an assessment made.”.
- (f) In section 4(1), in the Chinese text, by adding “有關” after “執行”.
- (g) In section 4(2), by deleting “the employer, whether” and substituting “his or her employer. For a PWD who has chosen to undergo a trial period of employment under section 2 of this Schedule, that time may be”.
- (h) In section 4(5), by deleting “whose degree of productivity has been assessed” and substituting “in respect of whom an assessment of his or her degree of productivity has been completed”.
- (i) By deleting section 4(6).
- (j) In section 5(1), in the Chinese text, by adding “有關” after “執行”.

- (k) In section 5(2)(c), by deleting “by the PWD and the employer as well as”.
- (l) In section 5, by adding –
 - “(2A) The assessment of the degree of productivity of the PWD is completed for the purposes of this Ordinance when the certificate of assessment is signed by the approved assessor.
 - (2B) The PWD and the employer must countersign the certificate provided to them under subsection (1). On and from the first day after their doing so the certificate has effect for the purposes of section 8(1)(b).”.
- (m) In section 5(3), by deleting “signing” and substituting “countersigning”.

Schedule 4 In section 1(2), in the Chinese text, by deleting “任期” and substituting “任免”.

MINIMUM WAGE BILL

COMMITTEE STAGE

Amendments to be moved by Dr. the Honourable LEUNG Ka-lau

ClauseAmendment Proposed

2

[NEGATIVED]

In the definition of “place of employment”, by adding
“, waiting for work” after “the purpose of doing
work”.

MINIMUM WAGE BILL

COMMITTEE STAGE

Amendments to be moved by the Honourable LEE Cheuk-yanClauseAmendment Proposed

2
[NEGATIVED]

- (a) In the definition of “employee”, by deleting “, (3)”.
- (b) By deleting the definition of “minimum wage” and substituting –
““minimum wage” (最低工資) –
- (a) for an employee who is not a live-in domestic worker for a wage period, has the meaning given by section 7(2); or
- (b) for a live-in domestic worker for a wage period, has the meaning given by section 7(2A);”.
- (c) In the Chinese text, in the definition of “實習學員”, by deleting the full stop and substituting a semicolon.
- (d) By adding –
““conversion multiplier” (轉換乘數) means the value specified in column 1 of Schedule 3A;
“days worked” (工作日數), in relation to a live-in domestic worker, has the meaning given by section 3A;
“live-in domestic worker” (留宿家庭傭工) means an employee who is employed as a domestic worker in, or in connection with, a household and who dwells in that household free of charge;
“minimum daily wage rate” (每日最低工資額), in relation to a live-in domestic worker, means the wage rate derived by multiplying the prescribed minimum hourly wage rate by the conversion multiplier;”.

3

[NEGATIVED]

By deleting the clause and substituting –

“3. Hours worked

The hours worked by an employee in a wage period include any time during which the employee is, in accordance with the contract of employment or with the agreement or at the direction of the employer –

- (a) in attendance at a place of employment, irrespective of whether he or she is provided with work or training at that time; and
- (b) travelling in connection with his or her employment –
 - (i) including travelling (in either direction) between his or her place of residence and his or her place of employment that is not his or her usual place of employment; and
 - (ii) excluding travelling (in either direction) between his or her place of residence and his or her usual place of employment.”.

New

[NOT PROCEEDED
WITH]

By adding –

“3A. Days worked

The days worked by a live-in domestic worker in a wage period include any day on which the live-in domestic worker is, in accordance with the contract of employment or with the agreement or at the direction of the employer, doing work or receiving training, irrespective of the number of hours the live-in domestic worker is doing work or receiving training on that day.”.

5

[NEGATIVED]

By adding –

“(2A) A payment made to a live-in domestic worker in any wage period for any day that is not days worked by the live-in domestic worker must not be counted as part of the wages payable in respect of that or any other wage period.”.

5

[NEGATIVED]

By adding –

“(2B) A premium pay made to an employee in any wage period for any time worked by the employee on a holiday or a rest day, or for an overtime hour (or any part of an overtime hour) worked by the employee must not be counted as part of the wages payable in respect of that or any other wage period.”.

6

[NEGATIVED]

By deleting subclause (3) and substituting –

“(3) Sections 3, 5(2), 7(2), 8 and 17(1) and (2) do not apply to a live-in domestic worker.”.

7

[NEGATIVED]

By adding –

“(2A) The minimum wage for a live-in domestic worker for a wage period is the amount derived by multiplying the total number of days worked by the live-in domestic worker in the wage period by the minimum daily wage rate.”.

10(2)

[NEGATIVED]

In paragraph (c), by adding “non-voting” after “other”.

10

[NEGATIVED]

By adding –

“(3A) When appointing a member referred to in subsection (2)(b)(i), the Chief Executive must have regard to any nomination made for the purposes of such appointment by any one or more of the labour organizations specified in Schedule 3B.”.

11

[NOT PROCEEDED
WITH]

By deleting subclause (1) and substituting –

“(1) The main function of the Commission is, when required by the Chief Executive to do so, to report to the Chief Executive in Council its recommendation about the amount of the prescribed minimum hourly wage rate.”.

11

[NEGATIVED]

By adding –

“(1A) Another function of the Commission is, when required by the Chief Executive to do so, to report to the Chief Executive in Council its recommendation about the value of the conversion multiplier.”.

- 11
[NEGATIVED]
- By deleting subclause (3) and substituting –
- “(3) In performing its functions, the Commission must have regard to –
- (a) the needs of employees and their families, taking into account the general level of wages, the cost of living, social security benefits, and the relative living standards of other social groups; and
 - (b) economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment.”.

- 11(4)
[NOT PROCEEDED WITH]
- In the English text, by deleting “recommendations” and substituting “recommendation”.

- 11
[NOT PROCEEDED WITH]
- By adding –
- “(5) The Chief Executive must require that a report under subsection (1) is made at least once in every year.”.

- 13
[NOT PROCEEDED WITH]
- By deleting the clause and substituting –
- “13. Report of Commission**
- The Chief Executive must, as soon as practicable after receipt of a report made under section 11, publish a copy of the report.”.

- 15
[NEGATIVED]
- (a) In the heading, by deleting “**Schedule 3**” and substituting “**Schedules 3 and 3A**”.
 - (b) By adding –

“(1A) The Chief Executive in Council may, by notice published in the Gazette, amend Schedule 3A to –

 - (a) specify in column 1 a conversion multiplier or increase or reduce the then current conversion multiplier specified in that column; and
 - (b) specify in column 2 the effective date for any amendment referred to in paragraph (a).”.

- 15(2)
[NEGATIVED]
- (a) By adding “or (1A)” after “subsection (1)”.
 - (b) By adding “or (1A)” after “section 11(1)”.

16

{NEGATIVED}

- (a) In the heading, by adding “, 3B” after “2”.
- (b) In subclause (1), by deleting “or 2” and substituting “, 2 or 3B”.

17

{NEGATIVED}

By adding –

“(2A) If the relevant date is a date after the beginning of a wage period of a live-in domestic worker, in calculating the minimum wage for the live-in domestic worker for that period no account is to be taken of any day worked by the live-in domestic worker in that period before that relevant date nor of any wages payable to the live-in domestic worker for any such day.

(2B) In subsection (2A), “relevant date” (有關日期) means –

- (a) the effective date of the first prescribed minimum hourly wage rate; or
- (b) the effective date of the first conversion multiplier,

whichever is the later.

(2C) If the minimum daily wage rate is increased or reduced under section 15(1) or (1A) after the beginning of a wage period of a live-in domestic worker, in calculating the minimum wage for the live-in domestic worker for that period the increased or reduced rate only applies to any day worked by the live-in domestic worker on or after the effective date of the increase or reduction.”.

New

By adding immediately before clause 20 –

{NEGATIVED}

“19A. Information to employees

Section 45 of the Employment Ordinance (Cap. 57) is amended by adding –

“(1A) If an employer is required under section 49A to set out in the wage and employment record particulars of a kind referred to in section 49A(3)(ea) of an employee in a wage period, the employer shall, upon receipt of a written request from that employee, inform that employee of –

- (a) the total number of hours that are hours worked by that employee in that wage period referred to in section 49A(3)(ea);
- (b) the wages, calculated in accordance

with section 5 of the Minimum Wage Ordinance (of 2010), paid to that employee for the total number of hours referred to in paragraph (a) in that wage period; and

- (c) the wages other than those referred to in paragraph (b) (if any) paid to that employee in that wage period.

NOT PROCEEDED
WITH

(1B) If an employer is required under section 49A to set out in the wage and employment record particulars of a kind referred to in section 49A(3)(eb) of an employee in a wage period, the employer shall, upon receipt of a written request from that employee, inform that employee of –

- (a) the total number of days that are days worked by that employee in that wage period referred to in section 49A(3)(eb);
- (b) the wages, calculated in accordance with section 5 of the Minimum Wage Ordinance (of 2010), paid to that employee for the total number of days referred to in paragraph (a) in that wage period; and
- (c) the wages other than those referred to in paragraph (b) (if any) paid to that employee in that wage period.”.”.

20(1)
NEGATIVED

By deleting “of the Employment Ordinance (Cap. 57)”.

20(1)
NEGATIVED

By adding –

- “(eb) if the employee is a live-in domestic worker, the total number of days that are days worked (within the meaning of the Minimum Wage Ordinance (of 2010)) by the employee in any wage period;”.

20(2)
NEGATIVED

By adding –

- “(4A) Nothing in subsection (1) requires an employer of a live-in domestic worker to set out in a record particulars of a kind

referred to in subsection (3)(*ea*) of the live-in domestic worker.

(4B) Nothing in subsection (1) requires an employer of a live-in domestic worker to set out in a record particulars of a kind referred to in subsection (3)(*eb*) for any wage period, or part of a wage period, of the live-in domestic worker that occurred before the relevant date.

(4C) In subsection (4B), “relevant date” (有關日期) means the date referred to in section 17(2B) of the Minimum Wage Ordinance (of 2010).

(4D) In this section, “live-in domestic worker” (留宿家庭傭工) has the same meaning as in the Minimum Wage Ordinance (of 2010).”.

21

NEGATIVED

By deleting the clause and substituting –

“21. Powers of officers

Section 72(1)(*b*) is amended by repealing everything after “this Ordinance” and substituting –

“and –

- (i) in the case of a record which includes particulars required to be included under section 49A(3)(*ea*), require that the particulars under section 49A(3)(*a*), (*d*), (*e*), (*ea*) and (*f*) are produced in a single document; or
- (ii) in the case of a record which includes particulars required to be included under section 49A(3)(*eb*), require that the particulars under section 49A(3)(*a*), (*d*), (*e*), (*eb*) and (*f*) are produced in a single document,

and inspect, examine and copy the same;”.

New

NOT PROCEEDED
WITH

By adding –

“SCHEDULE 3A

[ss. 2 & 15]

CONVERSION MULTIPLIER

Conversion multiplier

Effective date”.

New
NOT PROCEEDED
WITH

By adding –

“SCHEDULE 3B

[ss. 10 & 16]

SPECIFIED LABOUR ORGANIZATIONS

1. Hong Kong Confederation of Trade Unions.
2. The Federation of Hong Kong and Kowloon Labour Unions.
3. The Hong Kong Federation of Trade Unions.”.

MINIMUM WAGE BILL

COMMITTEE STAGE

Amendments to be moved by the Honourable LEUNG Yiu-chung

<u>Clause</u>	<u>Amendment Proposed</u>
Long title [NOT PROCEEDED WITH]	(a) By deleting “; to repeal the Trade Boards Ordinance”. (b) By adding “, the Trade Boards Ordinance” after “Employment Ordinance”.
2 [NEGATIVED]	In the definition of “employee”, by adding “, (2A)” after “6(2)”.
6 [NEGATIVED]	By adding – “(2A) This Ordinance does not apply to a person to whom a Government notification made by the Chief Executive in Council under section 2(1) of the Trade Boards Ordinance (Cap. 63) applies.”.
Part 5 [NEGATIVED]	In the heading, by deleting “REPEAL AND”.
18 [NEGATIVED]	By deleting the cross-heading immediately before the clause and the clause.
New [NOT PROCEEDED WITH]	By adding immediately after clause 21A –

“Trade Boards Ordinance**21B. Trade Boards and minimum wages**

(1) Section 2(1) of the Trade Boards Ordinance (Cap. 63) is amended by repealing “The” and substituting “Subject to subsection (1B), the”.

(2) Section 2 is amended by adding –

“(1A) The general minimum time-rate fixed under subsection (1) shall be not less than the hourly wage rate specified in column 1 of Schedule 3 to the

Minimum Wage Ordinance (of 2010).

(1B) If the hourly wage rate specified in column 1 of Schedule 3 to the Minimum Wage Ordinance (of 2010) is increased under section 15(1) of that Ordinance so that the increased hourly wage rate exceeds the general minimum time-rate fixed under subsection (1), the general minimum time-rate shall be increased to a rate equal to the increased hourly wage rate with effect from the effective date of the increase of the hourly wage rate .”.”.

MINIMUM WAGE BILL

COMMITTEE STAGE

Amendments to be moved by the Honourable Mrs. Regina IP LAU Suk-ye, GBS, JP

<u>Clause</u>	<u>Amendment Proposed</u>
2 [NEGATIVED]	In the definition of "employee", by deleting "or (4)" and substituting ", (4), (5) or (6)".
6 [NEGATIVED]	By adding - <p>"(6) Despite any other section, this Ordinance does not apply to a PWD with a type of disability specified in Schedule 1A."</p>
16 [NEGATIVED]	(a) In the heading, by deleting "2 and 4" and substituting "1A, 2 and 4". <p>(b) In subclause (1), by deleting "or 2" and substituting ", 1A or 2".</p>
New [NOT PROCEEDED WITH]	By adding - <p>"SCHEDULE 1A [ss. 6 & 16]</p> <p>TYPES OF DISABILITIES OF PWD</p> <p>1. Mental handicap."</p>